Judicial Restraint or Self-Censorship? Recent Trends in the Application of EU Law by Hungarian Courts

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Abstract: The European legal order confers a significant role upon national judges. They are expected to respect the rules of EU law and, where appropriate, to apply them to domestic disputes, or, where necessary, to interpret national law in accordance with the objectives of EU law. However, the practice of national courts shows that there are significant differences between judges in how they perceive this role.

Previous studies have already examined the factors influencing judges' perceptions of their role in applying EU law and the patterns that can be identified. The research results identified both legal and non-legal factors (e. g. the workload of judges, their knowledge of EU law, etc.) as influencing judicial attitudes. Less research has been done, however, on the impact of rule of law backsliding in some Member States and the associated threat to judicial independence on the way national judges perceive their role in applying EU law. This is logically explained by the fact that it is mainly in the last decade that we have witnessed the threat of political pressure on courts in some countries (such as Hungary or Poland) to an extent that makes this research question worth raising.

The present research examines, in the Hungarian context, how and to what extent judges' perceptions of their role in applying EU law are influenced (if at all) by the following circumstances: 1) an increase in the intensity of government communication against EU institutions and EU law; 2) communication and actions of the national courts' administrative leadership concerning the application of EU law; 3) relevant legislative changes; 4.) other factors identified in previous research.

To answer the above question, a textual analysis of selected Hungarian court decisions will be carried out according to specific criteria. On this basis, an attempt will be made to identify indicators (such as the rate of ex officio application of EU law in cases involving EU law; the rate of rejection of parties' claims based on EU law; the rate of reference to the case law of the CJEU, etc.) that can be used to show whether or not there has been a change over time in the willingness of judges to apply EU law directly or to interpret national law in the light of the objectives of EU law. The selected judicial decisions will be coded according to these indicators in order to allow statistical analysis. Our analysis covers publicly available judgments of the Hungarian Supreme Court (Kúria) in selected areas of public administration litigation between 2014 and 2024. The reason for choosing the Kúria is that, as the highest judicial body, it has a particular responsibility for the correct application of EU law; and from 2021 onwards, the Kúria has been subject to administrative changes (including the change of administrative leadership).

As a second stage of our research, interviews (with judges, court staff and advocats) will be conducted to confirm or refute the conclusions drawn from the results of our analysis based on the text of the selected judgments.