



# Commission v. Hungary

## C-66/18

PUBLIC INTERNATIONAL LAW: ALTERNATIVE SEMINAR

ZDENĚK NOVÝ

# The central issue

- ▶ Does the Hungarian statute on higher education comply with its WTO (i.e. international-law) obligations?
- ▶ But: where is the infringement of EU law?

# Context

- ▶ Art. 258 TFEU – the infringement procedure
- ▶ Subjects involved:
  - ▶ Commission
  - ▶ CJEU
  - ▶ Member state (s)

# An argument by Hungary

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- ▶ CJEU lacks jurisdiction over MS' compliance with its obligations arising from WTO treaties

Commission v. Hungary  
6.11.2020



# International treaties concluded by EU are a source of EU law

- ▶ International law
- ▶ EU law

# What is the relationship between domestic law and international law in the eyes of CJEU?

- ▶ CJEU (Commission) as a supervisory mechanism against breaches of WTO (GATS) obligations (?)

# Key references to international law

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- ▶ Observance of international treaties (pacta sunt servanda) – VCLT (para 92)
- ▶ State responsibility under international law – DARSIIWA embodying customary international law:
- ▶ The relationship between domestic and international law:
- ▶ Characterization (para 88)
- ▶ Non-invocation (para 90)



# The result

- ▶ Hungary has breached EU law by discrimination of higher education institutions from third states in establishing in this country
- ▶ Strictly speaking, Hungary has violated no provision of law adopted by the EU itself, but rather an international treaty the latter has entered into (an internat enforcement of international treaty within the EU)



# An interesting argument

- ▶ *“Consequently, that characterisation cannot be affected by any characterisation of the same act that might be made under EU law.” (Judgment, para 88)*

► Thank you.

