

Ministry of Education and Science of Ukraine
National University of Kyiv-Mohyla Academy
Faculty of Social Sciences and Social Technologies
Department of Political Science

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**” THE CRISIS OF LEGITIMACY OF THE EUROPEAN UNION ON THE EXAMPLE OF THE
CASE OF POLAND”**

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Symerenko Marharyta Yuriivna

Advisor: Dr. Gnatiuk Mykola Mykola

Advisor: Prof. Olaf Leisse

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INTRODUCTION

In October 2021 Poland proclaimed the priority of its national law, namely the Polish Constitution, over the EU's primary law. The judges of the Polish Constitutional Tribunal decided that the treaties of the European Union are not compatible with Polish Constitution and if a situation occurs, where the decisions of the EU officials based on the Treaties will conflict with the provisions of the Polish Constitution, the latter should have the priority for Polish officials in guiding in their decision-making. It is not the first conflict between the Polish government and the EU, it is, however, the one that puts the ideals and reputation of the European Union at risk, as it made the European Union, first of all, aware of the problem it ignored for quite a long time. It is also impossible to say that the case of Poland was the only one, but it turned out to be significant enough to actualize the issue of the legitimacy of the European Union. Most importantly, it has finally revealed an inability of the European Union to prevent and stop the destabilising actions of the Polish government as it led to the current crisis. It also actualised the long-term discussion over the statement that the legitimacy of the European Union is in crisis.

Now, first of all, the complexity of the topic of the legitimacy of the European Union was underlined by many researchers. There is no single approach to understanding and interpreting the concept of legitimacy. The discussion becomes more complicated when the selected criteria are applied to the European Union, given the uniqueness of its structure. The debate on the sources of legitimacy and mechanisms of legitimation of the European Union has been going on almost since its inception, given the uniqueness of the structure of the Union itself, the powers of its member states on the one hand and the EU organs on the other. Almost the same amount of time went into the discussion over the lack of legitimacy of the EU that does not allow him fully implement the functions assigned to it by the member states.

Research question: What are the signs of the legitimacy crisis of the European Union in Poland?

The **object** of research is the legitimacy of the European Union.

The **subject** of research is the crisis of legitimacy of the European Union on the example of its relationship with Poland.

Research goal: find out the signs of the crisis of legitimacy of the European Union that emerged in the its handling of the Polish case.

In order to achieve the research goal, the following **research tasks** were formulated:

1. analyse approaches to defining legitimacy;
2. highlight the criteria on which the legitimacy of the European Union is formed;
3. analyse the definition of the crisis of legitimacy and its features for international organisations;
4. use the derived criteria of legitimacy to determine to analyse the crisis of legitimacy of the European Union in the Polish case.

The following **methods** were used to achieve the goal of the study: structural content analysis, case study and comparative analysis.

The analysis and evaluation of the data was based on the structural content analysis according to Philipp Mayring (2003). The usage of the **structural content analysis** is necessary to distinguish the basic criteria that construct legitimacy and are applicable to the understanding of the formation of the legitimacy of the European Union. After defining the criteria that are formative for the legitimacy of the European Union, the following stated sources will be analysed to determine how the criteria are questioned or denied by the Polish side to undermine legitimacy of the EU, as well as how the actions of the European Union failed to prevent its legitimacy crisis.

The **case study method** was used to better observe the practical confirmation of the presence of signs of a crisis of the legitimacy of the European Union, as well as for a more detailed study of the conflict between Poland and the European Union.

Comparative analysis was used to gain a better understanding of the uniqueness of the Polish case, as well as compare it with the rather similar and politically close

Hungarian case and determine the presence of a pattern of actions aimed at undermining the legitimacy of the EU. It was also used to compare the efficiency of the actions of the European Commission during the presidency of Jean-Claude Juncker and Ursula von der Leyen.

The paper is based on the analysis of the:

- Primary sources (official statements and decisions by EU and Polish officials);
- Secondary sources (articles, reports on the state of democracy and rule of law in Poland etc.)

Master thesis consists of an introduction, three chapters, eight sections, conclusions and a list of references.

The first part attempts to analyse the available approaches to defining the concept of legitimacy, peculiarities of its application to different entities, namely international organisations and the European Union in particular, to identify the criteria of legitimacy specific to each entity.

The second part analyses the approaches to defining the legitimacy crisis of the aforementioned entities, as well as the mechanisms of delegitimation. It analyses arguments regarding the existence of a legitimacy crisis in the European Union.

The third part attempts to confirm the existence of an EU legitimacy crisis using the example of the European Union's conflict with Poland.

The total volume of the work is 68 pages.

CHAPTER 1. THE CONCEPT OF LEGITIMACY

1.1 Development of the approaches to understanding the concept of legitimacy

The definition of legitimacy varies a lot, and the point of legitimacy discourse can vary a lot. A broader and general understanding of legitimacy is associated with such categories as “the right to rule”, or “the right to govern”. However, there is also a numerous understanding of these definitions: “the right” in “right to rule” could mean both justifications, fair claim, belief or privilege etc. While legitimacy can be seen as an attribute of an institution, it also encompasses the social practice of legitimation: it needs to be claimed, sustained and recognized (Zaum 2013: 10).

One of the first definitions was given by John Locke, who stated that “the government is not legitimate unless it is carried on with the consent of the governed which corresponds with his theory of the origin of the state “. The legitimacy of political authority in the civil state depends, according to Locke, on whether the transfer of authority has happened in the right way” (Ashcraft 1991: 524).

Max Weber defines the legitimacy of a political regime when there are indications that its members have certain beliefs or beliefs ("Legitimitätsglaube") about it: “the basis of every system of authority, and correspondingly of every kind of willingness to obey, is a belief, a belief by virtue of which persons exercising authority are lent prestige” (Peter 2015). Government orders and expects obedience, and society is ready to accept the demand of power if the order, in its opinion, will be legal and fair. He also distinguished three sources of legitimacy on which his types of legitimacy are based: faith in tradition (some political or social order existing for a long time, so it is legitimate because it always was), faith in leaders and their outstanding qualities (charisma), and trust in legality of it (rule of law is here the central category). The objection to the approach proposed by Weber is the factor of “belief” - for example - Beetham argued that “power relationship is not legitimate because people believe in its legitimacy, but because it can be justified in terms of their beliefs” (Beetham 1991: 11). In other words, for gaining legitimacy it is necessary to appeal to beliefs that people already have and

can be used to justify the political power. It is still necessary to ensure the belief that power is properly exercised.

John Rawls and Arthur Ripstein provide another perspective on the definition of legitimacy. In their studies, they point out the importance of justification of coercive political power. Whether the state or some political body is legitimate depends on whether the coercive power exercised by the state is justified. The government claims the right to rule and to create obligations to be obeyed, and as long as these claims are met with sufficient acquiescence, is considered authoritative. From this point of view, power can be legal and exist de-facto, but be illegitimate if people, for example, refuse to carry out these obligations (Peter 2015).

Another popular concept was developed by David Easton who links the definition of legitimacy. Within it, the legitimacy of political power depends on compliance with the moral principles of people, and their ideas of justice. He distinguishes ideological, structural and personal legitimacy. He bases ideological legitimacy on the conviction of citizens in the correct functioning of the current political regime and the institutions that represent it. Structural legitimacy is based on the acceptance by citizens of the existing structure of interaction between the institutions of the political system and the functions assigned to them. Personal legitimacy, according to Easton, is based on the belief of subjects in the personal qualities of politicians and their ability to best manage their power (Kerimov 2015).

Mark Suchman emphasises structural legitimacy. According to him, a structurally legitimate organisation gains public trust because it is considered the right organisation for a certain job (Suchman 1995: 579). Such legitimacy also might arise from beliefs about certain qualities of its membership.

There obviously is a tendency to blur the line between legitimacy and justice, causing confusion. One might argue, for example, that although such political entities as states are often unjust, only a just state is morally acceptable and legitimate in this sense. John Rawls objects to this approach. He views justice and legitimacy as related categories - because they draw on the same set of political values—they have different

domains and legitimacy makes weaker demands than justice. "A state could be unjust but legitimate, but not the other way around" (Peter 2015).

The normative approach to the definition of legitimacy often associates it with the justification of authority. William Edmundson formulated the relation between legitimacy and authority by deriving conditions for it which he calls the "warranty thesis": "If being an *X* entails claiming to *F*, then being a legitimate *X* entails truly claiming to *F*" (Peter 2015). *X* here stands for "state" and *F* stands for "creating a duty to obey". From this point of view, there are decisions that are considered legitimate, not because they are the result of democratic processes, but because they were taken by institutions that are considered to be authorised to do so.

When it comes to the talk about a political body commanding legitimacy it implies agreement that their prescriptions are recognized as legitimate and justified from the point of view of the normative provision is the requirement to comply with them.

Similarly, when we say that an institution is rightful, and hence legitimate, we are saying that its norms, rules, and principles are socially endorsed (Reus-Smith 2007: 159). A similar approach is presented by T. Warder, who focuses on rightfulness in his definition of legitimacy: "legitimacy manifests itself in 'persons subject to the binding rules made by political authorities, or at least the overwhelming majority of them, [accepting] that the political institutions making those rules have the right to do so'" (Warder 2010: 116).

Ripstein, however, points out the excessive focus on the justification of authority. Instead, he accentuates the centrality of coercive political power in understanding legitimacy. The focus on coerciveness also gains attention within debates over international and global legitimacy (the legitimacy of the international organisations).

Another typology of legitimacy that tries to explain in which way goes a legitimization of political bodies is offered by Innerarty. He distinguishes two types: input and output legitimacy. The first type comes from popular support or accepting the decisions through democratic procedures by which people assert themselves, while the second one is sanctioned by governments to the extent that they provide public goods

and solve societal problems (Innerarty 2014: 311). He also gives the idea of legitimacy two meanings: that political authority is doing what it should do, and that the people regard it in that way, in other words, it signifies correctness and acceptability (Innerarty 2014: 315).

Vivienne Schmidt adds a third model called “throughput legitimacy”. Its scope covers the processes of governance and inter-institutional interaction in terms of their effectiveness, accountability, transparency and openness to the participation of citizens, associations, and interest groups. According to V. Schmidt, the concept of end-to-end legitimacy reflects the relationship between the effectiveness of the system and its transparency, openness and accountability, where transparency is expressed in the availability of unhindered access of citizens to information, and openness - is in the availability of access to the decision-making process for interested groups of citizens, and accountability implies that empowered actors in the political process are responsible for “output” decisions (Schmidt, 2013).

Fabienne Peter lists the sources of legitimacy which are important for understanding how the legitimation of political power and its delegitimation takes place. Among them, he names consent, beneficial consequences, democratic approval and public reason (Peter 2015).

Consent could probably be seen as the most important source because it can be traced to some definitions of legitimacy and, secondly because it creates a bond between those who agree to comply and those who coerce them to do so. voluntary consent is valuable because it leads to stable rule, characterised by a relatively lower level of need for coercion and the risk of conflict in case of disobedience. There are, however, discussions on how exactly consent should be understood in ensuring legitimacy. For example, is consent understood as given voluntarily by each individual or is it a unanimous decision which in this case does not refer to an unattainable idealistic idea of everyone agreeing, but to the degree of unanimity required to achieve legitimacy overall. The next question is whether consent to recognise power as legitimate is given to some conditions (whether or not they are idealised) or is this legitimacy relative to the extent that the subject actually gave his consent to it (Green

2015: 9). In any case, legitimation undergoes as positions of authority are confirmed by the expressed consent on the part of appropriate subordinates, and by recognition from other legitimate authorities (Beetham 1998: 15).

The next source - beneficial consequences - brings morality back to the analysis of legitimacy. It has behind itself the followers of the utilitarian approach to the definition of political legitimacy. It states – “the legitimacy of political authority depends on what morality requires” (Peter 2015). Such an approach was proposed long before utilitarianists by Christian Thomasius who tried to clearly define the political nature of the source of legitimacy and developed the idea that political legitimacy depends on the principles of rational prudence.

Political actors are constantly seeking ways to legitimise themselves and keep the level of legitimacy at the level necessary to comply with the orders they formulate. Christian Reus-Smith underlines the importance of establishing

“in what group or constituency an actor needs to establish legitimacy to ensure compliance and enable effective action in the necessary political realm. These groups may be domestic, international or transnational; they may represent broad sections of national societies (or the international community), or they may be sectoral or problem-based (Reus-Smith 2007: 164).

The understanding of legitimacy is also derived through several parameters, the presence of which ensures its existence. So, for example, Bogdanor states that legitimacy comes through results or ‘delivery’. Beetham develops it, expanding the list to include the following items in the parameter list: first, the performance of institutions claiming legitimacy; second, how they are conforming to the democratic values of consent, representation, and accountability; and thirdly, the collective political identity, without which citizens may question the right of a particular system to make decisions on their behalf, regardless of outcomes (Warder 2010: 116-117). In addition, a necessary condition for legitimacy, especially for institutions that reinforce the need to enforce their rules by coercion, is compliance with the rule of law.

The concept of legitimacy tends to serve a distinctive and valuable function when something happens that raises the question of how we should orient ourselves in relation to an institution.

Legitimation can be practised both by rules from above and by rules from below (Barker 2003: 113). Legitimation from below, by those who submit to the power of the institution, recognizes and confirms the claims of these institutions to legitimacy. The most striking example of such legitimation is voting, as it validated the claims of power holders through democratic mechanisms.

1.2 Legitimacy of the international organisations

The discussion about the essence of legitimacy evolved around the states mostly as the objects of legitimation. At this level, the elections could be defined as the most certain way of legitimating the government because there is a direct connection between the object and the subject of the legitimation process and the process itself is clear.

However, with the emergence of the first IOs, the question of what constructs the legitimacy of international organisations (or, in other words, the legitimacy of global governance) and the problem of legitimising them stood as separate topics. Woods states that in the second half of the twentieth century, however, questions of legitimacy began more strongly to influence the core structure of international organisations (Woods 1999: 42).

On an international level, there is rarely such a mechanism of legitimising the power of an international organisation as an election, as most of them consist of the representatives of national governments that are members of organisations. This is illustrated by the emergence of many studies that focus only on the analysis of international organisations and distinguish between legitimacy at the national level and the global level.

However, the understanding of legitimacy as it developed on the level of national states needed to be developed to meet the features of the structures of international organisations.

It is of no discussion that international organisations are in need of legitimacy to govern effectively. As Buchanan and Keohane rightfully claim, the perception of legitimacy matters, because, in a democratic era, multilateral institutions will only thrive if they are viewed as legitimate by the democratic public.

“The legitimacy of an international organisation is also a highly important factor for them because they challenge the traditional scope of functioning of legitimacy - the sovereignty and autonomy of nation-states” (Tallberg\ Zürn 2019: 581).

Legitimacy also affects the capacity of international organisations to produce and enact norms and rules. When international organisations suffer from low levels of legitimacy, it makes it difficult to influence and gain the support of national governments to adopt and implement certain policies and enter into new treaties. It also affects the ability of international organisations to secure compliance with international norms and rules.

Moreover, Tallberg and Zürn note that since few IOs command the coercive power to compel state and non-state actors to comply, legitimacy is particularly important in global governance (Tallberg\ Zürn: 582).

First and foremost, there is a question under which conditions an international organisation could qualify as legitimate. Talking about global legitimation there are two directions for definition: state-centred and people-centred. The first one is interesting because in this case, the state acts as the subject of legitimation of international organisations. Charles Beitz describes it this way: “international society is understood as domestic society writ large, with states playing the roles occupied by persons in domestic society” However, the representatives of the second approach object to the necessity and sufficiency of state consent to form legitimacy. One of them, Buchanan states that this is not enough, since it is common knowledge that states tend to be the worst violators of human rights, and therefore an independent international standard of minimum justice is needed to gain legitimacy (Peter 2015). This is not necessary, since international law recognizes many obligations as binding even without the consent of the governments in power. As long as these obligations are consistent with the

“minimum justice”, they are legal, even if they were created without the consent of the state.

Responding to the question about the origin of global legitimacy he states that global governance institutions are similar to the states in understanding that they also issue rules and publicly tie and publicly bind responsibility for their compliance or non-compliance, while at the same time declaring that they have the authority to act this way (Peter 2015).

The second, people-based approach extrapolates the model of legitimation of state, arguing that, despite having a less noticeable connection it is still people, citizens of member-states who provide legitimacy to international organisations. Some studies have sought to map and explain the legitimacy of IOs through public opinion, exploring what factors shape citizens’ legitimacy beliefs.

Probably the most important criteria for ensuring the legitimacy of an international organisation are consent and authority.

Tallberg and Zürn state that "without authority, legitimacy is a non-issue for IOs. With authority, there is a demand for legitimacy, since IOs need the consent of the governed" (Tallberg\ Zürn 2019: 591). In the past few decades, there has been an increase in the authority of international organisations through two processes. Firstly, this is the delegation of powers of agenda-setting, decision making, implementation, and enforcement of the member states to IOs. Secondly, the member states have joined their efforts to optimise the process, moving to the forms of decision-making by the majority, which helped international organisations to broaden available powers and regulatory scope beyond the original functional mandates. On the other hand, the growth of authority also carries the risk of a legitimacy deficit, if the preparation of these new powers is not accompanied by their effective legitimation through procedures that help to create a positive belief about them within society. In other words, national governments will confer authority on international organisations only if they consider them legitimate. It is often said that the EU exemplifies this logic.

It should be noted that the relationship between authority and legitimacy changes over time, and the authority of the IO often goes beyond the intentions of governments at the time of the contract. In addition, such processes affect both the citizens of those states and the level of legitimacy of an international organisation in the affected societies.

It could be viewed as an unjust interference in domestic matters, as international organisations by the decisions of political elites from other countries affect national policies. It does, however, only strengthen the importance of legitimization of international organisations, the more power they have.

A big role in the construction of legitimacy of the international organisations plays the type of those organisations:

“Task-specific IOs, such as the International Atomic Energy Agency (IAEA) and the International Whaling Commission (IWC), reflect attempts at parsing the problems confronting states into discrete, functional pieces and are more likely to legitimise their activities with reference to purpose, invoking expertise, efficiency, and problem-solving. In contrast, general-purpose IOs, such as the EU and the African Union (AU), serve as general governance systems, not unlike national governments, for the manifold of problems that confront their member states. They have a broad policy mandate and are often rooted in a shared (regional) community and, therefore, may be more likely to legitimise themselves with reference to democratic standards, such as participation, transparency, and rights protection” (Tallberg\ Zürn 2019: 593-594).

Besides, in case of the legitimacy of international organisations, their compliance with procedural standards plays a special role (Tallberg\ Zürn 2019: 594). So, in situations where international organisations do not comply with generally accepted procedural standards, this gives opponents the opportunity to delegitimize IO by referring to these inconsistencies. In the case of the EU, the "democratic deficit" argument is most often encountered, which will be discussed further.

An analogue of the mechanism of legitimization, which is elections at the state level, at the global level (IO) is the practice of the consent of states to an institution, as states express their consent to be an object of authority by joining the organisation and accepting its rules. The recognition of the authority of an organisation is also confirmed by member states in their daily practice within those institutions.

The second form of legitimation is from above by the actors claiming legitimacy (Zaun 2013: 11). In this case, legitimation is the act or series of acts by which people justify to themselves or others the actions they take and the identities they expect or claim; in other words, it is a process of self-legitimation in which institutions communicate their claims to other institutions that may have competing claims, or to their membership and the wider international community to justify specific claims. In this case, legitimation is the act or set of acts by which people justify to themselves or others the actions they take; in other words, it is a process of self-legitimation in which institutions communicate their claims to other institutions that may have competing claims, or to the wider international community (narrowed to an international organisation in our case) to justify specific claims.

Also, in the context of the analysis of the legitimacy of international organisations, the multilevel nature of political governance is of particular importance. In the case of a multi-level system, where power is distributed among different levels and actors, legitimation cannot be limited to a one-time declaration of will in elections but requires involvement at different stages of the decision-making process (Moiseeva 2018: 97).

1.3 Legitimacy of the European Union

The political system of the European Union (EU) is a complex and multidimensional object to comprehend. It is, at first sight, a plausible contention that such legitimacy as the EU enjoys must be quite different from that of the states which compose it, and more akin to that of other international authorities, whose membership comprises states rather than individual citizens (Beetham 1998: 17). The phenomenon of the EU is that not being a state, it is endowed with political power and has a political system that was formed on the basis of the Maastricht Treaty of 1992, and, like any other political system, needs constant legitimation. Additional importance to the legitimacy of the European Union gives the understanding of how it impacts the legitimacy of member-states, especially in the direction of assessing the effectiveness and efficiency of work.

In fact, the partial transfer of sovereignty to European institutions was justified by the fact that they were better able to solve certain problems. Thus, the EU can be regarded as an institution whose level of legitimacy depends on how effective it is in solving problems that fall within its competence.

With the creation of the EU, the need for ensuring its high legitimacy also arose. Beetham notes that “such legitimacy as the EU enjoys must be quite different from that of the states which compose it, and more akin to that of other international authorities, whose membership comprises states rather than individual citizens” (Beetham 1998: 17).

To understand the essence of the legitimacy of the European Union, it is also important to take into account the process of its formation and the approval of the rules for its functioning. The main EU treaties outlined a framework for cooperation between member countries and the procedural principles on the basis of which this cooperation was built and regulated. Thus, a balance of powers and competencies was established between the national and institutions of the Union. With the entry of new members into the EU and their deeper integration into the community, serious institutional changes took place, the procedures themselves underwent significant changes, not to mention the emergence of new management methods. In this light, technocratic legitimacy (the core of which is the requirement for the authorities to be competent, to be professional) could no longer ensure the legitimacy of the entire political system and justify the expectations of citizens who at some point found themselves too dependent on the norms and rules of the organisation (here - the EU), although they did not participate in their development (Moiseeva 2018: 96).

Beetham also emphasises that the authority of EU's institutions requires, and is in the process of acquiring, a measure of normative validity, alongside the indirect legitimacy deriving from recognition by its member states and their political elites (Beetham 1998: 17).

Looking at the essence of the European Union and the process of the accession to the EU (in particular, the duty of the candidate to adopt, implement and enforce all

current EU rules (the "acquis"), the definition of legitimacy proposed by Jens Steffek could be considered as one of the basic regarding the EU's legitimacy discussion: "[...] the term legitimacy shall describe the fact that individuals or organisations are following rules, commands or decisions because they regard them as binding" (Steffek 2003: 255).

The legitimacy of the EU must be focused primarily on normative arguments that can force governments to comply with undesirable rules. In most cases, the EU does not actually require the obedience of individuals, since the enforcement of decisions is carried out through the prism of national law, which, of course, must comply with EU treaties.

The above-described multi-level political governance is also present in the structure of the EU and, accordingly, needs appropriate legitimation.

Innerarty believes that the legitimacy of the European Union is based on the fact that it is controlled by its member states and regulates this provision in the agreement with the criterion of national democracy (Innerarty 2014: 316). "Article 10 of the Treaty of the European Union seems to imply that the national parliaments are, in fact, one of two sources of the legitimacy of the EU" (Pernice\ Maduro et. al. 2013: 24). Following his approach to the division of legitimacy into input and output: input legitimacy is provided by states and national electorates, while output legitimacy is determined precisely by the success of the policy that the European Union implements. It seems that the creation of the European Union itself is closely tied with further emphasis on the output legitimacy as the part of national powers was given to the EU, symbolising a so-called "permissive consensus".

In the case of the EU, the difficulty in assessing and measuring legitimacy at the input lies in the fact that its main institutions provide their legitimacy in different ways.

For example, the Council of Ministers includes representatives of national governments of member states of the EU, hence its legitimacy is formed on a national level. Members of the European Parliament are elected by the direct vote, in the analogy with national parliaments. The situation is more complicated with the European Commission and the European Central Bank, whose input legitimacy is probably the

weakest, as they are only weakly accountable in other ways, such as in the giving of explanations for their decisions, for which they are regularly criticised. On the contrary, among the EU bodies, the European Council, which is formed from elected heads of government, has the highest input legitimacy.

The same situation is with the output legitimacy, whether the performance of the EU is assessed by the compliance of political decisions with the principles of fair distribution and equality, or refers to economic indicators such as competitiveness, budget balance, public welfare, etc. The situation will be similar with throughput legitimacy. It can also be deduced from this that, "since the Member States lose some of the powers that are transferred to the European Union, their internal constitutional structures can at best represent only an indirect source of the Community's legitimacy" (de Burca 1996: 352).

Moreover, individually none of these bodies provides sufficient legitimacy for the European Union since the European Parliament has rather an auxiliary legitimising function. It is the Member States, through representation in the Council of Ministers who are accountable to their national parliaments, that can provide the necessary legitimacy for the Community's actions. On the other hand, given the use of a supermajority voting system and weak control over national parliaments, the Council of Ministers cannot provide the necessary degree of legitimacy. Thus, it can be stated that the legitimacy of the European Union rests on a dual basis, stemming partly from member states and partly from its structures. It also takes into account the legitimacy of the European Union and its bodies, which is ensured by the citizens themselves, supporting the decisions taken. Given that the Union is not a state, it is argued that it does not require the same mode of democratic legitimation that we expect of the state but can be legitimated in other ways.

CHAPTER 2. THE CONCEPT OF LEGITIMACY CRISIS

Legitimacy is not a constant value, since it critically depends on the political, socio-economic, and foreign policy pursued by the authorities, and accordingly, it can increase or decrease. In the case of a decrease in the level of legitimacy, we have to talk about a crisis of legitimacy, legitimacy deficit or delegitimation of power. Those three definitions are interdependent and often are used in the same context.

The “crisis of legitimacy” was first defined by Jürgen Habermas as “an inability of the legitimising system to maintain the requisite level of mass loyalty while the steering imperatives taken over from the economic system are carried through” (Habermas 1976: 46). In a crisis of legitimacy, governing structures cannot prove that they are fulfilling the role for which they were created. As a result, the state loses the support of the population when the electorate begins to consider its administration unaccountable.

He states that during the course of capitalist development, the political system shifts its boundaries not only into the economic system but also into the socio-cultural system, and nurtures its legitimacy from those two: by ensuring the mass loyalty from the socio-cultural system and the fiscal scim-off from the economic system (Habermas 1973: 46-47). The political subsystem requires mass loyalty as an input to produce legitimate administrative decisions that are executed by the state. A rationality crisis is an exit crisis that occurs when the state is unable to meet the demands of the economy.

Accordingly, the crisis phenomena that arise in any of these areas, be it an economic or social crisis, inevitably affect the political system. After all, if the state's anti-crisis management fails, then it ceases to meet the basic requirements that the state forms for itself. The penalty for this failure is a reduction or loss of legitimacy.

Chris Reus-Smith described it as a “crisis in the capacity to enlist norm-compliant behaviour” (Reus-Smith 2007: 161). In other words, it must be either disobedience with something that forces the subject to the need to ensure such behaviour or the process of consent accepting of the authority is having functional problems. Accordingly, it is unable to effectively use its power and the material, financial and other resources at its disposal, as well as law enforcement agencies.

An important point to the understanding of what the crisis of legitimacy is, is its existence for a certain period. That is, the subject responsible for its elimination or resolution during this time either does not make sufficient efforts for this, or the efforts made are not successful. It also means that the decline in legitimacy has reached a critical point.

Habermas also described the legitimacy deficit as a situation where “it is not possible by administrative means to maintain or establish effective non-native structures to the extent required” (Habermas 1976: 47). It also literally means the deficit of those criteria through which legitimacy is ensured, such as the deficit of authority, which comes from the deficit of recognition or entitlement. Thus, the actor cannot evaluate his powers and achieve necessary results, which, in turn, affects the output legitimacy.

Here, the fact that the crisis of legitimacy is often closely connected with the systemic crisis of power and generated by the latter is of particular importance. A systemic crisis is a gradual, but steady, uncontrollable increase in the inability of the authorities to solve the problems facing society, respectively, contradictions and conflict potential both in society as a whole and in the power system itself.

Many studies also deal with the crisis of democratic legitimacy or the deficit of democratic legitimacy. Van Ham and Thomassen suggest that

“it is the comparison between the democratic ideals and the really existing functioning of democracy that makes for a judgement about the legitimacy of a democratic regime. If norms and reality match, the regime will be considered legitimate; if reality falls short of the ideal, there will be more or less a legitimacy deficit” (Kriesi 2013: 614).

When we are talking about the delegitimation of power a focus shifts to the process of contesting the legitimacy of some political actor. Legitimacy is contested by a problem if this problem leads to the emergence of disputes and activities that challenge the rightfulness of political rule or authority of political actors. Delegitimization is expressed in a decrease in the level of support for the government and its actions on the part of the population, not excluding the possibility of a change in political power itself.

It is difficult to give an unambiguous answer to the question of whether there are absolute indicators of a crisis of legitimacy or is a purely situational characteristic of political processes.

Achim Hurrelmann and Andrea Wagner identify the crisis of legitimacy by spotting the presence of two criteria: (a) legitimacy debates continue for long periods, suspending the normal “legitimacy focus cycle” that sees legitimacy issues being supplanted by discussion of new political issues, and (b) assessments of legitimacy become increasingly hostile as the debate continues (Hurrelmann\ Wagner 2020).

Another approach distinguishes three criteria that precede the crisis of legitimacy: (1) a violation of the perception of whether an institution meets existing standards of legitimacy (broken promises), (2) changes in the standards or criteria of legitimacy applied to an institution (changing standards), and (3) changes in the institution's relevant public (changing audiences) (Stephen 2018: 101-102). It is clear, that these are not universal criteria since the process of delegitimization takes place in different communities and at different levels in different ways.

In general, legitimacy is “riddled with contestation”, as political opponents are regularly trying to delegitimize the current “rulers” and steer political processes in the direction they need.

2.1 Crisis of legitimacy within international organisations

Legitimacy crises can cause political instability, especially at the level of international organisations.

Matthew Stephen points out that concerning international organisations, there is a belief that their member countries are interested in maintaining a sufficient level of legitimacy. “The lack of legitimacy must be compensated by increased incentives or coercion, which increases the operating costs of the institution, which in total leads to a decrease in “compliance” and calls into question the benefits of membership in the organisation” (Stephen 2018: 97).

To understand the essence of the crisis of the legitimacy of international organisations, the concept of "democratic deficit" is also important, which in this case implies the inability of international organisations to compensate for the procedures of democracy at the global level. Thus, the population does not feel the direct connection through which consent is transmitted to establish the authority of the authorities that arise in elections - parliament or heads of state, for example. Thus, although legitimacy is attempted to be tied to the ability to diffuse power in international affairs fairly, these attempts have limited ability to be implemented in practice (Schneider 2005: 6).

The delegitimation process affects the capacity of international organisations to develop and implement new norms and rules. Tallberg and Zürn declare that when IOs suffer from poor legitimacy among elites and citizens, this makes it more difficult for them to gain support of national governments for ambitious policy goals and to ensure ratification of new agreements (Tallberg\ Zürn 2019: 582).

At the level of member states represented by their governments, which implement the decisions made by organisations and at the level of society. Intergovernmental organisations rely on member states to execute their mandates, as a result, their success (and effectiveness of their work) is largely determined by those states' will to cooperate and contribute their efforts. For the most part, the powers remain with the states themselves, making legitimacy dependent on the goodwill of these member states, which also emphasises its weakness.

Thus, just as by granting legitimacy to an international organisation, member states can also take steps to reduce the organisation's legitimacy. The advantage of their position, in this case, is the ability to provoke promoted narratives, for example, about the inability of the organisation to fulfil the powers entrusted to it or their excess on its citizens. Thus, the assessment of the level of legitimacy in society can be reduced by the messages promoted by the government, but also by various non-governmental organisations, interest groups, lobbies, or come from a direct assessment by citizens of the activities of an international organisation. At this level, a crisis of legitimacy can manifest itself in demonstrations, and mass disagreement of the population with the policy being pursued. However, in this case, although the level of legitimacy of

international organisations suffers from its authority, it also hurts the authority of the state itself, which implements the policy adopted at the international level.

2.2 Crisis of legitimacy of the European Union

As noted above, the case of the EU is special due to its unique structure. At its core, the transfer of some of the powers from the Member States to the EU bodies was driven by the assumption that the EU would be better able to deal with problems that fall within its purview.

However, already here, one of the threats or problems to the legitimacy of the European Union arises. The EU does not have the same legitimacy in the eyes of citizens as the same national governments. If we talk about legitimacy based on consent, which was of particular importance for the integration process, it is not sufficient. Innerarty notes that “the project of European integration has always been accompanied by the shadow of a suspicion of inadequate legitimacy” (Innerarty 2014: 308). Moreover, some members oppose deeper further integration, calling it a threat to national sovereignty and accusing the European Union of threatening the national sovereignty of member countries. In other words, it means that the European Union exceeds the powers that were originally transferred to it. Moreover, some members of the European Union oppose deeper further integration, calling it a threat to national sovereignty. On the other hand, if we follow the timeline of the integration process with the promises that “it is possible to solve the problems by getting together, coordinating policies and talking about solidarity” almost no result can be seen. Despite the prominent narrative of integration leading the whole of Europe forward the discussion about the crisis of the legitimacy of the EU remains through the years.

The next problem that many researchers point out when talking about the crisis of legitimacy is the democratic deficit. Concerning the EU, this term is used to refer to the European Parliament as the only body whose members are elected, but which has relatively little power and power to influence policy compared to the European Commission and the Council of Ministers. Thus, on the one hand, delegitimization occurs

due to the fact that the bodies that form those who adopt this or that policy are not directly elected, which means that they do not have, roughly speaking, the consent of the governed to impose their authority, and on the other hand, the only the electoral body does not have sufficient powers and authority over other EU structures. Moreover, the European Parliament does not have the legislative powers that national parliaments have. This, in turn, reduces the level of importance of elections and, accordingly, the level of legitimacy of both the European Parliament and the entire EU.

The EU is seen as remote and unpredictable. Direct elections to Europe Parliament seem to have no demonstrable political consequences. The Council of Ministers and European Commission lack any popular electorate mandate. There are also other mechanisms, such as a referendum, or European citizen's initiative, however, they are characterised by low relevance. The European Union has acquired an impressive number of competencies that increasingly affect citizens' lives, but "if such a political system is only supported by approximately half of its citizens, then the system is in crisis" (Haverland 2013: 11).

The "throughput legitimacy" introduced by Vivienne A. Schmidt, which includes accountability of decisions and transparency of the political process, is at best in its infancy in the architecture of European statehood (Schmidt 2013).

On the other hand, the binding collective decisions made by the representatives of national governments in the Council were supposed to be legitimised by the electoral mandate they obtained during national elections.

However, statistics show that the greatest concern among the citizens of the European Union is not its democratic nature, but its inability to solve existing problems, which is its inefficiency (Buras 2021). The EU is constantly viewed as lacking the means to respond to the dissatisfaction of citizens and resolve the emerging crises, such as the Eurozone crisis. The extreme limit of this type of dissatisfaction is the following position: if an organisation cannot perform the functions assigned to it, then what is the point of its existence?

The most prominent example of the inability of the EU to overcome the negative consequences of the economic crisis which, in turn, affected its legitimacy, was the Eurozone crisis. The Eurozone financial crisis was widely perceived as a threat to the legitimacy of the European Union. Barroso pointed out that the crisis also had a more explicitly political component: This crisis [...] is also a crisis of confidence, he told the European Parliament (EP) in his State of the Union Address. 'A crisis of confidence in our leaders, in Europe itself, and in our capacity to find solutions' (Hurrelmann\ Wagner 2020: 708).

Barroso's statement confirmed that the eurozone crisis has proven to be a challenge to the EU's legitimacy, risking undermining the acceptance of its institutions. First of all, because he emphasised doubts about the ability of the EU institutions to pursue effective policy outputs and take effective measures. Secondly, it showed what is the "democracy deficit" many researchers are talking about in the discussions about the legitimacy crisis of the European Union.

In addition to the complexity of decision-making and its bureaucratic nature, the position of the member states (their governments or representatives in the EU bodies) plays a big role here. It is the governments that are responsible for the adoption of the initiatives developed by the European Commission and their further translating into national legal measures and ensuring the application of EU law, including enforcement where necessary. Whether a policy is implemented or not depends on factors such as the administrative capacity and attitudes of governments. Accordingly, there is variation in the degree of implementation and compliance across member states and across policy sectors. Thereby, being dissatisfied with their position or disagreeing with individual decisions, national governments can challenge those decisions. In the case of individual initiatives that some states may consider unacceptable for their national interests, the work of the EU bodies may be disrupted, and the process paralyzed. As Woods pointed out, "the legitimacy of international institutions is being challenged by states who feel inadequately consulted or represented within organisations" (Musonda 2006: 89). In this case, when the power of the EU's institution to act is challenged, which in turn leads to questioning its purpose, it can be said that the legitimacy of the

Community is at risk. It is often aimed at non-elective organs of the EU for the inadequacy of the amount of competence and decisions they produce. It also raises the question about the efficiency of excessive focus on resolving the crisis of the legitimacy of the European Union through ensuring and enhancing the democratic legitimacy of the EU if member states can challenge this legitimacy.

As already mentioned, this position is largely due to the belief that the policies implemented by EU bodies conflict with national policies and, in some cases, threaten the national sovereignty of member countries. De Burca states that in the context of the discussion about the legitimacy of the European Union

“...the real challenge to legitimacy comes not from those who oppose certain policies or the exercise of certain competencies by the Community, but from those who continue to believe in the nation-state as the only rightful political authority and who oppose the exercise of autonomous power by the Union...” (de Burca 1996: 351).

The EU was and is still in need of stronger political authority, the lack of which undermines not only the credibility and effectiveness of the EU's dealing in financial direction (strengthening the Euro and dealing with the aftermath of the Eurozone crisis), but also in political, what gives its critics the chance to destructively affect its institutions and strongly criticise them for the inability of efficient policy implementation.

A big role in the fact that such threats to the legitimacy of the EU turn into a crisis of legitimacy is played by the fact that the European Union does not have the full range of instruments of coercion that the executive branch of national governments has.

It would be more accurate to say that the available tools are not designed for their use. In other words, it is understood that the very fact of the possibility of "punishment for disobedience" should protect the Community from such cases. Therefore, when such a problem does arise, the EU quite often fails to resolve it optimally quickly and effectively, which causes a number of other problems, the accumulation of which over the period during which the EU is trying to solve this problem, results in the very crisis of legitimacy. Another side of this crisis is its characterization as a precedent - if the EU is not able to eliminate it by restoring the necessary level of legitimacy, then it may reappear.

Longo and Murray sum it up, stating that “the essence of the legitimacy crisis of the European Union is basically the number of cases and episodes that confirm the fact that the EU lacks legitimacy and isn’t able to compensate or replenish it” (Longo\ Murray 2015).

CHAPTER 3. POLISH CASE

The crisis of legitimacy of the EU in Poland is a danger to the legitimacy of EU's organs (European Commission and the Court of Justice of the European Union) in general. It concerns the challenges that the European Union, represented by its bodies, primarily the executive branch - the European Commission faced and faces in its relationship with Poland.

Despite the high level of general support for the EU among Polish citizens - 88% and 90 % in the years 2019 and 2021 respectively, it is openly challenged by the Polish government (Martins 2022). Despite the periodically arising disagreements between the central bodies of the EU and the Polish government, the starting point of the conflict should be considered the coming to power in Poland of the Law and Justice party (Prawo i Sprawiedliwość, here - PiS) in October 2015.

3.1 The crisis of effectiveness of the European Union

As mentioned earlier, for a sufficient level of legitimacy, it is very important to achieve certain results in the fulfilment of the assigned tasks, in other words, the effectiveness of activities. This plays a big role for international organisations, where input legitimacy is either completely absent or rather weak and the population can express their perception of the subject of legitimacy. For the European Union and its structural bodies, the ability to effectively solve problems is also one of the central criteria for legitimacy, and therefore cases, where the EU is unable to solve a certain problem, have a rather painful effect on the level of its legitimacy. This can be argued considering the case of Poland's violation of the rule of law and other important European principles.

Since coming to power (victory in parliamentary and presidential elections), PiS has been repeatedly marked by violations of the rule of law, the Polish constitution and EU law.

On 13 September 2016 European Commission activated the Rule of Law framework for Poland. For a better understanding of the complexity and threat of a conflict, it is necessary to mention that EU members are legally obliged to cooperate in this endeavour.

The Commission opted for usage of this tool in response to the appointment of new judges to the Constitutional Tribunal (Polish constitutional court), which, according to the European Commission, was carried out in violation of both the appointment procedure and the appointment itself violated the provisions of the Constitution. This includes the appointment of the acting President (such a position is not fixed by law) with the appointment of a new judicial composition, as well as the voting of the new composition on the appointment of the acting President as the new President of the CT. The second case, which has caused deep concern in the European Union, is related to the introduction of clearly unconstitutional changes to the procedure for the resignation of judges of the Supreme Court (2017), as well as the attempted early termination of the urgent mandate of the First President of the Supreme Court.

European Commission issued a complementary Rule of Law recommendation at the end of 2016 advising Polish authorities to deal with the case of the Constitutional Tribunal, in addition to the recommendation adopted earlier in July, enlarging the list of requests, but also giving Poland time to fulfil the requirements. Instead, the EU got another episode of a blatant defiance from Polish authorities, who, while continuing to form a more politically reliable and dependant Court, stated that the issues of concern have been solved, so there is nothing to worry about. Meanwhile, the Polish Ministry of Foreign Affairs noted that nothing that would've required a reaction or a feedback from European authorities happened and that the Commission's rule of law recommendations reflect "incorrect assumptions' deriving from 'incomplete knowledge about how the legal system and the Constitutional Tribunal operate in Poland" (Pech\ Schepelle 2016). It is quite clear that PiS almost surely believes that the Commission won't decide on tougher measures and allow another Member State to merge into another autocracy, as it already happened with Hungary.

Laurent Pech argues that at this time the European Commission should have already gone with invocation of Article 7 TEU, rather than producing another, obviously useless Recommendation, although with an added list of new demands (Pech 2016). It should have been clear to everyone that Polish authorities weren't going to cancel their "reforms", as the European Commission practically got a blatant refusal to comply with the first Recommendation. It had continued threatening Poland infringement procedure, while the new Recommendation indicated that the Commission decided not to take any actions to prevent the final stages of the Tribunal's demise. Even acknowledging the fact that the Constitutional Tribunal had fallen into political dependence, the Commission produced next set of Recommendations, which were belated and therefore useless, since the events they were trying to prevent had already happened. The fact that these recommendations were not accepted by the Polish authorities is also indicated by a quote from Yaroslav Kaczynski, who called them "an absolute comedy", denying any accusations his country was veering into authoritarianism (Sobczak\ Pawlak 2016). The apparent disregard and disregard of the requirements and recommendations of the Polish government and the Sejm for the EU has increasingly made it impossible to justify the Commission's failure to apply the Article 7 procedure after two months of implementing the first recommendations.

Despite concerns expressed by EU representatives regarding legislative changes in the activities of the Supreme Court, the Polish authorities made a number of further changes, creating two new divisions in its structure: Disciplinary Chamber and the Extraordinary Control and Public Affairs Chamber. After numerous attempts to influence the Polish authorities through statements, condemnations and other things, the EU, in particular the European Commission, apparently came to the conclusion that such tactics were ineffective, and, worse, gave the Polish authorities a sense of impunity.

Therefore, as the EU considered such actions a threat to the rule of law and European values it finally decided to go for the activation of infringement procedure according to Article 7(1) TEU.

It is also worth noting the unsuccessful attempts by the European Commission to amend the law on the Supreme Court to abolish the "extraordinary appeal procedure" since it was found to be incompatible with the rule of law due to the

"broadness of the criteria governing the extraordinary appeal", the "20-year reach of the extraordinary appeal" and the fact that this procedure "could even justify, for example, the repeal of final judgments by Polish courts applying EU law as interpreted by the case-law of the Court of Justice of the EU (Pech\ Wachowiec\ Mazur 2021: 11).

Thus, the period until December 20, 2017, can be characterised as the "pre-Article 7 procedure", as during this timeline the European Commission tried to use the available tools in order not to come to the point of using the procedure under Article 7 TEU.

With regard to Article 7 TEU, it is worth noting that it was originally included in the EU treaties primarily to fulfil symbolic and deterrent purposes, respectively: it was assumed that "the legitimacy of the EU would benefit from a provision making it clear that its 'constitution' was consistent with the basic principles of Western constitutionalism" and that "national governments, especially Eastern European new democracies, will refrain from acting to move away from adherence to democracy or the rule of law after accession for fear of triggering Article 7" (Kochenov\ Pech 2016: 1064). It is also perceived as a remedy of last resort underlying the seriousness of the situation.

However, even the imminent threat of activation of the procedure under Article 7 did not stop the Polish government from further legislative changes. Unfortunately, it can be noted that already at this stage the European Commission reacted a little bit late, not going with the activation the infringement procedure, losing the necessary time. It remains only to guess what the Commission was guided by delaying it, seeing at the same time Poland's lack of reaction to all the comments and criticism. Already at this stage, it can be argued that the fact that the EU bodies did not respond quickly and sharply enough to Poland's actions in the field of violation of the rule of law, but also in other areas, affected the effectiveness of the EU in this particular case. In defence, of course, it must be stated that, in general, the European Union needs more time to mobilise its institutions and form a reaction than national governments in making the decisions they need.

The EU also issued a recommendation considering the premature termination of mandates of the National Council of Judiciary (NCJ), to which the Polish Parliament, as expected, did not heed, electing 15 new judges in March 2018. The situation was aggravated by a procedural violation: at least 1 candidate failed to provide the required number of cover letters. Added to this are allegations of corruption, money laundering and abuse of office.

To follow the timeline, also in March 2018 the infringement procedure was supported by the European Parliament.

Thus, it can be calculated that the Commission practically wasted two years before referring to article 7 of the TEU. Considering it has failed to achieve success with a similar case in Hungary its strong belief in the efficiency of the pre-Article 7 dialogue turned out to be misplaced. This could make sense and result if the Polish authorities had the same fear of it as many researchers who call it the "nuclear option".

The European Commission itself explained that the activation of Article 7(1) TEU is necessary when “there is a clear risk of a serious breach inter alia of the rule of law in order to send ‘a warning signal to an offending Member State before the risk materialises’ (Pech\ Schepelle 2017). It is clear that in the Polish case the problem already went far beyond as the risk already materialised and could be better ascribed to the Article 7(2) TEU (“serious and persistent breach”)¹. Since, in its additional recommendations, the Commission clearly identified serious violations in the areas of the rule of law and the independence of the judiciary, this clearly went beyond the conditions set out in Article 7(1). Therefore, given the advantage that the preventive part of Article 7(1) TEU is activated independently of the sanctioning part of Article 7(2) TEU, the Commission could well have used the second part immediately without spending much time on warnings and recommendations.

Laurent Pech distinguishes at least three arguments that criticise the decision to postpone the activation of the procedure, even with the acknowledgement of deliberate actions of national government regarding undermining checks and balances:

¹ <https://eur-lex.europa.eu>

“... (1) legally speaking, the Commission is failing in its duty to ensure the application of the Treaties and act as the Guardian of the Treaties; (2) Politically speaking, the Commission’s belief that it must secure the Council’s backing before activating 7(1) TEU adds a political element which we consider ill-advised for an institution which is supposed to act independently and whose insulation from politics was institutionally organised to enable it to take ‘difficult’ decisions when it comes to ensuring the application of Union law; (3) Pragmatically speaking, triggering Article 7 would have finally obliged national governments, meeting in the Council, to face up to their own responsibilities to keep European values at the centre of the Treaties” (Kochenov\ Pech 2017).

While blaming the European Commission for the belated reaction one should also note the low activity of the Council of Ministers in assisting the commission in resolving this case. It mostly avoided taking any kind of firm position, limiting its own involvement to meaningless statements and unproductive attempts at dialogue. Pech even claims that in this time period before the case was taken to the Court of Justice, the Council of Ministers “did its best to do as little as possible while hiding this inaction by recalling at regular intervals its “concerns” about the rule of law situation in Poland and recurrently presenting “dialogue” as the way forward” (Pech\ Mazur\ Wachowiec 2021: 17).

In this case, in order to protect its actions and not being a sole responsible body, the Commission counted on the support and active involvement of the European Parliament and the Council of Ministers, which, in principle, ensure their legitimacy. Also, the presence of at least two EU bodies supporting sanctions and the activation of Article 7 carries more weight and attracts more attention than one. To wait however for a clear signal from a majority of national governments that Article 7 would succeed seems, however, like an excuse for not doing anything.

Of course, one cannot ignore the fact that the structure of the Council of Ministers influenced its decisions, since not only “friendly” countries could influence, but also countries with similar problems with the rule of law or the independence of the judiciary. Most obvious resistance to the Commission's proposals and support of Poland (since it is not allowed to vote for itself) was expectedly seen from Hungary, whose government has the same, if not worse, problem with the level of democracy and the violation of the rule of law. It could be predicted that they will be in favour of vetoing any sanctions against Poland. However, it also showed Council inclination to secrecy and cautious behaviour when it comes to one of its members. Among his decisions, there are couple worth noting: without any justification, reinterpreted Article 7(1) of the TEU

as providing for hearings in the form of peer review when a provision of the Treaty does not do so; there was also a partial selection of topics for discussion without any public explanation; adopted a set of "modalities" that procedurally favour those accused of violating the rule of law, allowing them, among other things, to avoid misleading or frankly inaccurate statements; and last but not least, the Council has established a hearing system that lacks transparency and rejects the participation of relevant external stakeholders with experience in the issues under discussion (Pech\ Mazur\ Wachowiec 2021: 19).

An analysis of the decisions of the Council showed that which country chaired the Council also played a role. Adding to that, the COVID-19 pandemic gave the Council a perfect excuse not to hold hearings under Article 7(1) thus reducing their efforts to resolve the crisis of the rule of law in Poland to a critical minimum. By using modalities which make the hearings as ineffective as possible, the Council has also violated the EU principle of "effet utile" ("useful effect") (Pech\ Wachowiec\ Mazur 2021: 19). James Shotter notes that "the requirement for unanimity basically allows any two countries to stop action against each other — as Hungary and Poland have pledged to do, effectively stalling the processes targeting them" (Fleming, Sam\ Peel, Michael\ Hopkins, Valerie 2020).

It is logical that the efficiency of the instrument itself is repeatedly questioned, especially if the President of the Council does not want to play a decisive role and promote the implementation of these procedures. In fact, this led not only to the fact that the Polish authorities were able to avoid any serious criticism in the Council but actually received an indirect *carte blanche* for further undemocratic decisions.

It is worth saying separately about the role of the European Parliament, since it reacted quite clearly to the decisions and accusations of both the Hungarian and Polish authorities. Parliament expressed concern about the resolution adopted by the Commission following the dialogue in September 2016, noting a dangerous trend due to the unwillingness of the Polish government to cooperate with the European Commission in order to eliminate violations of Polish law and the rule of law and independence of the three branches of power. Essentially, Parliament has the authority to call for

activation of Article 7, but it needs the support of a supermajority to do so. He was quite clear in his support for the Commission and the possible need to activate Article 7 and authorise Poland, thus handing over the entire initiative.

Finally, 15 months after adopting Article 7(1) Reasoned Proposal (approximately March 2018) the European Commission finally activated the third rule of law infringement and referred the case to the European Court of Justice. In general, the European Commission launched the infringement procedure against Poland four times: twice during 2018 and then in 2019 and 2020.

The second infringement procedure activated in 2018 concerned the incompatibility of activities and decisions of the Supreme Court with Article 19(1) TEU in connection with Article 47 of the EU Charter.

On 17 December 2018 the Court of Justice of the European Union issued an order imposing interim measures to stop the implementation of the changes to the Supreme Court and reinstate the judges forced to retire, also because of the age limit. However, the extent, to which Polish authorities obeyed the decision of the Court could be seen from the fact that some of the dismissed judges who were reinstated in their positions due to the order of the CJEU were subjected to the disciplinary measures, which, of course, can be considered as a sign of pressure. On 24th June 2019 the Court of Justice issued a final judgement in case, fully supporting the position of the European Commission².

Both the recommendations proposed by the European Commission and the decision of the Court were not accepted and implemented by the Polish government, not only in full, but even to a sufficient extent to predict progress. This significantly undermines the credibility of both structures, which will be discussed in more detail below, but in terms of effectiveness, this suggests that the Commission will be forced to continue to issue the infringement proceedings.

² <https://ec.europa.eu/commission>

This, among other things, raises the question of whether the reason for the lack of success the procedure is itself or whether it is about specific cases. The latter is however confronted by the fact that the European Union, in parallel with the Polish case, tried to resolve a similar Hungarian one. This creates a risk that the lack of instruments to eliminate the “illiberal practices” or their inefficient implementation may encourage other member state governments to follow suit.

The ineffectiveness of the EU's actions was underlined not only by the fact that the first case was not resolved but also by the fact that the Polish authorities continued to violate the rule of law. On 3 April 2019, the European Commission launched another infringement procedure, this time regarding the Disciplinary Chamber³. It also took the Commission less time to refer the case to the CJEU.

Thus, on 20 December 2019, the Polish parliament allowed the Disciplinary Chamber of the Supreme Court to suspend judges who were found to be involved in political activity, thereby violating the principle of independence of the judicial branch. Given this, the European Commission decided to ask the CJEU to apply interim measures to Poland and to oblige the government to suspend the work of the infamous Disciplinary Chamber of the Supreme Court. The request was accepted in April 2020, as the Court stated that EU member states should “ensure that the disciplinary regime applicable to judges of the national courts ... complies with the principle of the independence of the judiciary.”⁴

Obviously, such a decision was a big blast for the ruling party which undermined the legitimacy of the European Union and reduced the effectiveness of its decision by interpreting undesirable decisions in a favourable light itself. However, it was also expected that the ruling party will strongly oppose the decision under the argumentation of judiciary reforms being the prerogative of the member states. “A reform of the judiciary is the exclusive competence of EU member states,” Morawiecki said, as he announced that Poland will refer the ruling to the Constitutional Tribunal⁵.

³ <https://ec.europa.eu>

⁴ <https://www.reuters.com>

⁵ <https://www.reuters.com>

Polish minister of justice Zbigniew Ziobro also responded that "the last word regarding the organisation of the judiciary in Poland belongs to the Constitutional Tribunal"⁶. Once again, there was no immediate compliance with the decision and the problem wasn't solved. Despite Poland losing a number of cases to the EU, its government shows no clear signs of regretting its previous decisions, blaming everything on the EU.

It is also necessary to mention Poland's' biggest ally in the dispute with the European Union. The role that Hungary plays in the Polish case is important not only because of its support of the actions of the Polish government, which is expressed, among other things, in the veto of sanctions against Poland, but also because the Polish case is almost identical to the Hungarian situation with the rule of law, independence of the judicial branch and democracy, albeit an easier one. Therefore, while discussing the ability of the EU to solve the crisis of law in Poland and execute its assignments to protect the principles and legislation of the EU (especially for the European Commission as the "guardian of Treaties") it is also necessary to take into account that the EU could not solve the same problem in Hungary, which led to the "emergence" of an authoritarian regime among the democracies of the EU. Thanks to that, Poland got support for its reforms and in the conflict with EU institutions.

Going back to 2016 and, at that time, only a threat of invocation of Article 7 it is clear that most of the time Poland showed little fear over threats and decisions of the European Commission. The reason for Poland's noncompliance is clear: It can see ahead to the endgame, as it knows that it will be impossible for Article 7 sanctions to be mustered against it even if there is a widespread political will to do so.

The reason for that is the procedure of unanimous voting for sanctioning the offending country in the Council which Hungary promised to veto. So, following the thought, if there is no risk of sanctions, Poland can calmly continue with its "reforms" and ignore recommendations of the European Commission and the Court of Justice. However, there is some kind of absurdity in this situation: why is a country that has the similar problem allowed to vote?

⁶ <https://www.esiweb.org/>

In fact, the European Parliament called for invoking Article 7 against Hungary back in 2013, long before PiS came to power and began its judicial reforms, following numerous reports from the Venice Commission regarding the violation of the number of European principles and values. A bad example for Poland was set as Hungary not only did not comply with all of the recommendations but continued to violate the legislation of the European Union, while the infringement procedure, launched by Commission only contributed to Hungarian resolve against the EU officials (Carrera 2018). Based on this, to achieve a result in its fight against unconstitutional actions of the Polish government the EU should simultaneously deal with the Hungarian case. One of the options could be the exclusion of Hungary from the voting for sanctions as a country with the same problem through sanctioning them as well. Pech supposes that "if sanctions are pending against both at the same time, neither should have the legal capacity to veto sanctions against the other". He notes that the EU must take seriously the fact that Poland is practically following the Hungarian path with the support of Orbán's government, which inevitably affects the effectiveness of most actions and decisions of the EU bodies (Pech\ Schepelle 2016).

On the other hand, PiS explicitly took into account the peculiarities of the EU dealing with Orbán's actions, in particular, that the EU will never demand the dismissal of an incumbent official, even if his appointment is illegal.

It also became obvious that Commission did not learn from its experience with Hungary, that it needs to act before the "capture" of the judicial body (Hungarian Constitutional Court) is completed to prevent it, as it still asked Poland to respect the independence of its Constitutional Tribunal, even after the implementation of all changes that they criticised. The danger of delay is that once an institution gets under the control of the governing party, it reduces the effectiveness of any instruments the EU uses or is going to use, as by demanding, in this case, the dismissal of newly appointed in order to reverse values-violating actions, it theoretically violates the principle of non-intervention and puts pressure on independent representatives of the judiciary and "legally elected government", as it is additionally underlined by national governments. The Hungarian case has shown that even if the Commission invokes

Article 7 in relation to Poland, then the Council will have the opportunity to divert to the excuse that the systematic threat to the rule of law, which the Commission has stated in numerous recommendations, has already been eliminated since the Constitutional Council will take over its duties. The tribunal and the government, as prescribed by law and required by the Commission, will implement its new decisions. By then, the various reports and recommendations issued by the European and the Venice Commission will appear outdated, allowing the Polish government to claim that it has already taken care of all the problems and has no conflicts with the European Union.

There is a general tendency in the EU to believe that stalling solves most crises, but a constitutional takeover must be intercepted before it reaches its target or it will be much more difficult to reverse. The experience in the Hungarian proceedings shows that in cases of local cases, as a violation of the rule of law in one of the member countries, national governments may also resort to the use of symbolic concessions, which rather act as red herrings or a way out for the Commission from the problem, while avoiding engaging in conflict without losing trust and support. Meanwhile, the problem continues to worsen.

One must argue that the attention to the Polish case at its beginning was overshadowed by more dangerous and prominent problems for the European Union as a refugee crisis in 2016 and the Brexit process. Therefore, it was a question of relevance, a problem with the rule of law in Poland that was not considered something threatening enough to the existence and structure of the Union. In the case of Poland, the attention was successfully shifted from the case of judicial independence and backsliding democracy to refusing to accept refugees from the Middle East under the adopted quota system. Poland also questioned the effectiveness of the actions of the European Union in dealing with the refugee, blaming it for the consequences.

The last thing to note regarding the factors that influenced the effectiveness of actions of the European Commission is the human factor. The President of the European Commission (2014-2019) Jean-Claude Juncker admitted that there was not much that the Commission could do:

“Things have slipped in a number of countries and we do not know where they would take us... But there are already some Member States which are saying that they will refuse to use them. This a priori refusal cancels de facto Article 7. I note this with sadness and disappointment” (Pech\ Schapelle 2016).

The comment creates the feeling that Juncker refuses to take responsibility for the failure of the Commission's approach to the problem that has developed and, on the other hand, downplays the efforts made by the Commission.

We can also compare the results of actions of the European Commission during the Presidency of both Juncker and Ursula von der Leyen (since 1 January 2019), shortly after taking the position she had to deal with so-called muzzle law.

The case of “muzzle law” referred to the law adopted by Sejm on 20 December 2019 and was viewed as a response to the ruling of the European Court of Justice from 19 November 2019 regarding the Supreme Court. It introduced, among other things, new types of torts for judges, gave the ruling party the power to take over the position of the First president of the Supreme Court (since March 2018, when Małgorzata Gersdorf left the position as her term expired this position was held by acting president) - they appointed Małgorzata Manowska - the decision that violates both Polish law (and Polish Constitution, in particular) and ECJ rulings. The law also introduced the practice of applying disciplinary proceedings against those who defied the decision of the government, instead trying to follow and fulfil the requirements of the European Commission and the Court of Justice (Mazur 2020).

So, comparing this case and the case of Supreme Court “Purge Law” from December 2017 it should be noted that owing to actions of the Commission and the ECJ the law was amended in May 2018, therefore symbolising the win of the European Union in this case.

Considering the period between the adoption of the law and the Commission's appeal to the Court on 24 September 2018, then we are talking about approximately 10 months. During this period, a letter of formal notice (LFN) was received on 2 July 2018 and the reasoned opinion was adopted a month later. Now, looking into how the European Commission dealt with the “muzzle law” there is a question of what took it so

long, as on time for approximately fifteen months after adoption of this law the Commission still had not referred the case to the CJEU. Instead, it repeated the procedure of adopting the letter of formal notice and the reasoned opinion twice, with the second reasoned opinion being adopted on 27 January 2021.

Thus, the Von der Leyen Commission exacerbated the situation by effectively repeating the original mistake of the Juncker Commission by de facto suspending enforcement action in the vain hope that a resumption of dialogue could help convince the Polish authorities to stop their attacks on the independence of the judiciary. It is not surprising to anyone familiar with the situation that the Polish authorities, having received this new "window of dialogue", instead saw an opportunity to continue their actions to an irreversible state.

We tried to appease the autocrats and it's not working," says Katalin Cseh, a Hungarian centrist MEP. "A government can be destroying the EU from the inside and still getting billions to enrich their own circles. If we do not do something now, it will threaten the stability of the union" (Flaming\ Peel\ Hopkins 2020).

If the Commission had acted more expeditiously, it might have been possible to at least minimise further damage to the judiciary and the rule of law in Poland and the reputation of the EU, and perhaps significantly hasten the end of the existence of the disciplinary chamber of the Supreme Court of Poland, the dissolution of which President Andrzej Duda announced only in February 2022.

3.2 Crisis of input legitimacy of the European Union in Poland

Despite the active desire for membership in the European Union, Poland quite clearly outlined the boundaries of integration into the Community and the transfer of part of sovereignty to the intergovernmental level.

One of the most prominent examples was a decision not to completely abandon the Polish zloty with their subsequent replacement with the euro. Legally it is obliged to adopt it, but for many years it is postponing the process. Thus, Poland did not become part of the eurozone and does not seem to have a desire to do so in the foreseeable future. Pistillate arguments against adopting the euro are also the eurozone crisis in

2008 and the fact that, compared to many eurozone members, Poland, which did not adopt the euro, coped fairly well with the economic consequences. Additionally, it could be seen that public support for adopting the euro has declined markedly and persistently since the early 2000s. A 2002 CBOS survey found that 64 percent of Poles either confidently or more likely supported euro adoption. By 2014, this trend reversed, with just 24 percent of Poles in both of these categories (Carlson\ Carroll\ Chan et.al. 2016). Robert Marjolin noted that such integration should be treated with caution, taking into account the possible development of events in the future, since European leaders were “obviously not ready” to give up their core sovereign functions; the change required was “too profound” (Mody 2018: 56).

In other words, this example shows that Poland does not give its consent to deeper integration in those areas where it is considered a threat to the national interests and sovereignty. Polish prime minister Mateusz Morawiecki points out that “more and more EU members are seeing that there should be a limit to competencies - what the European Union can decide on and what the Polish state can decide on”. So, if not necessary, the European Union should give back some of the competencies to the national governments.

He stated that

“... in the treaties, we have entrusted the Union with a very large range of competencies. But we have not entrusted it with everything. Many areas of law remain the competence of nation-states. We have no doubt about the primacy of European law over national laws in all areas where competence has been delegated to the Union by member states”⁷.

In other words, further integration stirs the problem of the difference between the conditions that citizens agreed to when the country joined the European Union and those conditions that are formed as a result of further integration into the structures of the European Union and the expansion of its powers. It is not something unexpected and new, as the pushback against deeper integration to achieve one of EU's main goals

⁷ <https://www.gov.pl>

“to create an ever-closer union among the peoples of Europe ” existed ever since the establishment of the European Coal and Steel Community in 1951 (Jamal 2021).

This moment is very important for the legitimacy of the European Union because with the growth of powers it strengthened its authority, which in turn increased its legitimacy. However, if a member country declares the need to return part of the authority to the national decision-making level, this carries the risk of delegitimization for two reasons. First, this is obviously the very fact of the reverse process: the reduction of powers will lead to a weakening of authority, which will negatively affect the level of legitimacy of the Community. Another problem is the very feasibility of returning the required part of sovereignty to member states. How to put it into practice? To what extent will this have a destructive effect on the entire structure of the European Union and its legal framework, given also that only a few member states make such claims? The only option seemed to be leaving the European Union, which, of course, is an extreme option and, according to the statements of the Polish authorities, is not considered in any case.

Disputes between the Polish government and the EU considering the violation of the primacy of law were also part of the manifestation of the EU legitimacy crisis in Poland, which was analysed in the previous chapters. But the case itself goes back to the “decision of the Court of Justice of the European Union (Case C-824\18) regarding the appointment of the new judges to the Disciplinary Chamber of the Supreme Court, as it was recognised as violating the EU's primary law” (Lazek-Markey 2021).

But the trigger that really showed that the EU's legitimacy was under one of the biggest threats was the decision of the Polish Constitutional Tribunal on 1 October 2021. This particular case began with a statement by the Polish Prosecutor General on January 4, 2021, that he intended to apply to the Constitutional Tribunal for clarification of the possible incompatibility of the Polish constitution with the European Commission's regulation on the application of the rule of law.

In turn, the statement of the Prosecutor General was supported by the Polish prime minister who formally requested a “verdict from the Tribunal on the primacy of

the Polish Constitution over EU law, particularly the Articles 1, 2 and 19 of the Treaty of the European Union (TEU)”⁸.

Hence, on 7th October 2021 Polish Constitutional Tribunal adopted a decision, according to which Articles 1 (read in conjunction with Article 4(3)), and 19 of the TEU and ECJ interpretations of it were deemed unconstitutional by the Polish Constitutional Tribunal (Lazek-Markey 2021). Most importantly they were considered conflicting with the Polish Constitution and, citing the decision, “in such case national law can take precedence over other laws coming from Brussels”⁹. Daniel Tilles cited Gazeta Wyborsza over this issue:

“The Constitutional Tribunal has in the past ruled that the EU law does not take precedence over the Polish constitution, and in cases of a conflict between them, there are three options: for Polish lawmakers to change the constitution, for EU law to be changed, or for Poland to leave the EU”¹⁰.

So, basically, the case threatened the jurisdiction of the CJEU and undermined one of the basic principles of primacy of EU law.

The complexity is added by the fact that the European Union considers the members of the Constitutional Tribunal such that they were appointed in violation of the law and, according to Article 7 of the TEU, Tribunal cannot be considered an independent and legitimate body. The European Parliament also issued a resolution in which it stated that the Tribunal was illegitimate, and in which the name “Constitutional Tribunal” was put into quotation marks, showing how, from the political perspective, the Tribunal is treated in the European Union¹¹.

What is also interesting to add to the case is the statement of Marta Lasek-Markey that the Polish Constitutional Tribunal has, in fact, never recognised the primacy of the EU law over the Polish Constitution. Back in 2005, soon after Poland joined the European Union, Polish Constitutional Court issued a judgement where it has confirmed the

⁸ <https://notesfrompoland.com/>

⁹ <https://www.dw.com/>

¹⁰ <https://notesfrompoland.com/>

¹¹ <https://revdem.ceu.edu>

Constitution's supreme legal force, explaining "that a possible collision between a constitutional norm and a provision of EU law may in no circumstances be resolved by assuming the supremacy of the EU norm" (Lasek-Markey 2021).

It is also worth revisiting the reasoning behind the Constitutional Tribunal's ruling regarding the highlighted articles. The Tribunal drew attention to the first two subparagraphs of Article 1 of the TEC, finding that they made possible a stage of deeper European integration, which led to the functioning of the EU institutions beyond their powers as defined by the Treaties and transferred to Poland under Article 90 of the Polish Constitution. Arguing the judgment regarding the second subparagraph of Article 1, the Constitutional Tribunal found that further integration also allowed the Court to exceed the powers granted to the European Union, thus threatening Polish sovereignty by violating Article 2 and especially Article 8 of the Polish Constitution, which defines the Constitution as the supreme law of the Republic of Poland. The decision that Articles 2 and 19(1) TEU are incompatible is explained by the fact that it de facto removes the obligation for lower national courts, as well as the Supreme Court to refer to the Constitution as a primary source when making decisions, as well as to overturn decisions of the Constitutional Tribunal. The Tribunal also considered that the Court of Justice has de facto given itself new powers, declaring itself competent to assess the structure of a member state's judicial system and the legality of the appointment and dismissal of members of the judiciary. In turn, according to the Polish Constitutional Court, such powers can in no way be derived from Article 2 of the TEC, which is a list of values with only "axiological significance" rather than setting clear rules (Lasek-Markey 2021).

The Constitutional Tribunal has thus challenged the prior recourse procedure enshrined in Article 27 of the TFEU, effectively giving itself *carte blanche* to selectively ignore the implementation of CJEU decisions, which, in turn, are given in response to preliminary references by national courts of lower instances.

Of course, it is worth noting that this conflict was triggered by the Constitutional Tribunal, which can itself be considered illegitimate, as its decisions bear signs of political influence. Moreover, despite the absence of a separate statement on the primacy of EU law, one may be guided by another decision, in which the Constitutional Tribunal

declared the EU treaties to be fully compatible with the Polish constitution at the time of Poland's accession to the European Union.

3.2 Contested authority of the European Union in Poland

Another criteria that shows the danger to the legitimacy of the European Union is the threat to its authority. As it was previously stated, international organisations, and the European Union in particular badly need to maintain a high level of its authority to issue the decisions and refer them to the national governments, who comply with them. In practice, authority as a criterion of legitimacy and the level of legitimacy itself are interrelated. A low level of legitimacy does not provide sufficient authority for unquestioning obedience on the part of the objects of legitimacy, and a low level of authority calls into question the entire legitimacy of the subject, and the justification of the hierarchy of leadership - subordination.

While in general such explanation gives an assumption that some organisations simply do not have or are unable to gain enough authority to ensure consent, the EU needs formal recognition of its authority from its member states. This is partly the source of the dissatisfaction of the Polish authorities, who note that the growing authority of the EU bodies goes beyond the framework that Poland agreed upon when joining, and therefore, this surplus is not legitimate and Polish arguments about illegitimate interference of the EU's organs into the reforms of national government are justified.

In the Polish case there is an open contestation of the EU's authority. Furthermore, it's one of criterias where the challenge of the legitimacy of the European Union could be seen. Considering that it's already the seventh year of European Union clashing with Polish government, it could be said already that the fact of dispute continuation does negatively affect the authority of the European Union, not only because the level of authority it possess does not allow it to force Polish government to comply with the decisions of the European Commission and the European Court of Justice, but also

because it simply allows Polish authorities to openly undermine its authority, what, together with the same actions from Hungarian government creates a dangerous example for other politicians who don't want to do what the EU expects them to do.

The disruption of authority of the European Union is combined with the criteria of consent. Being the input criteria for legitimation it gives the national governments an idea of how much authority they transfer to the supranational level (EU level), and how much they keep for themselves.

However, it should be noted that the situation in Hungary appeared to be more serious also due to the lack of attention to the development of the situation, comparingly to the reaction to the actions of Polish authorities. It is achieved partially because of the Hungarian government's strategy of making minor concessions that within the bigger picture convey the fake message of compliance with the EU law.

The organ of the European Union whose authority suffers the most is obviously the European Commission as it is the most involved in dealing with Polish violations. Aside from Polish authorities repeatedly ignoring the recommendations from the European Commission and partially interpreting those recommendations to their likings and needs, the way Poland treated the rulings of the CJEU also shows how the legitimacy of the European Union is in crisis.

Polish authorities repeatedly stated that they could and would ignore the rulings of the CJEU. For example, Jarosław Gowin, Polish Deputy Prime Minister publicly announced that

“if the EU court were to take unprecedented action and decide to sanction Poland over its rule of law handling, the Polish government will probably have no choice but to lead to a second precedent or ignore the rulings of the CJEU as contrary to the Lisbon Treaty” (Brzozowski 2018).

He pointed out that the CJEU is basically overstepping its mandate, an argument quite often met within the rhetoric of Polish officials, primarily regarding the European Commission (Brzozowski 2018). Interesting however, is the threat of such a decision being used by the eurosceptics, showing that Polish authorities are able to openly and

quite skillfully manipulate the fears of the EU for its reputation and authority being widely questioned and undermined.

As judicial system continues to be the main area of disputes, Polish politicians argue that actually the issues regarding the national judiciary systems are outside of the scope of the European Union's authority and, therefore, any kind of interference from European officials isn't legitimate and nor the European Commission, nor the Court of Justice has the authority to apply an injunction on the national reforms that are completely legal. Therefore, it is not necessary to follow the rulings of the CJEU. Proving it, the next examples could be named: the judgement of the CJEU from 19 September 2019 was formally recognised as lacking legal effect in Poland and the ruling from 8 April 2020 was openly violated.

Besides that, Poland was accused of ignoring the Court decision regarding the Białowieża Forest. The European Court of Justice ordered a stop to logging in the forest. However, the environmental activists stated that Poland violated the ruling by continuing the logging, to which the Polish government responded that the continuous actions "are in line with the ECJ decision" as the environmental ministry "is only conducting indispensable measures aimed at providing public security"¹². Again, the Polish government interpreted the words of the ECJ ruling to its own benefit.

ECJ also ruled against Poland (but also against Hungary and Czech Republic) regarding the breach of the refugee quota system. Both Hungary and Poland refused to comply with the decision proposed by the European Commission which was aimed to reduce the load of the main countries of the influx of refugees and, therefore, did not accept any refugees (as per quota). That prompted the European Commission to refer the case to the Court of Justice for breaking the EU law, while accused countries again complained about the EU overstepping its authority range and interfering with national sovereignty. Polish prime-minister Beata Szydło called the possibility of being fined for refusal to accept the refugees over quota system none other than blackmail: "EU funds and cohesion policy are pillars of the European Union just like the free

¹² <https://www.euractiv.com>

movement of goods and services. We have a right to them... Therefore, we insist that EU treaties must be adhered to and we reject the diktat of the largest states.¹³” The biggest example and threat to the authority of the European Union appeared, after all, after the decision of the Polish Constitutional Tribunal that the provisions of the EU treaty granting the Court of Justice of the European Union (CJEU) the right to intervene when the principle of judicial independence is violated are not in line with the Polish constitution (Buras 2021). Besides this decision, as noted above that such decision in fact denies the consent to the subordination and transfer of part of national sovereignty to the level of the European Union, he also literally denies the authority of one of the main bodies of the European Union.

Not only Poland does not agree with the rulings of the CJEU, but it also strongly opposes the decision of the European Commission to apply to the Court for the authorization of Poland for its disagreement with the Court's decision of 15 July 2021, which demanded the dismantlement of the infamous Disciplinary Chamber of the Supreme Court. As the decision of the Court holds the biggest threat to the policies of Polish authorities, they direct at him their accusations of interfering in the internal affairs of the state, in fact "interference, usurpation and legal aggression (Rettman 2021)”.

By denying the authority of the Court, the Polish authorities and the national judicial bodies under their control will be able to continue to usurp and autocratize the country's political regime without any problems, ignoring any subsequent decisions of the Court to which the European Commission will apply under the existing procedure.

Allowing such a decision to slide will practically mean the demolition of the EU legal order. In other words, in this case, the EU will not be able to provide effective legal protection for its individuals and legal entities, which is possible, inter alia, by ensuring the independence of the judiciary from the executive, as it will deny the authority of the highest arbitrator, which is the Court of Justice of the European Union.

¹³ <https://www.euractiv>

While most are concerned that such a decision would in fact be the beginning of a Polesxit (by analogy with Brexit, will lead to Poland's withdrawal from the EU), such an option is easily denied by the statistics. Despite the openly antagonistic attitude of the Polish political elite, in general, the Polish government strongly denies both the possibility and the desire of Poland to leave the European Union. This is justified both by the high level of EU support both among the population (80 percent approve of EU membership) and by the politicians themselves assessing the benefits of membership (Buras 2021). At the same time, they have wisely exploited dissatisfaction with certain areas of EU policy, such as LGBTQ, refugee policy or, in the case of allegations of violations of the rule of law, interference in matters within the jurisdiction of national sovereignty.

Piotr Buras argues, that in fact such actions show that

“... what is at stake is not Polesxit, but the credibility and legitimacy of EU law and its key defender – the CJEU. Today, the primary question of EU governments and institutions is not how to punish Warsaw for the outrageous verdict of its puppet court, but how to defend the CJEU’s position as the undisputed arbiter when it comes to fundamental issues affecting the EU’s legal order” (Buras 2021).

Numerous European politicians, among them Polish ombudsman Adam Bodnar, defined this decision as a “Polesxit in the field of law\ legal order”, arguing that such decision could lead to the real one (Buras 2021). In general, in response to numerous recommendations of the Commission, the Polish government quite often noted that, in fact, both the proposals themselves and the very fact of the EU’s reaction to certain decisions of the Parliament, the Council of Ministers and other bodies is interference in the national affairs of the state, which in turn is oversteps the authority of the European Union. This position was expressed by Polish deputy and Poland's Foreign Minister during 2015-2018 Witold Waszczykowski, who commented on the formal notification letter received from European Commission Vice President Frans Timmermann. He noted that he was surprised to receive it: “an EU official who came to office via political connections, writes to a democratically-elected

government... Mr Timmermans is not a legitimate partner for me"¹⁴. Poland wasn't really discreet about its dissatisfaction with the growing powers of the European Union, which led to increasement of its authority, calling such a process the threat to national sovereignty. It believes that that the EU was not authorised to take certain actions as it is the sole prerogative of the national government. The same logic goes from the decision regarding the primarity of the Polish Constitution over EU law. Not only that concerns the legislation itself, but also the courts as its main arbiters - the Constitutional Tribunal and the Court of Justice of the European Union respectively. Basically, that makes the EU lose most of its judicial authority over decisions and rulings of the Polish government and courts, as they always can refer to the fact that the Constitution authorised them to act accordingly. That could be seen from the statements of Polish judges and politicians. For example, the head of Poland's Constitutional Tribunal, Julia Przyłębska, argued that the European Commission "encroached on the sovereignty of Polish state organs" when it approached the Polish government with the request to withdraw a case put to the tribunal regarding the supremacy of Polish over European law¹⁵. Lauren Pech believes that this decision is actually "from the point of view of European law, this is a Poxit, and at the same time, the end of Poland's confidence in the European legal system"¹⁶. Julien Bois describes such situation as "the end of permissive consensus", in other words - a consent from the citizens to the elites to decide on the mechanisms, forms and speed of integration into the European Union, which has led to the involvement of all EU institution into the process of the contestation of authority of the European Union. He connects such changes with the rule of law debate that pits EU institutions against the governing bodies of Poland (Bois 2022). It does not have the problem with the input legitimacy, since the governments are the one who appoint the judges of the court. The problem lies more with the number of decisions of the various national constitutional courts that have declared some of the rulings of the Court of Justice as "ultra vires",

¹⁴<https://www.reuters.com>

¹⁵<https://notesfrompoland.com>

¹⁶<https://www.dw.com.ru>

characterising the decision of the court as exceeding its powers and therefore not applicable in the country to which this decision concerns. Such decisions question the authority of the Court. As an example, which was also cited by Polish authorities in their justification of the decision regarding the primacy of the EU law concerns the case of the German Constitutional Court, that ruled out in 2020 that the European Court of Justice had acted beyond its competence in a case relating to the purchase of bonds by the European Central Bank. However, in this case there is a substitution of concepts, since the German court only called into question how the courts of justice interpreted and applied EU law, while the Polish Constitutional Tribunal challenged the supremacy of both the law and the court itself.

However, what both German and Polish cases signal, while Brexit also played a role, is the pendency of one of the conflicts within the European Union legal system - the contested idea is the idea of the EU as a de facto federation in which non-majoritarian institutions such as the ECJ have final say about the quality of democracy in member states (Auer\Bergsen\Kudnani 2021). The development of the EU's legal community was one of its greatest achievements. So, even in times of crisis, it was considered to be one of the European Union's stable foundations. This was also facilitated by the fact that the "pride" of the European Union - the process of European integration - actually took place through "integration through law" and the ECJ was considered as a key institution that drove it forwards – usually benefiting from what Erik Stein called 'benign neglect by the powers that be and the mass media (Auer\Bergsen\Kudnani 2021). Worth noting is also the decision of the ECJ from 1964 that confirmed the supremacy of EU law. Such a process was made possible and proceeded by the aforementioned "permissive consensus" among Member States, which allowed judicial integration to proceed largely unhindered. However, the situation has changed as both national governments and national courts are more inclined to challenge decisions of the Court which they consider to be abuses or abuses of power. Although being destructive for the European judicial system, the logic of the Polish authorities explains quite well the claims that such integration took place without their

and the Polish people's explicit consent, and therefore did not acquire legitimacy for the exercise of those powers that they consider interference in sovereign affairs of the state.

Once again, returning to the comparison of the cases of Poland and Hungary, it could be said that the European Union has ended up in some kind of trap: on one side national governments of those states complain that it is overstepping its authority in decisions against them, on the other side it does not appear to have sufficient authority to force both Poland and Hungary to comply nor with recommendations and requirements from the European Commission, nor the rulings of the Court. In any case, the EU has failed to prevent or stop this slide into authoritarianism.

However, having a number of similarities in their policies, mainly according to the scheme of the use by the Polish authorities of the experience of Hungary in refuting the authority of the European Union, these cases cannot be called identical.

This was cumulatively influenced by the ignoring or dismissive reaction to a number of recommendations, letters of formal notice, reasonable opinions formulated by the European Commission, but also by the fact that more and more areas are being disputed between the European Union and the Polish government. In addition to the aforementioned crisis in the field of the rule of law, we are also talking about Polish laws that: restrict the rights of LGBT minorities, women to have an abortion, introduce censorship in the media.

In the end, the only instrument that really possesses some kind of threat for the Polish government are sanctions. As was mentioned above, Polish President Andrzej Duda agreed with the EU demand to dissolve the Disciplinary Chamber of the Supreme Court only in February 2022 and in June he signed amendments to the law on judicial reform, which abolished the Disciplinary Chamber - approximately five years after European Commission voiced its concerns regarding the legitimacy and legality of the Chamber, but only after the European Union imposed sanctions against them - a fine of one million euros per day.

The European Court of Justice ruled that funding for any EU member state should be linked to its rule of law, rejecting attempts by Hungary and Poland, whose governments have been repeatedly accused of violating the rule of law, to discredit the mechanism, question its validity and delay its application. Once again the two governments referred to the EU lacking authority to implement such a tool.

However, the question to which extent the European Union will be able to restore its authority with imposition of sanctions even in cases when the Polish government agrees to comply with requirements for ignoring or violating which they were fined. Once again, the EU won't be able to resolve the problem by succeeding only with Poland, but failing with Hungary, because it will always leave the possibility for Poland to follow the Hungarian example. Moreover, the claims against Poland are not limited to the Disciplinary Chamber and the decision of the Constitutional Tribunal on the supremacy of the Polish Constitution on EU law, but a number of other violations in the field of the rule of law, freedom of the media and other individual rights of citizens.

Polish government was keen to using a manipulative rhetoric on a verge of receiving a fine regarding the decision of Constitutional Tribunal, stating that the European Union is “putting a gun to the head” of Poland, blackmailing it, or, as prime-minister Morawjety said “causing the third world war”. This way they are trying to influence other member states that the actions of the European Commission are highly destructive for the stability and the unity of the European Union and Poland is not to blame here, since it will be defending itself using the defence mechanisms at its disposal¹⁷.

In the end, the Polish decision gave a mechanism and showed the possibility of denying the legitimacy of the ECJ; the statements of politicians from other member-states should be considered more attentively. For example, French politician Michel Barnier, who participated in negotiation with Great Britain regarding the Brexit stated that

¹⁷<https://www.dw.com/en>

“France must regain its "legal sovereignty in order to no longer be subject to the judgments" of the Court of Justice of the European Union and the European Court of Human Rights”.

Despite the fact that he took back his words, explaining that he had in mind only the solution of the issue of immigrants, such rhetoric will find sufficient support, especially among eurosceptics. French presidential candidates such as Valérie Pécresse and Eric Zemmour are also openly challenging the primacy of EU law (Auer\Bergsen\Kudnani 2021).

3.3 Freezing the conflict

As the European Commission finally decided to impose fines for Polish disobedience and violation of EU law and basic principles it seems like the situation finally started to improve. However, it is only partially true as the problem is far from being dealt with. The European Commission was able to partially break the resistance of the Polish government with the help of sanctions and intensify "work on the mistakes' ', the first step of which was the already mentioned agreement regarding the abolition of the Disciplinary Chamber of the Supreme Court of Poland. It will allow the EU to partially unlock the Recovery Fund while maintaining control over the flow of finance in the event of another violation by Poland, and Poland, in turn, will have access to the finances it needs, while at the same time avoiding both forced surrender and its public recognition.

This, however, maintains the risk of Polish government following the Hungarian approach to the recommendations of the European Commission - they may choose not to make radical statements and actions, instead giving the appearance of agreeing to and complying with EU requirements, making decisions and introducing changes in laws that will not, in essence, solve existing problems. For example, this is indicated by the fact that changes have been made regarding the Disciplinary Chamber, however, all other legislative decisions regarding the Supreme Court are still in force. In addition, a much more important conflict over the primacy of the EU's law has been put on hold.

One of the reasons for the freezing of the ceasefire process is the unwillingness of Justice Minister Ziobro to sign the bill submitted by the president. While some opposition partners are ready to help PiS vote for the law, they have several amendments to the bill that could give the impression that PiS is retreating - in this case, Ziobro threatened to leave the coalition. On the other hand, serious amendments to the bill may trigger another veto from the president and return the situation to the beginning.

Andrzej Bobinski also names a psychological factor, that is most most clearly manifested in the statements of Jarosław Kaczyński - he believes that Brussels has wronged Poland. Aside from involvement in national matters, he thinks that the European Union treats Poland like a “a second-rate member state and uses the rule-of-law stick to weaken its standing” (Bobinski 2022). The criticism regarding Poland breaching the rule of law is not the same compared to the similar problems or violations by other member-states.

Thus, it was only through the imposition of financial sanctions and the threat of their further imposition that the European Union was able to stop the attacks on its legitimacy. It is yet to successfully restore it, as both sides are most likely to wait for the parliamentary elections in 2023 to determine whether the Prawo i Sprawiedliwość will keep its majority in the parliament. This, however, cannot be called a positive outcome for the question of the European Union's legitimacy crisis, as it is very likely that it will remain in limbo for some time. This condition leaves the risk that Poland's experience will be used by other countries in case populist or conservative political forces come to power.

In addition, the EU should not forget about Hungary and Viktor Orban, who got another election victory. As Lauren Pech stated, one cannot solve the problem of Poland alone or separately from the Hungarian case.

CONCLUSIONS

The need to justify the right to power and the fact of its possession has existed in fact since the emergence of power itself. However, the formation of the term legitimacy itself and its use in scholarly discourse concern the power of governments in states. Thus, one of the first noted definitions of legitimacy is given by John Locke, associating it with his theory of the origin of the state. Subsequent definitions, developing the concept of legitimacy, highlighted a number of different criteria, the presence or mastery of which is necessary to legitimise one's power.

Of particular interest are such criteria as: the effectiveness of the activity and authority of the subject, as well as the consent of those on whom the power will be extended.

The importance of consent as a criterion of legitimacy lies in the fact that, in essence, it is a voluntarily concluded agreement on the subordination and distribution of power, being the starting point of legitimation. Authority is especially important for legitimacy of international organisations, as the member states recognise the highest position of the governing bodies of the organisation of which they are members and the readiness to implement the decisions put forward by these bodies. On the other hand, this criterion is one of the most contested, since organisations can both arbitrarily go beyond the existing authority or increase it, which in both cases causes dissatisfaction of the member states, of which the European Union is an example. Effectiveness correlates with legitimation at the output and is an assessment of the results of the activity of the subject, its compliance with the powers delegated to it.

The emphasis on these criteria is due to their priority for the legitimacy of intergovernmental associations, including the European Union. However, it is also important to note that every international organisation conducts its legitimation process differently, considering its powers and structure. It is different for international organisations, because, unlike nation-states, the ones who provide their legitimacy are the member-states, though public opinion also plays a role.

Taking into account the specifics of the formation of the EU bodies - through elections, meetings of representatives of member states or appointment to a position - legitimacy is ensured by both the citizens of the European Union and the governments of the member states and provided by the main institutions in different ways. So, summarising, it can be said that the legitimacy of the EU is not permanently stable and high.

The most important characteristics of the crisis of legitimacy can be called, firstly, the inability of government structures to ensure the implementation of their powers and norm-compliance behaviour, and secondly, its duration, that is, the existence for a certain period of time.

The subject of legitimacy can both lose it and its legitimacy can be contested by those who produce it. It is most prominently seen within international organisations when member states may take measures leading to the undermining of the legitimacy of an international organisation, often because they are not satisfied with one of the above criteria for the organisation's legitimacy.

Tracking the facts of the existence of a crisis of legitimacy of the EU according to the selected criteria, the following was noted:

- consent, that is, the input legitimacy, which is mainly represented by the European integration project, is increasingly subject to criticism from the member countries, since they 1) do not agree with further, deeper integration into the structures of the European Union; 2) they consider it a threat to national sovereignty.

- efficiency is probably viewed as the most criticised aspect of legitimacy, because seeing the inability of EU's institutions to solve some strategic issues, both citizens and national governments are doubting whether EEU deserves such broad scope of competencies.

- The authority of the EU is characterised as insufficient for coercion of the member states, in comparison with the governments of the states, and at the

same time, in practice, goes beyond the framework that was legitimised by the treaties.

The above observations are vividly illustrated by the so-called Polish case, one of the most radical challenges to the legitimacy of the European Union, which also showed the depth of the EU's legitimacy crisis.

It has greatly damaged the evaluation of efficiency of the EU, as it showed an inability to solve the problem quickly enough to prevent aggravating the situation.

This inefficiency is almost entirely due to the activities of the European Commission in its attempts to resolve the threat to the rule of law and other undemocratic decisions of the Polish authorities. Moreover, most of the strategies chosen and instruments applied have shown the relative impotence of the European Union to face such a clear challenge to its legitimacy. The reasons for this can also be attributed to the delay in introducing more radical instruments, the lack of effective punishment mechanisms (a fine for violations of the rule of law was proposed only in 2020), the excessive faith in the effectiveness of the procedure under Article 7(1) of the TEU, as well as the lack of effective communication between EU bodies (Commission and the Council in particular).

Through the integration process Poland set boundaries on a depth of an integration process, deeply voiced their dissatisfaction with the amount of competencies the EU had and considered it a threat to national sovereignty. The PiS government said that some of the powers transferred to the EU should be returned to the level of the states, underlining this decision of the Constitutional Tribunal on the incompatibility of the Polish Constitution with EU treaties (especially TEU) and priority of the former, thereby denying legitimation of the EU through consent given during the implementations of those treaties.

Finally, Poland undermined the authority of the European Union, in particular of the European Commission and the CJEU, as it publicly stated that the Commission in its decision to fine Poland and the Court in its rulings overstepped their authority and, therefore, those decision won't be implemented by Polish authorities.

As a result, for a long time the EU could do nothing about such a gross challenge to its legitimacy and it is quite likely that a solution to the problem in the near future is unlikely. In addition, the biggest problem is the possibility of using the Polish experience by other countries, especially in the case of political forces like PiS in Poland coming to power.

In the case of Poland, the EU not only showed that its legitimacy is in crisis, but at the time of the latest data, it was unable to restore it to a satisfactory level for its activities, and also showed that it needs effective mechanisms to protect its legitimacy from member states that violate principles and legislation and question the legitimacy of the European Union.

BIBLIOGRAPHY

Agh, Atilla (2016) The Decline of Democracy in East-Central Europe, *Problems of Post-Communism*, 63:5-6, pp. 277-287.

Auer, Stefan\ Bergsen, Pepijn\ Kudnani, Hans (2021), The law as a tool for EU integration could be ending, in: Chatham House, <https://www.chathamhouse.org/2021/10/law-tool-eu-integration-could-be-ending> [Last access 7.5.2022].

Barker, Rodney (2001), *Legitimizing Identities. The Self-Presentations of Rulers and Subjects*, *Contemporary Political Theory*, Cambridge: Cambridge University Press, 113–115.

Beetham, Davis\ Lord, Christopher, *Legitimacy and the European Union* (Weale, Albert\ Nentwich, Michael ed.) (1998), *Political Theory and the European Union. Legitimacy, constitutional choice and citizenship*, London: Routledge.

Binder, Martin\ Heupel, Monika (2015), The Legitimacy of the UN Security Council: Evidence from Recent General Assembly Debates, *International Studies Quarterly*, 59, pp. 238–25.

Bobinski, Andrzej (2022), Poland's Frozen Conflict over Rule of Law, in: GMF <https://www.gmfus.org/news/polands-frozen-conflict-over-rule-law>.

Bois, Julien (2022), The contested but upheld legitimacy of the Court of Justice of the European Union, in: <https://post-crisis-democracy.ideasoneurope.eu/2022/02/21/the-contested-but-upheld-legitimacy-of-the-court-of-justice-of-the-european-union/> [Last access 28.05.2022].

Brzozowski, Alexandra (2018), Poland threatens to ignore rulings of EU's top court, in: <https://www.euractiv.com/section/central-europe/news/poland-threatens-to-ignore-rulings-of-eus-top-court/> [Last access 18.06.2022].

Buras, Piotr (2021), Forget the Poles - the EU must defend the CJEU, in; *Reporting democracy* <https://balkaninsight.com/2021/10/10/forget-poles-the-eu-must-defend-the-cjeu/> [Last access 16.03.2022].

Carlson, Michael\ Carroll, Conor\ Chan Idris, et. al (2016) *Should Poland Join the Euro? An Economic and Political Analysis*, Princeton: Woodrow Wilson School of Public & International Affairs, Princeton University.

Carrera, Sergio\ Bard, Petra (2018), The European Parliament vote on Article 7 TEU against the Hungarian government, in: <https://www.ceps.eu/ceps-publications/european-parliament-vote-article-7-teu-against-hungarian-government-too-late-too-little/> [Last access 17.06.2022].

de Búrca, Gráinne (1996), The Quest for Legitimacy in the European Union, *The Modern Law Review*, 59: 3, Wiley-Blackwell, pp. 349-376.

1. Fleming, Sam\ Peel, Michael\ Hopkins, Valerie (2020), EU identity crisis: Poland, Hungary and the fight over Brussels' values, in: *Financial Times* <https://www.ft.com/content/bfa58276-1868-4011-9891-ccd363dc68dc> [Last access 18.05.2022].

Greene, Amanda (2016), Consent and Political Legitimacy, *Oxford Studies in Political Philosophy*, 2, in: <https://discovery.ucl.ac.uk/id/eprint/1517822/1/Consent%20and%20Political%20Legitimacy%20-%20Penultimate%20with%20Abstract.pdf> [Last access 27.05.2022].

Habermas, Jurgen (1976), *Legitimation crisis* (McCarthy, Thomas, Trans.), Great Britain: Heinemann Educational Books.

Haverland, Markus (2013), Business as Usual? EU Policy-Making Amid the Legitimacy Crisis (Inaugural Lecture), in: <https://ssrn.com/abstract=2380673> [Last access 18.06.2022].

Hurrelmann, Achim\ Wagner, Andrea (2020), Did the Eurozone crisis undermine the European Union's legitimacy? An analysis of newspaper reporting, 2009–2014, *Comparative European Politics* (2020) 18, pp.707–728.

Innerarty, Daniel (2014), What kind of deficit?: Problems of legitimacy in the European Union, *European Journal of Social Theory*, 17:3, pp. 307–325.

Jamal, Darius (2021), Judicial Warfare: How Poland Is Attacking the European Rule of Law, in: *The McGill International Review*, <https://www.mironline.ca/judicial-warfare-how-poland-is-attacking-the-european-rule-of-law/> [Last access 6.6.2022].

John Locke: *Critical Assessments* (Ashcraft, Richard (ed.)) (1991), London: Routledge.

Kerimov, Alexandr (2015), Legitimacy of political power: problems of definition and main theoretical models, in: <https://elar.urfu.ru/bitstream/10995/31128/1/iuro-2015-137-10.pdf> [Last access 6.4.2022].

Kochenov, Dimitry \ Pech, Laurent (2021), Respect for the Rule of Law in the Case Law of the European Court of Justice: A Casebook Overview of Key Judgments since the Portuguese Judges Case, SIEPS, 3, in: <https://ssrn.com/abstract=3850308> [Last access 30.04.2022].

Kochenov, Dimitry \ Pech, Laurent (2015), From bad to worse? On the Commission and the Council's rule of law initiatives, VerfBlog, <https://verfassungsblog.de/bad-worse-commission-councils-rule-law-initiatives/> [Last access 10.06.2022].

Kochenov, Dimitry \ Pech, Laurent (2016), Better Late than Never? On the European Commission's Rule of Law Framework and its First Activation, *Journal of Common Market Studies*, 54:5, pp.1062-1074.

Kriesi, Hanspeter (2013), Democratic legitimacy: Is there a legitimacy crisis in contemporary politics?, *Politische Vierteljahresschrift*, 54: 4 , pp. 609-638.

Longo, Michael \ Murray, Philomena (2015), *Europe's Legitimacy Crisis: from Causes to Solutions*, London: Palgrave Pivot.

Martins, Mariana Henriques (2022), Poland Challenges the Principle of Primacy of the European Union law: the Conflict that Raised "Polexit", in: *The new global order* <https://thenewglobalorder.com/world-news/poland-challenges-the-principle-of-primacy-of-the-european-union-law-the-conflict-that-raised-polexit/> [Last access 6.06.2022].

Mayring, Philipp (2003), *Qualitative Inhaltsanalyse: Grundlagen und Techniken*, Weinheim: Basel: Beltz.

Mazur, Dariusz \ Pech, Laurent \ Wachowiec, Patryk (2021), Poland's Rule of Law Breakdown: A Five-Year Assessment of EU's (In)Action, *Hague Journal on the Rule of Law*, 13, pp.1-43.

Mody, Ashoka (2018), *EuroTragedy: A Drama in Nine Acts*, Oxford: Oxford University Press.

Moiseeva, Dariia (2018), A model of straight legitimacy for the political system of the European Union, *Modern Europe*, 6, pp. 93-103.

Musonda Anthony M. (2006), Political Legitimacy: The Quest for the Moral Authority of the State, A Philosophical Analysis, in: https://edoc.ub.uni-muenchen.de/5813/1/Musonda_Anthony.pdf [Last access 26.04.2022].

Pech, Laurent (2016), Systemic Threat to the Rule of Law in Poland: What should the Commission do next?, *VerfBlog*, <https://verfassungsblog.de/systemic-threat-to-the-rule-of-law-in-poland-what-should-the-commission-do-next/> [Last access 10.06.2022].

Pech, Laurent\ Schapelle, Kim Lane (2016), The EU and Poland: Giving up on the Rule of Law?, *VerfBlog*, <https://verfassungsblog.de/the-eu-and-poland-giving-up-on-the-rule-of-law/> [Last access 10.06.2022].

Pech, Laurent\ Schepelle (2017), Illiberalism Within: Rule of Law Backsliding in the EU, *Cambridge Yearbook of European Legal Studies*, 19 (2017), pp. 3–47.

Pech, Laurent; Scheppele, Kim Lane (2016), The EU and Poland: Giving up on the Rule of Law?, in: *VerfBlog*, <https://verfassungsblog.de/the-eu-and-poland-giving-up-on-the-rule-of-law/> [Last access 15.06.2022].

Pech, Laurent\ Scheppele, Kim Lane (2017), Poland and the European Commission, Part I: A Dialogue of the Deaf?, *VerfBlog*, <https://verfassungsblog.de/poland-and-the-european-commission-part-i-a-dialogue-of-the-deaf/> [Last access 10.06.2022].

Pech, Laurent\ Wachowiec, Patryk\ Mazur, Dariusz (2021), 1825 Days Later: The End of the Rule of Law in Poland, *VerfBlog*, <https://verfassungsblog.de/1825-days-later-the-end-of-the-rule-of-law-in-poland-part-i/> [Last access 10.06.2022].

Pernice, Ingolf\ Maduro, Miguel P., et al (2013) Challenges of multi-tier governance in the European Union. Effectiveness, efficiency and legitimacy, in: [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474438/IPOL-AFCO_ET\(2013\)474438_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474438/IPOL-AFCO_ET(2013)474438_EN.pdf) [Last access 10.06.2022]

Peter, Fabienne, Political Legitimacy, Zalta, Edward N. (ed.) (2015), *Stanford Encyclopedia of Philosophy*, Stanford: Stanford University, p.

Rettmann, Andrew (2021), Poland's EU future questioned after snub to bloc's top court, in: *euobserver* <https://euobserver.com/rule-of-law/152455> [Last access 15.05.2022].

Reus-Smith, Christian (2007), International Crises of Legitimacy, *International Politics*, 44, pp. 157–17.

Scheppelle, Kim Lane (2016), Can Poland be Sanctioned by the EU? Not Unless Hungary is Sanctioned Too, *VerfBlog*, in: <https://verfassungsblog.de/can-poland-be-sanctioned-by-the-eu-not-unless-hungary-is-sanctioned-too/> [Last access 10.06.2022].

Schmidt, Vivienne A. (2013), Democracy and Legitimacy in the European Union Revisited: Input, Output and 'Throughput', *Political Studies*, 61, p. 2-22.

Schneider, Christian (2005), The Challenged Legitimacy of International Organisations: A Conceptual Framework for Empirical Research, in: http://userpage.fu-berlin.de/ffu/akumwelt/bc2005/papers/schneider_bc2005.pdf [Last access 15.02.2022].

Sobczak, Pawel\ Pawlak, Yustina (2016), Poland's Kaczynski calls EU democracy inquiry "an absolute comedy", in: Reuters <https://www.reuters.com/article/us-poland-politics-kaczynski-democracy-idUSKBN14B1U5> [Last access 28.05.2022].

Stephen, Matthew D. (2018), Legitimacy Deficits of International Organizations: design, drift, and decoupling at the UN Security Council, *Cambridge Review of International Affairs*, 31:1, pp. 96–121.

Suchman, Mark C. (1995). Managing Legitimacy: Strategic and Institutional Approaches. *The Academy of Management Review*, 20:3, 571–610.

Tallberg, Jonas\ Zurg, Michael (2019), The legitimacy and legitimation of international organizations: introduction and framework, *The Review of International Organizations*, 14, pp.581–606.

Voßkuhle, Andreas, "European Integration Through Law" The Contribution of the Federal Constitutional Court, *Teoria y Realidad Constitucional*, 39, pp. 103-121.

Warder, Tom (2010), The European Union: a crisis of legitimacy?, *European View*, 9, pp. 115–127.

Woods, Ngaire (1999), Good Governance in International Organizations, *Global Governance*, 5:1, pp. 39-61.

Zaum, Dominik (2013), *Legitimizing International Organisations*, Oxford: Oxford University, pp.3-26.muz

INTERNET SOURCES

No Author, "EU "encroaching on Polish sovereignty" in legal primacy case, says constitutional court chief", in: <https://notesfrompoland.com/2021/06/14/eu-encroaching-on-polish-sovereignty-in-legal-primacy-case-says-constitutional-court-chief/> [Last access 18.05.2022].

No Author, German commissioner to push for EU action over Poland's media law (2016), in: Reuters, <https://www.reuters.com/article/us-poland-eu-media-germany-idUSKBN0UHOCL20160103> [Last access 10.06.2022].

No Author, In conversation with Barbara Grabowska-Moroz: The escalation of Poland's Rule of Law crisis | Review of Democracy, <https://revdem.ceu.edu/2021/12/02/in-conversation-with-barbara-grabowska-moroz-the-escalation-of-polands-rule-of-law-crisis/> [Last access 10.06.2022]

No Author, Poland accused of ignoring EU ruling on protected forest logging, in: euractiv <https://www.euractiv.com/section/energy-environment/news/poland-accused-of-ignoring-eu-ruling-on-protected-forest-logging/> [Last access 15.06.2022].

No Author, Poland's deepening crisis - When the rule of law dies in Europe (2019), in: European Stability initiative, <https://www.esiweb.org/publications/polands-deepening-crisis-when-rule-law-dies-europe> [Last access 16.06.2022].

No Author, Polish PM rejects EU 'blackmail' on migrant quotas, in: euractiv <https://www.euractiv.com/section/justice-home-affairs/news/polish-pm-rejects-eu-blackmail-on-migrant-quotas/> [Last access 15.06.2022].

No Author, Rule of Law: Commission launches infringement procedure, in: europa.eu https://ec.europa.eu/commission/presscorner/detail/en/ip_21_7070 [Last access 20.05.2022].

No Author, Statement by Prime Minister Mateusz Morawiecki in the European Parliament, in: <https://www.gov.pl/web/eu/statement-by-prime-minister-mateusz-morawiecki-in-the-european-parliament> [Last access 10.06.2022].

