



Opposing populists in power: how and why Polish civil society Europeanised their opposition to the rule of law crisis in Poland

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Abstract

As the Polish experience demonstrates, populists can become a genuine challenge for democracy. This raises the question of whether and how democracy can defend itself when a majority populist government holds power. Data on initiatives opposing the Law and Justice government between 2015 and 2020 show that a ‘pincer movement’ of opposition emerged. It involved a combination of initiatives from international and domestic actors, including civil society and EU actors. Yet we do not know much about how these actors interact to put pressure on populists in power. By using the concept of Europeanisation and social movement theories, we analyse how and why non-governmental organisations reoriented their opposition to the rule of law crisis in Poland at the European level. We analyse NGOs’ strategies and argue that three factors help to explain the Europeanisation of the opposition to populist party: the changing multi-level structure of opportunities and threats, the construction of national and transnational coalition for democratic defence as well as NGOs’ common pro-European frame and their commitment to democratic values. The article applies a thematic content analysis based on press articles and semi-structured interviews conducted with Polish NGOs.

Keywords Poland · Populist party in power · Rule of law crisis · Civil society organisations · Opposition · Europeanisation

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Introduction

Even though populists are at odds with many aspects of liberal democracy, their ability to realise their policies is limited when they do not hold a majority in national politics. However, as the experiences of Poland demonstrate, they can become a genuine challenge when they form a majority government. The ‘reforms’ undertaken by the coalition government led by the Law and Justice Party (Prawo i Sprawiedliwość—PiS),¹ not least of the judiciary, have resulted in a decline in the quality of democracy as evidenced by democracy indexes.² This raises the question of whether and how democracy can defend itself when a majority populist government holds power.

As Bourne’s (2023) comparative analysis shows, a distinctive feature of Polish opposition to the PiS government is that it constitutes a ‘pincer movement’.³ It consists of a combination of opposition from international and domestic actors. We already know a great deal about the inter-institutional dynamics of EU institutions and member states from the growing literature on the EU’s ‘rule of law crisis’ (Kovacs and Scheepel 2018; Pech et al. 2021). We know much less about how these international initiatives interact with the opposition at home. This is a problematic shortcoming in the study of reactions to populism. Our preliminary studies indicate that there is a link between national and international opposition to populists in power, including civil society and EU actors. The scholarly literature concerning opposition to the democratic backsliding in Poland highlights the activities of civil society, pointing at their contribution to the internationalisation of the Polish rule of law crisis (Karolewski 2016; Bojarski 2021; Grabowska-Moroz and Śniadach 2021). Thus, we aim to explore how national actors interact with international actors to put pressure on populists in power.

Therefore, in this article, we focus on the question of how and why civil society actors have approached European actors in their opposition to the rule of law crisis in Poland. By using the concept of Europeanisation, we analyse NGOs’ strategies directed at the European level to exert pressure on the populist party. In addition, we identify the opportunities and constraints that explain why civil society actors decide to Europeanise their opposition to the populists at home. We argue that three factors were of great importance here: the changing multi-level structure of opportunities and threats, the construction of national and transnational coalitions for democratic defence as well as NGOs’ common pro-European frame and a strong commitment to democratic values.

The study applies Bourne’s (2023) typology of initiatives opposing populist parties (IoPPs), and the concept of bottom-up Europeanisation developed by Della

¹ The PiS government constituted a three-party coalition called United Right. PiS was the dominant party, while Poland Together (PR) and Solidarity Poland (SP) played a secondary role in policy making (Domagała and Zieliński 2020, p. 142).

² According to Variety of Democracy index, it has dropped since 2015 from 0.94 to 0.76 in 2021. For comparison, this index was 0.64 in the 1980 during the communist period.

³ See Bourne’s contribution to this Special Issue.



Porta and Caiani (2009: 25) and McCauley (2011, p. 1020). The theoretical tools of the social movement literature (Tarrow 2011; della Porta and Ciani 2009) will help explain the shift of opposition strategies to the European level. As part of a broader comparative study on IoPPs in Europe, we began by mapping the reactions of Polish and international opponents to the PiS government in its first term (2015–2019).⁴ Then, we focus on an examination of the Europeanisation of NGOs' opposition to judicial 'reforms' in Poland by conducting semi-structured interviews with leading civil society organisations that were deeply engaged in the country's rule of law.

The paper first presents the theoretical approach and methods applied to explain the Europeanisation of NGOs' opposition to democratic backsliding in Poland. It then discusses the general patterns of responses to the PiS government pointing out the specific 'pincer movement'. Next, we present the Europeanisation strategies applied by Polish NGOs. In the following sections, we provide an analysis of factors facilitating the mobilisation of opposition at the European level: the multi-level structure of opportunity and threats, coalitions supporting the Europeanisation process, and ideas, which helped to transform opportunities into actions.

The theoretical framework for studying Europeanisation of civil society reactions to populists in power

To understand how and why civil society actors approach the EU in their opposition to the populists in power, we apply the concept of bottom-up Europeanisation and the theoretical tools of social movement studies (i.e. Tarrow 2011; Della Porta and Ciani, 2009; McCauley 2011). We define bottom-up Europeanisation after McCauley (2011) as a 'reorientation of (sub-)national actor's *champ d'activite* towards supranational institutions, politics and/or policy making' (p. 1020). We apply the concept of externalisation strategies, defined by Della Porta and Caiani (2009) as 'the mobilisation of national actors targeting the EU in attempts to put pressure on their own governments' (p. 15) to analyse strategies used by NGOs.

To understand why democracy protection was Europeanised, we employed the concept of political opportunity structure (POS) conceived as 'dimensions of the political environment or of change in that environment that provides incentives for collective action by affecting expectations for success or failure' (Tarrow 2011, p. 163). According to the theory, civil society actors advance their claims when the institutional channels of access open up, potential allies are available, splits amongst political elites appear or state repression diminishes (Tarrow 2011; McCauley 2011). At the same time, civil society challengers may create opportunities for themselves 'by diffusing collective actions and displaying the possibility of coalitions, [...] and by producing incentives for elites and third parties to respond' (Tarrow 1998, p. 72). Thus, they may become catalysts for opposition and breakthroughs. However, similar threats may become the stimulus for collective action. At the structural level, threats in the form of the erosion of rights or state repression act as a

⁴ See other contributions in this Special Issue.



negative condition that can intensify or create grievances for civil society. Instead of new advantages or benefits, individuals are motivated to undertake defensive actions as the costs of inaction may be greater than the risks connected with the activity (Almeida 2019).

In line with these theoretical assumptions, we expect that in cases where actors' activities are constrained in the domestic arena, they will be more inclined to look for opportunities in the European terrain. The analysis of bottom-up Europeanisation should therefore focus on opportunities and threats in multi-level structures. We also pay attention to allies in the Europeanisation process of the opposition to the rule of law crisis in Poland. After all, when NGOs do not have access to formalised decision-making structures and state authorities are the main opponents of its activities civil society needs strong support from other actors to be able to get their message across to decision-making structures. As Borońska-Hryniewicka 2011 indicate, 'Europeanisation through coalition building can be a successful way of pursuing particular interests which otherwise would remain unpoliticised and would not be addressed' (p. 81).

External factors prompting changes in political structures are not sufficient conditions for opportunities and threats to turn into action. Indeed, constructivists draw attention to the relationship between meaning and mobilisation. Researchers point to the role of an 'organising idea' or shared European frame for understanding bottom-up Europeanisation processes (McCauley 2011; Princen and Kerremans 2008; Snow et al. 2019). The micro-level theories indicate that threats to becoming a driving force for action must be contextualised and interpreted within the moral belief systems and community norms of justice (Almeida 2019). The coherent sets of action-oriented beliefs and meanings legitimise and inspire social movement activities (Snow et al. 2019, p. 395). We expect that shared ideas about democratic values and their threats as well as the pro-European frame facilitated NGO activists seeking to shift their opposition to the rule of law crisis in Poland to the supranational level despite the risk of state repression towards them.

For this article, we define NGOs as groups of citizens and professionals who associate for a chosen purpose in the form of associations, foundations, or less formal initiatives (Bojarski 2021). The research included both 'expert' and 'street' NGOs.⁵ Amongst the first group, we identified those that organise lawyers, judges, and prosecutors: Free Courts, Iustitia, Themis, Lex Super Omnia (LSO); organisations focussed on socio-political issues and democracy: Stefan Batory Foundation and organisations focussed on the protection of human rights: Helsinki Foundation for Human Rights (HFHR) and Foundation for Women and Family Planning (Federa). The second group, the so-called 'street' NGOs, included Citizens of the Republic of Poland (RP Citizens) and Democracy Action (AD).⁶

⁵ By expert organisations, we mean those with expertise in a particular subject area. Street organisations, on the other hand, focus on social mobilisation around specific issues.

⁶ In case of Committee for the Defence of Democracy (KOD), we used materials available on the organisation website, press reports and scholarly literature.



Methods

We employ thematic content analysis (TCA) to draw inferences about activities, beliefs, and positions of civil society actors (Anderson 2007; Krippendorff 2013, p. 24). We based our research primarily on press articles and semi-structured interviews conducted with NGOs. To complete the information, we used materials available on the Internet (mainly NGO websites) and scholarly literature.

Based on press reports from “Gazeta Wyborcza,”⁷ we first mapped reactions to the governing populist party in Poland. Articles from each Wednesday issue were analysed and coded according to Bourne’s typology for the next four years (2015–2019). We collected the reactions of individual actors (public authorities, political parties, and civil society actors) to the populists. Opposition reactions were divided into tolerant and intolerant as well as national and international. Then, depending on the type of actor, we coded the actions as ordinary legal controls (for public authorities), forbearance (for political parties), and adversarialism (for civil society).⁸ We perceived the press analysis as a preliminary study, which made it possible to define trends in reactions opposing populists in power and to formulate further research questions. The study indicated amongst others the large share of civil society actors and the EU institutions in reactions to populist government. We also observed that part of civil society’s reactions to populist parties was aimed at the international level. It inspired us to study NGO relations with European actors in their opposition to the rule of law crisis in Poland.

To deepen our knowledge in this regard and answer the research questions, we conducted twelve semi-structured interviews with representatives from nine Polish NGOs. The time frame covered the NGOs’ activities from 2015 to 2021. We used a ‘purposeful’ sampling of NGOs, examining those that were actively involved in the Polish judiciary’s defence (Krippendorff 2013). In individual organisations, we spoke to active members, especially at the international level. They were often members of the organisation’s board.⁹ Interviews were conducted, recorded, and transcribed between January and September 2022. They were based on open-ended questions concerning NGO activity at the national and international level, foremost concerned with their opposition to judicial reforms in Poland, as well as their cooperation with various European actors.

In the first step of the analysis of the interviews, we hand-coded NGOs’ oppositional reactions as well as factors enabling and constraining the Europeanisation that they indicated. In the second step, drawing on the Europeanisation studies and theory of social movements, we grouped the coded themes into broader analytical categories. Thus, we were able to identify oppositional strategies adopted by civil

⁷ It has been one of the most popular newspapers in Poland for years (Onet, RMF FM and WP..., 2022). In 2019, was recognised as the most opinion-forming media in Poland based on the number of citations (Most opinion-making media..., 2019). We realise that this is a left-wing newspaper, but this has the potential to capture as many reactions as possible from actors opposing the populist authority.

⁸ A detailed analysis of the collected data can be found in the ‘pincer movement’ section.

⁹ As some interviewees requested their anonymity in the paper, we only use the names of the organisations.



society actors, trace the process of creation of transnational networks defending the rule of law in Poland, as well as identify the ideas facilitating the transferring of NGOs' actions at the European level. Above all, via interviews, we learned about the perception of specific phenomena by the interviewees. Yet, the interviewees' subjective view of reality required in some cases, fact-checking the data by comparing it with data from other sources, amongst them press releases, and the scientific literature. The alternative sources provided additional knowledge necessary for the conducted research.

'Pincer movement' opposition to populists in power

Researchers have conceptualised reactions to populist or extremist parties in many different ways (Capoccia 2005; Downs 2012; Kaltwasser and Taggart 2016). Although this literature helps highlight the diversity of tools used to contain political enemies, it lacks categories covering the reactions of actors acting simultaneously at the national and supranational levels.

Bourne's (2023) typology defines two dimensions of opposition to populist parties: the type of actors and the modes of reactions. It is designed to allow for the collection of data on national, transnational, and international initiatives. In the first dimension, Bourne includes public authorities, political parties, and civil society actors. The second dimension distinguishes between tolerant (ordinary) and intolerant (exceptional) modes of engagement with populist parties. Intolerant reactions are characterised by their authors denying rights, privileges, and respect to populist parties. They can take the form of restrictions on the rights and freedoms of political parties, a policy of ostracism, and coercive confrontation by civil society actors. Internationally, intolerant reactions also imply the loss of rights. For example in the context of the Article 7, procedure of the Treaty on the European Union which may lead to the loss of member state voting rights in the Council. Tolerant reactions are based on the use of ordinary rules and norms that apply to all political parties. Here, actors base their reactions on the instruments of 'normal politics' including parliamentary procedures, persuasion in the public sphere, policy co-optation and governing collaboration (forbearance), and the use of checks and balances or judicial controls based on penal and civil codes (ordinary legal controls and pedagogy). Tolerant reactions can also take the form of protests, lobbying, or information campaigns exercised by civil society actors (adversarialism).

In the Polish case, opposition actors almost exclusively adopted tolerant reactions. Amongst 498 initiatives opposing populist parties coded from "Gazeta Wyborcza" press releases, we have found a high proportion of ordinary legal controls and pedagogy (43%, $n = 209$) undertaken by public authorities. Adversarialism, performed by civil society actors, was also a common form of opposition initiative (37%, $n = 177$). Forbearance was the least used type of engagement, particularly adopted by political parties (18%, $n = 90$).¹⁰

¹⁰ For each type of oppositional reactions, the percentage of all 489 coded reactions was calculated.



Such a significant advantage of tolerant reactions undertaken by public authorities and political parties resulted from the fact that most types of intolerant modes of engagement were unavailable for them as the populist government had a majority in parliament. Ostracism was irrelevant for oppositional parties who since 2015 were in the minority in both chambers of parliament. Rights restrictions towards populist parties were excluded as the Constitutional Tribunal was captured by the governing populist party itself. Yet, with few exceptions, civil society actors did not engage in repressive reactions either.

A high proportion of opposition by international actors is also specific to the Polish case. These were mainly tolerant reactions of the EU, very often undertaken in response to opposition actions of domestic actors aimed at the international level. This combination of two forces (domestic and international actors) acting against an opponent (the governing populist party) we call after Parmet and Jacobson (2014, pp. 161–162) a pincer movement model of opposition.

Amongst the reactions of different actors, at both levels, people working at public authorities were the most active group. At the national level, this mainly included common courts, the Supreme Court, the Constitutional Tribunal, lawyers, members of the National Council of the Judiciary, and the Ombudsman. They belonged to vertically accountable institutions. Their activities included lawsuits, investigations, and public condemnations. However, successive changes in the law limited the ability of individual institutions and their members to react. At the international level, the main actors responding to populist policies were the EU institutions, but also the Council of Europe and its advisory body the Venice Commission. They often communicated with the above-mentioned national public authorities in this respect or acted in response to their initiatives. They relied mainly on public persuasion (issuing political positions and recommendations) and judicial control (related to the infringement procedure against Poland).

Civil society actors also stood out. At the national level, they primarily focused on organising public protests and civil disobedience actions. However, many initiatives involved appealing to international (mainly EU) institutions. For example, there were numerous domestic protests in defence of European values urging EU actions. At the international level, reactions opposing populists were carried forward by international NGOs (e.g. Amnesty International, International Women's Strike, European Network of Councils of the Judiciary), who wanted to draw attention to and intervene in the crisis of the rule of law and human rights violations in Poland. These actions primarily took the form of public criticism of the populist government and of various forms of lobbying at the EU and national levels.

Compared to other actor types, political parties were much less active both at the national and international levels. They focussed mainly on public persuasion including dialogue and initiatives to defeat or amend the legislation of a governing populist party, to interpellate government representatives, establish investigatory committees and challenge government acts in the courts (Bourne 2023, p. 1, 13). There were also some opposition reactions from the largest political factions in the European Parliament like the European People's Party, which called on the PiS government to respect the law and the constitution and appealed to the European Commission to challenge the Supreme Court law in the ECJ.



Thus, our data give us an understanding of the trends in reactions to the populists in power but also some insights into the linkages between the international and domestic actors. Nevertheless, they do not leave us with a clear understanding of interactions between these actors in their opposition to the populist government. Thus, we focussed our further studies on NGOs' strategies directed at the European level to put pressure on populist in power.

The Europeanisation of the opposition to the rule of law crisis in Poland

Polish NGOs used various strategies to oppose the populist party. One of the most important was Europeanisation by externalisation. Della Porta and Caiani (2009) distinguish between two dimensions of the Europeanisation of NGOs. *Domestication* '(...) that is, the use of national government and institutions as main channels of pressure upon the EU' (della Porta and Caiani 2009, p. 41) or *externalisation* '(...) in which European institutions are called upon by national actors to intervene in national public spheres' (della Porta and Caiani 2009, pp. 51, 53). In the latter, civil society actors look at the EU as an additional arena for the mobilisation of resources that may then be used at the national level.

In Poland, domestication strategies were not possible. The process of Europeanisation concerned the opposition reactions to the rule of law crisis, which was created by the government. There was no collaboration between civil society actors and the ruling party, which was very critical of EU interference in domestic matters (Łazowski and Ziółkowski 2021). Thus, the actions undertaken by Polish NGOs were directly addressed to European institutions to mobilise them to react to the Polish rule of law crisis.

Europeanisation itself was not a new phenomenon in the Polish civic space. The Helsinki Foundation for Human Rights, for example, Europeanised its activities after several years of cooperation with different European actors. However, initiatives concerning the rule of law crisis in Poland only started in 2015 (Bojarski 2021). As early as 2015, the Committee for the Defence of Democracy undertook actions aimed directly at the EU. Nevertheless, from mid-2017, the government's attack on the courts triggered significant changes in the way civil society operated, and many NGOs redirected their action to the European level.

At the international level, NGOs mainly targeted the EU platform via formal and informal contacts. Expert NGOs held study visits and working meetings with EU institutional representatives. Members of Free Courts emphasised that they used the meetings with persons responsible for the EU's operational strategy to present mechanisms, which, in their opinion, could stop the ongoing crisis. During meetings with the European Commission and the European Parliament, NGOs lobbied the EU to initiate infringement proceedings, perceiving this as an instrument that could stop the exodus of Polish Supreme Court judges. Representatives of both street and expert NGOs also cooperated with the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE), informing MEPs about judiciary degradation in Poland. They lobbied in favour of a rule of law conditionality mechanism



(money for the rule of law), amongst other things. The meetings also allowed Polish NGOs to 'learn' about the EU and its decision-making mechanisms.

Using the EU legal space, members of the expert organisation Free Courts also acted as lawyers, representing several Polish judges who decided to submit complaints to the European Court of Human Rights (ECHR). These complaints concerned the denial of the right to a trial, dismissal from office, or the transfer of judges between courts of different instances. Expert NGOs persuaded judges to submit preliminary ruling requests to the ECJ. This process started on a larger scale in response to the law on the Supreme Court in 2018. As Free Courts emphasised, 'these judgments create a kind of legal space [or ground] on which we can build the standard of the independence of the judiciary'.

To reach EU institutions and their member states, NGOs used foreign media as a communication channel. Democracy Action managed to reach the most important media outlets in Europe, including *Politico*, *The Guardian*, *Independent*, and *The Brussels Times*. The strategy sought to persuade the EU institutions to 'defend' the Polish judiciary, but also to express criticism of the EU's consensual response to violations of EU values. In foreign newspapers, including the *Süddeutsche Zeitung*, articles were published popularising the struggle of civil society and the legal community for the independence of Polish courts (Mazur 2021).

In addition, civil society actors used other (non-EU) international platforms. Cooperation was established with the Council of Europe and its advisory body, the Venice Commission. The members of Lex Super Omnia directly asked the latter to participate in a procedure evaluating the rule of law in Poland.

Actions directed at European actors were also undertaken nationally. Expert and street NGOs organised information campaigns and numerous protests in Poland addressing the EU. One of the most important and largest-scale was the act 'Europe, Don't Give Up', which involved more than 120 NGOs and civic movements. Polish NGOs appealed to the European Commission to immediately initiate ECJ infringement proceedings against the Act on the Supreme Court. Almost 170 NGOs signed a letter to Jean-Claude Juncker regarding this matter.¹¹

In the years 2017–2018, more than 800 events were organised to inform and mobilise people at the national and international levels. They mainly consisted of protests, opposition marches, and civil disobedience. One of them was a demonstration organised by the Citizens of the Republic of Poland in June 2018, during the session of the European People's Party in Warsaw. Polish activists demanded that the European Commission initiate an infringement procedure against Poland.

Yet, the varying strategies largely depended on the type of organisation and its resource availability. Expert NGOs undertook formal activities, which required competencies in the field of Polish and EU law. Street NGOs also operated at the EU level, participating in working meetings with the EU institutions, but to a much lesser extent. Their activity was focussed on the national level. Through information campaigns, protests, and other events directed towards the EU, they supported the activities of expert NGOs and strengthened their message. The strategies applied by

¹¹ <https://europonieodpuszczaj.pl/podpisz-list/>.



NGOs resulted in creation of new channels of communication between civil society actors and EU institutions.

Shifting opportunities and threats in a multi-level political environment

The increased mobilisation of European actors by civil society organisations to act against the PiS government's policies resulted from a structural change in the national and supranational environments.

In late 2015, when the PiS formed a government, it claimed it sought to 'reform' the judiciary. This process started with the controversial replacement of judges in the Constitutional Tribunal and the implementation of laws limiting the Court's functioning. Within a year, the Tribunal had become an instrument for legitimising claims challenging the rule of law in Poland (Pech et al. 2021). In mid-2017, the PiS passed laws, which brought changes to the entire judicial system. These were the laws on the system of ordinary courts, the National Council of the Judiciary (NCJ), and the Supreme Court of Justice (SC). They were designed to make the judiciary politically dependent and enabled personal replacement and takeover of courts' crucial institutions. Moreover, new disciplinary bodies and instruments were set up, which were to be entrusted to persons elected under significant influence of the government (amongst them to the new Disciplinary Chamber in the Supreme Court, the legality and autonomy of which have been repeatedly challenged) (Kovacks and Scheppele 2018; Pech et al. 2021; Bojarski 2021). The so-called 'muzzle law' adopted in December 2019 aimed at further subordination of the national judiciary to a ruling party by introducing new types of disciplinary offences (Pech et al. 2021).

Several international actors have condemned the new laws. In several recommendations, the European Commission argued that changes to the judicial system seriously jeopardised basic European standards. Yet the political dialogue initiated by the European Commission in January 2016, through the instrument of the Rule of Law Framework (RoL),¹² had not produced the desired results after two years. The PiS ignored recommendations and deepened the rule of law crisis.

The law undermining the independence of the judicial system in Poland and the European Court of Justice's (ECJ) new line of jurisprudence on issues of national justice triggered changes in the Commission's strategy. At the end of 2017, in parallel with the RoL Framework, the EC initiated infringement proceedings and triggered Article 7(1) TEU.¹³ However, the possible consent of Member States in the Council to Article 7(2) sanctions proved impossible (Pech et al. 2021). Opportunities

¹² The European rule of law mechanism is tool aiming to prevent challenges from emerging or deteriorating. It provides a process for dialogue between EU and Member States and is a step prior to Article 7 TEU.

¹³ Art. 7 TEU is a procedure leading to suspend certain rights from a member state. It begins with a proposal to find a "Clear Risk of Serious Breach" (7.1). In the event of a 'serious and persistent breach', the European Council decides unanimously to proceed further (7.2). The Council then votes by qualified majority to suspend rights of the accused country, including voting rights within the Council, until all duties are fulfilled (7.3).



for the effective protection of the rule of law have arisen in connection with infringement proceedings.¹⁴ Initially, the national judicial system was seen as an area protected from EU interference by Article 4(2) TEU. This changed significantly with the ECJ ruling on 'Portuguese judges' at the end of February 2018. The Court held that national judiciaries were 'dual-use' institutions. This means that EU judiciaries and all Member States are obligated by Art. 19(1) TEU to have an independent judiciary.¹⁵ Thus, the ECJ, with its jurisprudence, gave the Commission a tool to protect the rule of law in the Member States regardless of the willingness of that State to cooperate (Kovacs and Scheppele, 2018). It opened a 'window of opportunity' at the European level for legal reactions to populists in power. Yet despite the ruling, the Commission was still reluctant to activate infringement (Barcz et al. 2021). It has perceived the tool as a measure of last resort option, applied only to those cases when there is a certainty of winning in the ECJ (Pech et al. 2021).¹⁶

Civil society organisations recognised the EU as a legal opportunity structure to defend the rule of law in Poland, and since 2018, they have intensified their actions at the European level. However, this change of strategy also resulted from the lack of effective legal tools at the domestic level.

The space for civil society organisation activities was restricted through smear campaigns in government-controlled media, restrictions on public funds, and closing communication channels with the authorities (Grabowska-Moroz and Śniadach, 2021). It was part of the populist strategy of 'elite replacement' (Bill 2022). Yet the typical platforms for dialogue (lobbying, issuing statements, deploying expertise, and presentations during public consultations) were closed in 2016 (Grabowska-Moroz and Śniadach, 2021). As indicated by NGOs, this was one of the crucial reasons motivating them to take action in the European arena. The Helsinki Foundation for Human Rights pointed out that '[...] populist government closed off anyway to cooperate with organisations they consider hostile to themselves. We did not internationalise certain issues until 2015 because we had all the tools that were at the national level [...] Now we are ostracised. [...] So this [internationalisation] is an alternative'. Similarly, the judges' organisation Themis noticed '[...] the internal safeguards of the rule of law were practically all switched off. [...] And now we, as judges, as lawyers, we are left with these tools found abroad [...]'. NGOs were aware of the EU's hesitancy. However, they stood by the position that the EU had to be persuaded to activate procedures since this was the only alternative to the ineffective appeals to domestic authorities.

¹⁴ By means of it, the Commission can react to the states failing to implement EU rules or infringing EU law. By a decision of the European Court of Justice (ECJ), a state could be charged with a financial penalty.

¹⁵ 'Member states should provide remedies sufficient to ensure effective legal protection in the fields covered by Union Law', Kovacs and Scheppele (2018), p. 12.

¹⁶ The Commission challenged the Polish state in court in 2018—law on the Ordinary Courts and the Supreme Court, in 2020—the Disciplinary Chamber of the Supreme Court and the 'Muzzle Law', in 2021—the Polish Constitutional Tribunal and its case law. This is referred to by law scholars as the 'awakening of the supranational system' (Barcz et al. 2021, p. 35).



The analysis has revealed that a mixture of structural threats and opportunities stimulated the Europeanisation of NGOs' opposition to the populist government. When domestic instruments of pressure were frozen, NGOs were determined to use legal opportunities at the supranational level. However, they were also aware that these opportunities had to be largely created by spreading actions and generating incentives for elites and other counter-movements.

Allies and sceptics in the socio-political realm. The construction of the multilevel community for democratic defence.

During the Europeanisation process, Polish NGOs have managed to build national and international networks to support cooperation across borders. This is what Bandy and Smith (2004, p. 3) call transnational coalition formation. The cooperation networks had a cluster dimension and involved various actors (international NGOs, EU officials, Polish NGOs, and the judiciary community).

Numerous European judges' associations supported the activities of expert NGOs by adopting resolutions to oppose the ongoing crisis of the rule of law in Poland. The European Association of Judges declared that without an independent judiciary, the EU would cease to function (Oświadczenie Prezesa..., 2020). An eloquent gesture of the international judiciary was the participation of judges from twenty European countries in the 'March of a thousand robes'. For the judiciary and the NGOs, it was a symbolic moment in which, as an interviewee from Iustitia emphasised, 'the status of the European judge has evolved' and the sense of unity within the EU has strengthened. Bojarski (2021, p. 1370) has argued that such collective initiatives boosted the morale of the entire professional group. Street NGOs also sought international allies. Under the 'Money for the rule of law' mechanism, Democracy Action has undertaken joint initiatives with the Hungarian and Romanian organisations. The main factor for cooperation was the threat to democracy in all of those EU Member States.

Polish NGOs pointed to a significant change within the transnational judicial community. It redirects their activities from organisational issues to issues related to the rule of law. The Iustitia interviewee notes that 'the rule of law is [currently] in the first place [...] Because [other associations] have the feeling that it could happen to them in their country in a moment as well'.

Initially, Polish NGOs met with a sceptical attitude from some EU officials: Jean-Claude Juncker (the President of the European Commission 2014–2019), Frans Timmermans (Vice-President of the European Commission), and Vera Jurova (Commissioner for Justice, Consumers, and Gender 2014–2019). Lobbying by Polish NGOs (experts and street) in the form of numerous talks, appeals, and letters has changed the attitudes of some officials, according to numerous NGOs. Iustitia pointed out that Timmermans became the main advocate of the activities of Polish NGOs at the EU level and described his actions as 'uncompromising'. Similarly, Jurova showed greater interest and support over time, starting a regular dialogue with representatives of selected NGOs (Free Courts, Iustitia, Themis). According to the Helsinki Foundation for Human Rights, numerous protests in defence of the



courts have become not only a 'driving force' for Polish NGOs but have also been heard and noticed in EU institutions.

With some exceptions, NGOs' pressure on the EU institutions was not facilitated by the involvement of Polish MEPs. Representative of the Citizens of the Republic of Poland, when asked about cooperation with the MEPs, stated: 'We do not have good experiences here'. Members of expert and street NGOs emphasised that opposition parties did not cooperate in this regard. One of the exceptions was MEP Michał Boni, who acted as an 'information broker' between the expert and street NGOs and the European Commission. MEPs from other countries showed greater involvement in the Polish case. But scepticism among Polish MEPs scepticism regarding the Europeanisation of the opposition reactions to the rule of law crisis remains unchanged. Opposition parties' main argument was the purported effect of the PiS government's rhetoric, which called anyone who 'took' domestic problems abroad a 'traitor'. The NGOs interviewed considered the lack of support from the parliamentary opposition as a factor constraining Europeanisation. As a consequence, at the international level, Polish NGOs took over some political party functions, such as articulating the demands of the Polish citizens (Van Der Heijden 2002, p. 187).

Polish NGOs turned out to be their own greatest allies. These organisations' dynamics and level of involvement in joint activities were demonstrated by the numerous protests and information campaigns. An example was the European Front, an informal initiative created jointly by Polish pro-European non-governmental organisations. In 2018, 13 organisations associating judges and prosecutors involved in the defence of the rule of law in Poland decided to formalise their cooperation by establishing the Justice Defence Committee. This organisation monitors cases of exerting political pressure on judges, prosecutors, and representatives of other legal professions providing these people with the help of both authorised representative and defenders at the national and European levels.

Polish NGOs have managed to create a multilevel community in defence of democracy. This network has supported the NGOs in their efforts to reach European decision-making structures. It has also resulted in the diffusion of collective opposition to democratic backsliding in Poland and produced incentives for European elites to act.

The role of ideas in Europeanisation of opposition to the rule of law crises in Poland

The activity of civil society in Poland in response to the populist government was exceptional for two reasons. For the first time, since the fall of communism, a serious crisis of the rule of law occurred, which posed a real threat to liberal democracy (Cześniak 2021). Secondly, civil society actors function in a space shaped by a strong identity conflict between the symbolic politics of nationhood and the liberal Europeanised vision of politics (Karolewski 2016; Moroska-Bonkiewicz 2020). It came to a head when the ruling PiS was underpinned by the populist divide between the 'bad' versus 'good' elite (Bill 2022). The judiciary



was specifically framed as a hermetic post-communist ‘caste’, which looked after their interests. The judiciary was attacked as a group and as individuals, by state-sponsored defamation campaigns and repressions (Bojarski 2021). This situation created a particularly strong constraint for opposition to populist politics and particularly the Europeanisation of the opposition reactions to the rule of law crisis.

We argue that to overcome this constraint and fear of potential personal or collective losses, the Europeanisation of opposition to democratic backsliding was driven by the existence of collective ideas and frames ‘that are favourable to specific forms of political activity’ (Princen and Kerremans, 2008, p. 1132). In this particular case, we expected shared ideas about democratic values and their threats and perception of Europe in symbolic terms as a community of democratic principles, to be factors explaining the transformation of available opportunities and threats into action.

The problem of the rule of law as perceived by civil society organisations was a fundamental issue for Poland and the greatest challenge for democracy. To emphasise the importance of this issue, interviewee from Helsinki Foundation for Human Rights used metaphors comparing the rule of law crisis to ‘a beating heart that poisons the whole system’, or ‘global warming’, which shook them deeply. Similarly, civil society organisations perceived themselves as defenders of civil liberties and rights, and Poland’s presence in the European Union. As the representatives of most NGOs interviewed pointed out, defending cherished values was the motivation for their actions both at the national and international levels. Some judges from Themis organisation framed their defensive strategies as a ‘war for the rule of law’ in which lawyers should be on the front line, just as soldiers are in a conventional war. They acknowledged that this entailed negative effects on an individual level, such as disciplinary actions against judges or prosecutors, but saw positives on a systemic level. The fact that the authorities labelled legal organisations as ‘traitors to the nation’ did not discourage them from acting, but they did not expose their activities to a broad public. Iustitia representative felt that this was a sign of the effectiveness of NGOs’ activities.

The transfer of the protection of the rule of law to the European level was an ‘available’ strategy for NGOs, as the EU institutions were seen as ‘ours’. As one Iustitia interviewee stated ‘we are the judges and members of the Union. Amongst other things, the Union is there to uphold the treaties. We, therefore, believed that we had to mobilise it to act decisively’. Lawyers’ organisations saw national and international actions as equivalent, which was due to the multicentric political and legal order of the EU. Hence, as a Batory Foundation representative stated, ‘as citizens of the Union, we have the privilege and the right to make use of them [European institutions] and to expect protection’. Nevertheless, civil society organisations were also convinced that the European Union, had a duty to respond, to protect the principles of the Treaty through the available procedures, as Helsinki Foundation for Human Rights explained to ‘uphold values in all Member States’. The rule of law crisis in Poland was also seen as a testing moment for the EU as to whether it would live up to its commitments. The Europeanisation of the reactions to the rule of law crisis and the creation of protective mechanisms in this regard were seen as steps



towards the transformation of the Union into a self-conscious political community based on human rights and democratic goals.

Conclusions

The guiding question of the presented research was whether and how democracy can defend itself when a majority populist government holds power. Our preliminary findings revealed that a pincer movement model of opposition has emerged, composed of actions undertaken by actors at the national and international levels. The oppositional reactions were characterised by a tolerant approach as intolerant modes of engagement were mostly unavailable. Moreover, the results show that when the majority populist government undermines liberal democratic institutions the focus of oppositional reactions is shifted over time to civil society actors and international institutions. To further explore how national initiatives interact with the international opposition to put pressure on populists in power, we focussed on how and why civil society actors Europeanise their opposition to the rule of law crisis in Poland.

The studies revealed that the various oppositional strategies undertaken by Polish NGOs were mainly aimed at mobilising reactions from EU institutions. The Europeanisation of the opposition has increased over time encompassing more actors and forms of mobilisation. However, Polish NGOs not only exploited the existing European opportunity structure but actively shaped it by producing new channels of communication with EU actors and incentives for European elites and other movements to exert pressure on the populist government and contain the democratic backsliding in Poland.

The activities of NGOs resulted in the formation of 'solidarity and political transnational networks' which supported the opposition to the rule of law crisis in Poland. European NGOs, judges' communities, and allies amongst representatives of European institutions empowered Polish organisations with professional support and moral encouragement to undertake actions at the national and European levels.

The assignment of action against the populist party to the European level was the result of changes in the multi-level political and legal environment. Transformation of the structural threats and opportunities into actions at the European level was facilitated by NGOs' moral duty to defend the rule of law in Poland, as well as their shared views on the role of the European Union as a guardian of democracy.

Our analysis contributes to the growing literature on reactions to populism in power as it deepens the knowledge about civil society's opposition to the populist majoritarian government when many of the traditional instruments to curb democratic challengers are inapplicable. Our research has also shown that the opposition of civil society actors is largely based on supranational cooperation. We have indicated that NGOs were an important factor in animating the European Union to intervene against the populist judicial policy. The pressure strategies adopted by NGOs seem to be largely effective, as the EU gradually implemented the legal instruments pushed through. However, to define to what extent the national and international opposition curbed the activities of populists in power further in-depth research is required.



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