East European Politics

ISSN: (Print) (Online) Journal homepage: https://www.tandfonline.com/loi/fjcs21

Judges as activists: how Polish judges mobilise to defend the rule of law

Claudia-Y. Matthes

To cite this article: Claudia-Y. Matthes (2022): Judges as activists: how Polish judges mobilise to defend the rule of law, East European Politics, DOI: 10.1080/21599165.2022.2092843

To link to this article: https://doi.org/10.1080/21599165.2022.2092843

Published online: 01 Jul 2022.

EAST EUROPEAN POLITICS
https://doi.org/10.1080/21599165.2022.2092843

Routledge
Taylor & Francis Group

Judges as activists: how Polish judges mobilise to defend the rule of law

Claudia-Y. Matthes

Department of Social Sciences, Humboldt-Universität zu Berlin, Berlin, Germany

ABSTRACT

What research on democratic backsliding often overlooks is that protest against the decline of rule of law also emerges inside state institutions. In Poland, the judges' associations are using legal means, organising public events and urging the European institutions to stand firm towards the Polish government. In this article, I analyse the judiciary's collective actions and motivations regarding on- and off-bench mobilisation. Based on in-depth interviews with judges, I show how they focus on litigation but use lobbying and protesting as complementary tools. Moreover, their networking and adaptation of measures to changing circumstances proves their ability to act strategically.

ARTICLE HISTORY
Received 9 August 2021
Accepted 15 June 2022

KEYWORDS
Rule of law; judiciary; Poland; European Union; mobilisation

Introduction

"My presence here is not about politics, I am here to protect the rule of law" (Gersdorf in Goclowski and Sobczak 2018). This statement by Judge Małgorzata Gersdorf, the former president of the Polish Supreme Court (SC), made to reporters when she entered the court building in July 2018 after she had been forced to retire, describes the motivation of many Polish judges. After several legal changes in Poland that led to more political control over decision-making procedures in courts, the appointment of judges and their responsibilities (Sadurski 2018; Davies 2018), judges began to organise their resistance with diverse forms of on- and off-bench mobilisation. Since 2017, in addition to their legal action, they are protesting on the streets, spreading information through social media and the websites of their associations and are reaching out to the European Commission and the European Parliament (Reuters 2020; www.iustitia.pl). This accompanies the protest of more experienced activists, such as human rights movements, civil society organisations and the former Ombudsman for Civil Rights, Adam Bodnar (Buras and Knaus 2018; Bodnar 2018; Amnesty International 2019).

The judges' engagement in public contestation constitutes an empirical and a theoretical puzzle. Most legal and professional cultures expect judges to restrain from seeking public attention and political involvement (Trochev and Ellett 2014, 70) and, therefore, off-bench mobilisation is not a common task for them. First, judges have to

CONTACT Claudia-Y. Matthes claudia.matthes@sowi.hu-berlin.de

carry the costs of collective action that is not part of their professional culture, is beyond their expertise and is against their code of conduct. Second, like interest groups and NGOs, they have to learn which strategy is most promising when addressing the public, the government and European institutions. Since they are not experienced in navigating these different political structures, this creates another challenge.

Judicial activism is mostly observed and investigated with regard to judges' rulings in court (Mayoral and Pérez 2018; Baum 1997). Yet, there have been situations where judges engaged in off-bench mobilisation against governmental interference, in Egypt (Wolff 2009), Pakistan (Ghias 2010), Latin America and Africa (Trochev and Ellett 2014) as well as in Turkey (Özbudun 2015; Bakiner 2016). In Hungary, another case where the government curtailed the rule of law, the judges remained more restrained mainly due to the very quick adoption of the new Fundamental Law in 2011 and a rapid exchange of judicial staff (Fleck 2018). For Poland, research on judges is scarce despite their mobilisation. This resistance can be considered a sign of democratic resilience (Boese et al. 2021) and makes a study on judges as activists not only an issue for legal scholars but important from a social sciences' perspective as well.

This article investigates the different on- and off-bench measures against democratic backsliding that the Polish judges applied. It seeks to identify how they relate on- to off-bench mobilisation and how they choose and evaluate which of the available measures. In order to sketch out the judges' potential actions and the factors that may explain these choices, I combined three approaches from legal and social science scholarship. Starting with literature that evaluates decision-making inside the courtroom in order to outline judicial behaviour in general, I secondly consulted research on judges acting in the public sphere. The third pertinent field of literature addresses strategies of interest groups in the multi-level-system of the European Union which forms a relevant opportunity structure for judicial protest. The EU's tools to protect the rule of law additionally shape the judges' actions.

This analysis, therefore, also shows how the judges assess the EU's attempts to handle the rule of law crisis, especially the Art. 7 and infringement procedures, which is an understudied issue so far. Research on Poland's judicial reforms has either covered the content of these changes from a domestic (Bill and Stanley 2020; Sadurski 2018; Przybylski 2018; Zoll and Wortham 2019) and a comparative, regional viewpoint (Bugarič 2015; Cianetti, Dawson, and Hanley 2018; Vachudova 2020; Sata and Karolewski 2020). Or, it looked into the European institutions' attempts to act against these changes (Halmai 2019; Closa 2019; Scheppele, Kochenov, and Grabowska-Moroz 2020). The response of those who were at first and directly affected by the decline of democratic standards, the judges, has not yet been studied.

I organised the article as follows: The first section elaborates on how to investigate the judges' engagement in litigation, lobbying and protesting in terms of on- and off-bench mobilisation. This guided my empirical analysis presented in the main section. My study confirms the judges' preference for litigation and lobbying for litigation to the Art. 7 procedure. It also demonstrates that their choice of instruments is influenced by the timing of actions in their environment, i.e. the EU institutions and the Polish government. Off-bench mobilisation turned into a purposeful strategy to support the lobbying for litigation. In conclusion, I evaluate the extent to which legal and public mobilisation can counter democratic backsliding in the EU.

Conceptualising judicial on- and off-bench behaviour and action repertoires

The literature on democratic backsliding discusses what happens when governments seek to maximise their power and instrumentalise the court system (Levitsky and Ziblatt 2018). If this disturbs the equilibrium between courts and legislatures, then, according to O'Donnell (2004, 35), "the stewards of the law must hold themselves ready to support and expand that very democracy". In the following, I will lay out which types of activity the judges could potentially employ and discuss which considerations and structural conditions could influence their choices.

To resist the curbing of court autonomy and judicial independence, on-bench mobilisation is one evident option. Judges can litigate by submitting requests for preliminary rulings that national courts can send to the Court of Justice of the European Union (CJEU) in order to clarify if legislation violates European law. The second available measure is an infringement procedure at the CJEU. Judges cannot initiate this directly but have to activate the European Commission (Stone Sweet 2010). Thirdly, they could also lobby for the use or continuation of political measures, such as the Art. 7 procedure. Additionally, off-bench mobilisation can take place in the form of protests or awareness-raising, which can help to create social networks enabling the judges to stand firm against repressions (Trochev and Ellett 2014).

Considering that judges are a specific type of actor, different from politicians, citizens or economic actors, above the day-to-day pressures of politics and often independent from the necessity of being re-elected, their behaviour is formed by certain professional habits which are interpreted through different analytical lenses. The attitudinal model seeks to trace the judges' values and does so by deducing from their rulings if they are more activist, constrained, liberal or conservative (Dyevre 2010, 301–302). According to this view, the Polish judges' actions against the decline of the rule of law would be inspired by a normative belief in the impartiality of the law. But, judges' actions in the courtroom are also driven by self-interests and ambitions (Ferejohn 1999). The public choice theory assumes that judges want to gain influence and prestige and have their rulings cited by others (Epstein 1990, 838), so their main reason for mobilisation would be their fear of loss of status.

In addition to these individual reflections, their direct group environment matters. Courts or judicial associations often develop a corporate identity, which can make judges more inclined to interventions when their autonomy is threatened (Brown and Waller 2017, 820). Bakiner's (2016) study of off-bench mobilisation shows that sometimes it is also intra-judicial conflict and opposing views on government policies that induce judges' turn to public activities. Dyevre (2010, 303–304) instead stresses the institutional settings that surround judges. Judges weigh the chances of realising their goals according to existing opportunity structures. These are found in factors such as constitutional provisions, legal changes, executive-judicial relations or public support. This means the narrowing of the Polish system of checks and balances is not only the grievance for why judges engage in protest but also constitutes the environment that influences their choice of measures. The same is valid for the EU institutions. Their available instruments to protect the rule of law shape the judges' action repertoire and the EU's institutional setup channels their respective choice of measures.

The European Commission as lawmaker (Beyers 2004, 218–220) is the body to start the infringement or the Art. 7 procedure. Hence, in order to achieve the Commission's attention, the judges need access to this institution, which is easier when an issue has become highly visible in public (Bouwen and Mccown 2007, 430–431). This can be realised by off-bench mobilisation or by litigation through submission of requests for preliminary rulings (De Schutter 2017, 8–9). Using the latter also makes sense insofar as the CJEU's case law has already created new, pro-integration precedents, especially since the ruling in February 2018 on Portuguese judges that stretched the reach of EU law (Mathieu, Adam, and Hartlapp 2018; Rodríguez 2020, 334). While interest groups may abstain from the costs of litigation because of a lack of material resources, knowledge and organisational capacities (Bouwen and Mccown 2007, 425), this is different for judges and lawyers. They may specifically concentrate on such tool, as legal debates are their daily professional bread. However, the increasing restrictions on domestic courts might force judges to turn to indirect litigation by lobbying the European Commission to start an infringement procedure.

Since time is key, because once a law is passed, its consequences cannot easily be revised, off-bench mobilisation may achieve another function. Judges can exercise it to show the EU and the national government that their resistance against the curtailment of their powers finds support among the population. Moreover, they can lobby EU institutions to continue the Art. 7 procedure. In this respect, the European Parliament may be an important addressee since it backs this political instrument and brings further publicity to the issue through its plenary debates and resolutions. Hence, judges could ask it to stay on topic.

Summing up, I argue that the judges pick their specific mix of on- or off-bench mobilisation in terms of litigation, lobbying or protesting under consideration of both the domestic and European structural opportunities and each EU institutions' part in the rule of law protection. Litigation through requests for preliminary rulings is likely to be their preferred strategy because of their assumed belief in law as a normative area, but they may complement it with other tools in view of the conditions discussed above. Table 1 summarises how I operationalised the judges' action fields for my empirical analysis.

Table 1. The Judges' action repertoires.

Action		Addressee	RoL Tool	Goals
On-bench mobilisation	Litigation	CJEU	Request for preliminary ruling	CJEU shall check compatibility of national with European Law
On- and off-bench mobilisation	Lobbying (for litigation)	European Commission and CJEU	Infringement procedure	European Commission shall activate CJEU
Off-bench mobilisation	Lobbying (for political action)	European Commission and European Parliament	Art. 7 procedure	uphold political pressure on Polish government
	Protesting	public space and NGOs in Poland and across Europe	Demonstrations networking awareness-raising	create political pressure increase knowledge about rule of law

Source: own compilation.

The judges may not deploy these four potential measures in a strictly separated sense. As Beyers (2004, 234) and partially Bouwen and Mccown (2007, 424) observed in their studies, interest groups in the EU often apply flexible behaviour, adapt and combine different strategies. My analysis has shown that the Polish judges are able to do the

same. As I will elaborate below, the judges adjusted their choice of measures in direct reaction to the respective actions by EU institutions and the domestic government and fine-tuned their repertoire over time.

The research design

Doing a case study on the Polish judges as "an intensive study of a single unit for the purpose of understanding a larger class of (similar) units" (Gerring 2004, 342) is relevant and telling in two ways: First, although the Polish judges' protests stand out as a quite unique example in the recent wave of democratic backsliding in Europe, studying them helps to theorise in a general perspective about judges' action repertoires and measures to defend their independence and the rule of law. Second, judges as activists can be part of a broader societal attempt to defend civil liberties and political rights and studying their actions allows assessing the resilience capacities of a society (Boese et al. 2021).

In order to examine how and under consideration of which factors the judges applied which of the action repertoire laid out in Table 1, I combined two methods. First, I gathered information on on- and off-bench mobilisation from documents on the websites of the Polish judicial associations, Iustitia and Themis, the Polish SC, the CJEU and the European Commission. Secondary literature complements these data. Second, I conducted several semi-structured interviews to get an understanding of why they opted for each action and how they evaluated them. Among them were five judges, to some I repeatedly talked, from the two Polish associations of judges, Themis and Iustitia, and two lawyers from the movement Wolne Sądy, plus the EU Commission's representation in Warsaw.[1]

Regarding the timeline, the analysis traces the judges' reactions since 2017, when the Polish parliament (Sejm) started changing the legislation on the SC in April, the European Commission launched the first infringement procedure in July and opened the Art. 7 procedure in December, until late 2021.

After presenting some background on the judicial reforms in Poland and the position of the judges' associations, I look into their actions according to the respective addressees: first into their litigation efforts at the CJEU, then into the lobbying of the European Commission for infringement procedures, the European Parliament for the Art. 7 procedure, and finally their other types of off-bench mobilisation. The only institution the judges did not approach is the European Council because of its inactivity in rule of law issues (Scheppele, Kochenov, and Grabowska-Moroz 2020, 19), although the Nordic and Benelux countries supported some infringement procedures as interveners.

Empirical analysis: the judges' protest activities and strategies

The purpose of judicial reforms and the positioning of the judges' associations

The government's reforms of the court system did not come as a total surprise. Debates about the judiciary in Poland had taken place for many years due to the lengthy time that court cases often lasted. This was primarily related to organisational problems and uneven distribution of workload in understaffed courts but also to quarrels about the relationship between the political and the judicial sphere (Odlanicka-Poczobutt 2015). Judges had nevertheless professionalised and de-communised themselves, same as their

rules and procedures (Bodnar and Bojarski 2012). The governing Law and Justice party (Prawo i Sprawiedliwość, PiS) however, especially party leader Jarosław Kaczyński and his minister of justice, Zbigniew Ziobro, from the coalition party, United Poland (Solidarna Polska, SP), follow an agenda that does not aim to increase the efficiency of courts but has political intentions. Their interest in extending control of the judiciary relates to two issues. First, to PiS' first period in office between 2005 and 2007, when the Constitutional Tribunal (CT) had stopped several government bills from taking effect by declaring them unconstitutional (Sadurski 2019; Bill and Stanley 2020, 383). Second, their approach to courts and other public institutions in Poland expresses their intention to implement a counter-constitutional project (Blokker 2020, 348) that contests certain legal norms established at the roundtable talks in 1989 and the constitution in 1997. Kaczyński and Ziobro repeatedly called for a judiciary that is subordinate to the political majority instead of acknowledging minority views, an objective for which Bień-Kacała (2019, 200) coined the term "illiberal constitutionalism". This ideological underpinning corroborates that the PiS government's actions go beyond what Popova (2010) terms "strategic pressure" when incumbents curtail the independence of courts for fear of electoral or other defeat.

The judges' protest against these changes does not take place on an individual basis but through their associations. Although some personalities spoke out more bluntly in public and the media covered them more prominently, such as the previous SC-president, Małgorzata Gersdorf, or judges facing disciplinary trials, like Igor Tuleya (Amnesty International 2019), the main setting that is investigated here is collective action. There are four professional associations of judges in Poland: Iustitia and Themis, plus two associations of judges from family courts. The latter are not covered due to their comparably low number of members. Membership in each association is voluntary.

The Polish Judges Association Iustitia (Stowarzyszenie Sędziów Polskich Iustitia) has operated since 1990, and it unites judges from common, administrative and military courts, including the SC. It is the oldest and largest association, representing 3,500-4,000 members, which equals about one-third of the total number of judges in Poland. It has a national office and 32 local branches and defends the professional and social interests of the judiciary. In the past, Iustitia was a kind of trade union that argued about salaries and working conditions, but not about the meaning of the judiciary for democracy. When the PiS-government's changes to the CT took effect in 2016, some judges in Iustitia even welcomed them and hoped for new career opportunities. Many were frustrated in their jobs and awaited promotion, so the government used this as incentive to get backing for their measures. These judges profited from a new system of distributing cases and in some chambers, they even received higher salaries.[2]

In 2016, Iustitia elected a new leadership that, with the ongoing political pressure, took a more activist approach. The new chair, Krystian Markiewicz, felt something should be done after the PiS-government had abolished the independence of the CT. In the course of these discussions, the government-friendly judges left the association. This way, the intra-institutional conflicts dissipated, opposite to the Turkish case where this was the main driver for mobilisation (Bakiner 2016). However, government-friendly judges are not only present in the courts but are increasingly achieving more important positions while the critical judges face disciplinary proceedings, so the intra-judicial conflict as such did not vanish.

The Association of Judges Themis (Stowarzyszenia Sędziów THEMIS) is situated in Warsaw and Krakow and was founded in 2010 as secession from Iustitia because some judges wanted

to create a less bureaucratic and ponderous organisation to engage in modernising procedures. Themis comprises 180 members and some judges still hold double membership with Iustitia. Themis was more critical of the government's reforms from the very beginning as their members, who mostly belong to higher courts, faced the political restrictions more quickly. Since Themis is smaller, they can, according to their own assessment, react spontaneously, whereas Iustitia has better resources to formulate substantial responses and studies.[3] Both associations make use of these different profiles and collaborate with each other.

Litigation through activation of the CJEU

In the course of 2017, the new laws in Poland began to have a negative impact on the judges' autonomy. In reaction to that, some lower courts, the Administrative Court and especially the SC began to prepare requests for preliminary rulings. The SC submitted the very first request on the rule of law matters on 2 August 2018 and, according to its website, six more followed in 2018 and two in 2019. In 2020, the SC formulated seven requests but did not finally submit them to the CJEU as a new law from December 2019 (see below) considered this a disciplinary offence. Additional submissions came from local and regional courts. Specifically, they tackled the forced early retirement age of judges (issue of discrimination), the legality of the new Disciplinary Chamber and the new National Council of the Judiciary (NCJ) (issue of non-independence and non-impartiality).

The judges' goal was to make the CJEU aware of the existing legal dispute and to receive backing for its clarification on the domestic level. Polish legal scholars were optimistic that this could protect the "crucial and fragile enforcement of common values" (Sikora 2018, 2), although the CJEU usually needs more than 18 months to issue a ruling (Stone Sweet 2010, 13). For the requests from Poland, of which only few were withdrawn, found inadmissible or rejected, it took the court about a year to respond (Court of Justice of the European Union 2019 and 2020; Spieker 2020) as Table 2 shows.

Table 2. Decided and pending requests for preliminary references (selection).

Case number	Submission date	Decision date	Issue	Decision
C-585/18	20/09/2018	19/11/2019	Legal status of new NCJ	National courts received criteria to test "appearance of independence"
C-624/18	03/10/2018		Disciplinary Chamber	
C-625/18	03/10/2018		Consequences of newly imposed retirement age	
C-824/18	28/12/2018	02/03/2021	Appointments of judges	Primacy of EU law, disapply national regulations
C-487/19	26/06/2019	06/10/2021	Legality of chambers, transfer of judges to other chambers/courts	National law and action taken violate Art. 19 TEU(1)
C-508/19	02/07/2019	Pending 15/04/2021 opinion by Advocate General	same topic	Recommendation to override national law
C-765/19	18/10/2019	Pending	Non-legality of legal organs	

Source: own compilation from SC (http://www.sn.pl/orzecznictwo/SitePages/Biuletyny.aspx?ListName=BSiA_Pytania_prejudycjalne) and CJEU (https://curia.europa.eu/jcms/jcms/j_6/en/) websites.

The CJEU's most important decision from November 2019 pointed in the direction Iustitia and Themis had hoped for. It asked the SC to test the so-called "appearance of independence" of courts in order to check the legality of these new chambers. A panel of three judges of the SC's Labour Law and Social Security Chamber then found in early December 2019 that the

Disciplinary Chamber was neither independent nor impartial. This decision affected 543 judges elected by the new NCJ in the meantime and several courts subsequently precluded these judges from cases (Zelazna 2020, 910). Yet, new legal battles emerged between government-critical and -friendly judges inside the SC and among the highest courts. The latter group questioned the authority of the CJEU's decision and sent the issue to the CT. In December 2019, it ruled according to the government's opinion that the SC and CJEU were wrong.

In another move, also in December 2019, the PiS-government had responded to the CJEU's and SC's rulings by introducing the so-called "muzzle-law". It prohibits all courts from applying the test of appearance regarding judges or chambers installed after 2018 and penalises those judges who question the legitimacy of the government's legislation by asking the CJEU to issue a preliminary reference. Neither the judges' immediate public reaction, calling on the March of 1,000 Robes in January 2020 (see below), an intermediate rejection by the Senate, the second chamber of parliament, nor criticism voiced by the European Commission hindered the Sejm from passing the muzzle-law in February 2020 (Ziółkowski 2020; Wanat 2020).

In April 2020, the term of SC-president Gersdorf expired. Since her successor is a government affiliate, government-critical judges prefer to submit requests for preliminary rulings through other courts, but the muzzle-law clearly restricted their room for manoeuvre. The judges try to uphold the pressure insofar as they continue to send petitions to the European Commission and give evidence at hearings on pending cases.[4] The CJEU decided on two of them in 2021: one on the mode of appointing judges in March and the other on the practice and process of the Polish State President to transfer judges to other courts against their will in October. It declared both as incompatible with EU law.

Lobbying the European Commission for litigation: infringement procedures

Despite the limited success of the preliminary rulings in terms of making the Polish government change the contested legislation, they were nevertheless relevant reference points for the development of European Law and the infringement procedures. In order to lobby for them, Iustitia and Themis both worked on legal opinions on the legislative changes to show how they breached Art. 47 of the Charter of Fundamental Rights of the European Union (effective remedy and fair trial) and Art. 19 of the Treaty on the European Union (TEU) (legal protection and judicial independence) (Kościerzyński 2019; Mazur 2019).[5] To submit these assessments, they approached the European Commission's representation in Warsaw as a shortcut to Brussels.[6] Representatives of Iustitia then managed to arrange two personal meetings and presented their views to Commissioners Frans Timmermans and Věra Jourová on 7 May 2018 in Brussels and during Mr. Timmermans four visits to Warsaw, where he spoke to government officials, members of civil society and judicial associations.[7] In addition, Polish and European NGOs and the European Network of Councils for the Judiciary met with Mr Timmermans or one of his cabinet aides. Polish judges and lawyers also saw his successor, Commissioner Didier Reynders, in November 2020 to discuss the disciplinary charges against judges.

For their lobbying activities, Iustitia and Themis received help from Wolne Sądy (Free Courts), a group of four lawyers who understand themselves as "judicial guerrillas". Next to their advocacy work, they set up a Facebook page in 2017 that quickly reached more than 50,000 (80,000 in 2021) followers on which they upload small films about the impact of the judicial changes on ordinary people and about what happens when courts do not function

properly. At first, convinced that the "miracle of transformation", as one of their members called it, was safe after the end of communism, Wolne Sądy then realised that the fight for democracy had to continue, "so we went from communication to action".[8] Being involved with civil society organisations for a long time as lawyers that help pro bono, they then used their experience to defend judges who face disciplinary procedures, help in getting access to the European Commission and represent the plaintiff's side at the hearings in Luxemburg. In 2020, they formed a foundation in their name (https://wolnesady.org/).

The interviewees from Wolne Sądy described the process of approaching the European Commission to initiate the infringement procedure as a challenge that demanded a lot of persuasions. The Commission also went ahead with the Article 7 procedure and tended to submit only those cases to the CJEU that were promising enough to be won (Mathieu, Adam, and Hartlapp 2018; Blauberger and Kelemen 2017). Moreover, its college of commissioners decides through consensus, so the judges and Wolne Sądy pressed hard to secure enough backing for their demand to start the infringement procedure.[9]

During this process, Iustitia also networked with European judges' associations such as MEDEL (Magistrats européens pour la démocratie et les libertés). They met with the European Commission to discuss the rule of law issues and published supportive postings on their website, which provided further legitimacy to the judges' concerns. Iustitia also welcomed that the European Network of the Judicial Councils suspended the Polish NCJ's membership in 2018[10] due to its vicinity to the government and finally expelled it in October 2021.

By late 2021, the European Commission had sent four cases to the CJEU. Representatives of Iustitia and Wolne Sądy report that time pressure was and is acute because the Commission and the CJEU should take measures before the domestic legislation changed too much. Therefore, the judges also urged the Commission to ask the CJEU to impose expedited procedures and interim measures and continued to present evidence on the disciplinary procedures against judges taking place in Poland (Kościerzyński 2019; Mycielski and Pech 2020) as Table 3 shows.

Table 3. Infringement procedures.

Case number	Procedure opened by European Commission	Submission date to CJEU	Judgement	Reactions by Polish Government
C-192/18 independence of ordinary courts, retirement age	29/07/2017	15/03/2018	05/11/2019 violation of Art. 19 TEU	Partial compliance
C-619/18 retirement age of Supreme Court judges	02/07/2018	02/10/2018 expedited procedure on 15/11/2018	24/06/2019 violation of Art. 19 TEU	Partial compliance affected judges resumed their work
C-791/19 Disciplinary Chamber	03/04/2019	25/10/2019 interim measures on 08/04/2020	15/07/2021 violation of Art. 19 TEU and Art. 267 TFEU	Government continues to appoint judges, Commission issued formal notice acc. to Art 260(2) TFEU
C-204/21 Muzzle-Law	29/04/2020	01/04/2021 immediate request for interim measures imposed 14/07/2021 fine of 1 million € per day imposed 27/10/2021		CT-rejected judgment, no changes to Disciplinary Chamber

Source: own compilation from European Commission (https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?lang_code?=?en) and CJEU (https://curia.europa.eu/jcms/jcms/j_6/en/) websites.

While waiting for the different rulings, the judges reacted in three ways: They upheld their requests for a preliminary ruling at the CJEU (Zelazna 2020, 908), and, as their forced early retirement was illegal, they engaged in civil disobedience by going to work even though they received no cases. Finally, they accompanied this protest with media work and by giving interviews in which President Gersdorf and other judges stressed the existing threats (Żurek 2019; Zoll and Wortham 2019, 894). This pressure and awareness-raising were also meant to help the judges who were accused at the SC's Disciplinary Chamber and had their immunity lifted (Rettmann 2020; Pech 2020, 1–2).[11]

The compliance record of the Polish government regarding the lost cases is low (Mastracci 2019; Rodríguez 2020) because its political majority still allows it to ignore the "blaming and shaming" (Sedelmeier 2017) and to continue its course. Off-bench mobilisation, therefore, took place in reaction to domestic changes, but Iustitia proactively contributed to the European Commission's decisions to hold on to the cases against Poland at the CJEU. For the fourth infringement procedure (European Commission 2020a), which the European Commission submitted to the CJEU in July 2021, it simultaneously asked to impose interim measures. The CJEU later imposed a fine of 1 million € per day on the Polish government until it changed the legislation (Court of Justice of the European Union 2021).

Lobbying the European Parliament regarding the Art. 7 procedure

Iustitia had not been in contact with EU institutions regarding the Art. 7 procedure prior to its opening in December 2017. Since 2018, especially the Committee on Civil Liberties, Justice and Home Affairs (LIBE) was involved in the issue, as it has to prepare for the European Parliament's vote.[12] LIBE held several hearings on the Polish case, including members of Iustitia, and it sent a delegation to Warsaw in September 2018. The Members of the European Parliament (MEP) met, amongst others, representatives of Wolne Sądy, the SC and Iustitia. The judges imparted information about colleagues who were already facing proceedings at the Disciplinary Chamber and about other judges whom the new NCJ had sent, against their will, to other departments because of their submission of requests for preliminary rulings (LIBE 2018).

While collaboration with the LIBE committee was important, the judges did not get in touch with MEPs from the parties constituting the then main parliamentary opposition in Poland, the Civic Platform (Platforma Obywatelska, PO) and the Polish People's Party (Polskie Stronnictwo Ludowe, PSL). These MEPs themselves avoided taking an open position towards the Polish government, as they feared being depicted as "traitors" to the Polish nation.[13] They had already had this experience after the European Parliament's voting on a resolution regarding Art. 7 in November 2017. The PSL members had not attended and the PO-MEPs mostly abstained, but four of them had voted in support of the Art. 7 procedure and were subsequently harassed at a rally in Poland. People showed posters with their pictures hanging from gallows (Behrendt 2017). Iustitia did not want to ally too closely with these MEPs and political parties in general, as judges in Poland must not engage politically. One interviewee expressed the same experience as the MEPs: "When we report to our European partners, we are accused of being traitors" … "we want and have to avoid any affiliation with political parties"[14] Hence, they concentrated on stressing what they called the objective, unpartisan and legal consequences of the changes in the judiciary.

Moreover, both associations said their main purpose of collaborating with the European Parliament was and is to draw attention to the decline of the rule of law in Poland and the need to protect it everywhere in Europe. They do not fundamentally believe in the effectiveness of Art. 7, which is why the judges did not lobby the European Commission in this respect. The Themis member assessed Art. 7 just as a tool for "small grilling of the government"[15] that does not have serious consequences, given the institutional requirement of a unanimous vote in the Council. Wolne Sądy argued the European Commission should "squeeze Art. 7 into court action".[16] Iustitia's representatives stressed that although it left the Polish government rather unimpressed, at least it "stopped the government from doing more, all reforms were slowed down".[17] The judges perceive the European Parliament, which is more outspoken and critical towards the Polish government with its resolutions, public hearings and reports (European Parliament 2017, 2020) as a relevant resonance room. Still, they find the European Commission and litigation more relevant. Overall, this different perception reflects the judges' intention to avoid turning into political actors and giving the government a target. Further, it underlines their professional belief in court procedures.

Protesting and other off-bench mobilisation in Poland

Lobbying on the European level had already required the judges to network and engage in awareness-raising for their concerns. While the attention that they received from European partner organisations and EU institutions was largely satisfying, mobilisation on the domestic level was more challenging. Here, the judges were directly confronted with the government, especially after its re-election in October 2019 (Markowski 2020), and had to decide on how to cope with its harsh measures and how and whether to align with the population as well as with other protest groups.

Off-bench mobilisation, as well as being a response to increased political pressure at home, was intended to show Europe that societal support for the protection of the rule of law exists inside Poland. However, it took the judges time to develop a coherent strategy. Interviewees from both associations stated that they wanted to address and involve Polish society early on, but this was a completely new field of activity for them. They mentioned two main hurdles: their professional culture, plus the lack of knowledge, time, money and a common identity: "We are not trained to talk to the public", "we were told the only way to express your idea is the written verdict".[18] Judges in Poland are therefore unaccustomed to communicating much with each other, or with advocates, prosecutors or society. They had no experience in explaining their judgments or in translating them into plain language. This missing link to the public is one reason why the judges' profession had a rather negative image (Hertogh and Kurkchiyan 2016).[19] A further obstacle inside Iustitia was the distinction between judges from lower or district courts and judges at the higher or appellate courts that was previously quite pronounced.[20] Iustitia then found several responses to the political and legal threats, which lastly also strengthened the association's common identity and its understanding as a judicial rights association.

First, the judges could build on existing protest movements in Poland. In 2016, when the CT came under attack, many demonstrations took place in Warsaw that were organised by the newly formed movement Committee for the Defence of Democracy (Komitet

Obrony Demokracji, KOD) (Karolewski 2016). For these demonstrations, slogans and logos, such as t-shirts and flags with the word "konstytucja", were designed to underpin the protests with a visual iconography that became known worldwide. The judges' associations had not co-organised these protests and were even hesitant to align with KOD, however, they profited from this protest spirit very much. On 25 July 2017, Iustitia called for a "Chain of Lights" in Warsaw in front of the SC to protest the government's legislation. This event achieved plenty of attention in the media, support from the public and enhanced the formation of a common identity. Since then, Iustitia has repeatedly arranged the Chain of Lights (Gwizdak 2020).

Second, the judges began to use social media and their website to translate their at times complex legal assessments into easier language and participated in public discussions. These initiatives sped up in response to a government campaign, dubbed "Fair Courts", that started in September 2017. It spread many false accusations and presented judges on billboards all over Poland, as lazy, corrupt and incompetent. Additional hate speech campaigns on social media, such as the Twitter account KastaWatch, aimed to further discredit them in public (Amnesty International 2019; Żurek 2019). Both Themis and Iustitia then sought contact with independent journalists. Today, they claim to be content with their relations with the media.[21]

As another response to the government's attempts to defame judges, they developed various formats of education to emphasise the relevance of a free judiciary. They went to schools and nurseries to simulate court proceedings with children, invited them to participate in court sessions, held legal cafes in villages or organised mock courts at rock festivals. Already for these actions, many judges met disciplinary consequences (KOS 2018, 15; Amnesty International 2019, 8).[22]

In the course of these various actions, both associations began to collaborate with NGOs more systematically. Expanding the cooperation with Wolne Sądy, on 4 June 2018, the 29th anniversary of the first semi-free elections in Poland, Themis and Iustitia co-founded a network of first six then 12 legal and human rights associations, called the Justice Defence Committee (Komitet Obrony Sprawiedliwości, KOS).[23] They agreed on a division of labour: Iustitia and Themis provide content and legal expertise, Wolne Sądy acts as defender, supports the judges at the hearings of the CJEU and at meetings with the European Commission, while the NGOs, especially the Helsinki Foundation for Human Rights, which acts in the field of strategic litigation for many years already (Şerban 2018, 10) contribute their know-how. As a Themis member said: "I had never imagined that it would become necessary one day to collaborate with Amnesty International", another partner in KOS.[24]

For Themis and Iustitia, this network is relevant insofar as they realised that off-bench mobilisation is a constant task since public participation comes in certain waves. In addition, the KOD-movement lost momentum. While many Poles took to the streets in July 2017, the public outcry was smaller in 2018, when the Sejm passed the amendments of the bills on the SC. Themis calls this the "Hungarian salami tactic"[25], according to which single changes come one after another so the people do not realise the massive impact of their sum. For later Chain of Lights events and especially the March of 1,000 Robes in January 2020, protesting against the introduction of the muzzle-law, Iustitia campaigned more intensively and so 30,000 people and many judges from other European countries participated (Reuters 2020). Furthermore, inside the two associations, pressure from the

disciplinary trials and the time spent for mobilisation on top of the daily work bind capacities and create a challenge due to scarce resources. Themis and Iustitia only have their membership fees as a source of income. Although next to Iustitia's ten board members, judges in all 32 regional chapters collaborate and action takes place all over Poland, sharing the labour with NGOs was very welcome.

Finally, members of both associations engage in another new field of action that connects public advocacy with legal work: They defend judges who face disciplinary measures pro bono in court, as judges in Poland are permitted to do that. When the Themis president Beata Morawiec, chair of the Regional Court of Krakow, was accused of ineffective work, Themis sued the government and won the case in the first instance.[26] In doing this, the judges collaborated with another defender of civil rights, the Polish Ombudsman. Adam Bodnar made a particularly significant contribution by providing additional evidence, using his own professional networks to inform experts and the public, and maintaining contact with EU institutions directly. Additionally, judges practice professional disobedience since government-critical judges did not participate in elections to the new NCJ and refrained from applying to open positions in the SC (Zoll and Wortham 2019, 939).

Off-bench mobilisation at the domestic level took the same development as at the EU level: The judges engage in networking with civil society and raising awareness in the wider public by organising highly visible protest marches. They inform domestic and European media in order to unmask the government's cutbacks and undertake advocacy work. Still, they avoid collaborating with opposition parties in order to maintain their political neutrality. Knowing they should not act politically, the judges described this public engagement as skating on "very thin ice".[27] They started these activities out of ideational motives and their engagement over time reinforced their identity as a judicial rights' association. Now, they say, they act in the name of the society in their fight to maintain the independence of courts.[28] Therefore, and this is a rather pre-emptive tool, Iustitia expanded its education efforts, created an own website (www.edukacja.iustitia.prawo.pl/) for this purpose and now sees this as one of the most important fields of action for the future.[29] In response to the COVID-19 pandemic, they offered digital events since personal gatherings and public participation in courts were forbidden over several months.

Conclusion

As expected, Polish judges prefer to concentrate on legal tools to protect the rule of law and consider lobbying to push the Art. 7 procedure as less relevant. Among the EU institutions, the European Commission continues to be their most important access point due to its leeway in the choice of instruments and as a gatekeeper to the CJEU. As one judge from Iustitia put it, "without the Commission we had no chance".[30] At the same time, the judges' engagement in both on- and off-bench mobilisation have become more interrelated in response to new legislation passed in Poland and the different waves of action taken by the European Commission. In order to exert more pressure and manage these combined tasks, Themis and Iustitia established close networks with the lawyers from Wolne Sądy, NGOs and European judicial associations. This demonstrates a surprising ability of legal actors to engage with and connect to a wider audience by

applying varied and simultaneous measures. It allowed them to handle in parallel the CJEU's rulings, organise demonstrations like the March of 1,000 Robes in January 2020, lobby the European Commission to finally apply for interim measures and use the momentum of public attention. Hence, between 2017/18 when Iustitia and Themis started their mobilisation efforts and 2021, they learned to navigate the EU's multi-level system. Multi-track action in which on- and off-bench mobilisation complement each other has become a purposeful strategy.

These activities were motivated by the judges' belief in democratic values and the need to protect them. Of course, some judges feared the loss of privileges. However, the messages spread in public and in my interviews demonstrate that their normative motivation "to act as guardians of the constitution", which is still in place in contrast to the Hungarian case, predominates. This underlines that ideational motives (Baum 1997; Dyevre 2010) also drive off-bench activities. Individual cost-benefit calculations obviously did not guide the judges in their activism, a crucial number of them were even subjected to disciplinary proceedings and harassment on social media. Growing cohesion and corporate spirit within and among the judicial associations helped them endure these experiences. My results, therefore, extend knowledge of judicial protest repertoire. Even though the judges were eager to stay within the frame of their profession and avoid becoming political actors, they turned into societally relevant legal activists aiming to defend the rule of law. These findings provide further evidence to and also expand V-Dem studies' observations of a global increase in mobilisation for democracy (Maerz et al. 2020) since here it comes from inside state institutions.

Theoretically, these results relate to the effects of networking for both on and off-bench mobilisation. Trochev and Ellett (2014) as well as Bakiner (2016) find that the success of judges' off-bench mobilisation depends on network building. While this is generally plausible, for Central and Eastern Europe, it is even more specific, due to a special adversarial legal culture (Şerban 2018) that emerged after 1989. Litigation has become a widely used tool for interest groups in the whole region, but especially in Poland. This enabled judges and interest groups to collaborate quite easily and helped to overcome the hurdles for collective action. Networking was therefore also relevant for indirect on-bench mobilisation, when judges lobbied the European Commission to start infringement procedures. Another component was their media work that aimed to balance the government's control over public media and its defamatory campaigns (Przybylski 2018, 60). Overall, my study emphasises the judges' ability to act strategically, which is an aspect that research on legal mobilisation has not yet conceptualised.

With their on- and off bench mobilisation, Themis and Iustitia alerted the European Commission, pushed it to open and transfer the infringement procedures to the CJEU, whose rulings confirmed the Polish judges' legal interpretations. This proves that their legal activism advanced "integration through law" Blauberger and Daniel Kelemen 2017; Rodríguez 2020), and the European Commission (2019, 2020b) specified its notion of the rule of law. Yet, there is no progress with Art. 7 and democratic backsliding continued. Although the European Commission took a stricter stance towards the Polish government in 2021 by activating Art. 260 TEU and withholding payments from the COVID-19-related Recovery Plan based on the new rule of law budget conditionality, the Polish government continues its actions against judges, media and NGOs, further narrows the public space (Bill 2020) and waters down the CJEU rulings. A further

escalation between the EU and the Polish government arose after the CT's ruling from October 2021, initiated by Prime Minister Mateusz Morawiecki on the grounds of the CJEU's March response to a preliminary ruling. The CT found several articles of the TEU incompatible with the Polish constitution (Ciobanu 2021). Constitutionally, this verdict brings Poland close to a "Polexit" and illiberalism is now no longer a swerve (Bustikova and Guasti 2017) but a real turn.

Nevertheless, off-bench mobilisation remains relevant because, as one of its unexpected features, Iustitia lately engages in legal education, and this contributes to the societal and cultural fostering of the concept of rule of law. Making citizens aware of the necessity of independent courts and engaging in different types of dialogue about a democratic and pluralist constitutional system introduces ideas into society that can counter the "contestation over constitutionalism" (Blokker 2020, 336) and increase democratic resilience.

Notes

1. Some judges are well-known spokespersons but others fear disciplinary consequences, so I anonymised all interviews but one because this person no longer works as a judge.
2. Interviews Gwizdak, 15 September 2020 and Iustitia 1, 13 March 2019.
3. Interview Themis, 19 March 2019.
4. Interview, Iustitia 3, 30 September 2020.
5. Interviews Themis, 19 March 2019 and Iustitia 2, 16 May 2019.
6. Interview Representation of European Commission Warsaw, 14 September 2018.
7. Interviews Themis, 19 March 2019 and Iustitia 1, 13 March 2019.
8. Interview Wolne Sądy 1, 13 March 2019.
9. Interview Wolne Sądy 2, 16 May 2019.
10. Interview Iustitia 1, 13 March 2019.
11. Interview Iustitia 3, 30 September 2020.
12. Interview Themis, 19 March 2019.
13. Interview Representation of European Commission Warsaw, 14 September 2018.
14. Interview Iustitia 1, 13 March 2019.
15. Interview Themis, 19 March 2019.
16. Interview Wolne Sądy 1, 13 March 2019.
17. Interview Iustitia 1, 13 March 2019.
18. Interview Iustitia 2, 16 May 2019 and Iustitia 1, 17 June 2021.
19. Interview Iustitia 2, 16 May 2019.
20. Interviews Gwizdak, 15 September 2020 and Iustitia 1, 13 March 2019.
21. Interviews Iustitia 1, 13 March 2019 and Themis, 19 March 2019.
22. Interviews Iustitia 1, 13 March 2019, Iustitia 2, 16 May 2019 and Themis, 19 March 2019.
23. This includes the Polish Association of Administrative Court Judges, the Judges Cooperation Forum, the Association of Prosecutors Lex Super Omnia, two legal think tanks (Professor Zbigniew Hołda Association and Institute for Law and Society, INPRIS), the Helsinki Foundation for Human Rights, the Osiatyński Archive, Amnesty International, the Civil Development Forum Foundation and Wolne Sądy.
24. Interviews Themis, 19 March 2019 and Iustitia 2, 16 May 2019.
25. Interview Themis, 19 March 2019.
26. Interviews Iustitia 3, 30 September 2020 and Themis, 19 March 2019.
27. Interview Iustitia 1, 13 March 2019.
28. Interview Themis, 19 March 2019.
29. Interview Iustitia 1, 17 June 2021.
30. Interview Iustitia 2, 16 May 2019.

Acknowledgements

The author would like to thank the editor and the two reviewers for helpful comments and suggestions as well as Anna Fruhstorfer, Ertug Tombus, Ula Wozniak and finally the participants of the ECPR Joint Session's Workshop on "Democratic Backsliding in EU Member States and Candidate Countries" with whom she discussed very early ideas on the article. Research for this article took place within the Jean Monnet Module "Investigating EU Policies to foster the Rule of Law, EU4LAW". We acknowledge support by the Open Access Publication Fund of Humboldt-Universität zu Berlin.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Funding

This work was supported by the European Commission [grant number 621220-EPP-1-2020-1-DE-EPPJMO-MODULE].

Notes on contributor

Claudia-Y. Matthes is a Senior Lecturer of Comparative Politics and Democracy Studies. She is the author of numerous publications on political and social change in Central and Eastern Europe and regularly contributes to the Bertelsmann Transformation Index and the Sustainable Governance Indicator on democratic developments in Poland.

ORCID

Claudia-Y. Matthes http://orcid.org/0000-0002-6756-4594

References

Amnesty International. 2019. *Poland: The Judges who defend the Rule of Law*. Report No. 37/9800. London.

Bakiner, Onur. 2016. "Judges Discover Politics. Sources of Judges' Off-Bench Mobilization in Turkey." *Journal of Law and Courts* 4 (1): 131–157.

Baum, Lawrence. 1997. *The Puzzle of Judicial Behavior*. Ann Arbor: The University of Michigan Press.

Behrendt, Joanna. 2017. "Protest Targeting Opposition Lawmakers Stirs Outrage in Poland." *The New York Times*, November 27. https://www.nytimes.com/2017/11/27/world/europe/poland-protest-europe-tensions.html.

Beyers, Jan. 2004. "Voice and Access: Political Practices of European Interest Associations." *European Union Politics* 5 (2): 211–240.

Bień-Kacała, Agnieszka. 2019. "Illiberal Judicialization of Politics in Poland." *Comparative Law Review* 25 (1): 197–213.

Bill, Stanley. 2020. "Counter-Elite Populism and Civil Society in Poland: PiS's Strategies of Elite Replacement." *East European Politics and Societies and Cultures* 20 (10): 1–23.

Bill, Stanley, and Ben Stanley. 2020. "Whose Poland is it to be? PiS and the Struggle Between Monism and Pluralism." *East European Politics* 36 (3): 378–394.

Blauberger, Michael, and R. Daniel Kelemen. 2017. "Can Courts Rescue National Democracy? Judicial Safeguards Against Democratic Backsliding in the EU." *Journal of European Public Policy* 24 (3): 321–336.

Blokker, Paul. 2020. "Building Democracy by Legal Means? The Contestation of Human Rights and Constitutionalism in East-Central Europe." *Journal of Modern European History* 18 (3): 335–351.

Bodnar, Adam. 2018. "Europe can save Poland from darkness." *Politico*, April 9. https://www.politico.eu/article/poland-judiciary-rule of law-europe-must-intervene/.
Bodnar, Adam, and Łukasz Bojarski. 2012. "Judicial Independence in Poland." In *Judicial Independence in Transition*, edited by Anja Seibert-Fohr, 667–738. Berlin: Springer.
Boese, Vanessa A., Amanda B. Edgell, Sebastian Hellmeier, Seraphine F. Maerz, and Staffan I. Lindberg. 2021. "How Democracies Prevail: Democratic Resilience as a two-Stage Process." *Democratization* 28 (5): 885–907.
Bouwen, Pieter, and Margaret Mccown. 2007. "Lobbying Versus Litigation: Political and Legal Strategies of Interest Representation in the European Union." *Journal of European Public Policy* 14 (3): 422–443.
Brown, Nathan. J., and Julian G. Waller. 2017. "Constitutional Courts and Political Uncertainty: Constitutional Ruptures and the Rule of Judges." *International Journal of Constutional Law* 14 (4): 817–850.
Bugarič, Bojan. 2015. "A Crisis of Constitutional Democracy in Post-Communist Europe: "lands in-Between" Democracy and Authoritarianism." *International Journal of Constutional Law* 13 (1): 219–245.
Buras, Piotr, and Gerald Knaus. 2018. ""Where the law Ends: The Collapse of the Rule of law in Poland and What to do." Batory Foundation." *European Stability Initiative*.
Bustikova, Lenka, and Petra Guasti. 2017. "The Illiberal Turn or Swerve in Central Europe?" *Politics and Governance* 5 (4): 166–176.
Cianetti, Licia, James Dawson, and Seán Hanley. 2018. "Rethinking 'Democratic Backsliding' in Central and Eastern Europe: Looking Beyond Hungary and Poland." *East European Politics* 34 (3): 243–256.
Ciobanu, Claudia. 2021. "BIRN Fact-Check: What the Polish Constitutional Tribunal Ruling Means in Practice." *Balkan Insight*, October 18. https://balkaninsight.com/2021/10/18/birn-fact-check-what-the-polish-constitutional-tribunal-ruling-means-in-practice/.
Closa, Carlos. 2019. "The Politics of Guarding the Treaties: Commission Scrutiny of Rule of law Compliance." *Journal of European Public Policy* 26 (5): 696–716.
Court of Justice of the European Union. . 2019. "Judgment of the Court (Grand Chamber)." November 19. http://curia.europa.eu/juris/document/document.jsf?text=&docid=220770&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=12109747.
Court of Justice of the European Union. 2020. "Judgment in Joined Cases Case C-558/18 and C-563/18 Miasto Łowicz and Prokurator Generalny." Press Release No 35/20, March 26, Luxembourg.
Court of Justice of the European Union. 2021. "Order of the Vice-President of the Court in Case C-204/21 R Commission v Poland." Press Release No 192/21. 27 October, Luxembourg.
Davies, Christian. 2018. *Hostile Takeover: How Law and Justice Captured Poland's Courts. Nations in Transit Brief*. New York: Freedom House. https://freedomhouse.org/report/special-reports/hostile-takeover-how-law-and-justice-captured-poland-s-courts.
De Schutter, Olivier. 2017. *Infringement Proceedings as a Tool for the Enforcement of Fundamental Rights in the European Union*. Brussels: Open Society European Policy Institute.
Dyevre, Arthur. 2010. "Unifying the Field of Comparative Judicial Politics: Towards a General Theory of Judicial Behaviour." *European Political Science Review* 2 (2): 297–327.
Epstein, Richard A. 1990. "The Independence of Judges: The Uses and Limitations of Public Choice Theory." *Brigham Young University Law Review* 3: 827–855.
European Commission. 2019. "Further Strengthening the Rule of Law within the Union. State of Play and Possible Next Steps." Communication from the Commission to the European Parliament, the European Council and the Council. COM(2019) 163 final. Brussels, April 4.
European Commission. 2020a. "Rule of Law: European Commission Launches Infringement Procedure to Safeguard the Independence of Judges in Poland." Press Release No. IP/20/772, Brussels.
European Commission. 2020b. "The Rule of Law Situation in the European Union." 2020 Rule of Law Report. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Region. COM(2020) 580 final, Brussels, September 30.

European Parliament. 2017. "The Situation of the Rule of Law and Democracy in Poland." European Parliament resolution of 15 November 2017 on the situation of the rule of law and democracy in Poland (2017/2931(RSP)), P8 TA(2017)0442, Strasbourg.

European Parliament. 2020. "Interim Report on the Proposal for a Council Decision on the Determination of a Clear Risk of a Serious Breach by the Republic of Poland of the Rule of Law (COM(2017)0835–2017/0360R(NLE))." Committee on Civil Liberties, Justice and Home Affairs. Rapporteur: Juan Fernando López Aguilar. A9-0138/2020. Brussels, 20 July.

Ferejohn, John. 1999. "Independent Judges, Dependent Judiciary: Explaining Judicial Independence." *Southern California Law Review* 72 (2-3): 353–384.

Fleck, Zoltán. 2018. "Changes of the Judicial Structure in Hungary – Understanding the New Authoritarianism." *Osteuropa Recht* 64 (4): 583–599.

Gerring, John. 2004. "What Is a Case Study and What Is It Good for?" *American Political Science Review* 98 (2): 341–354.

Ghias, Shoaib A. 2010. "Miscarriage of Chief Justice: Judicial Power and the Legal Complex in Pakistan Under Musharraf." *Law & Social Inquiry* 35 (4): 985–1022.

Goclowski, Marcin, and Pawel Sobczak. 2018. "Polish-EU Tensions Flare Again as New Law Requires Judges to Quit." *Reuters*, July 4. https://www.reuters.com/article/uk-eu-poland-gersdorf-idUKKBN1JU0M5.

Gwizdak, Jarosław. 2020. "A Grim Joke. Four Judiciary Musketeers on Opposite Sides of the Barricade." *Visegrad Insight*, May 4. https://visegradinsight.eu/a-grim-joke-rule of law-poland/.

Halmai, Gábor. 2019. "The Possibility and Desirability of Rule of Law Conditionality." *The Hague Journal of Rule of Law* 11: 171–188. doi:10.1007/s40803-018-0077-2.

Hertogh, Marc, and Marina Kurkchiyan. 2016. "When Politics Comes Into Play, law is no Longer Law': Images of Collective Legal Consciousness in the UK, Poland and Bulgaria." *International Journal of Law in Context* 12 (4): 404–419.

Karolewski, Ireneusz Paweł. 2016. "Protest and Participation in Post-Transformation Poland: The Case of the Committee of the Defense of Democracy (KOD)." *Communist and Post-Communist Studies* 49 (3): 255–267.

KOS. 2018. *A Country That Punishes. Pressure and Repression of Polish Judges and Prosecutors*. Warsaw: Komitet Obrony Sprawiedliwości.

Kościerzyński, Jakub, ed. 2019. *Justice Under Pressure – Repressions as a Means of Attempting to Take Control Over the Judiciary and the Prosecution in Poland. Years 2015–2019*. Warsaw: Iustitia.

Levitsky, Steven, and Daniel Ziblatt. 2018. *How Democracies Die*. New York: Crown.

LIBE. 2018. "Mission Report Following the Ad Hoc Delegation to Poland on the Situation of the Rule of Law 19-21 September 2018." Brussels: Committee on Civil Liberties, Justice and Home Affairs.

Maerz, Seraphine F., Anna Lührmann, Sebastian Hellmeier, Sandra Grahn, and Staffan I. Lindberg. 2020. "State of the World 2019: Autocratization Surges – Resistance Grows." *Democratization* 27 (6): 909–927.

Markowski, Radoslaw. 2020. "Plurality Support for Democratic Decay: The 2019 Polish Parliamentary Election." *West European Politics* 43 (7): 1513–1525.

Mastracci, Matteo. 2019. "The Rule of Law and the Judicial Retirement Age in Poland: Is the ECJ Judgement the End of the Story?" *I-CONnect*, July 19. http://www.iconnectblog.com/2019/07/the-rule of law -and-the-judicial-retirement-age-in-poland-is-the-ecj-judgment-the-end-of-the-story/.

Mathieu, Emmanuelle, Christian Adam, and Miriam Hartlapp. 2018. "From High Judges to Policy Stakeholders: A Public Policy Approach to the CJEU's Power." *Journal of European Integration* 40 (6): 653–666.

Mayoral, Juan A., and Aida Torres Pérez. 2018. "On Judicial Mobilization: Entrepreneuring for Policy Change at Times of Crisis." *Journal of European Integration* 40 (6): 719–736.

Mazur, Dariusz. 2019. *Judges Under Special Supervision, That is "the Great Reform" of the Polish Justice System*. Warsaw: Themis.

Mycielski, Martin, and Laurent Pech. 2020. "When Will the Commission Act? An Open letter". *Verfassungsblog*, April 28. https://verfassungsblog.de/when-will-the-eu-commission-act/.

Odlanicka-Poczobutt, Monika. 2015. "The Reform of the Common Judiciary in Poland – Annexation or Adaptation?" In *Knowledge, Economy, Society. Challenges and Development Trends of Modern Economy, Finance and Information Technology*, edited by Anna Malina, Renata Oczkowska, and Jarosław Kaczmarek, 439–450. Warsaw: Cracow University of Economics.

O'Donnell, Guillermo. 2004. "The Quality of Democracy." *Journal of Democracy* 15 (4): 32–46.

Özbudun, Ergun. 2015. "Turkey's Judiciary and the Drift Toward Competitive Authoritarianism." *The International Spectator* 50 (2): 42–55.

Pech, Laurent. 2020. "Protecting Polish Judges from the Ruling Party's "Star Chamber": The Court of Justice's interim relief order in Commission v Poland (Case C-791/19R)". Verfassungsblog, April 9. https://verfassungsblog.de/protecting-polish-judges-from-the-ruling-partys-star-chamber/.

Popova, Maria. 2010. "Political Competition as an Obstacle to Judicial Independence: Evidence from Russia and Ukraine." *Comparative Political Studies* 43 (10): 1202–1229.

Przybylski, Wojciech. 2018. "Can Poland's Backsliding be Stopped?" *Journal of Democracy* 29 (3): 52–64.

Rettmann, Andrew. 2020. "Poland 'crossed rubicon' against EU court injunction." *Euobserver*, June 10. https://euobserver.com/justice/148609.

Reuters. 2020. "Thousands Protest Against Poland's Plan to Discipline Judges." January 11. https://www.reuters.com/article/us-poland-judiciary-toga-march-idUSKBN1ZA0PD.

Rodríguez, Pablo Martín. 2020. "Poland Before the Court of Justice: Limitless or Limited Case Law on Art. 19 TEU." *European Papers* 5 (1): 331–346.

Sadurski, Wojciech. 2018. How Democracy Dies (in Poland): A Case Study of Anti-Constitutional Populist Backsliding. Sydney Law School Research Paper No. 18/01. https://doi.org/10.2139/ssrn.3103491

Sadurski, Wojciech. 2019. "Polish Constitutional Tribunal Under PiS: From an Activist Court, to a Paralysed Tribunal, to a Governmental Enabler." *The Hague Journal of Rule of Law* 11: 63–84. doi:10.1007/s40803-018-0078-1.

Sata, Robert, and Ireneusz Pawel Karolewski. 2020. "Caesarean Politics in Hungary and Poland." *East European Politics* 36 (2): 206–225.

Scheppele, Kim Lane, Dimitry Vladimirovich Kochenov, and Barbara Grabowska-Moroz. 2020. "EU Values Are Law, After All: Enforcing EU Values Through Systemic Infringement Actions by the European Commission and the Member States of the European Union." *Yearbook of European Law* 39 (1): 3–121. doi:10.1093/yel/yeaa012.

Sedelmeier, Ulrich. 2017. "Political Safeguards Against Democratic Backsliding in the EU: The Limits of Material Sanctions and the Scope of Social Pressure." *Journal of European Public Policy* 24 (3): 337–351.

Sikora, Alicja. 2018. "The CJEU and the Rule of Law in Poland: Note on the Polish Supreme Court preliminary ruling request of 2 August 2018." EU Law Analysis, August 4. http://eulawanalysis.blogspot.com/2018/08/the-cjeu-and-rule of law -in-poland-note.html.

Spieker, Luke Dimitrios. 2020. "The CJEU's Judgment in Miasto Łowicz." Verfassungsblog, March 26. https://verfassungsblog.de/the-court-gives-with-one-hand-and-takes-away-with-the-other/.

Stone Sweet, Alec. 2010. "The European Court of Justice and the Judicialization of EU Governance." *Living Reviews in European Governance* 5 (2), http://www.europeangovernance-livingreviews.org/Articles/lreg-2010-2/.

Şerban, Mihaela. 2018. "Stemming the Tide of Illiberalism? Legal Mobilization and Adversarial Legalism in Central and Eastern Europe." *Communist and Post-Communist Studies* 51 (3): 177–188.

Trochev, Alexei, and Rachel Ellett. 2014. "Judges and Their Allies: Rethinking Judicial Autonomy Through the Prism of Off-Bench Resistance." *Journal of Law and Courts* 2 (1): 67–91.

Vachudova, Milada Anna. 2020. "Ethnopopulism and Democratic Backsliding in Central Europe." *East European Politics* 36 (3): 318–340.

Wanat, Zosia. 2020. "Poland's Supreme Court Slams PiS's Judicial Changes." *Politico*, January 23. https://www.politico.eu/article/polands-supreme-court-slams-pis-judicial-changes/.

Wolff, Sarah. 2009. "Constraints on the Promotion of the Rule of Law in Egypt: Insights from the 2005 Judges' Revolt." *Democratisation* 16 (1): 100–118.

Zelazna, Ewa. 2020. "The Rule of Law Crisis Deepens in Poland After A.K. v. Krajowa Rada Sadownictwa and CP, DO v. Sad Najwyzszy." *European Papers* 4 (3): 907–912.

Ziółkowski, Michał. 2020. "Two Faces of the Polish Supreme Court After "Reforms" of the Judiciary System in Poland: The Question of Judicial Independence." *European Papers* 5 (1): 347–362.
Zoll, Fryderyk, and Leah Wortham. 2019. "Judicial Independence and Accountability: Withstanding Political Stress in Poland." *Fordham International Law Journal* 42 (3): 875–948.
Żurek, Waldemar. 2019. "If You Are Not with Us, We Will Destroy You. Interview with judge Waldemar Żurek." *Gazeta Wyborcza*, September 17. http://themis-sedziowie.eu/materials-in-english/if-you-are-not-with-us-we-will-destroy-you-interview-with-judge-waldemar-zurek/.