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EUROSCEPTICS OR “BRUSSELS- SCEPTICS”?

Understanding the Roots and Consequences of
Poland and Hungary’s Shift Towards Illiberal
Democracy

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Abstract

This dissertation aims to provide a profound analysis of the political crisis suffered by the European Union in the second semester of 2020, caused by Poland and Hungary's budget veto over the Rule of Law clause introduced by Parliament in the recovery fund. This crisis will be taken as the starting point for a broader study of Budapest and Warsaw's historically complicated relation with Brussels. And specifically, of their clashes over violations of the Union's democratic standards and the founding values established in Article 2 of the TEU. Among other issues, this dissertation will cover: Poland's controversial judicial reform, the "LGTB-free zones" established in some Polish regions and Budapest's contentious immigration policies. For this purpose, a theoretical background will be provided for the notions of: (i) Central Europe; (ii) Illiberalism; (iii) Populism; and (iv) the Rule of Law. And upon this basis, three case-studies will be carried out: first, on the governmental meddling in judicial and media independence; second, on the violation of minority rights; and lastly, on the responses to the 2015 migration crisis.

The final goal is to determine which are the most suited legal and political tools at the disposal of EU leaders, in order to efficiently respond to the infringement of Article 2 TEU values. Therefore, the suitability of Article 7 TEU will be considered, questioning whether it is enough on its own or if it should be implemented alongside other tougher measures. As a conclusion, a proposal for novel and complementary legal alternatives will be presented.

Keywords

European Union; Poland; Hungary; Illiberalism; Populism; Rule of Law; Migratory crisis; LGTB rights; Judicial independence; Article 2 TEU; Article 7 TEU.

Resumen

Este trabajo pretende ofrecer un análisis profundo de la crisis sufrida por la Unión Europea en el segundo semestre de 2020, provocada por el veto presupuestario de Polonia y Hungría a la cláusula del Estado de Derecho que fue introducida por el Parlamento en el fondo de recuperación. Esta crisis se tomará como punto de partida para un estudio más

amplio de la complicada relación histórica de Budapest y Varsovia con Bruselas. Y en concreto, de sus enfrentamientos por la violación de las normas democráticas de la Unión y los valores fundacionales establecidos en el artículo 2 del TUE. Entre otras cuestiones, este trabajo abarcará: la polémica reforma judicial de Polonia, las "zonas libres de LGTB" establecidas en algunas regiones polacas y las polémicas políticas de inmigración de Budapest. Para ello, se proporcionarán antecedentes teóricos de las nociones de: (i) Europa Central; (ii) Iliberalismo; (iii) Populismo; y (iv) Estado de Derecho. Y sobre esta base, se llevarán a cabo tres estudios prácticos: primero, sobre la intromisión gubernamental en la independencia judicial y de los medios de comunicación; segundo, sobre la vulneración de los derechos de colectivos minoritarios; y por último, sobre las respuestas a la crisis migratoria de 2015.

El objetivo final es determinar cuáles son las herramientas jurídicas y políticas más adecuadas a disposición de los dirigentes de la UE, para responder eficazmente a la vulneración de los valores del artículo 2 TUE. Por lo tanto, se analizará la idoneidad del artículo 7 TUE, cuestionando si es suficiente por sí solo o si debe aplicarse junto con otras medidas más duras. Como conclusión, se presentará una propuesta de alternativas legales complementarias y novedosas.

Palabras clave

Unión Europea; Polonia; Hungría; Iliberalismo; Populismo; Estado de Derecho; Crisis migratoria; Derechos LGTB; Independencia judicial ; Artículo 2 TUE; Artículo 7 TUE.

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LIST OF ABBREVIATIONS

EC – EUROPEAN COMMISSION

EU – EUROPEAN UNION

ECJ – EUROPEAN COURT OF JUSTICE

e.g. – EXEMPLI GRATIA (“FOR EXAMPLE”)

i.e. – ID EST (“THAT IS”; “IN OTHER WORDS”)

IR – INTERNATIONAL RELATIONS

KRS – NATIONAL COUNCIL OF THE JUDICIARY (POLAND)

LGTB – LESBIAN, GAY, TRANSEXUAL AND BISEXUAL
COLLECTIVE

NATO – NORTH ATLANTIC TREATY ORGANIZATION

NGO – NON-GOVERNMENTAL ORGANIZATION

PiS – LAW AND JUSTICE PARTY (POLAND)

RoL – RULE OF LAW

TEU – TREATY ON THE EUROPEAN UNION

TFEU – TREATY ON THE FUNCTIONING OF THE EUROPEAN
UNION

VC – VENICE COMMISSION

V4 – VISEGRAD GROUP OR VISEGRAD FOUR

CHAPTER 1: INTRODUCTION

1. BACKGROUND

In July 2020, the European Union (hereinafter, EU) was facing a **historical challenge**. The socioeconomic damages caused by the Covid-19 pandemic reverberated across the whole continent: millions of Europeans had lost their jobs, thousands of companies were on the brink of bankruptcy and unprecedented restrictions had (for the first time in decades) suspended freedom of movement. Aware of this dramatic context, national leaders met in Brussels in order to discuss the approval of a historical budget plan for the 2021-2027 period, which contemplated a **€750 billion recovery fund**. At stake was the compelling revival of a paralyzed economy, further urged by the ambitious and more dynamic strategies of China and the United States, which were starting to surpass Europeans in the global race for economic reconstruction.

However, an unexpected crisis unfolded and the urgent ratification of both budgetary and recovery plans was put on hold: **Poland and Hungary** forged a dissident alliance and threatened to **veto the historical budget**. Behind their fierce opposition lied an attempt prompted by EU officials (led by the rotatory presidency of Germany) to link the funds to novel guarantees for the Rule of Law (hereinafter, RoL) and democratic standards, which aimed to overcome the burdensome unanimity and qualified majority requirements laid out in Article 7 of the Treaty on the European Union (hereinafter, TEU). Warsaw and Budapest regarded such links a direct attack on their sovereignty, as expressed by Polish foreign minister, Paweł Jabłoński, in a press briefing¹: “... the prime minister made it very clear that we would not agree to any solutions that would not guarantee respecting our rights, would not give us a guarantee that we are safe, that the rights that are set out in the EU treaty are respected.”

After weeks of intense negotiations, this high-level diplomatic crisis finally unraveled on December 10th 2020. The compromise urged by Berlin did not eliminate the fund's contested RoL and democratic mechanisms, but it certainly softened them: eventual sanctions will not be applied until the European Court of Justice (hereinafter, ECJ)

¹ Jabłoński's declarations can be accessed through the following link: <https://www.reuters.com/article/eu-budget-hungary-poland-idUSKBN28H1TI>

confirms the legality of the mechanism (a process which could extend for more than a year). This **loosening of the initial rules** was taken as a victory by Hungary and Poland, while criticized by multiple human rights and pro-democracy non-governmental organizations (hereinafter, NGOs) across the continent. Ultimately, the budget was ratified, opening the door to the gradual disbursement of its recovery funds (made up by a combination of generous grants and loans to Member States). In this new budgetary framework for 2021-2027, the two countries will continue to be among the **main beneficiaries of EU resources**²: net aid from the €750 billion fund will amount to 2.5% of GDP in both cases, higher than in Italy and very close to that of Spain (European Commission, 2021).

Fortunately, the crisis has been solved and the much-needed recovery plan is already in motion. However, Poland and Hungary's failed veto attempt cannot be ignored: two Member States hard-hit by the pandemic decided to assume the risk of losing an estimate of €180 billion. Alone, this decision might stand out as striking and incomprehensible. However, it falls into a **context of increasing tensions** between European institutions (and namely, the European Commission; hereinafter, EC) and Hungarian and Polish governments. During the past decade, there has been a steep rise of clashes in different areas, such as: judicial and media independence, equal treatment regardless of gender or sexual orientation, freedom of expression and migration policies. As a response, both Warsaw and Budapest have been subjected by the EC to **Article 7 TEU proceedings**, which remain open. It is precisely this **framework of chronic confrontation and incessant diplomatic crises** that serves as the point of departure for this dissertation.

2. AIMS AND OBJECTIVES

Hungary and Poland officially joined the EU on May 1st 2004, after a long process of political negotiations and internal reforms, both guided by the **Copenhagen criteria** (a set of accession principles and rules which was laid down by the European Council in 1993). Previously in 1999, these two ex-Soviet satellite states (alongside the Czech Republic) had also become members of the North Atlantic Treaty Organization

² These figures have been published by the European Commission, in its Facts and Figures Report for the 2021-2027 budget plan, accessible through the following link: <https://op.europa.eu/en/publication-detail/-/publication/d3e77637-a963-11eb-9585-01aa75ed71a1/language-en>

(hereinafter, NATO). In a post-Cold War political and intellectual context marked by Fukuyama's notion of the "End of History" and Huntington's "Clash of Civilizations", these two Eastern enlargements of NATO and the EU were deemed as the **ultimate triumph of Western liberal and democratic values**. As it will be further discussed in the next Chapter, the notion of a "Central Europe" was recovered, built upon the idea of a group of countries that had been for too long "**kidnapped**" by the Soviet Union and were now returning to the arms of their natural Western partners (Kazharski, 2018).

This understanding of Central Europe in general, and of Poland and Hungary in particular, as **exemplary tales of success for liberal normative standards** was certainly well-founded. Indeed, in 1991 the governments of Poland, Hungary and Czechoslovakia joined forces through the creation of the **Visegrad Group** (hereinafter, V4), whose essential task was to promote a normative, social and geopolitical transition from Communism towards Western liberalism (Ananicz, 2017). For this purpose, during the negotiation process the four countries engaged in a **massive assimilation of European norms, standards and policies**, which continued after their official accession in 2004 (Farrell, 2005). Adherence to the social and political values upheld by Liberalism thus seemed to be absolute in Warsaw and Budapest.

However, **during the 2010's**, the sovereign debt crisis and its dramatic socioeconomic effects served as the *coup de grâce* for the liberal upsurge (Offe, 1994) in Central and Eastern Europe (which, as it will be discussed in following Chapters, was not as solid as it had initially seemed to be). In Poland and Hungary, the Law and Justice (hereinafter, **PiS**) and **Fidesz** parties rose to prominence in national elections, following the economic mismanagement of previous governments which had caused a great deal of popular unrest. Opposed to the political transition of the previous century, these new ruling elites launched a process of **detachment from liberal and Western values**. Viktor Orban's 2014 *Băile Tuşnad* speech after securing a second term for his government is considered to be the epitome of these new "**illiberal**" trends³ (Juhász, 2014). The controversial approach of the Hungarian prime minister was not new, as it matched the previous reforms led by his government targeted at the dismantlement of constitutional checks and balances. However, his remarks against liberalism and Western ideology were

³ The full speech can be accessed through the following link: <https://budapestbeacon.com/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/>

surprisingly explicit (Gall, 2014). In the Polish case, the rise to power of PiS in the 2015 elections marked the beginning of illiberal policies which mirrored those of Fidesz (Puddington, 2017).

Therefore, the main purpose of this dissertation is to **examine and clarify this sharp contrast** between Poland and Hungary's initial portrayal as exemplary stories of democratization and their current stance as illiberalist champions, which has sparked an **identity crisis in the EU** (Fleming, Peel, & Hopkins, 2020). For this purpose, the following structure will be followed. First, a **theoretical framework** in Chapter 2 will be provided, in order to analyze the four guiding concepts of this dissertation: (i) **Central Europe**, not as a geographical region, but rather as a political evolving entity; (ii) **illiberalism**, as a hybrid form of government between full democracies and authoritarian regimes; (iii) **populism**, as a hatred-based approach to politics; and (iv) the **RoL**, as one of the cornerstones of the EU which is being demolished by illiberal trends.

Upon this basis, Chapter 3 will then delve into the **practical shift** of Poland and Hungary away from Western values, focusing on the **case studies** of three areas: (i) **media and judicial independence**; (ii) **minority rights**; and (iii) **migration policies**. This case-based approach will serve to test the theoretical requirements presented in the previous Chapter, in order to verify and illustrate the political and normative deviation of the two countries. Lastly, a final Chapter will critically analyze **the existing legal and political mechanisms** at the disposal of European institutions to tackle illiberalism and the decay of the RoL. Namely, the **suitability of Article 7 TEU** will be questioned, in order to provide a conclusion on the future prospects of Poland and Hungary's fitting in the EU.

3. RELEVANCE OF RESEARCH

Throughout its history, the EU has faced numerous crises. From the Eurozone's wobbling in the early 2010's, to the migratory collapse of the Union's external borders in 2015, the Brexit referendum in 2016 or the economic catastrophe triggered by Covid-19. There are those who adhere to Jean Monnet's claim that **"Europe will be forged in crisis"**. And indeed, the previous examples somehow sustain this bitter belief: after the sovereign debt crisis, the Euro managed to emerge a solid currency through the creation of a banking union and the establishment of financial stability instruments; once the disastrous

situation in Greek islands alleviated, the mechanisms and funds for external border control were reinforced; the United Kingdom's exit from the Bloc has created opportunities for further integration which were previously thwarted, such as stronger military cooperation; and in the context of the post-pandemic recovery, the Northern hawks (mainly the Netherlands, Germany and Denmark) have given in to joint debt issuance, a historic decision that paves the way for a future fiscal union.

However, **the democratic crisis** that has been unfolding for years in Warsaw and Budapest is **of a very different kind**. It is no longer a matter of diverging economic criterions, or preferences for different models of integration. On the contrary, the rise of illiberalism within its own borders entails a **direct threat to the EU's bedrock** (Fleming, Peel, & Hopkins, 2020): its stance for democracy, the RoL and human rights. Indeed, scholars have signaled a shift from economic competition among Member States towards **identity-based competition** (Meunier, 2018). For these reasons, it is extremely relevant to understand the **origins, development and consequences** of Poland and Hungary's **departure from Western liberal values**. Only then the **political and legal mechanisms** currently at the disposal of European institutions can be properly addressed. Ultimately, the question at stake is **the survival of the European project of integration**, or at least, the endurance of its original meaning and identity.

4. METHODOLOGY

For the abovementioned aims and objectives, this dissertation will resort to a **qualitative research methodology**, in which both **primary and secondary sources** will be addressed. Namely, this dissertation will rely on: (i) official communications and reports by European institutions, regarding the issue of the crises in Poland and Hungary; (ii) reports published by NGOs and think-tanks specialized in human rights and democratic standards; and (iii) academic publications by experts in the fields of European politics and integration, as well as democratic and constitutional structures. In this sense, all of these sources will be approached through a **grounded theory framework**, with the intention of inductively building up a conclusion on the current state and the prospects of the convulsive relation between Brussels and Polish and Hungarian governments.

CHAPTER 2: THEORETICAL FRAMEWORK

This Chapter aims to lay the ground for the practical study of Polish and Hungarian ruptures with Western and democratic ideals. For this reason, a theoretical background will be provided, in order to **delimit the four central conceptual notions** of this dissertation. This task will be carried out through the analysis of academic and scholarly sources, as well as specialized reports, which expound the implications and meanings of the following: (i) Central Europe; (ii) illiberalism; (iii) populism; and (iv) the RoL.

1. CENTRAL EUROPE, FROM EXEMPLARY DEMOCRATIC TRANSITIONS TO BRUSSELS' POLITICAL NIGHTMARES: THE ROLE OF EVOLVING NATIONAL IDENTITIES

The recent political and social dynamics in Hungary and Poland must be approached from a historical angle, which essentially relies on a notion that has been changing its connotations throughout time: "Central Europe". In this sense, many authors have pointed to a **transition** in the region **from moral conformity with the West towards a mere "partial identification"** (Kazharski, 2018). This evolution can only be properly addressed from a constructivist perspective, as it relies on the **building and transformation of political identities** (a factor which is despised by the two traditional theories of International Relations, Realism and Liberalism). For this reason, prior to delving into the study of Central Europe as a politically and socially constructed concept, an introductory explanation of **constructivism and its discursive theory** is needed.

In this sense, the two traditional theories had for long presented opposing arguments in their basic approaches, since both have different ways of viewing the international scenario. One of the main points of confrontation is the role played by the State in International Relations (hereinafter, IR), in spite of **both theories assuming the superiority of the State** as the leading agent (Tah Ayala, 2018): while realists argue that national interest is the main driving force of countries' behavior, liberalists argue that these national actors are reactionary to the circumstances and therefore the creation of higher bodies (international institutions) to regulate collective actions is necessary, in order to curb anarchic practices. However, **both of them miss out on many of the particularities and novel actors of our modern international arena** (Tah Ayala, 2018).

For this reason, during the 1980's constructivism emerged as a revolutionary approach to IR, whose main contribution is the definition of **social identities and interactions between actors as the central structures of the international system** (Tah Ayala, 2018). In this sense, scholars have considered the constructivist approach to be “characterized by an emphasis on the importance of normative as well as material structures, on the role of identity in shaping political action, on the mutually constructive relationship between agents and structures” (Reus-Smit, 2001). In other words, according to this theory, **societies are not static, but dynamic**: due to constant social interactions, it is possible to transform the environment, just as the environment transforms the societies within it (Tah Ayala, 2018). And within this wider framework of constructivism, Laclau and Mouffe's theory articulates the ways in which **discourses are able to redefine and challenge preeminent identities and political notions** (Kazharski, 2018), thus leading to a **non-ceasing mutation process**.

Upon this introduction, we can now approach the **building and mutation of Central Europe as a political entity**, which is key for understanding Polish and Hungarian identities. In this sense, authors have framed the rise of this notion in international politics at the end of World War I (Trencsényi, 2017), although there were similar concepts which preceded it, such as the Germanic “Mitteleuropa” (Kazharski, 2018). However, throughout the early 20th century, the term Central Europe was given multiple interpretations, thus leading to **divergent local conceptions**. It was in the 1980s when it made its comeback to the frontline of IR, thanks to the publications of regional scholars (Todorova, 2009). These intellectuals promoted the idea of a Central Europe (comprising Poland, Hungary and Czechoslovakia) which had been **kidnapped by the Soviets' iron curtain**, in spite of culturally and historically belonging to the West (Kundera, 1984).

These “kidnapping” and somehow victimizing discourses became a key component of the **nation-building processes** of Hungary and Poland, in the context of their independence from the fallen Soviet Union. Such processes relied on the “**othering**” of **Communist and Eastern values**⁴, opposing them to the alleged Western identity of

⁴ This binary approach to nation building has been criticized by many scholars, who consider that it was used to **project national insecurities** onto an external actor (Russia) and **neglected the indigenous components of repression and violence** in Central Europe during the iron curtain decades (Garton Ash, 1986).

Central Europe (Kazharski, 2018). Ultimately, this understanding the region became the **key component of Poland and Hungary's new foreign policy**, whose main goal was to gain membership in Western institutions, and namely, in the EU (Neumann, 1999). Indeed, it is reported that “every young official” knew that from then on the post-Soviet region should be referred as Central Europe (Garton Ash, 1986), and that Polish and Hungarian diplomats repeatedly corrected their Western counterparts whenever they used the term “Eastern” (Kazharski, 2018). These new attitudes reflected a **fear of backsliding into the Communist sphere of influence**, and serve as the perfect example of the prominent role that discourses play as challengers of established identities and political systems: “Central Europe” emerged as a political concept (and a foreign policy discursive tool) which reflected the **conformation of V4 countries with European and Western values**.

On the **legal and policy dimensions**, these binary and “othering” identity-building discourses led to the **absolute acceptance of the EU's norms and values** by Warsaw and Budapest (Kazharski, 2018). In fact, as opposed to previous enlargements, the Central European candidates were not offered “opt-outs” in specific policy areas as it had previously happened with Denmark or the United Kingdom, among others (Farrell, 2005). However, this process of normative assimilation **did not eliminate economic, social and cultural structural divergences** between Poland and Hungary and Western Europe. On the contrary, such differences persisted and have become a cornerstone in the current EU's **identity crisis** (Kazharski, 2018). In this sense, and as IR scholars have pointed out, two elements should be separated: on the one hand, there is the process of identity building and its external promotion of a Western “lost cousin” in Central Europe; and on the other hand, there are the fundamental differences between East and West that remained even after the V4's accession to the EU in 2004 (Kazharski, 2018).

Indeed, in spite of the enormous initial assimilation of normative and legal standards undertaken by Hungary and Poland, their **structural discrepancies with the West** remained: illiberal trends started to gain momentum in the 2010's, and were further **catalyzed by the 2015 migration crisis** (Kazharski, 2018). The V4's radical rejection to the proposed immigration quota system (designed under the moral auspice of Angela Merkel, who got personally involved in the resolution of this crisis) is seen by many as the **trigger of a perpetuated normative gap between Brussels and the V4** (The

Economist, 2016). A key question is then begged: **has Central Europe lost its initial meaning of the 1990s?** As previously explained, this would be a perfectly viable option, since political systems and identities are not stable. Quite the opposite, they are opened to political contestation and especially during times of crisis and upheaval (Kazharski, 2018). Therefore, the previous question should be reformulated to **whether the ruling elites of PiS and Fidesz have effectively reshaped Hungarian and Polish identities within the EU through their discourses.** An affirmative answer seems to be inevitable, as demonstrated in the 2016 **proposal for a “cultural counter-revolution”**⁵ presented by the leaders of both countries (Hungary’s Orban and Poland’s Kaczynski). Therefore, and upon this conceptual mutation, the following step is to provide a precise notion what Central Europe currently stands for.

In this sense, scholars have noticed a shift from absolute normative conformation towards a preference for the British skeptical approach to European integration, built on the **mistrust for federalism and its defense of national sovereignty** (Kazharski, 2018). In particular, Central European Member States have become increasingly leery of the idea of an “ever-closer union” (Blusz, Zerka, Demeš, & Vit, 2016), which has led them to advocate for a version of the EU in which integration is subjected to national power and conservative values. This attitude entails an **aversion for universalist and liberalist policies**, which are believed to pose a **cultural threat to Europe’s Christian civilization** (Kazharski, 2018). However, it must be noted that this conservative **approach has not led Hungary and Poland to seek the abolishment of the EU.** On the contrary, as Figure 1 in the Appendix shows, Hungarians and Polish citizens find themselves **among the strongest EU supporters** (Wike, et al., 2019).

As scholars have pointed out, both political elites and the general public in these two V4 countries are fully aware of their **dependence on the EU**, for institutional and economic reasons (Kazharski, 2018). Consequently, as long as they do not find a better practical alternative to their membership in the Union, Poland and Hungary will keep **fighting for their own interpretation of integration**⁶, consisting in benefiting from economic and

⁵ The remarks of both leaders in their joint summit can be accessed through the following link: <https://www.ft.com/content/e825f7f4-74a3-11e6-bf48-b372cdb1043a>

⁶ It is for this reason that Polish and Hungarian governments have been labelled as **“Brussel-sceptics”**, rather than plainly Euro-sceptic: they do not reject European integration altogether, but its predominant liberal foundations (Kazharski, 2018).

political benefits while rejecting specific requirements (and namely, values and standards of Article 2 TEU). As a conclusion, the analysis of this Section leads us to confirm the **evolution of Central Europe towards a subversive political entity**, which is said to have become Brussels' political nightmare (Kazharski, 2018).

2. ILLIBERALIST REGIMES: A HYBRID BETWEEN AUTHORITARISM AND DEMOCRACY

This Chapter's second Section will touch upon a key political concept, which has gained enormous relevance in the present **global context of sustained decline in democratic standards** (The Economist, 2021). Historically, the concept of democracy had always been linked to the notion of Western liberal democracy (also known as **constitutional liberalism**): a system in which the RoL, the separation of powers and the protection of individual freedoms accompany the basic requirement of fair and free elections (Zakaria, 1997). However, during the 1990's, multiple democratically elected governments began to **ignore constitutional limits and disregard the individual freedoms** of their citizens. For this reason, the North-American political scientist Fareed Zakaria proposed the novel notion of "illiberal democracy" in an article published by Foreign Affairs⁷, which aimed to encompass those rising **forms of government straddling the line between traditional liberal democracy and authoritarian rule** (Zakaria, 1997).

Indeed, illiberal democracies still resort to certain traditional Western democratic mechanisms such as universal suffrage, but in practice they do not carry much weight. These **hybrid regimes** hold elections where there is political opposition, but separation of powers barely exists and the RoL is violated, thus hindering the governing options of minority parties (Puddington, 2017). In Zakaria's words, these are countries where **democracy flourishes but constitutional liberalism does not** (Zakaria, 1997). In his initial publication for Foreign Affairs, the author pointed out to both Hungary and Poland as examples of illiberal regimes, among many other nations. More than twenty nations were categorized by Zakaria under the same political framework, and for this reason his analysis has been criticized by other authors for its **oversimplification and excessive broad approach** (Hidalgo, 2019). Further critics of this notion of illiberal democracy

⁷ The full article can be accessed through the following link: <https://www.foreignaffairs.com/articles/1997-11-01/rise-illiberal-democracy>

also consider that it serves to **whitewash the violation of rights and freedoms that takes place in these countries**, and that a system that violates the RoL cannot be called a democracy (Hidalgo, 2019). In spite of such well-founded critics, this dissertation will still resort to the notion of illiberal democracy, as it is particularly convenient for the understanding of Poland and Hungary's dismissal of Western values. However, a further clarification of Zakaria's definition is needed: in these hybrid political regimes, **anti-liberal and illiberal policies must be distinguished** (Hidalgo, 2019). In this regard, anti-liberal practices refer to the sweeping dismantlement of liberal values, while illiberal policies resort to the manipulation of liberal and democratic standards with the purpose of implementing their own objectives (Hidalgo, 2019). In other words, **illiberal approaches typically respect the formal frameworks of Western traditional democracies, but abuse their institutions and principles**.

Poland and Hungary are perfect examples of these illiberal practices. In both states the notion of **liberal constitutionalism has been detached from that of democracy**, thus paving the way for majority politics and the violation of minority rights and individual freedoms. Indeed, **intolerance towards minorities** is considered to be one of the key features of illiberalism (Puddington, 2017). For a precise definition of these features, this dissertation resorts to the work of James A. Gardner (a reputed U.S. expert in constitutional and electoral law), who in his essay "Illiberalism and Authoritarianism in the American States" provides a precise and comprehensive catalogue of **illiberal authoritarian attributes**, which will be linked to the specific cases of Poland and Hungary (Gardner, 2021):

- The **principle of equality** of all individuals and the **right to be ruled by the democratic majority** are abolished: only certain "right" individuals are entitled to govern and enjoy society's freedoms. In the context of this dissertation, such "right" individuals refer to the political elites of both PiS and Fidesz, as opposed to traditional majority parties which are deemed as anti-patriotic.
- The **strict control of civil society** is promoted through various mechanisms, usually **guided by religious believes and traditions** which are considered to be inalterable ways of life. In our specific case, Hungarian and Polish civil societies are subjected to traditional and conservative Christian values, which are portrayed

as the core of national identity (as previously explained in page 13 in Section 1). This control often focuses on the **intervention of media channels**.

- **Strong individuals are granted leadership**, with the objective of ruling in the name and for the “right” members of society⁸. These leaders create laws for their citizens, however themselves are **not subjected to any form of power constraint or “checks and balances”**: their only limit is the safeguarding of national interests. In this sense, one fragment of an Orbán’s interview with Bloomberg is particularly illustrating: he stated that “checks and balances” are “a U.S. invention that for some reason of intellectual mediocrity Europe decided to adopt and use in European politics” (Halmai, 2019).
- In this sense, **executive power** is not regarded a conditional and incidental delegation, but rather as **a right of those individuals entitled to it**. And for this reason, its performance cannot be restrained nor challenged.

But, are these illiberal features new in the Central European political context? In other words, are they simply the product of PiS and Fidesz’s ascend to power? Quite the opposite: **liberalism has flourished in V4 countries during very specific and brief periods** (among others, in the post-1989 context that was described in the previous Section), after which it has always fallen into a process of decay and delegitimization (Halmai, 2019). On the contrary, the **authoritarian features of illiberalism have been predominant in Warsaw and Budapest throughout modern history**. This was the case even during the 1990s context of the region’s process of “rejoining” with Western neighbors (Kazharski, 2018), in which as many scholars have described, Hungarian and Polish citizens were **pursuing the West in terms of standards of living, rather than in democratic and constitutional standards** (Halmai, 2019). For this reason, and as foreseen by Claus Offe⁹, the **economic stagnation and consequent decline of living standards** led to a process of democratic backsliding in Central Europe, in which **psychological factors** also played a key role (Halmai, 2019).

⁸ As it will be later analyzed in Chapter 3 regarding the migration crisis, there is **an excluding understanding of national identity** which is promoted through the “**othering**” of specific minorities.

⁹ The author’s predictions can be accessed through the following link: https://www.ssoar.info/ssoar/bitstream/handle/document/26717/ssoar-1994-offe-designing_institutions_for_east_european.pdf?sequence=1&isAllowed=y&lnkname=ssoar-1994-offe-designing_institutions_for_east_european.pdf

As a final remark, this Section will approach the **preconditions for the rise of illiberalism**, in order to weigh its **eventual rise in other EU Member States**. In this sense, **two requirements** stand out as pivotal for illiberal upsurges (Puddington, 2017): (i) first, the **electoral defeats of large and traditional mainstream parties** (as it happened with Poland’s Civic Platform in 2015 and Hungary’s Socialist Party in 2010); and (ii) second, the **weakening of extra-political democratic actors**, and namely, media agencies, civil society organizations and the judiciary. In many Western European nations, the first precondition is by far met (countries like Spain, France or Italy have experienced a rise of new populist parties). However, the **second requirement is less apparent**: in spite of reiterated attacks by multiple actors (both foreign and domestic), these countries seem to maintain proper levels of civil society, media and judicial independence, and currently find themselves among the world’s strongest democracies (The Economist Intelligence Unit, 2021). It thus seems **unlikely for illiberal systems and patterns to expand further West in Europe**, although Member States should **remain vigilant**, as the discourse of a “conservative” and illiberal version of Europe is not exclusively targeted to domestic recipients: Hungarian and Polish illiberal politicians aim to create a powerful audience for their beliefs and ideals across the whole of the EU (Kazharski, 2018).

3. POPULISM: THE PERVERSION OF TRADITIONAL POLITICS

This third Section approaches one of the most complex and extended phenomena of modern political systems: populism. It is present across all continents, but due to its sophistication and varied forms, it still lacks a unified definition: it is an essentially **controversial concept that can be interpreted in various ways and through different methodologies** (Vittori, 2017). However, there seems to be an academic consensus around its two basic features (Ungureanu & Serrano, 2018): **antagonism between the elite and the people and the simplifying nature of its discourse**. In this sense, populism has been developed as a contentious approach to traditional politics which has gained track in multiple systems: from Trump in the U.S., to Modi in India or Chávez and Maduro in Venezuela. In all of these cases, populism displays **specific characteristics relating to the country’s own idiosyncrasy**. For this reason, this Section will only approach those notions of populist politics which are applicable to the cases of Hungary and Poland. In this regard, and propelled by social discontent with traditional

representative democracies (that rose to prominence after the **global financial crisis of 2008**), populism reemerged as an approach to politics characterized by the **following aspects** (Rivero Rodríguez, Zarzalejos, & del Palacio Martín, 2017):

- The **defense of a virtuous people with a single will, against the oppression of a privileged elite**. In this aspect, populist discourses depict the elites as homogeneous and represent them as the source of social and political evil (Ungureanu & Serrano, 2018). The corrupted elite can be either national (for instance, the traditional Socialist Party in Hungary) or international (again in the case of Hungary, Brussels' liberal apparatus or U.S.-based philanthropist George Soros). Consequently, the populist narrative assumes the **radical rejection of the enemy** (i.e., the elite), who must be eliminated. This antagonistic approach leads populist leaders to be in a constant search for enemies¹⁰ (Ungureanu & Serrano, 2018), thus creating a poisonous **narrative of hatred** which, as scholars have pointed out, is sustained on the **amplification of existing** (and sometimes dormant) **prejudices** (Kets de Vries, 2020).
- Strongly related to this previous attribute lies populism's **substitution of political pluralism by the permanent search for an enemy of the people**, against whom to deploy an emotional, simplistic and moralistic political discourse (Ungureanu & Serrano, 2018). Therefore, while liberalism understands "the people" as an irreducible plurality, populist politics provide a particular interpretation of a homogeneous entity by which "**the people**" is **reduced in a dualistic and anti-pluralistic way** (Matthews-Ferrero, 2018).
- The **critique of representative democracy from an illiberal and sovereigntist perspective**. Indeed, populism is deeply entangled with the illiberal structures described in the previous Section: they **feed back on each other**. In this sense, populists condemn the failure of the traditional mechanisms and institutions of representative democracy, both because of their own limits and because they have been captured by the elites. They often **question the basic rules of the**

¹⁰ As it will be later explained in Chapter 3, this antagonistic rhetoric leads to the **discrimination and othering of minority groups**: religious and sexual minorities, immigrants, refugees...etc.

democratic game and, in return, offer magical solutions to society's complex problems, undermining democratic practices based on deliberation and negotiation (Ungureanu & Serrano, 2018). Populism is personalistic and identity-driven; while on the other hand, representative democracy is based on impersonal procedures and mediation mechanisms (which are allegedly abused by elites).

- The **personification of power in a charismatic leader** who speaks in the name of the will of the people. This personalistic feature is deeply rooted in illiberalism's preference for strong individual leaders¹¹, and therefore also leads to the weakening of "checks and balances". This is so because populist leaders are **portrayed as courageous, sincere and capable of unmasking the elites** (Ungureanu & Serrano, 2018), since they are "outsiders" to their corruption who have become saviors of the betrayed people. Examples of this kind of populist leaders would include: Le Pen in France, Erdogan in Turkey, Trump in the U.S., Bolsonaro in Brazil or Duterte in the Philippines. These leaders might indeed be **elected through democratic mechanisms**¹², but **they do not interact with their constituencies through deliberation**: their relationship is based on **emanation** (Ungureanu & Serrano, 2018), by which populist leaders are in a privileged position to connect with the interests of the people.

Altogether, these attributes conform populism as an **anti-liberal political project that alters governmental agendas and power structures**, in order to reestablish democracy around a leader-people unity which disregards representative institutions and separation of powers (Gratius & Rivero, 2018). But, is populism **an ideology in itself**? This question has lied at the core of scholars' analyses, and does not have a precise answer. Some authors portray populism as a "**thin-centered ideology**", as it is not equivalent to traditional ideologies with broader social visions (Matthews-Ferrero, 2018). In other words, populism as an ideology has several **voids, which need to be filled by the inputs of traditional left and right dogmas**. For this reason, there has been an academic distinction between **left-wing and right-wing populisms**, with the latter being prototypical of Eastern Europe and the former of Latin America (Gratius & Rivero, 2018).

¹¹ For further detail, refer to page 16.

¹² Similar to the nature of illiberal approaches, as seen in page 15, populist leaders often resort to formal democratic frameworks in order to abuse and manipulate them once they are elected.

However, beyond merely mixing with other ideologies, the simplifying logic of populism's thin core **restricts them to the lowest common denominator** (Matthews-Ferrero, 2018). Therefore, it seems key to emphasize additionally that it is a **restrictive ideology**, which **exceeds the traditional notion of left vs. right politics**. In this sense, authors point out to the fact that the left-right axis, which has functioned as an effective guiding criterion since the nineteenth century, seems to have **exhausted its capacity for political description and orientation** (Matthews-Ferrero, 2018). In this sense, populist discourses are increasingly rejecting such ideological divide and instead focus on the **“will of the people” or “common sense”** as their guiding forces (Timbro, 2019).

As a final remark regarding its prospects, **populism continues to ride the wave of political expansion around the globe** (Ungureanu & Serrano, 2018). However, its spread has become **notably strong in Europe** (Henley, 2018): at the beginning of the century, European populist parties received a poor 7% of vote share, but that figure has increased to more than 20% in 2018 elections. Figure 2 in the Appendix depicts this **spectacular rise of populist vote** in the EU. In turn, these prominent electoral outcomes have resulted in populist discourses reaching the top of State institutions: as of 2019¹³, nine European Member States had populist-authoritarian parties in government, including Poland and Hungary (Timbro, 2019). These growing numbers bring up a key debate: will representative democracy survive? Will traditional systems implement new participation mechanisms that meet the demands of populist discourses? These questions remain unanswered, and only time will tell, although **discontent among voters with their political systems remains unbeaten** (Ungureanu & Serrano, 2018).

4. THE RULE OF LAW: A DEMOCRATIC PILLAR UNDER SIEGE

The RoL is the last notion studied within this theoretical Chapter. For purposes of concision, this dissertation will not approach the RoL from a generic legal and political perspective, on the contrary, it will focus on its significance and features within the wider framework of **Article 2 TEU** (which also foresees the principles of human dignity, freedom, democracy, equality and human rights). In other words, the RoL will be studied **from a European angle**. This approach is necessary, as the RoL principle has acquired

¹³ During the timeframe examined in Timbro's report, Podemos (which is categorized by the Nordic think-tank as a left-wing populist party) was not yet part of Spain's coalition government.

a particular meaning within the EU context, that differs from that of International Law. In fact, it is the Union's principle that has undergone the most sophisticated development and, consequently, has acquired a **preponderant position within Article 2 TEU** (Martin y Perez de Nanclares, 2019).

The RoL implies, first and foremost, that in a democratic society **the law is the same for everyone, including public and government authorities**: the submission of public authorities to general rules known to all **guarantees legal certainty and avoids arbitrariness** (Arenas García, 2020). This core element of universal submission to the law implies that the RoL has a **double dimension** (Martin y Perez de Nanclares, 2019): (i) first, a **procedural** one, which entails the independence of judges and courts, as well as the existence of effective judicial protection, effective procedural guarantees and the legal obligation to provide sufficient reasoning for the decisions of the public authorities; and (ii) second, a **substantial** one, which refers to the protection of fundamental rights and the guarantee of key principles such as legality, legal certainty and equality. This double dimension is reflected in the **eight “ingredients”** of the RoL, as defined by the Venice Commission¹⁴ (hereinafter, VC) in its 2011 Report. Furthermore, the VC's Report also provides a detailed list of the **six fundamental elements around which a consensus has been built**. These are the elements that emanate from the multiple conceptions of the RoL across Member States (Venice Commission, 2011), and that have **been underpinned as European constitutional norms by the ECJ in its case law** (Magen, 2016). Particularly, the Report refers to (Venice Commission, 2011):

- **Legality (supremacy of the law)**: which involves a “transparent, accountable, democratic and pluralistic process for enacting laws”, both domestic and international.
- **Legal certainty**: implying that rules must be clear and predictable and cannot be retroactively modified. The CV points out to the relevance of this certainty regarding the promotion of economic activity.

¹⁴ The Commission is part of the Council of Europe, and its full report can be accessed through the following link: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)003rev-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)003rev-e)

- **Prohibition of arbitrariness:** this prohibition is guaranteed through the respect for individual's private spheres and their "protection against arbitrary or disproportionate intervention".
- **Access to Justice before independent and impartial courts:** in the sense that everyone should be able to challenge public decisions which are against their interests, and this challenging should be handled by judicial institutions which are not subject to external pressures nor prejudiced regarding the outcome of the case.
- **Respect for human rights:** human rights do not necessarily match with RoL principles, but they do often overlap. And the protection of these rights within the Union has been the **most visible battle horse for the enforcement of the RoL** (Martin y Perez de Nanclares, 2019) .
- **Non-discrimination and equality before the law:** again, referring to the abovementioned core element of universal submission to the law. As pointed out by the VC, this formal equality requirement serves to guarantee substantive equality between all individuals.

However, as authors have pointed out, this definition of the RoL presents a series of **deficiencies** (Magen, 2016). First of all, the VC does not provide express references to certain notions that are essential in a modern and democratic understanding of the RoL, such as **corruption or the principle of civilian control of security forces** (Magen, 2016). More troublesome is the **lack of a clear delimitation** (by both the VC and EU institutions) between the RoL and its related principles of Article 2 TEU, and namely, democracy and human rights (Magen, 2016). The reason for which this deficit is particularly problematic is that, in order to be triggered, Article 7 TEU requires the severe and persistent breaching of Article 2 TEU "values", and not just the RoL as a single value (Magen, 2016). Further reference to the intricate relationship between this Treaty provision and the RoL will be provided in the last Chapter of this dissertation.

As a final remark, it must be noted that the vital importance of the RoL within the EU is due to its nature as one of the **basic components of representative democracy** ("a democratic pillar"), which has lied at the core of the European project of integration

(Arenas García, 2020). Furthermore, and derived from this substantial reason for the RoL's relevance, lies a more pragmatic rationale: EU membership implies **cooperation** between Member States; **which would not possible without the existence of mutual trust between the authorities of the various countries** (Arenas García, 2020). This mutual trust must be necessarily be based on the existence of basic common principles in terms of political and legal organization, and namely, the RoL (Arenas García, 2020). For the abovementioned reasons, the repeated attacks on this principle in Poland and Hungary (which will be analyzed in detail in the following Chapter) have caused so much concern across the continent, as they **endanger a core element of the Union's identity**.

CHAPTER 3: BUDAPEST AND WARSAW'S DIVORCE WITH THE WEST, AN UNQUESTIONABLE REALITY?

Upon the theoretical discussion of the previous Chapter, this dissertation will now approach **three specific case studies in Poland and Hungary**: (i) the governmental meddling in judicial and media independence; (ii) the upsurge of majority politics which overrides the rights of minority groups; and (iii) migration policies marked by an institutionalized religious intolerance. Their choice is due to the fact that the three of them have been at the **core of the diplomatic and political crises between Brussels and Warsaw and Budapest's governments**, which were introduced in Chapter 1. Furthermore, they also stand out as ideal case studies to test the theoretical requirements of Chapter 2: through their review, this dissertation aims to **verify whether Poland and Hungary have actually evolved in their sociopolitical identities**, as part of a larger entity known as "Central Europe", **through the adoption of illiberal constitutional structures and populist discourses, which altogether wreck the RoL in their territories**. For this ambitious purpose, each Section will deal with Hungarian and Polish contexts separately, in order to later provide a unified conclusion, except for the last one on migratory policies, in which the cases of Poland and Hungary will be addressed jointly.

1. THE CAUSE AGAINST MEDIA AND JUDICIAL INDEPENDENCE

1.1. Hungary

As previously seen, in 2010 Orban's populist party Fidesz achieved an enormous parliamentary majority in national elections (defeating the traditional Hungarian Socialist Party), upon which it deployed a series of **constitutional and legal reforms**. These initial measures, effectively approved in 2011 and 2012, comprised the approval of a controversial Media Law and the adoption of several decisions affecting the independence of the judiciary and the Constitutional Court, which raised the first alarm bells in Brussels (Martin y Perez de Nanclares, 2019). In particular, the first strategic step of Fidesz was the **modification of the constitutional provisions that dealt with the approval of new constitutions**: the four-fifths majority requirement of Article 24.5 of the 1949 fundamental norm (which was still formally in force, although strongly modified in 1989) was removed, so that Orban's party could **then launch a new constitutional**

drafting process without having to negotiate with opposition parties (Bugarič, 2014). Later on in 2012, the new constitution was enacted (known as the Szájer Constitution, in honor to its main drafter¹⁵). Upon this point of departure, Fidesz used its parliamentary majority to promote several constitutional amendments, which among other reforms, modified the **functioning rules for the Constitutional Court, the organization of the state's judiciary and the authority of media supervision** (Bugarič, 2014).

First, regarding the amendments related to the Constitutional Court, the new 2012 constitution foresaw a profound **limitation of its traditional access mechanisms** (Bugarič, 2014). This situation was further aggravated in 2013, when Parliament adopted the “**Fourth Amendment**”, a provision which **drastically reduced the Court's jurisdiction through a double step** (Bugarič, 2014): first, its decisions adopted prior to the enacting of the 2012 Constitution were overthrown; and second, the Court's powers to review future constitutional reforms on the basis of substantive collisions with constitutional principles were suppressed. These controversial reforms severely weakened one of the last defenders of “checks and balances” in Hungary, and were seen by many as Orban's revenge on an independent institution that had annulled multiple of his illiberal attempts (Bugarič, 2014). The European Parliament (hereinafter, EP) was notably critical when approaching this subject in its 2013 “**Tavares Report**”, and Point 19 of its Assessment serves to illustrate the previous description of this paragraph (European Parliament Committee on Civil Liberties, Justice and Home Affairs, 2013):

“19. Is also extremely concerned about those provisions of the Fourth Amendment which repeal 20 years of constitutional jurisprudence, containing an entire system of founding principles and constitutional requirements, including any potential case law affecting the application of EU law and of European human rights law”

Second, in respect to the organization of the state's judicial bodies, the Szájer Constitution **lowered the retirement age of ordinary judges** from 70 to 62, with the intention of ousting most of the country's court presidents (Bugarič, 2014). Furthermore, a “National

¹⁵ József Szájer was a Hungarian MEP, very close to Fidesz elites and to Orban, who played a key role in the prohibition of same-sex marriage in the new Constitution. In December 2020, he voluntarily resigned from his parliamentary duties after being arrested in a homosexual orgy in the center of Brussels, during the Covid-19 restrictions in the Belgian capital. Further information available at: <https://www.bbc.com/news/world-europe-55145989>

Judicial Office” was created, with the competences for **appointing new judges and reassigning judicial matters to a specific judge for each case** (Bugarič, 2014). In a similar way, the public prosecutor was allowed to designate a court of his election for all criminal cases. Both the president of the National Judicial Office and the public prosecutor were given surprisingly **long mandates** (up to nine years), and the positions were taken by Fidesz loyalists strongly tied to Orban (Bugarič, 2014).

Lastly, Hungarian media was also tackled by the new 2012 Constitution: the traditional Media Authority was replaced by the “**Media Council**”: an allegedly independent institution composed by five members and entrusted with **the supervision of “media balance”** (Bugarič, 2014). Once again, the presidency of this body was granted to a Fidesz’s ally for a nine years term. Very recently, this supervisory authority has come under fire from several NGO’s and European institutions for the **shutting down of an independent Budapest radio broadcaster**, which criticized Orban and his government¹⁶. Not surprisingly, a regional court upheld the Authority’s decision to dismantle the radio station in a ruling that has been firmly condemned by the EC (Hopkins, 2021). Overall, these constitutional and legal reforms **effectively place Fidesz loyalists in all relevant Hungarian state institutions** for prolonged periods of time (Bugarič, 2014). Therefore, even if Orban eventually lost his absolute majority, any new government with less than two thirds of seats would have to deal with institutions controlled by Fidesz. It would thus be **almost impossible to promote new candidates** to these power positions, and consequently, to **alter the illiberal course of Hungarian politics** (Bugarič, 2014).

1.2. Poland

In a very similar way to the case of Hungary, the meddling of judicial and media independence in Poland erupted in 2015 after the sweeping victory of PiS in national elections (Duncan & Macy, 2021). The populist party’s first move was the **parliamentary election of three constitutional judges which were to replace the ones duly designated by the previous legislature** (Wyrzykowski, 2019). Later on, and once again through the enactment of a parliamentary decision, PiS imposed **novel procedural**

¹⁶ Further information of the case can be consulted through the following link: <https://www.ft.com/content/3f01c295-ac4e-42f4-8b81-8279ba90cd82>

requirements to the Constitutional Court, by which a two-thirds supermajority was required in order to decide on any issue with the intention of hindering the Court's tasks of judicial review (Duncan & Macy, 2021). The judges released a statement criticizing these reforms, as they violated the Polish Constitution, but the government dismissed their claims. On the contrary, it kept on with the promotion of controversial reforms, mainly aimed at the **nomination of PiS-friendly constitutional judges** (Duncan & Macy, 2021). Furthermore, **two other judicial institutions were targeted by the government** (Duncan & Macy, 2021): the National Council of the Judiciary (hereinafter, KRS) and the Supreme Court. First, regarding the former, the KRS is the body in charge of judicial appointments in Poland, and the majority of its members had originally been elected by independent judiciary assemblies (Duncan & Macy, 2021). However, in 2017 the PiS government promoted a law by which Parliament would from then on designate KRS's members, thus **politicizing a historically impartial body** (Wyrzykowski, 2019). As a retaliatory measure, the European Network of Councils of the Judiciary decided to suspend the membership of KRS (Duncan & Macy, 2021), which depicts the seriousness of its reform. And second, regarding the Supreme Court, PiS launched a **retirement age lowering proposal** (very similar to that of Fidesz's in Hungary), by which it would have been able to **replace around 40% of its judges** (Duncan & Macy, 2021). However, the ECJ released an opinion criticizing such move, which led PiS to walk back on its original proposal (although the party's apparatus still managed to position several loyalists within the Supreme Court).

Lastly, on the topic of judicial independence, in 2017 the Polish government created a **disciplinary chamber**, ultimately controlled by the Minister of Justice (Duncan & Macy, 2021), which has sanctioned multiple judges for allegedly participating in political activities. Polish judges have denounced the **arbitrariness and repressiveness** of this body's decisions (Duncan & Macy, 2021), which have only become worse after the passing of a new **"muzzle law"** in 2019, by which the chamber is entitled to impose salary cuts or decree the suspension of judges who criticize the restructuring of the KRS or the appointment of new judicial nominees by PiS (Duncan & Macy, 2021). Overall, and as scholars have pointed out, these judicial reforms constitute a **"hostile takeover" of the constitutional "checks and balances" structure** (Wyrzykowski, 2019), illegally implemented through ordinary legislation (as opposed to the previous case of Hungary, in which the contested reforms were built upon a formally valid constitutional reform).

Media independence on its hand has also been severely harmed since the rise of PiS to power in 2015. The party's initial focus lied on the **control of the State's public broadcasters** (Reporters Without Borders, 2020), as reflected in the follow up of the 2020 elections in which the national TV channel backed the PiS candidate and launched a discrediting campaign against his main opponent. However, this approach has now been expanded to the **censoring and supervision of private media operators** (Hall, 2021): the state-owned oil company (Orlen) is planning to acquire twenty regional newspaper currently controlled by a German-owned press corporation (Reporters Without Borders, 2020), and the government has launched a tax proposal on the advertising profits of private media operators (Hall, 2021), which is seen by many as a further step in PiS' **copyright policies** (Reporters Without Borders, 2020). Altogether, these policies have led Poland to fall to a **record low position in the World Press Freedom Index**, according to Reporters Without Borders¹⁷.

1.3. Conclusion

In the two countries, the rise to power of populist political forces has led to **partisan constitutional and legal reforms**, which have targeted the independence of both media corporations and the judiciary. Overall, the goal of such reforms has been the **strengthening of governmental power**, through the abolition of constitutional constraints and "checks and balances". For this reason, and under the theoretical framework of Chapter 2, we can conclude that both Fidesz and PiS governments have developed **illiberal structures and policies** (i.e., overexpansion of executive powers and strict control of civil society) which **effectively undermine the RoL** (and namely, in its aspects of judicial impartiality and independence, and its prohibition of arbitrariness). However, while in Hungary this process was carried out through illiberal legal means (i.e., the reform of the constitution in order to remove its "checks and balances") which respected the formal democratic framework (Bugarič, 2014), in Poland a parliamentary force illegally resorted to ordinary legislation to alter the constitutional order (Wyrzykowski, 2019), as it lacked the required majority to promote an amendment. For this reason, authors Bugarič, Halmai and Wyrzykowski make a **distinction** between a **Hungarian "constitutional revolution"** and a **Polish "illegal war against the constitution"** or "**constitutional coup d'etat**".

¹⁷ The full Press Freedom report can be accessed through the following link: <https://rsf.org/en/ranking>

2. MAJORITY POLITICS AND THE DISMISSAL OF MINORITY RIGHTS

2.1. Hungary

For the case of Hungary, the status of three minorities will be studied in this Section: the **Lesbian, Gay, Transgender and Bisexual collective** (hereinafter, LGTB), **homeless individuals and the Roma people** (also known as gypsies). This choice allows for a comprehensive approach to the discrimination of minorities and Hungarian anti-pluralism, since it covers groups affected by **sexual, socioeconomic and racial factors of intolerance**. First, regarding LGTB rights, Hungary was one of the first countries in Eastern Europe to develop a sexual political movement: in 1988, prior to the collapse of the Soviet government, Lambda Homerosz was founded as the nation's first queer organization (Renkin, 2009). From then on, the process of "Westernization" described in Section 1 of Chapter 2 brought several **improvements regarding LGTB rights**, mostly due to the requirements imposed for EU accession (Volstrup, 2016): the age of sexual consent was equaled to that of heterosexual relations, and the first pride march was celebrated in Budapest in 1997.

However, these improvements were soon counteracted by **homophobic tendencies**. In 2007 and 2008, **Pride Marches in Budapest were heavily attacked by far-right groups**, leaving multiple participants severely injured, while openly anti-LGBTB discourses by public officials were becoming more and more common (Renkin, 2009). Some of the chants at the extremist riots against the marches even alluded to anti-Semitism, "[Throw the] faggots into the Danube, and the Jews after them!", bringing back memories of Hungary's dark past with the Jewish collective (Renkin, 2009). Soon, this popular rhetoric transformed into legal and political action, and the Sjózer Constitution of 2012 introduced a clause **forbidding same-sex marriages**. More recently, the NGO "Human Rights Watch" has reported "an intensified attack" on LGTB rights, after the Fidesz government brought a proposal **banning same-sex couples from adopting children** (Human Rights Watch, 2020). And this same month, in June 2021, Hungarian Parliament has enacted a law that **prohibits content referring to homosexuality in schools and in television programs aimed at minors**, claiming that "there is content that children under a certain age can misinterpret and have a detrimental effect on their development" (Abril, 2021). Altogether, these policies fit into a context of **increasing**

socialized homophobia, depicted in Figure 3 in the Appendix, which is also present in other Central and Eastern European Member States.

Moving on to the **discrimination against homeless individuals** by Budapest's authorities, this issue started to raise attention in 2009, before Fidesz victory's in national elections. During that year, the mayor of one of the capital's largest districts declared the so-called "**homeless-free zones**" (Bence & Tessza Udvarhelyi, 2013). Later on, and with Orban already in power, a law was passed in 2012 establishing the "inadequate use" of public spaces as a **punishable offence** (Tessza Udvarhelyi, 2013). However, the Constitutional Court (which as explained in the previous Section, remained as one of the last defenders of the RoL in Hungary until it was virtually dismantled through the Fourth Amendment¹⁸), annulled such regulation considering that it was **against the principle of human dignity** and the country's constitutional foundations. In his classic illiberal and populist line, Orban heavily criticized the ruling, and declared that the prohibition of street homelessness would be covered by the constitutional reform of 2013: the **Fourth Amendment** included a provision which allows local entities to punish the use of public spaces as habitual residence, thus making Hungary the first country in the world to **foresee the criminalization of homelessness in its constitution** (Tessza Udvarhelyi, 2013). This legal discrimination is accompanied by a lack of a national housing plan and one of the lowest rates of social housing in the EU (Bence & Tessza Udvarhelyi, 2013).

Lastly, regarding the **Roma minority**, the EC estimates that there around 750,000 members of this minority residing in Hungary (which amounts to 7.5% of the total population). Their poor living conditions have been denounced by several organizations, such as Minority Rights Group International, who claims that Fidesz's accession to power in 2010 has created an environment of **enhanced discrimination and exclusion** (Minority Rights Group International, 2018). Among many other manifestations, this situation has led to educational segregation, lower levels of life expectancy, difficulties in access to housing (which in turn, make the Roma minority especially vulnerable to the criminalization of homelessness) and hate crimes (Minority Rights Group International, 2018). Combined, these **discriminatory social and educational policies have created a threat to the survival of the Roma identity in Hungary** (Bigazzi & Cserto, 2016).

¹⁸ For further detail, refer to page 26.

2.2. Poland

For the case of Poland's treatment of minorities, this Section will **exclusively focus on the LGTB collective**, for various reasons: (i) first, because Poland is a **highly homogenous country from ethnic and racial points of view**¹⁹ (although since its EU accession in 2004, the number of foreigners and the country's diversity have grown), and therefore the academic study of racist structures and discourses does not present much practical relevance²⁰; and (ii) second, because Warsaw has emerged as the **EU's biggest homophobic Member State** (ILGA, 2021) and its systemic infringement of LGTB rights (alongside its meddling in judicial and media independence) has become the **central element of tensions with liberal institutions in general and Brussels in particular**.

In this sense, homophobic structures and ideologies in Poland date back to **times of Soviet control**, under which Poles were repeatedly told that homosexuality "was a symptom of Western depravity" (Selinger, 2008). As scholars have already explained, this notion has somehow remained, and homosexuals stand in public imagination as **foreign and mythical characters who awake a sense of disgust** (Selinger, 2008). A possible explanation for the endurance of this historical and psychological legacy is the fact that Central and Eastern European **never experienced a "sexual revolution"** as the one lived on the other side of the Iron Curtain during the 1970's, which is seen by many as the West's turning point in its acceptance of homosexuality (Selinger, 2008). However, and in spite of this worrying legacy, the legal protection Polish LGTB community saw great improvements in the late 90's and early 2000's (once again, and as in the case of Hungary, due to the requirements set by EU institutions for the country's accession to the Bloc).

It was in **2004 that homophobia intensified in Poland**, accompanied by a greater degree of visibility of the collective (Binnie, 2013). This tendency arose with the **prohibition of Pride marches** in several cities, and was strengthened in 2015 with the arrival of PiS at State institutions. From its power position, the populist party launched a **hate-based social media campaign**, which is depicted in detail by the US Department of State in its

¹⁹ Hungary is also homogenous in these terms, but it has a large Roma community that Poland lacks.

²⁰ However, as NGOs have pointed out, **xenophobia is on the rise** (mostly targeted at Muslims) and Warsaw's PiS government is not doing much about it (Flückiger, 2017). Experts frame this dangerous tendency within the country's far right politics which are leading to an excluding Polish identity (Balogun, 2020). For this reason, **EU institutions should remain vigilant, as racism might soon join homophobia as Warsaw's arenas of ideological battle**.

2020 “Human Rights in Poland” Country Report: among many other hateful remarks, President Duda stated that “LGTB ideology”²¹ is a **form of “neo-Bolshevism” more dangerous than Communism itself**; and former homeland security minister and sitting MEP Joachim Bruzinkski tweeted that **“Poland without LGBT is most beautiful”** (Bureau of Democracy, Human Rights and Labor, 2020). This political campaign was been further **fueled by State media channels** (which, as seen in the previous Section, have fallen under the control of PiS), which promote stereotypes of “perverts who deprave juveniles” or “a campy queers” (Selinger, 2008). Moreover, independent reports have denounced the **arbitrary use of police force** deployed upon participants of a demonstration against the arrest of LGTB activist Malgorzata Szutowicz, as well as the **increasing number of sexual hate crimes that are not punished** (Bureau of Democracy, Human Rights and Labor, 2020). This poor situation is worsened by the **weak protection that Polish laws give to the LGTB minority**, enhanced by the broad interpretation powers of government authorities which are used to apply criminal and censorship provisions (Selinger, 2008).

Besides all the controversial policies previously described, the most contentious measure adopted by Polish institutions in their wrecking of LGTB rights has been the creation of the so-called **“LGTB-free zones”**: since 2019, these “zones” have been implemented in over a hundred municipalities (Reid, 2021) that extend across a third of Polish territory (for further detail, refer to Figure 4 in the Appendix). The non-binding legal resolutions adopted by these local entities call for the dismantling of LGTB ideology, and have served to actively **encourage hostile actions against those who do not identify as heterosexual** (Reid, 2021). The description provided by Bloomberg journalists is particularly illustrating of this situation: Polish LGTB people live “in a country where **their sexuality makes them an enemy of the state as the government weaponizes homophobia for political gain**” (Strzelecki & Bartyzel, 2020). In this sense, authors have pointed out to a growing and worrying **link by conservative forces between homophobia and a sense of Polish patriotism** (Graff, 2006). This dramatic situation presents multiple similarities with Hungary’s “homeless-free zones”, since both fall in a context of hatred-based narratives and otherings of certain collectives by political leaders.

²¹ As authors have pointed out, the notion of “LGTB ideology” is extended throughout Central and Eastern Europe, and its used to **portray homosexuality as an oppressive Western dogma threatening to dismantle the regions sovereignty and culture** (Reid, 2021)

Altogether, these different homophobic policies and social tendencies have forced to thousands of LGTB Poles to **flee their homeland in order to avoid systemic criminalization and violence** (Reid, 2021), particularly in rural and poorer areas where PiS is the dominant political force (Strzelecki & Bartyzel, 2020). As a final remark, it should be noted that Polish structural discrimination against LGTB individuals counts with a particular factor that was not present in Hungary: the **role of the Catholic church**. In this sense, the country's ties with the Vatican have always been stronger than in other Central and Eastern European countries (Strzelecki & Bartyzel, 2020). However, in recent years, there has been a growing divergence between Polish church officials and the Pope, as the former have adopted an explicit hateful speech against LGTB people (Renkin, 2009).

2.3 Conclusion

Multiple conclusions can be derived from the description of Hungary and Poland's treatment of minorities. First, both countries present a **populist tendency**, in which leaders of Fidesz and PiS use their institutional powers **to frame and criminalize specific collectives**, which are portrayed as the enemy of the people and traditional values. Against this constructed threat, political leaders present themselves as **saviors of Polish and Hungarian identities**, and consequently implement discriminative political and legal actions. Second, the **RoL's principles of fair access to justice and equal legal treatment are undermined**, as specific collectives (gypsies, homeless, gays...etc.) are systematically left out and are abused by institutions (and particularly by security forces, whose control and containment was a key factor of modern democratic societies, as explained in Chapter 2). And lastly, the two countries have used their **anti-minority strategies** (and namely, their anti-LGBTB policies) **as a form of anti-Brussels campaigns** (Renkin, 2009). In this sense, minorities are labelled as the "others", which exert a form of **Western "moral colonialism"** which intends to impose its liberal vision of democracy (Renkin, 2009). This perception and its subsequent nationalistic and illiberal reactions fall into the **wider framework** described in Chapter 2, in which Central Europe (and Poland and Hungary in particular) is **transitioning** from absolute compliance with Western democratic values **towards a rejection of the liberal approach to European integration**.

3. MIGRATION POLICIES: CHALLENGING BERLIN'S UNIVERSALISM

3.1. The broader context of the V4's handling of the 2015 migratory crisis

As it has already been mentioned, the 2015 migratory crisis in the EU and the radical and controversial response of V4 countries served as the **catalyst for the normative rupture** between Brussels and these four Member States. Thus, a brief introduction to the crisis' context must be provided. As authors have already argued, this was **not the first time for the Union facing a migratory challenge that required a unified response**. On the contrary, the Yugoslav wars of the early 1990s marked the first occasion in which the EU tried to jointly manage a massive influx of refugees into its territory, but it did so long before having legal or political instruments that would allow for coordinated action (González Enríquez, 2015). However, while the 1990's was a decade marked by economic growth and stability, the migratory crisis of 2015 (which mostly involved Syrian and Sub-Saharan immigrants) came under a **context of crisis, rising unemployment and budgetary restrictions** (González Enríquez, 2015). Furthermore, its migratory flows **entered the EU through its weakest Member States**: Southern and Eastern nations, the hardest hit by the financial and Euro crises (González Enríquez, 2015).

In this context, and aware of the urgency of the situation, EU institutions designed a plan which contemplated the **relocation of migrants across Member States according to a system of fixed quotas**, which was officially ratified on September 21st 2015 thus becoming EU law. This system would alleviate the pressure suffered by Italy and Greece, whose borders were being overwhelmed, and it counted with the strong support of Berlin. However, **V4 Member States expressed their full opposition** to this proposal, and announced that they would not comply with their assigned quotas (López-Dóriga, 2021). What lies behind this opposition is the **shared rejection of minorities and cultural plurality**, which has been introduced in the previous Section. Applied to the case of the migratory crisis, this rejection resorted to Islamophobic arguments, which claimed that refugees posed a **security threat due to their alleged links to Islamist terrorism**²² (The Economist, 2016). Furthermore, Fidesz and PiS leaders in Poland and Hungary **warned against the cultural disintegration of their societies** because of the arrival of refugees.

²² This crisis coincided with the Paris terror attacks of November 2015.

Authors have attributed this controversial reaction to the 2015 crisis to two factors: (i) a **lack of experience** in handling migratory flows; and (ii) the presence of **strongly homogenous societies** (ethnically and racially). Combined, these conditions generated fears and anxiety in the V4 when the quota system was proposed (Foy & Buckley, 2016).

In turn, such fears and anxieties manifested in specific policies, guided by the non-compliance with EU quotas. The most polemical was **Hungary's decision to build a 175 kilometers long fence in its border with Serbia**, which was accompanied by the deployment of military forces who were given permission to shoot rubber bullets and tear gas at the migrants reaching Hungarian territory from Greece (Bauerová, 2018). Orban's justification of this military strategy is particularly illustrating: when asked at a European Council's press briefing about the similarities between his government's fence and the historical Soviet border controls, he declared **that the iron curtain "was against us" while the Serbia fence is "for us"** (Kazharski, 2018). This discourse fits into the wider logic of building excluding national identities through the process of othering, as explained in Section 1 of Chapter 2. Furthermore, an **anti-migration media campaign** was launched, in order to discourage asylum applications (Bauerová, 2018), and Orban attempted to promote legal initiatives which would make the EU quota system unconstitutional. The populist leader accused Berlin of attracting migratory flows into the continent, and based on the alleged protection of its sovereignty and its population, **Hungary has not yet welcomed any of the migrants according to the quota system** (Bauerová, 2018).

The case of Poland presents certain particularities, since at the time of the approval of the quota system PiS was not yet in power, and the country initially accepted the proposed measures. However, when the populist party achieved its parliamentary majority in October 2015, the **country's stance took a drastic turn**: political leaders accused migrants of abusing Polish solidarity, and the party's leader Kaczyński complained about refugees stating that the quota system risked "bringing in all kinds of parasites, which are not dangerous in their own countries, but which could prove dangerous for the local populations in Europe" (Bauerová, 2018). Consequently, the country joined the rest of the V4's members and refused to comply with Brussel's system, and just like Hungary, **it has not taken in any of the migrants according to the quotas** (Bauerová, 2018).

3.3 Conclusion

This last case study shows us the enormous degree to which the **normative subversion** of the V4 in general, and of Poland and Hungary in particular, has occurred. Warsaw and Budapest's **refusal of universalist liberal Western values is so strong that their governments are willing to violate EU laws**, thus assuming the cost of disciplinary procedures and litigation before the ECJ (which has already been launched by the EC, which is suing V4 countries for their failure to follow the Union's norms). The rejection of migratory quota systems is **embedded on a rise of populism and illiberalism in the two Member States**, which has unleashed identity insecurities and fears in traditionally homogenous and conservative societies. Those same **fears are projected onto minorities** (in this specific case, migrants and refugees), which are systematically discriminated. Lastly, **Brussels and Berlin are attacked as the sources of moral colonialism attempts**, and hence are presented as the "others" to which Polish and Hungarian identities must fight back.

4. CONCLUSION

The detailed case studies of the this Chapter lead to an **univocal conclusion**: in spite of their initial portrayal as tales of liberal success and outstanding political transitions, in the past decade Hungary and Poland have effectively **evolved towards illiberalism**. The respective governments of Fidesz and PiS have contaminated national politics and discourses with **hatred-based populism**, which targets specific sexual, economic and racial minorities. And throughout this journey, media and judicial independence have been severely eroded, through the **dismantlement of constitutional "checks and balances"** which has caused the **tumbling of the RoL** in these two Member States. Certainly, the roles of Orban and Kaczyński's parties in this process have been essential. However, they did not depart from scratch, on the contrary, **they capitalized and magnified existing social discontent and structural political flaws**.

The first of these emanated from a **psychological factor**, since during the 1990's both Poland and Hungary experienced a drastic and fast paced change in their value systems, accompanied by degrees of freedom never experienced before, which generated **disorientation and anxiety among the population** (Selinger, 2008). Crime rates rose, the economy stagnated and levels of inequality were increasingly growing (Halmai,

2019), a reality that seemed to **shatter aspirations for catching up with Western Europe in terms of living standards** (as explained in page 17). This frustrating socioeconomic disorder (which is actually prototypical of most periods of change) was attributed by Hungarian and Polish societies to the process of Western democratization, rather to the process of transition in itself (Selinger, 2008). Consequently, discontent with the implementation of novel constitutional and democratic structures grew, as they did not delivered the much desired economic growth and were causing social instability. Regarding the second factor from which Fidesz and PiS capitalized, during the transition process of the 1990s **flawed democratic institutions** were established as a result of the **lack of true consensus on liberal values** (Halmai, 2019). Authors blame these deficiencies to an excessive focus of economic development, which left the building of a strong civil society aside (Halmai, 2019). These initial failures had several manifestations in the **impaired promotion of liberalism**, but one of them stands out among the rest: both Hungary and Poland built **disproportional electoral systems**, which have favored the absolute parliamentary majorities of Fidesz and PiS (Halmai, 2019).

Overall, scholars have argued that liberalism and democratic structures never really flourished in Poland and Hungary, due to **an excessive implementation of legal constitutionalism**: the creation of state structures and the drawing of boundaries between individuals and public authorities were prioritized, thus **hindering the construction of participatory democracies** (Halmai, 2019). As a final conclusion on the study of this Chapter, it must be noted that it is only upon these **psychological, social and political factors that Fidesz and PiS have been able to abuse weak and flawed liberal systems**, in order to implement their own illiberal and populist visions.

CHAPTER 4: BRUSSELS' POLITICAL AND LEGAL TOOLS TO TACKLE NORMATIVE SUBVERSION, A CRITICAL ANALYSIS

Chapter 3 of this dissertation has provided a very alarming picture of the current state of Hungarian and Polish democracies. Their **liberal and populist backsliding** is no longer a threat, but an **overwhelming reality**. Leaders in Warsaw and Budapest remain belligerent in their cause against Western values, and due to the partisan corruption of key State institutions (as explained in page 27), it seems very unlikely that this critical situation will reverse any time soon. For this reason, it is crucial to analyze the **viability of a EU intervention, through both political and legal means**. As described, fundamental individual rights are being violated, the RoL is falling apart and institutions are being contaminated with hatred: **the urgency of the task is enormous**. Consequently, this Chapter will first analyze the existing resorts at the disposal of European institution for the protection of Article 2 TEU, and ultimately, for the **survival of the Union's identity as a democratic bastion**. Their previous application attempts will then be critically examined, in order to provide viable and complementary alternatives.

1. OVERVIEW OF EXISTING MECHANISMS AND THEIR IMPLEMENTATION

During its first decades, the project of European integration had focused on economic convergence, and its values and principles were originally excluded from treaty provisions, although they always implicitly remained as the cornerstone of the project's identity (Becerril Atienza, 2020). Indeed, the presence of stable institutions guaranteeing democracy, the RoL and fundamental rights had always functioned as a non-written prerequisite for accession (Becerril Atienza, 2020). After the fall of the Soviet Union and with the EU's fifth enlargement towards the East in mind, this initial predominance of the economic focus was reversed: the **political dimension of integration was assigned a vital role in the 1997 Treaty of Amsterdam**, through the enumeration of the Union's values in Article 2 TEU²³. These values (human dignity, the RoL, freedom, equality...etc.) were now legally protected as the **reflection of the EU's self-understanding** (Becerril Atienza, 2020). Previously in 1993, the European Council had,

²³ The full provision can be accessed through the following link: https://eur-lex.europa.eu/eli/treaty/teu_2012/art_2/oj

under the Danish presidency, fixed those values as the requirements for prospective candidates to the EU, and were therefore named the “**Copenhagen Criteria**”. As it was already explained in Section 1 of Chapter 2²⁴, the conditionality of this Criteria (imposed before and during negotiations) had a positive impact on the consolidation of the new democracies of Central and Eastern Europe, and enabled the Union to exert unprecedented political influence (Becerril Atienza, 2020). However, once membership was granted, most Member States²⁵ (and in particular, Poland and Hungary) were **no longer subjected to supervisory procedures regarding compliance with the Union’s values** (Martin y Perez de Nanclares, 2019). It was precisely this lack of effective means to ensure compliance with EU values after joining the Club that led to the emergence of the “**Copenhagen Dilemma**” (Martin y Perez de Nanclares, 2019).

In order to address this alarming situation, in which new Member States could get away with violating Article 2 TEU while third candidate states were heavily subjected to its provisions, **European institutions began to equip themselves with new monitoring mechanisms**, by means of treaty reform, starting with the Amsterdam Treaty (Becerril Atienza, 2020). These mechanisms will be addressed in this Section, in order to understand their functioning and inherent limitations. In particular, the following will be approached: (i) the **sanctioning procedure** of the Treaty of Amsterdam; (ii) the **preventive procedure** of the Nice Treaty; and (iii) the **dialogue procedure** within the framework of the RoL. And out of this framework, this Section will also address **infringement procedures**, which do not specifically relate to Article 2 TEU, but have been used by the Commission as a last legal (and somehow covert) resort against specific Hungarian and Polish illiberal laws.

1.1. The sanctioning procedure of the Treaty of Amsterdam: Articles 7.2 and 7.3 TEU

The sanctioning mechanism was linked from the very beginning to the prospects of a future enlargement towards the East, and particularly to Poland and Hungary (Becerril

²⁴ For further information on the normative assimilation process of Central Europe, refer to page 13.

²⁵ As some authors have pointed out, in the specific **cases of Romania and Bulgaria certain supervision mechanisms were exerted by EU institutions** (Becerril Atienza, 2020), which might explain why in spite of their own democratic flaws, they have not fallen into a process of illiberal backsliding as strong as that experiences by Poland and Hungary.

Atienza, 2020). In the minds of Brussels' leaders, the **violation of European values became a likely possibility** in two states whose past was “marked by massive and systematic violations of human rights and remarkably undemocratic structures, and whose recent enthusiasm for human rights and democratic practices ought to be viewed with a certain degree of mistrust” (Becerril Atienza, 2020). Thus, the Member States formalized a **two-stage mechanism** in the Amsterdam Treaty: the first step would comprise the determination of the infringement of article 2 TEU, and the second the **adoption of sanctions**. This mechanism is currently set out in paragraphs 2 and 3 of Article 7 TEU, which read as follows:

*2. The European Council, **acting by unanimity** on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, **may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2**, after inviting the Member State in question to submit its observations.*

*3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide **to suspend certain of the rights deriving from the application of the Treaties to the Member State in question**, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.*

As the drafters expressed, this article is not designed for specific and one-time situations, on the contrary, it is applied to **extreme circumstances** in which Member States experience a systematic failure, based on the **serious and persistent violation** of Article 2 TEU values²⁶ (Becerril Atienza, 2020). Furthermore, the triggering of the sanctioning mechanism of Article 7 is **not limited in its scope to the application of EU law**: it is also possible to intervene if the violation occurs in one of areas of competence reserved to Member States (Becerril Atienza, 2020). This ample scope of application led to **reluctance in some national capitals**, which has remained throughout time and is one of the reasons for which Article 7 TEU is barely applied (Becerril Atienza, 2020). Indeed,

²⁶ As explained in page 23, multiple values must be infringed in order to apply the sanctioning provision, for this reason a clear delimitation between them is essential.

the confirmation of the infringement requires the **unanimity of the European Council, excluding the State concerned**, which in practice makes its use very unlikely (Martin y Perez de Nanclares, 2019). Once the violation has been ruled, the Council is made responsible for the establishment of sanctions, acting by qualified majority. In this aspect, the TEU grants a wide margin of political discretion, and sanctions might consist in the **suspension of certain rights**, including voting rights, although the **possibility of expulsion from the Union is not envisaged**, as Member States considered it to be excessive (Bugarič, 2014). Lastly, it should be noted that in spite of the severity of the situation in certain Member States (and namely, Poland and Hungary), whose systems have clearly fallen into the reiterated infringement of Article 2 TEU, the sanctioning procedure of Article 7 has **never been applied**.

1.2. The preventive procedure of the Nice Treaty: Article 7.1 TEU

In December 2000, the Nice Conference reached agreement on institutional reform, finally opening the door to the fifth enlargement to the East. The reform also amended the abovementioned sanctioning procedure, with the purpose **of adding a second mechanism** (Becerril Atienza, 2020): the **preventive procedure**. As opposed to the retaliatory functioning of Amsterdam's mechanisms, this new procedure could be triggered if there was a **potential risk** of a serious breach of the EU's values, **without requiring the effective materialization of the infringement**. As scholars and EU officials have pointed out, the need for such preventive mechanism became apparent during the 2000 "**Haider Affair**" in Austria, which was the first occasion in which the application of Article 7 TEU was contemplated (Bugarič, 2014): the crisis exploded when a coalition government was formed in Austria, including Haider's Freedom Party, which trivialized and advocated for certain features of the country's Nazi past (Bugarič, 2014).

However, no effective infringement of Article 2 took place, and for this reason Article 7 could not be applied in its sanctioning form (Becerril Atienza, 2020). Therefore, and faced with the lack of legal tools, fourteen Member States took coordinated action against Austria, including withdrawal of support for Austrian candidacies to international institutions and the expulsion of ambassadors (Bugarič, 2014). However, after an independent report confirming the compromise of the Austrian government with EU values, such sanctions were lifted (Becerril Atienza, 2020). This episode highlighted the

need to reform Article 7 so that from then on the EU would be able to **act not only in the event of a serious and persistent violation of European values, but also in advance, when a clear risk of such violation arises** (Becerril Atienza, 2020). This proposal was detailed in Article 7.1, which reads:

*1. On a reasoned **proposal by one third of the Member States**, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that **there is a clear risk of a serious breach by a Member State of the values referred to in Article 2**. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure. The Council shall regularly verify that the grounds on which such a determination was made continue to apply.*

It is important to emphasize that this preventive procedure is **independent of the sanctioning procedure foreseen in paragraphs 2 and 3**: although it seems reasonable that prevention should precede the sanctioning, the Treaty does not require so (Becerril Atienza, 2020). In other words, Nice's new procedure was **not designed for the purpose of postponing or replacing sanctions** (Becerril Atienza, 2020). Furthermore, regarding its formalities, the European Parliament (hereinafter, EP) gains an strengthened role. Lastly, and just like in the sanctioning procedure, the Council counts with discretion in determining the risk of violation, and it is therefore a **political mechanism** which leaves room for a diplomatic solution (Becerril Atienza, 2020). The ultimate consequence of its application is simply the **delivering of recommendations** to the Member State posing the risk.

Regarding its practical implementation, this preventive procedure has already been **launched against both Hungary and Poland**. First, regarding Hungary, article 7.1 TEU was not triggered by the Commission, who has been heavily criticized for not deploying all its forces against the illiberal turn of Orban's government (Becerril Atienza, 2020). On the contrary, it was the **EP which in September 2018 took the plunge and activated the preventive procedure**, requesting the Council to confirm the existence of a clear risk of a serious breach of the Union's values. However, a decision by the Council has still **not been adopted**, despite the fact that, as has been pointed out, the preventive procedure

does not require unanimity (Becerril Atienza, 2020). It should be noted that, although at this stage the existence of a serious and persistent violation of the RoL in Hungary can hardly be doubted, the **activation of the sanctioning mechanism has not been considered** (Becerril Atienza, 2020).

In the case of Poland, the preventive procedure was preceded by the failed attempts of the Commission implement the dialogue procedure, which will be explained hereunder. In this sense, after **four failed recommendations** which aimed to revert the meddling of judicial independence in the country²⁷, the EC finally decided to trigger article 7.1 TEU. Brussels had been under extreme pressure from multiple political and media forces, which claimed that the prolonged dialogue with Polish authorities, far from reversing the situation, had given Warsaw more time to implement its political strategy and consequently undermine the RoL (Becerril Atienza, 2020). However, just like in the case of Hungary, the proposal (in this case by the EC, rather than the EP) **remains unanswered** by the European Council.

1.3. The dialogue procedure within the framework of the RoL

This third mechanism was developed long after the fifth enlargement, in 2013, when European institutions (and namely the EC) were becoming **increasingly concerned about the situation in Hungary** (which as explained before, unfolded after Fidesz's accession to power in 2010). In spite of the gravity of the situation, Article 7 was not applied, not in its preventive variant nor in its sanctioning form. The EC pointed out that the high thresholds required for its approval (unanimity and qualified majority) made it "almost impossible" to apply (Becerril Atienza, 2020). Consequently, Brussels called for more **flexible mechanisms capable of filling the gap between "the soft hand of political persuasion and the hard hand of Article 7 of the Treaty"** (Becerril Atienza, 2020). The first step in this direction was taken in 2013, when the EC launched its **EU Justice Scoreboard**²⁸, an instrument designed to carry out a comparative review of judicial independence, quality and efficiency (Becerril Atienza, 2020). In 2014, Brussels went a step further by setting out in a Communication a new procedure called the **Rule**

²⁷ For further information, refer to pages 27-29.

²⁸ Each year's scoreboards are accessible through the following link: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en#scoreboards

of Law Framework²⁹, with the aim of resolving situations where a systemic threat existed before the conditions for triggering Article 7 were met (Becerril Atienza, 2020): something akin to a **mechanism prior to the preventive mechanism, referring specifically to the RoL**. The process would consist of **three phases**: (i) an evaluation by the Commission; (ii) a recommendation identifying the problems in question and giving the State a deadline for their resolution; (iii) and a follow-up.

Within this framework, the EC opted for a **broad definition of the RoL**, similar to that provided in Section 4 of Chapter 2, in which this principle has a double nature: substantial and procedural. In this regard, Brussels follows the definition provided by both the ECJ and the VC (which was already provided in page 22). Furthermore, as a **prelude to the application of Article 7 TEU**, this Framework is activated when national authorities “are adopting or tolerating situations that may systematically and adversely affect the integrity, stability or proper functioning of the institutions and safeguards established at the national level to ensure the rule of law” (Becerril Atienza, 2020). As multiple authors have expressed, the **differentiation** between the “serious and persistent breach by a Member State” of the sanctioning procedure and the “clear risk of violation of the Rule of Law” of this Framework is an **extremely complicate task** (Becerril Atienza, 2020). The problematic of this differentiation in particular and the design of softer mechanisms (such as the RoL Framework) has been acknowledged by multiple authors, who claim that the development of mechanisms to safeguard European values has resulted in a kind of **“inverted pragmatism”** (Becerril Atienza, 2020) whereby **“more soft law mechanisms have been added as clearer threats to the rule of law emerged, rather than applying the more drastic mechanisms that already existed”** (Blázquez, 2019).

In respect to its practical implementation, in spite of initially being designed for the Hungarian controversial constitutional reforms (Becerril Atienza, 2020), this Framework has **only been applied to Poland**. Indeed, this new and “flexible” procedure was used for the first time in 2016, shortly after PiS’ accession to national power (Becerril Atienza, 2020). The underlying context was the government’s approval of laws that would allow for the annulment of judicial appointments from the previous legislature and reduced the duration of the terms of office of its president and vice-president (as explained in Section

²⁹ More information available at: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-framework_en

1 of Chapter 3). The Commission, backed by the EP, then decided to issue its first recommendation to Warsaw, which provided a detailed numeration of proposed actions. However, the PiS-led government ignored such recommendation, and kept on with its illiberal reforms. In spite of multiple NGOs and civil society organizations calling for the urgent application of Article 7 TEU (Becerril Atienza, 2020), the Commission decided to stick to the dialogue procedure, and issued three further recommendations. As previously explained, it was precisely **Warsaw's disregard of these recommendations that led the Commission to abandon** the Framework and launch Article 7 TEU in its soft and preventive version (Bugarič, 2014).

1.4. Infringement procedures: Article 258 TFEU

This final mechanism has been applied to both Hungary and Poland, although it is **not strictly related to the surveillance of compliance with EU values**. In this sense, within its duties as “Guardian of the Treaties”, article 258 TFEU entrusts the EC with the monitoring of Member States’ **proper application of EU law** through the infringement procedure. In particular, this provision deals with infractions of **both original and derived provisions** (i.e., treaties and directives). For these cases, the precept reads:

*“If the Commission considers that a Member State has failed to **fulfil an obligation under the Treaties**, it shall **deliver a reasoned opinion** on the matter after giving the State concerned the opportunity to submit its observations.*

*If the **State concerned does not comply** with the opinion within the period laid down by the Commission, the latter may **bring the matter before the Court of Justice of the European Union.**”*

In other words, the article is **double phased**: first, a pre-litigation step attempts to correct the infringement; and only if it fails to do, a litigation phase is foreseen. Due to its relatively straightforward application mechanisms (especially when compared to Article 7 TEU), the Commission has resorted to this legal tool in many occasions to **counter specific laws and amendments of Polish and Hungarian governments** (Becerril Atienza, 2020). Among many other polemic reforms, the EC applied this mechanism to tackle: Hungary’s lowering of judges’ retirement age, its creation of a new Central Bank

and the controversial Freedom of Information Act, which eliminated the Parliamentary Commissioner for Data Protection and created a new governmental agency (Bugarič, 2014); and Poland's legal amend which modified the functioning of the Supreme Court (Becerril Atienza, 2020). In spite of certain legal victories, which served to force Warsaw and Hungary to partially revert some of their proposals, the application of this infringement procedure by the Commission has received multiple critics, as it is **limited in its own nature** (Bugarič, 2014). The EC's lawyers might have been able to properly apply the ECJ's case law, but **article 258 TFEU proceedings fail to tackle the structural causes behind Poland and Hungary's controversial and illegal reforms** (Bugarič, 2014). In other words, the infringement procedure only functions as a **covert approach** for the protection of Article 2 TEU, which cannot face institutional factors behind the democratic backsliding of these two Member States (Bugarič, 2014).

2. THE NEED FOR COMPLEMENTARY ALTERNATIVES

The study of the previous Section provides a very poor framing of the EU's powers to tackle the urgent situation in Poland and Hungary, described in Chapter 3. In spite of **formally counting with multiple severe legal tools** (and namely, the sanctioning procedure), European institutions have refrained from deploying all their forces: in light of flagrant infringements of the Union's values, the **preference has always been for softer means** (and namely, the RoL Framework and infringement procedures), and when tougher actions have been launched (i.e., the preventive procedure, which is indeed not a punitive provision), they have **never been fully implemented**. This worrying situation is well portrayed in the editorial comments of Wolters Kluwer's article "Hungary's new constitutional order and European unity", which claim that the measures described in the previous Section illustrate³⁰: *"the discrepancy between, on the one hand, the self-understanding of the Union as founded on universal values and as the guarantor of their protection within the Union's territory and, on the other hand, the limited capacities of the European Union to involve itself and intervene in the internal orders of its Member States"*.

³⁰ The entirety of the comments can be accessed through the following link: <https://kluwerlawonline.com/api/Product/CitationPDFURL?file=Journals\COLA\COLA2012033.pdf>

In this sense, this dissertation shares the view that past experiences with Poland and Hungary have demonstrated that **current political and legal mechanisms are insufficient to face the undermining of the Union's values**. Article 7 TEU contains mechanisms that would certainly dissuade Warsaw and Budapest from adopting illiberal reforms. However, its **intrinsic political nature** (which emanates from the unanimity and qualified majority requirements in the European Council) **has become its own Achilles's heel** (Bugarič, 2014). In this sense, critics have denounced the manipulation of this provision according to **political interests**, which become stronger within the EP: while Socialists are accused of protecting Victor Ponta in Romania, conservatives of the European People's Party are criticized for covering Victor Orban (López Aguilar, 2016). At the same time, targeted Member States have systematically complained about alleged **"double standards" in Brussels** (López Aguilar, 2016).

A key question then arises: **how come does the EU lack political will to apply its Treaty mechanisms to safeguard its foundational values?** This absence of strong political will becomes even more striking when looking at the process of integration in fiscal matters (Bugarič, 2014). In this sense, while there seems to be an **implicit consent by all actors to the EU's intervention in national sovereignty through fiscal means** (and namely, through the obligation imposed to Member States by which they have to include budgetary balance clauses in their respective constitutions), the **supervision of social and political issues generates anxiety and indecisiveness** across both Member States and European institutions (Bugarič, 2014). For this reason, the first step proposed by this dissertation in order to strengthen the EU (against Poland and Hungary's illiberal shift) is the **promotion of a strong consensus around the political dimension of European integration**. In this regard, the Union has proven to be much more than a mere economic bloc, and for this reason, EU leaders cannot hesitate when deploying the most severe treaty provisions against those who challenge Article 2.

But aware of the complexity of such political impulse, this dissertation also advocates for the **building of novel treaty mechanisms**, which complement Article 7 TEU and cover its deficiencies. In this aspect, the proposals of German political scientist and Princeton lecturer Jan-Werner **Müller** stand out as advantageous: he believes that both the preventive and the sanctioning procedures must be maintained, but new **extensive mechanisms should be added** (Müller, 2014). In particular, this dissertation considers

the following proposals of Müller as beneficial. First, the **EC should extend its monitoring of the RoL to all Member States**, regardless of this situation. This would avoid the current political controversies caused by the individual targeting of Brussels' surveillance (Müller, 2014), and namely, the victimizing self-perception by Hungarians and Poles as “second-class” European citizens who are not trusted by Western moral colonists (Müller, 2014). Second, and much more interesting, is Müller's consideration that the **EC as a surveillance body is excessively politicized**, and that for this precise reason, the tasks previously explained should be **delegated to an impartial and specialized institution** (Bugarič, 2014).

In this regard, this dissertation supports Müller's proposal of a “**Copenhagen Commission**”, which, in a similar way to the Council of Europe's VC, would be entirely (and exclusively) entrusted with the supervision of compliance of Member States with the Copenhagen criteria (i.e., with the values of Article 2 TEU). The German political scientist advocates for a **composition dominated by legal and political experts**, with the capability of raising awareness in the event of infringements of the Union's values (Müller, 2014). And regarding its functioning, this body would be entitled to undertake its own investigations and produce its own reports, in order to later **provide the Commission with a sanctioning proposal** (Müller, 2014). However, in order to avoid political complications, those sanctions would not be as harsh as those foreseen in Article 7 TEU: they would be restricted to the **cut of funds or the imposing of severe fines** (Müller, 2014). As Müller points out in his essay “The EU As A Militant Democracy, Or: Are There Limits To Constitutional Mutations Within Eu Member States?”, such economic sanctions would **support the idea that those Member States who attack the RoL are attacking the whole of the EU, and therefore are faced with a truly European response** (Müller, 2014).

Overall, this dissertation considers that, combined, **the strengthening of political will on the defense of the Bloc's values** (which would serve to ensure the full application of Article 7 TEU) and the **creation of a Copenhagen Commission** (which would require a treaty reform) are the **essential and urgent steps** that European institutions need to take, in order to tackle illiberal and democratic backsliding within its borders. Particularly, the analyses of the previous Chapters allow us to conclude that **such measures would effectively respond to the worrying political crises in Hungary and Poland**.

CONCLUSIONS

The three previous Chapters aimed to provide an exhaustive analysis of the origins and consequences of a complex and pressing reality: the **illiberal and populist upsurges in Poland and Hungary, which have called into question the ability of the European institutions to protect the values of Article 2 TEU**. Each of the Sections dealt with a specific issue, in order to settle the ground for a final study of viable complementary alternatives to existing legal mechanisms. For this reason, it now seems necessary to recapitulate and put the conclusions of each of the Sections in connection with each other:

- i. Drawing from the **basis of social discontent** with the economic outcomes of European integration, Fidesz and PiS have effectively **promoted illiberal and populist structures** in Hungary and Poland. Their parliamentary majorities (which have been favored by disproportionate electoral systems) have allowed for **constitutional reforms**, which present their own particularities in each case: in Hungary, illiberal amendments were carried out through formally valid means; while in Poland, due to PiS' lack of required seats, reforms have been conducted through illegally enacted laws (thus leading to a “constitutional attack” as opposed to Hungary’s “constitutional revolution”). Overall, in both cases the constitutional restructuring was guided by a **hatred-based populist narrative**, which has had damaging impacts on the rights of minority collectives and the RoL.

- ii. Indeed, political illiberal elites have focused on the **portraying of certain minorities as sources of evil**, which threaten to destroy national identities. These collectives are regarded in Warsaw and Budapest as Brussels and Western Europe’s Trojan horse to **impose liberalist and universalist values**. This narrative falls into a wider process in which the region of Central Europe is **subverting against the predominant liberal approach to European integration**, by promoting its own view of a Christian and conservative Europe in which States maintain their sovereignty. In this regard, Poland and Hungary are trying to **“re-educate” their Western neighbors**, in an attempt to impose their approach to integration. It is for this reason that the two countries should not be labelled as Eurosceptics, but rather **Brussels-sceptics**.

- iii. However, throughout this process of reinterpretation and shift of identities, constitutional **“checks and balances” are being dismantled**. Governments and parliamentary majorities are attaining enormous powers, through **repeated attacks on the judiciary and the media**. Sadly, these accumulated powers are being exerted upon discriminated minorities, and namely, upon the LGTB collective. Within their populist discourses, Fidesz and PiS have effectively **overridden the rights of these minorities for purposes of political gain**.
- iv. Overall, these worrying developments are a clear demonstration of the **democratic backsliding of Poland and Hungary** which blatantly violates Article 2 TEU values. However, the gravity of this situation has not been matched by a proper European response. On the contrary, **political controversies and the intricate requirements for the application of Article 7 TEU** have led to the use of **much more lenient mechanisms**, such as infringement procedures or the RoL dialogue procedure, which **have had virtually no effect**. The sanctioning and preventive mechanisms or Article 7 TEU are indeed effective tools for the containment of Polish and Hungarian illiberalism: what is **currently lacking is a political consensus around their enforcement**.
- v. For these reasons, this dissertation proposes a **double-step solution**: first (and most complicated) Member States must **reinforce the political dimension of EU integration**, so that institutions exert their legal powers with the same force as they do in fiscal and economic matters. And second, a treaty reform is needed, in order to **develop new mechanisms** which complement Article 7 TEU. In particular, this dissertation has advocated for the **generalized monitoring of the RoL in all Member States**, through the **creation of an impartial Commission** (in a similar sense to the Venice Commission in the Council of Europe) empowered to propose economic sanctions (such as fines or budgetary cuts). These mechanisms would **complement existing preventive and sanctioning tools**, overcoming their inherent political deficiencies. And their implementation is extremely urgent: **as the violation of the RoL and minority rights continues in Poland and Hungary, the threat to the identity of European integration keeps growing**.

BIBLIOGRAPHY

1. ACADEMIC SOURCES

- Ananicz, A. (2017). *From the Anti-Communist Underground to NATO and the EU*. Retrieved from Visegrad Group: <https://www.visegradgroup.eu/the-visegrad-book/ananicz-andrzej-from-the>
- Arenas García, R. (2020). El Estado de Derecho en la UE: Significado, desafíos y perspectivas de futuro. *Revista Iberoamericana de Filosofía, Política, Humanidades y Relaciones Internacionales*, 51-79.
- Balogun, B. (2020, January 31). If Poland's government believes in ending discrimination, it should reassess its conception of Polish identity. Retrieved from LSE Blogs: <https://blogs.lse.ac.uk/europpblog/2020/01/31/if-polands-government-believes-in-ending-discrimination-it-should-reassess-its-conception-of-polish-identity/>
- Bauerová, H. (2018). Migration Policy of the V4 in the Context of Migration Crisis. *Politics in Central Europe*, 14(2), 99-120.
- Becerril Atienza, B. (2020). The European Institutions in the face of the Rule of law crisis in Hungary and Poland. *Historia y Política*, 44, 113-144.
- Bence, R., & Tessa Udvarhelyi, E. (2013). The Growing Criminalization of Homelessness in Hungary – A Brief Overview. *European Journal of Homelessness*, 7(2), 133-143.
- Bigazzi, S., & Cserto, I. (2016). Minority Identity Strategies Bound by Prejudice: Restricted Perspectives of People Categorized as Gypsies in Hungary. *Journal of Community & Applied Social Psychology*, 26, 189-206.
- Binnie, J. (2013). "Neoliberalism, Class, Gender and Lesbian, Gay, Bisexual, Transgender and Queer Politics in Poland". *International Journal of Politics, Culture & Society*, 241-257.

- Blusz, K., Zerka, P., Demeš, P., & Vit, M. (2016, 02 29). *A View from Central Europe: Germany and V4 moving further apart?* Retrieved from GLOBSEC: Ideas Shaping the World: <https://www.globsec.org/news/view-central-europe-germany-v4-moving-apart/>
- Bugarič, B. (2014). Protecting Democracy and the Rule of Law in the European Union: The Hungarian Challenge. *LSE Europe in Question Paper Series*(79), 1-39.
- Duncan, A. K., & Macy, J. (2021, Fall/Winter). *The Collapse of Judicial Independence in Poland: A Cautionary Tale*. Retrieved from Judicature: <https://judicature.duke.edu/articles/the-collapse-of-judicial-independence-in-poland-a-cautionary-tale/>
- Editorial Comments. (2012). Hungary's new constitutional order and "European unity" . Retrieved from Wolter Kluwers: <https://kluwerlawonline.com/journalarticle/Common+Market+Law+Review/49.3/COLA2012033>
- Farrell, M. (2005, January). *From EU Model to Policy? The external promotion of regional integration*. Retrieved from Research Gate: https://www.researchgate.net/publication/253049026_From_EU_Model_to_Policy_The_external_promotion_of_regional_integration
- Gardner, J. A. (2021). ILLIBERALISM AND AUTHORITARIANISM IN THE AMERICAN STATES. *American University Law Review*, 829-912.
- Garton Ash, T. (1986, October 9). *Does Central Europe Exist?* Retrieved from The New York Review: <https://www.nybooks.com/articles/1986/10/09/does-central-europe-exist/>
- Gratius, S., & Rivero, A. (2018). Más allá de la izquierda y la derecha: populismo en Europa y América Latina. *Revista CIDOB d'Afers Internacionals*, 35-61.
- Halmi, G. (2019). Illiberalism in East-Central Europe. *EUI Working Paper LAW*, 1-29. Retrieved from: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3486420

- Hidalgo, O. (2019). Religious Backgrounds of Illiberal Democracy in Central and Eastern Europe. *Religion and Society in Central and Eastern Europe*, 12(1), 3-21.
- Juhász, A. (2014, August 21). *Announcing the "illiberal state"*. Retrieved from Heinrich-Böll-Stiftung, The Green Political Foundation: <https://www.boell.de/en/2014/08/21/announcing-illiberal-state>
- Kazharski, A. (2018). The End of "Central Europe"? The Rise of the Radical Right and the Contestation of Identities in Slovakia and the Visegrad Four. *Geopolitics*, 23(4), 754-780.
- Kets de Vries, M. F. (2020, December 4). *How Leaders Get the Worst Out of People: The Threat of Hate-based Populism*. Retrieved from Social Sciences Research Network (SSRN): https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3741909
- Kundera, M. (1984, April 26). The tragedy of central Europe. *New York Review of Books*, 31(7).
- López Aguilar, J. F. (2016). El Caso De Polonia en la UE: Retrocesos Democráticos y del Estado de Derecho y «Dilema de Copenhague». *Teoría y Realidad Constitucional*(38), 101-142.
- López-Dóriga, E. (2021, June 15). Refugee crisis: The divergence between the European Union and the Visegrad Group. Retrieved from Universidad de Navarra, Global Affairs: <https://www.unav.edu/web/global-affairs/detalle/-/blogs/refugee-crisis-the-divergence-between-the-european-union-and-the-visegrad-group>
- Magen, A. (2016). Cracks in the Foundations: Understanding the Great Rule of Law Debate in the EU. *Journal of Common Market Studies*, 54(5), 1050-1061.
- Martin y Perez de Nanclares, J. (2019). La Unión Europea como Comunidad de Valores: a Vueltas con la Crisis de la Democracia y del Estado de Derecho. *Teoría y Realidad Constitucional*(43), 121-159.
- Matthews-Ferrero, D. (2018). Populismo europeo contemporáneo y la vuelta de la historia. *Revista CIDOB d'Afers Internacionals*, 85-111.

- Meunier, S. (2018). Liberal Intergovernmentalism, Illiberalism and the Potential Superpower of the European Union. *Journal of Common Market Studies (JCMS)*, 1631–1647.
- Müller, J.-W. (2014). The EU As A Militant Democracy, Or: Are There Limits To Constitutional Mutations Within EU Member States? *Revista de Estudios Políticos*, 141-162. Retrieved from: <https://recyt.fecyt.es/index.php/RevEsPol/article/view/39414>
- Neumann, I. B. (1999). *Uses of the other. 'The East' in European identity formation*. Minneapolis: University of Minnesota Press.
- Offe, C. (1994). Designing institutions for East European transitions. *Reihe Politikwissenschaft / Institut für Höhere Studien, Abt. Politikwissenschaft*, 19. Wien: Institut für Höhere Studien (IHS), Wien. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-267177>
- Renkin, H. Z. (2009). Homophobia and queer belonging in Hungary. *Focaal—European Journal of Anthropology*, 53, 20-37.
- Reus-Smit, C. (2001). Constructivism. In S. Burchill, *Theories of International Relations: 2nd Edition*. (p. 209). New York: Palgrave.
- Rivero Rodríguez, A., Zarzalejos, J., & del Palacio Martín, J. (2017). *Un viaje por el universo del populismo desde sus orígenes hasta Trump*. Madrid: FAES.
- Selinger, M. (2008). Intolerance Toward Gays and Lesbians in Poland. *Hum Rights Rev*, 15-27.
- Tah Ayala, E. D. (2018). Las Relaciones Internacionales desde la perspectiva social. La visión del constructivismo para explicar la identidad nacional. *Revista Mexicana de Ciencias Políticas y Sociales*, 389-403.

Tessza Udvarhelyi, E. (2013). “If we don’t push homeless people out, we will end up being pushed out by them”: The Criminalization of Homelessness as State Strategy in Hungary. *Antipode*, 46(3), 816-834.

Todorova, M. (2009). *Imagining the Balkans*. Oxford: Oxford University Press.

Trencsényi, B. (2017). Central Europe. In D. Mishkova, & B. Trencsényi, *European regions and boundaries. A conceptual history* (pp. 166-188). New York: Berghahn Books.

Ungureanu, C., & Serrano, I. (2018). El populismo como relato y la crisis de la democracia representativa. *Revista CIDOB d’Afers Internacionals*, 13-33.

Vittori, D. (2017). Re-conceptualizing populism: Bringing a multifaceted concept within stricter borders. *Revista Española de Ciencia Política*, 44, 43-65.

Volstrup, T. K. (2016, May). *Nationalism and Homosexuality in Hungary (KU Leuven Series, Nationalism in European History)*. Retrieved from Research Gate: https://www.researchgate.net/publication/303497412_Nationalism_and_Homosexuality_in_Hungary

Wyrzykowski, M. (2019). Experiencing the Unimaginable: the Collapse of the Rule of Law in Poland. *Hague Journal on the Rule of Law*, 417-422.

Zakaria, F. (1997, November). *The Rise of Illiberal Democracy*. Retrieved from Foreign Affairs: <https://www.foreignaffairs.com/articles/1997-11-01/rise-illiberal-democracy>

2. REPORTS BY PUBLIC INSTITUTIONS, SECTORIAL NGOs AND THINK-TANKS

Bureau of Democracy, Human Rights and Labor. (2020). *POLAND 2020 HUMAN RIGHTS REPORT*. Retrieved from United States Department of State: https://pl.usembassy.gov/wp-content/uploads/sites/23/hrr_2020_poland.pdf

- Eurobarometer. (2019, September 23). *Eurobarometer on Discrimination 2019: The social acceptance of LGBTI people in the EU*. Retrieved from Eurobarometer: https://ec.europa.eu/info/sites/default/files/ebs_493_data_fact_lgbt_eu_en-1.pdf
- European Commission. (2021, 04 29). *The EU's 2021-2027 long-term budget & NextGenerationEU: Facts and figures*. Retrieved from Publications Office of the European Union: <https://op.europa.eu/en/publication-detail/-/publication/d3e77637-a963-11eb-9585-01aa75ed71a1/language-en>
- European Parliament Committee on Civil Liberties, Justice and Home Affairs. (2013, June 24). *Report on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012) (2012/2130(INI))*. Retrieved from European Parliament: https://www.europarl.europa.eu/doceo/document/A-7-2013-0229_EN.html
- González Enríquez, C. (2015, November 18). *La crisis de los refugiados y la respuesta europea*. Retrieved from Real Instituto Elcano: <http://www.realinstitutoelcano.org/wps/wcm/connect/720dbb004a9fd99f84e48e207bacc4c/ARI67-2015-GonzalezEnriquez-Crisis-refugiados-respuesta-europea.pdf?MOD=AJPERES&CACHEID=720dbb004a9fd99f84e48e207bacc4c>
- Human Rights Watch . (2020, November 18). *Hungary: Intensified Attack on LGBT People*. Retrieved from Human Rights Watch : <https://www.hrw.org/news/2020/11/18/hungary-intensified-attack-lgbt-people>
- ILGA. (2021, May 17). *Rainbow Map Europe 2021*. Retrieved from International Lesbian, Gay, Bisexual, Trans and Intersex Association: <https://www.ilga-europe.org/rainboweurope/2021>
- Minority Rights Group International. (2018, January). *World Directory of Minorities and Indigenous Peoples: Hungary, Roma*. Retrieved from Minority Rights Group International: <https://minorityrights.org/minorities/roma-8/>

Puddington, A. (2017). *Breaking Down Democracy: Goals, Strategies, and Methods of Modern Authoritarians*. Washington D.C.: Freedom House. Retrieved from: https://freedomhouse.org/sites/default/files/June2017_FH_Report_Breaking_Down_Democracy.pdf

Reporters Without Borders. (2020). “*Repolonising*” means censoring. Retrieved from Reporters Without Borders (RSF): <https://rsf.org/en/poland>

The Economist Intelligence Unit. (2021). *Democracy Index 2020: In sickness and in health?* London: The Economist.

Timbro. (2019, February). *TIMBRO AUTHORITARIAN POPULISM INDEX*. Retrieved from Timbro: <https://populismindex.com/wp-content/uploads/2019/02/TAP2019C.pdf>

Venice Commission. (2011). *REPORT ON THE RULE OF LAW*. Venice: Council of Europe. Retrieved from: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)003rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)003rev-e)

Wike, R., Poushter, J., Silver, L., Devlin, K., Fetterolf, J., Castillo, A., & Huang, C. (2019, October 14). *European Public Opinion Three Decades After the Fall of Communism*. Retrieved from Pew Research Center: <https://www.pewresearch.org/global/2019/10/14/the-european-union/>

3. SPECIALIZED PRESS

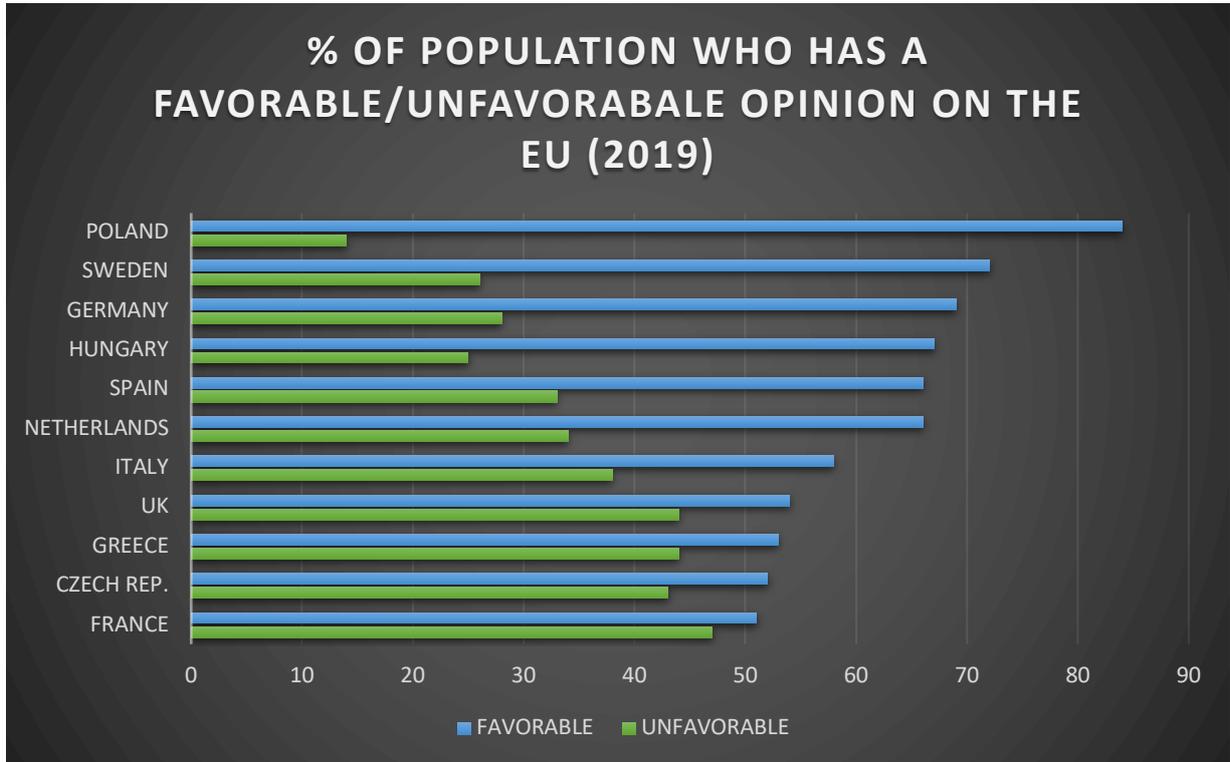
Abril, G. (2021, June 15). *Orbán desafía a la UE con una ley que prohíbe hablar de homosexualidad en las escuelas de Hungría*. Retrieved from El País: <https://elpais.com/internacional/2021-06-15/orban-desafia-a-la-ue-con-una-ley-que-prohibe-hablar-de-homosexualidad-en-las-escuelas-de-hungria.html>

Fleming, S., Peel, M., & Hopkins, V. (2020, December 4). *EU identity crisis: Poland, Hungary and the fight over Brussels’ values*. Retrieved from Financial Times: <https://www.ft.com/content/bfa58276-1868-4011-9891-ccd363dc68dc>

- Foy, H., & Buckley, N. (2016, August 19). The Visegrad four: Brussels' eastern critics. Retrieved from Financial Times: <https://www.ft.com/content/e99d3b12-6b96-11e6-a0b1-d87a9fea034f>
- Gall, L. (2014, July 29). *Dispatches: The End of Liberal Democracy in Hungary?* Retrieved from Human Rights Watch: <https://www.hrw.org/news/2014/07/29/dispatches-end-liberal-democracy-hungary>
- Hall, B. (2021, February 16). *Assault on media freedom poses another test of EU's resolve.* Retrieved from Financial Times: <https://www.ft.com/content/a7cbaefc-66d6-4599-ab79-b11ae54a59f8>
- Henley, J. (2018, November 20). *How populism emerged as an electoral force in Europe.* Retrieved from The Guardian: <https://www.theguardian.com/world/ng-interactive/2018/nov/20/how-populism-emerged-as-electoral-force-in-europe>
- Hopkins, V. (2018, November 24). *Hungary's ban on homelessness leaves many people vulnerable.* Retrieved from Financial Times: <https://www.ft.com/content/f8f0076e-e026-11e8-a6e5-792428919cee>
- Hopkins, V. (2021, February 13). *Hungary media freedom fears mount as broadcaster goes off air.* Retrieved from Financial Times: <https://www.ft.com/content/3f01c295-ae4e-42f4-8b81-8279ba90cd82>
- Strzelecki, M., & Bartyzel, D. (2020, November 22). *Where Your Sexuality Can Make You Enemy of the State.* Retrieved from Bloomberg: <https://www.bloomberg.com/news/features/2020-11-22/lgbtq-news-homosexuality-makes-you-enemy-of-state-in-poland>
- The Economist. (2016, January 30). *Big, bad Visegrad.* Retrieved from The Economist: <https://www.economist.com/europe/2016/01/28/big-bad-visegrad>
- The Economist. (2021, February 2). *Global democracy has a very bad year.* Retrieved from The Economist: <https://www.economist.com/graphic-detail/2021/02/02/global-democracy-has-a-very-bad-year>

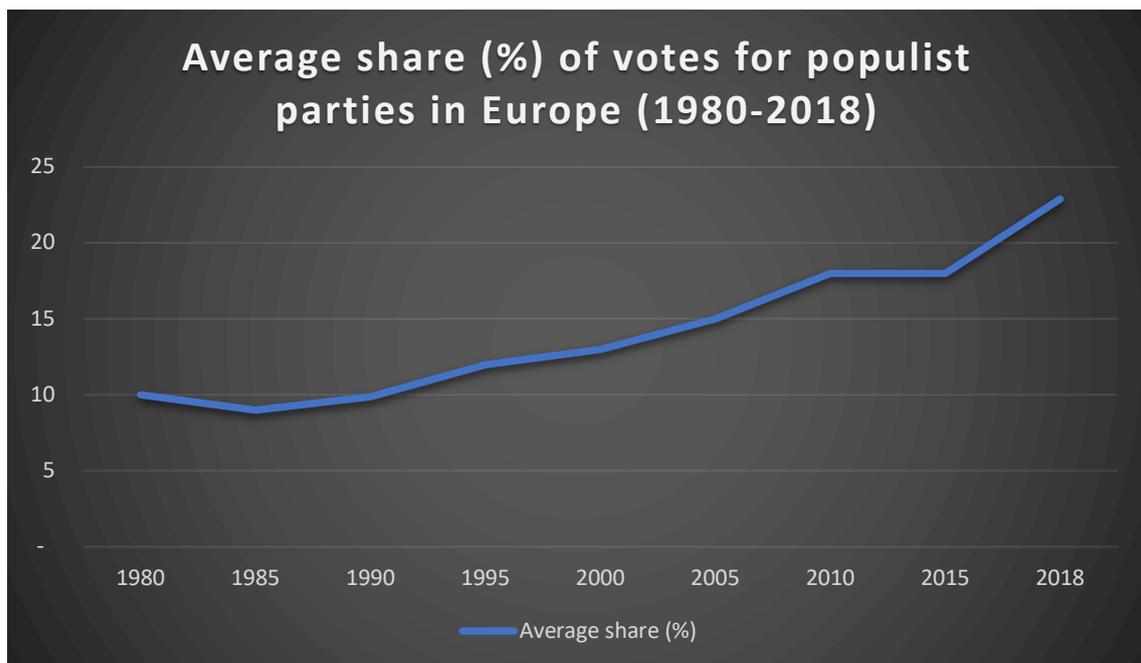
APPENDIX

Figure 1



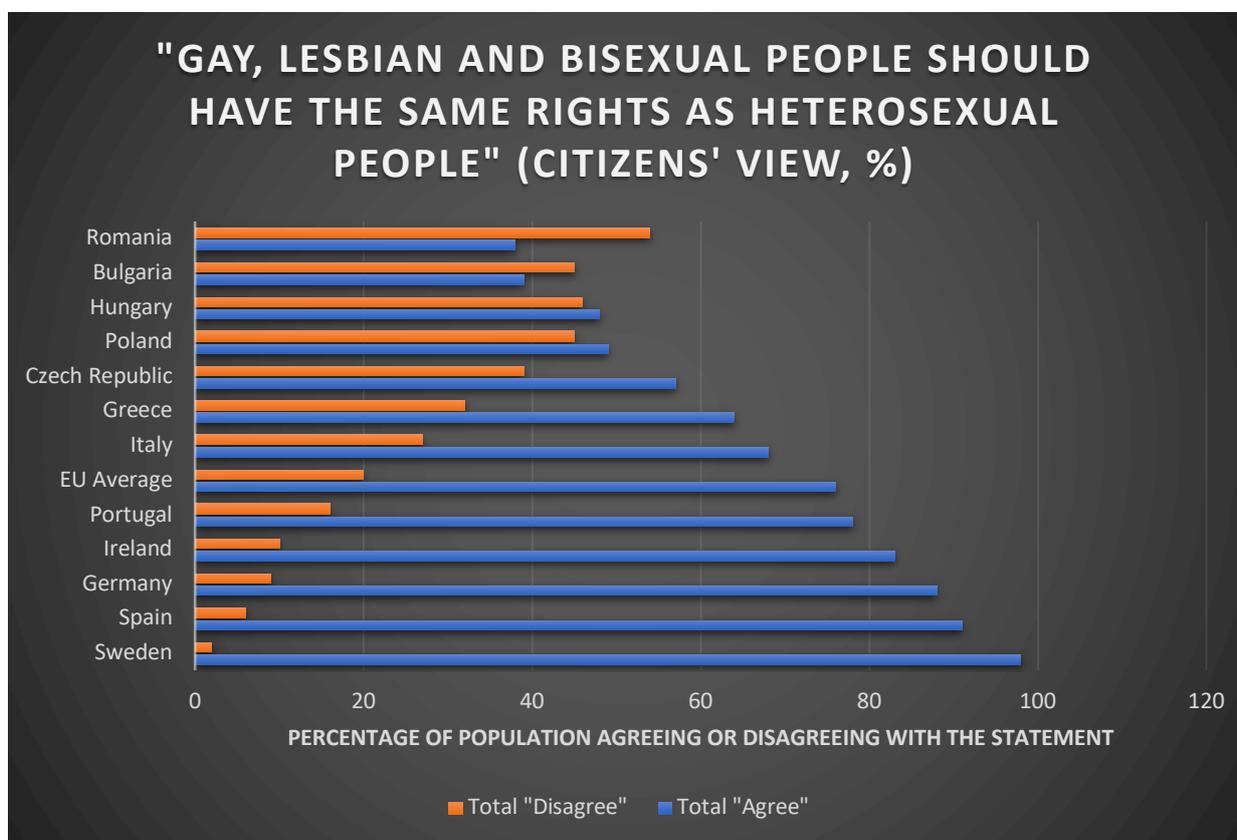
Source: Pew Research Center (2019). Retrieved from: https://www.pewresearch.org/global/2019/10/14/the-european-union/pg_10-15-19-europe-values-04-016/

Figure 2



Source: Timbro Think-Tank (2019). Retrieved from: <https://populismindex.com/wp-content/uploads/2019/02/TAP2019C.pdf>

Figure 3



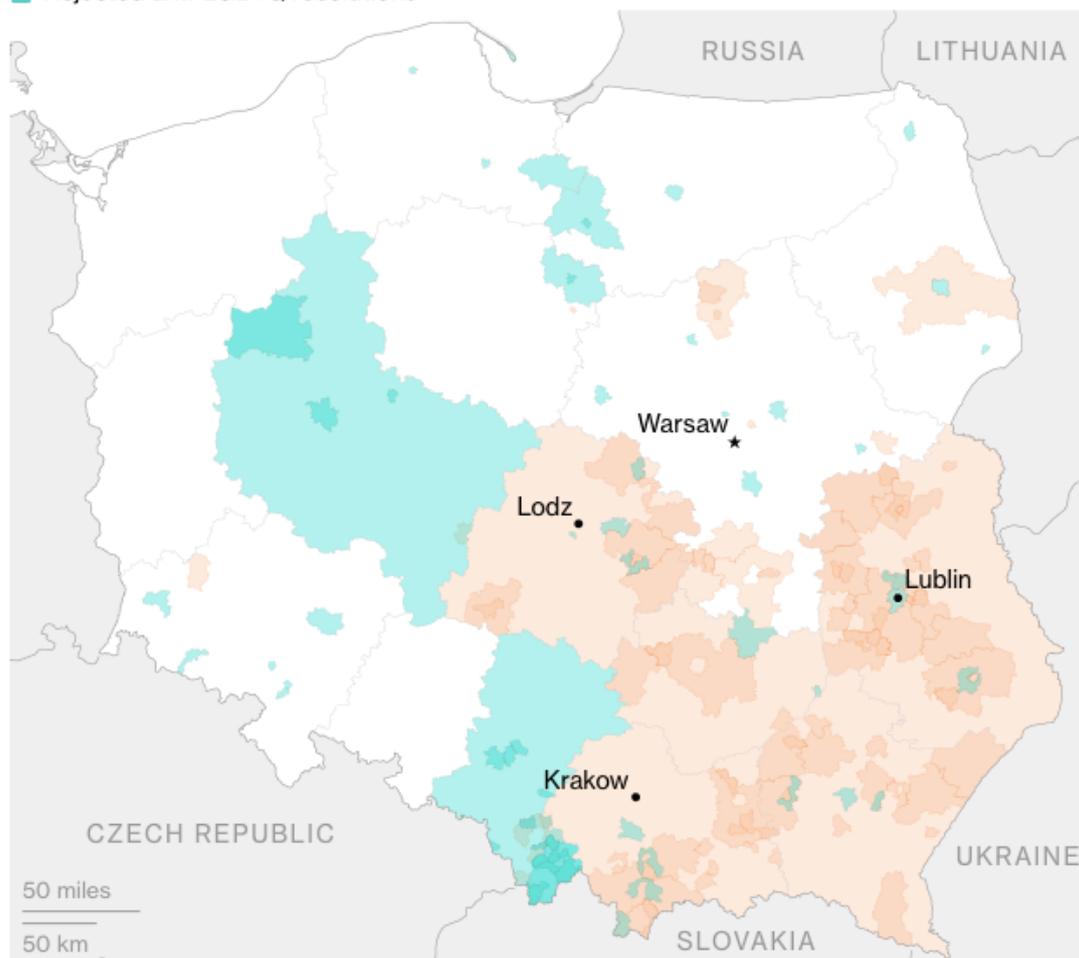
Source: Eurobarometer on Discrimination (2019). Retrieved from:
https://ec.europa.eu/info/sites/default/files/ebs_493_data_fact_lgbti_eu_en-1.pdf

Figure 4

Discriminating

Regions passing measures to ostracize the LGBTQ community

- Self-declared "Free from LGBTQ Ideology" or with resolutions against LGBTQ people
- Rejected anti-LGBTQ resolutions



Source: Bloomberg (2020). Retrieved from:

<https://www.bloomberg.com/news/features/2020-11-22/lgbtq-news-homosexuality-makes-you-enemy-of-state-in-poland>