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L'articolo 2 della Costituzione del 2 aprile 1997 definisce la Polonia come uno "Stato democratico di diritto che attua i principi di giustizia sociale". Sin dall'avvio della transizione democratica nel Paese, il principio del rule of law rappresenta il fondamento della democrazia polacca. Una corretta comprensione del principio richiede oggi di analizzare le sfide che tale principio deve affrontare. L'articolo inizia con la descrizione dei recenti sviluppi costituzionali della Polonia. Quindi, nella seconda parte, si concentra sull'evoluzione e sulla creazione dello stato di diritto in Polonia durante il periodo di transizione democratica. L'articolo prosegue, nella terza parte, concentrandosi sull'attuale situazione dello stato di diritto in Polonia. L'articolo si conclude con una riflessione sulla "lezione incompiuta" che l'attuale situazione polacca sta ponendo in termini di diritto costituzionale e sulle possibili violazioni dell'identità comune europea.

Article 2 of the Constitution of 2nd April 1997 sets out Poland as "democratic state of law implementing the principles of social justice". However, the rule of law principle was already present in the Polish legal discourse - specifically since December 1989, when the former communist Constitution of 1952 was amended. Since its beginning it is the foundation of Polish democracy. A correct understanding of mentioned principle requires to identify the challenges it has to face. The article starts with the description of current situation in Poland. Then, in the second part, it focuses on the evolution and on the creation of the rule of law in Poland during the transitional period. It presents the core elements of the notion, as long as it considers the rule of law as a multi-dimensional phenomenon, rather than a strictly legal one. In the end of this part, the article focuses on the practical aspect, that is to say on how the rule of law is conceived by the Polish Constitutional Tribunal - presenting principles resulting from it. In the third part, the article focuses on a doctrinal research concerning the recent situation in Poland, trying to capture its social factors. It concludes that the entitled "unfinished lesson" is in fact facing the paradox of breaching the core of common European Identity.

Summary:

° Saggio sottoposto a *double-blind peer review*.

1. Introduction - a glance on current affairs

On 2nd April 1997, the Republic of Poland passed the Constitution of the Third Republic. It happened quite late - 8 years after the beginning of the process of post communism transition. The New Constitution was a modern act, opening the whole system on the process of European integration. It also determined a vast catalogue of modern principles and values - well developed in Western Democracies. Among them, we can point out those referring directly to human rights i.e.: dignity, solidarity, proportionality, sovereignty etc., as well as addressed to the State: democracy, legality, independence and integrity of the territory of the country. Before that (years 1989-1997), the constitutional system of Poland was based on amended, but former-communist Constitution on 22nd July 1952. From that point of view, the second amendment of December 1989), which introduced the *rule of law* clause into Polish legal system, was the most important one. Then, new art. 1 par. 1 of the Constitution on 22nd July 1952 set up Poland as a "democratic State of law implementing the principles of social justice". Its content did not change in the newly passed Constitution of 1997. However, the *rule of law* principle was moved to art. 2 of the Constitution, being replaced by new art. 1, according to which "Republic of Poland shall be the common good of all citizens".

On 12th November 2015, the VIII tenure of the Polish parliament began. The Majority belonged to PiS (Law and Justice) party, which formed the government. President of the Republic who won the election on 24th May 2015, was also the candidate supported by the PiS. That meant the whole *executive* power in Poland belonged to the same political party. The Ruling party immediately started a series of legal changes. On 20th December 2017, the European Union (further: EU) issued a Reasoned Proposal in Accordance with art. 7(1) of the Treaty on European Union (further: TEU) regarding the *rule of law* in Poland[1]. Despite the fact that in the official Polish version the above mentioned document was named as "recommendations", it was the formal background for a Council Decision on the determination of a clear risk of a serious breach of art. 7(1) TEU by the Republic of Poland. Opening proceedings of art. 7(1) TEU is sometimes considered as a "nuclear option". The reasoning for such a decision was the "clear risk of a serious breach by a

[1] *Reasoned proposal on 20th of December 2017 in accordance with article 7(1) of the Treaty on European Union Regarding the Rule of Law in Poland,* European Commission, Brussels, 2017/0360 (NLE), COM(2017) 835 final; further called: reasoned proposal. It included also earlier recommendations on: 2016/1374, 2017/146, 2017/1520.

Member State of the values referred to in Article 2". Among them we indicate: respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. Obviously, the main charges concerned the breaching of the *rule of law* by the Polish government. It also resulted with the legal discourse between the Republic of Poland and European bodies - especially Venice Commission. On that basis a catalogue of opinions on broadly interpreted certainty of law and its procedures in Poland were created[2]. In parallel, European Commission issued a complaint on *rule of law* in Poland to the European Union Court of Justice (further: ECJ). ECJ adjudicated on that on 24th of June 2019 (C-619/18 - analyzed further).

From the European perspective, the main threats to the *rule of law* in Poland concern the separation of powers. The Executive and legislative powers took advantage of the judiciary, whereas *minimum minimorum* safeguards of the legal and political system were subdued. Initially whole issue focused upon the legality of the judges of the Constitutional Tribunal (further: CT) nominated by the previous government. The biggest controversies related to the fact of nomination, which happened right before the end of tenure of the former Parliament (VII tenure). According to the PiS party, it was an unjustified action. In that opinion, it was supposed to keep the majority of the judges (helpful for opposite political parties) in the content of the Constitutional Tribunal. It was subject of CT considerations in judgments on 3rd and 9th of December 2015[3]. According that, CT ruled that actions taken by the ruling party, threatened the procedure, excluded three correctly appointed judges from the status of a Judge of a Constitutional Tribunal, opening the composition of CT on newly elected (by the new political majority) judges[4]. Analyzed interference led to take over in the Polish Constitutional Tribunal. Further changes concerned the acts on Supreme

[2] See: Venice Commission. *Opinion on amendments to the act on 25th of June 2015 on the Constitutional Tribunal,* CDL-AD(2016)001, *Opinion on the act of 15th January 2016 amending the Police act and certain other acts,* CDL-AD(2016)012, *Opinion on the act on Constitutional Tribunal,* CDL-AD(2016)026, *Opinion on the act on the Public Prosecutor's office as amended,* CDLA-AD(2017)028, *Opinion on the draft acts: amending the act on the National Council of the Judiciary, amending the act on the Supreme Court, on organisation of ordinary courts,* CDL-AD(2017)031,

[3] Judgment of CT of Poland on 3rd of December 2015, *K 34/15*, OTK ZU 2015, nr 11A, pos. 185; Judgment of CT of Poland on 9th of December 2015, *K 35/15*, Dz.U. 2015, pos. 2147. Issuing presented judgments was preceded with controversies as Polish government refused to publish it in official journal.

[4] According to uncertain legal status of mentioned judges, they are sometimes called in Poland "understudy judges"

Court and National Council of Judiciary. Such interference focused upon personal changes in composition of those bodies[5]. On that basis, the European Commission acknowledged a "lack of an independent and legitimate constitutional review in Poland". These changes could be considered as systematic as it referred to: composition of fundamental Constitutional bodies, procedures of passing and exercising law, respect to CT judgments[6]. ECJ maintained such reasoning in judgment C-619/18 stating that "the measure consisting in lowering the retirement age of the judges of the Sąd Najwyższy (Supreme Court, Poland) " and granting the President of the Republic the discretion to extend the period of judicial activity of judges of that court beyond the newly fixed retirement age, the Republic of Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU[7].

Circumstances of changes cannot be omitted neither. A vast catalogue of laws was passed urgently (at night) without proper procedures, civic consultations and especially - *vacatio legis*. Obviously, the Polish government consequently presented opposite standpoint[8]. Thus, it presented itself as the guard of the principle of sovereignty of Nation, assuming to represent the interests of the Sovereign against the corrupted and non-reformed judiciary. The implemented changes were - up to their point of view - leading to a strengthen of the *rule of law* in Poland (i.e. by merging offices of Public Prosecutor General and Minister of Justice - noted even by the Venice Commission in opinion CDL-AD (2017)028).

Referring to the "*Rule of law* checklist" issued by the Venice Commission, we should consider it a basic, universal principle. Hence it includes the following "core" elements: 1. Legality, including a transparent, accountable and democratic process for enacting law; 2. Legal certainty; 3. Prohibition of arbitrariness; 4. Access to justice before independent and impartial courts, including judicial review of administrative acts; 5. Respect for human rights;

[5] Estimated changes in composition of Supreme Court was about 37%. It was connected with shortening retirement age of the Judes of the Supreme Court. Tenure of National Council of Judiciary was also discontinuated beforre its termination.

[6] On how changes influenced Polish judiciary see the report of Helsinki Foundation on the Human Rights (HFHR's): https://www.hfhr.pl/en/hfhrs-report-the-time-of-trial-how-do-changes-in-justice-system-affect-polish-judges/ (access on: 3-12-2019).

[7] Judgment of the Court (Grand Chamber) on 24 June 2019, *European Commission vs. Republic of Poland,* case C-619/18, ECLI:EU:C:2019:531,

[8] White Paper on the Reform of the Polish Judiciary. Available on: https://www.premier.gov.pl/files/files/white_paper_en_full.pdf (access: 25-5-2019). Practically whole paper was a set of fragmentary thesis from recent opinions of Venice Commissions, enriched with subjective standpoint of need of reforms in Polish judiciary system.

6. Non-discrimination and equality before the law[9]. The European Commission itself also stressed out the importance of the respect for fundamental law and equality before the law[10]. In parallel it is assigned to the principle of democracy with its main assumption, which is protection of minorities before the will of political majority. Considering Polish example: changes in composition of constitutional judiciary bodies, breaching procedures of passing and exercising ordinary laws, rejecting candidates on Judges of Polish CT by the President of the Republic of Poland - each contrary to exact provisions of the Constitution - indicated certain threat to the *rule of law* in Poland. On July 2018 Polish society commenced a huge strike against acts (ordinary laws) on Supreme Court, which aimed to break its integrity before executive and legislative powers in Poland. It represented a tremendous attempt to secure the *rule of law* in Poland - resulting with unexpected reaction from the President of the Republic. Acting on the basis of art. 122 p. 5 of the Constitution, he referred the act, with given reasons, to the Sejm (lower chamber of Polish parliament) for its reconsideration (*veto* procedure). Nevertheless, it did not stop unconstitutional changes and the new act on Supreme Court was passed on Autumn 2018, without society's objection, with minor changes. We can assume that since January 2018 there was no progression on securing *rule of law* in Poland coming from internal (Polish) entities[11]. One significant exception was the so-called *Reinstatement Law* on 21st November 2018. On its basis, the judges previously forced (by the ordinary law) to retire, could be moved back to normal services. It was possible only as a result of the efforts made by the EU Commission and following the proceedings initiated before the ECJ (C-619/18 Commission vs. Poland)[12]. In relation to this judgment, the ECJ adjudicated also on 19th of November 2019 (joined cases C-585/18, C-624/18 and C-625/18) where Polish Supreme Court (Sąd Najwyższy) issued a pre-judiciary question. The

[9] *Venice Commission - Rule of law checlist,* CDL-AD (2016)007, 14-18.

[10] European Commission. *A new EU Framework to strenghten the Rule of Law,* COM(2014) 158 final, 4.

[11] GRZELAK, *Odpowiedź Polski na czwarte zalecenie Komisji Europejskiej w sprawie praworządności* [Answer on 4th recommendation of European Commission on the rule of law] in BARCZ - ZAWIDZKA-ŁOJEK (ed.) *Sądowe mechanizmy ochrony praworządności w Polsce w świetle najnowszego orzecznictwa Trybunału Sprawiedliwości*, Warsaw, 2018, 107-136. Whole discussion was maintained with mechanisms of soft law, presenting its drawbacks. More on that: POPŁAWSKI, *Role and fuctions of soft law in public international law. Remarks on the basis of the opinion of the Venice Commission, Krytyka Prawa*, n. 3, 2019.

[12] More on whole process: TABOROWSKI- MARCISZ, *The first judgment of the ECJ regarding a breach of the rule of law in Poland?,* https://verfassungsblog.de/the-first-judgment-of-the-ecj-regarding-a-breach-of-the-rule-of-law-in-poland/ (access on: 3-12-2019).

main issue of the judgment was the consideration on the acceptable level of legal guarantees granted to the Member States by the art. 47 of the EU Charter of Fundamental Rights (discretional, internal power of the Member States), when there are justified doubts concerning independence and autonomy of certain judicial bodies[13]. The presented level of interference to the autonomy of judiciary power, could be considered a serious threat not only to the proper separation of powers, but a danger for the whole liberal democracy in Poland and for its citizens. Nevertheless, the civil society is still granting a strong voice of support to the ruling party, by assuring to the PiS the power to govern in IX tenure of the Parliament (in principle: years 2019-2023). We shall then ask: do Poles understand the importance of the *rule of law*? And do they see its breaches?

2. Rule of law in Poland - an issue between theory and practice

When presenting the Polish standpoint, we need to start the analysis from the beginning. Despite the fact that the "Rechtsstat" and the *rule of law* were well developed in Western Europe and in the Countries of *common law,* for Poland it was kind of *terra incognita.* Before 1989 it was an unknown concept in Poland. In the legal discourse it was presented in its basic assumptions - deriving its initial content from the experiences of German constitutionalism[14]. A fundamental moment for the implementation of the *rule of law* in Poland was the amendment of the Constitution (from December 1989), which can be seen as the initial point of the transforming process. By amending the existing communism Constitution, the new art. 1 par. 1 of the Constitution of 22nd July 1952 defines Poland as a "democratic State of law implementing the principles of social justice". The Mentioned democracy meant to be universal, without any adjectives describing it - and in fact limiting it[15]. In early 1990's there was an open question what is behind the

[13] Judgment of the Court (Grand Chamber) on 19 November 2019, *A.K. vs. Krajowej Radzie Sądownictwa (National Coucil of Judiciary) and CP; DO vs. Sąd Najwyzszy (Supreme Court),* joined cases: C-585/18, C- C-624/18 and C-625/18) ECLI:EU:C:2019:982.

[14] TULEJA, *Zastane pojęcia państwa prawnego,* in WRONKOWSKA, *Zasada demokratycznego państwa prawnego*, Warsaw, 2006, 70.

[15] SOKOLEWICZ, *Rzeczpospolita Polska - demokratyczne państwo prawne (uwagi na tle ustawy z dnia 29 XII o zmianie Konstytucji),* in *Państwo i Prawo*, n. 4, 1990, 17-18. It is worth to mention that during the communist period, former Constitution also recognised notion of democracy (art. 7), but as a "social democracy", which was pursuant to the needs of uniformal, totalitarian leadership.

words "democratic State of law", which was considered as combination of "law - abiding" State as well as democratic one. It consisted of two aspects: theoretical and - in some sense - ideological[16]. The Theoretical one was focused on a well know dilemma: the relation of the State and the law (created and exercised). Moreover, the new order had to be based on *rule of law* maintained in a democratic State. Thus, it was about securing democratism on procedural, merits influence of the public opinion on decisions of the Bodies of the State. In this sense countries meant to be "instrumentally" obedient to the society[17]. Ideology results from the need of realizing the principle of social justice. Kind of a split between legality and democratism was obvious and important. However, it was not so obvious if newly established democratic State of law will be basing on tripartition of powers - important for independent judicial power. Early Polish doctrine focusing on the *rule of law*, emphasized it had to be based on limitation of powers of each other, where legislative or executive bodies had to abide - with its own initiative - limits of competences. Polish *rule of law* - in its initial process - wanted to create situation, when State passing and exercising rights is considering and protecting dignity or other fair rights and freedoms of individuals[18]. It was also stated that *rule of law* was about political declaration of creating "legal norms of certain standards" as well as creating situation, where State actions could be "judged from the concept of the rule of law"[19].

As it follows, the whole process was also about a sociological change. Since that moment, whole system of exercising powers or competences, had to be strictly legal. What is more, civil society though needed to be aware of their special position as the Sovereign power and concrete legal tools it was given. The judiciary power played a crucial role in the early process of transition. It is strictly connected with judicial activity in interpretation the clause of the *rule of law* until new Constitution was established. It seemed problematic, when works on the content of the Constitution on 2nd of April 1997 was prolonging. At the same time there was an urgent need of creating a new, modern axiology, able to bring Poland - even if slowly - closer to the legal standards of the Western Democracies. This role started to be fulfilled by the Polish Constitutional

[16] WRÓBLEWSKI, *Z zagadnień pojęcia i ideologii demokratycznego państwa prawnego (analiza teoretyczna),* in *Państwo i Prawo*, n. 3, 1990, 12.

[17] WRÓBLEWSKI, *supra note 12*, 13.

[18] SOKOLEWICZ, *Rzeczpospolita Polska - demokratyczne państwo prawne…,* p. 25.

[19] JASKIERNIA, *Problem adekwatności konstytucjonalizacji państwa prawnego w kategoriach odzwierciedlenia rzeczywistości ustrojowej*, in SKOTNICKI, *Demokratyczne państwo prawne w teorii i praktyce w państwach Europy Środkowej i Wschodniej*, Łódź 2010, 33.

Tribunal, which then started to base its rulings mainly on the principle of the *rule of law*. The whole process was based on assumption, that *rule of law* is a condensation of other more specific principles. Works of the CT initially focused on: setting constitutional framework for proper law making or developing principles of fair and decent legislation. All under the main goal: protecting proper procedures impinging on citizen's confidence in the State apparatus[20]. However, it did not only refer to the general aspect of constitutional law, because it sometimes had a certain, individual dimension - by being created a source of individual rights and freedoms not explicitly mentioned in the Constitution. As it was presented, it mainly concerned the guarantees of the judicial branch, but also: dignity of man, right to protection of life, right to privacy[21]. Important for early judgments was also the financial situation of the State and the conditions of the economical transitions. In its concept *rule of law* was about to establish minimum of new, modern democracy. It has soon turned out that criteria worked out in described period, became a corner stone of further development. It is also worth stressing out the third dimension of "democratic transition", which focused on the legal changes referring to issues of economy and free market[22].

The complexity of political circumstances (especially pending process of the European *integration through law*) forced Poland to undertake certain actions. The actions needed to be taken urgently. Until 1997, there has been an intense judicial activism. The Years 1989 - 1997 are even called times of "judicial made Constitution", where creative interpretation of the Constitution went rather far[23]. On the other hand, it made foundations for the whole system. It played a crucial role in the creation of the new Constitution. Works were maintained in parallel to the exercising the *rule of law* principle by the CT. Fundamental principles of new Constitution were already interpreted by the CT and only needed to be implemented into legal text. The source of such interpretation was the *rule of law*. Polish constitutionalism was then prepared for further changes, specifically concerning the democratization and the internationalization of the Polish legal system. This mainly occurred through the implementation of the *rule of law* and thanks to the efforts of the Polish Constitutional Tribunal. Later - after the

[20] GARLICKI, *Constitutional Law,* in FRANKOWSKI (ed.), *Introduction to Polish Law,* Cracow 2005, 7-8.

[21] Ibid. Concrete provisions resulting from described principle will be presented further.

[22] WYRZYKOWSKI, *Legislacja - demokratyczne państwo prawa - radykalne reformy polityczne i gospodarcze*, SUCHOCKA (ed.), *Tworzenie prawa w demokratycznym państwie prawnym*, 44.

[23] See: GARLICKI, *Constitutional Court of Poland: 1982-2009,* in PASQUINO - BILLI (ed.), *The political origins of Constitutional Courts,* Roma 2009, 25-26.

enactment of the new Basic Law - the process of European integration on the basis of the new Constitution began. Obviously, the entry into the European Union had an influence on the understanding of the - relatively still new - principle of the *rule of law*. That is why the final remarks on the described aspect shall be found in modern descriptions. Relatively modern analysis is focused on the material and formal aspects of principles of law in the process of exercising the *rule of law*. Presenting it shortly, material aspect focuses on the content of the principle, defines rights or competitions, is concerned about individuals. Formal aspect concerns issues related to the process of creation of the law or other guarantees different from the content of the principle. Is about to limit competences of the State and creates form of correct governing[24]. On that basis it is emphasized that in Polish system, *rule of law* played mainly - but not only - formal aspect. As it will be presented it mainly focuses on methods of right government, passing and exercising law. Material aspect- if occurs - is usually connected with a formal dimension (i.e. principle of certainty of law reflecting on the situation of individuals, but concerning requirements of correct legislation - more presented in below passage). It is sometimes stressed out that Polish *rule of law* is filled with axiology, which in fact make it far from initial (continental) meaning of *rule of law*[25]. Then it shall be admitted that the concrete provision of *rule of law* in Poland is a combination of the above presented *rule of law* (in a "common law" sense) and of the "State governed by law" (similar to German *Rechtsstaat* and its assumptions). In some sense, it presents the objective attitude of the State ruled by certain and predictable provisions, but it still maintains an individual *pedigree* focused on the individuals and on their rights. It even results from the provision of art. 2 of the Constitution, which (since the moment of democratic transition) presents Poland as a democratic State- implementing principles of social justice. In general, *rule of law* can be perceived as a guarantee of the proper evolution of the political regime, being itself "axiomatically tied" with principles of: democracy, freedom, dignity etc. Hence, we can cite *T. Carothers* pointing that "one cannot get through a foreign policy debate these days without someone proposing the rule of law as a solution to the world's troubles"[26]. Thus, a proper

[24] KORDELA, *Formalna interpretacja klauzuli demokratycznego państwa prawnego w orzecznictwie Trybunału Konstytucyjnego,* in WRONKOWSKA, *Zasada demokratycznego państwa prawnego*, cit., 142.

[25] KORDELA, *Formalne państwo prawne,* in ALEKSANDROWICZ, A. JAMRÓZ, L. JAMRÓZ (ed.), *Demokratyczne państwo prawa. Zagadnienia wybrane,* Białystok 2014, 92.

[26] Following: JANSE, *A turn to legal pluralism in Rule of Law promotion?,* in *Erasmus Law Review*, n. 3, 2013, 182-183.

understanding of the *rule of law* (especially during transition period) forces the researchers to consider it as a multi-dimensional phenomenon, which concerns not only legal but also political and economical factors.

Here it is worth to point out the main principles, which was derived from the *rule of law.* It shall be stressed out that primary role, in the proper interpretation of the *rule of* law, was played by the judiciary.[27]. R*ule of law* shall be then considered as combination of values, which are implemented and expressed in the content of the Constitution[28].

As it follows, one of the fundamental is the principle of the citizens' confidence in the State - reduced to the mutual relation between State and citizens. It is based on the assumption that State has to preserve legitimate interests of the citizens' - remembering that they are organizing their "everyday" activities within created norms, which though need to be certain and predictable. Sometimes it is connected with the concept of the Latin maxim *pacta sund servanda* and it corresponds to the idea of the Constitution as social contract. Following that, CT interpreted from the *rule of law* well known concepts of the "principle of non retroactivity of law" (*lex retro non agit).* In general, it forbids to exercise laws to the past situation and protects the "principle of security of vested rights". The "vested rights" shall be then understood as rights, which were correctly acquired and - on that basis - cannot be withdrawn or interfered[29]. It is worth mentioning that the above mentioned principle secures only fairly acquired laws[30]. The Constitutional Tribunal enlarged the above criteria also to a situation in which the State should secure "interests in progress"[31]. It also affirmed the prohibition for the legislator "to create normative constructions, which are unfeasible, constitute the illusion of the law and its security aspect"

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[27] BIERNAT, *Zasada "the rule of law",* in ALEKSANDROWICZ - A. JAMRÓZ - L. JAMRÓZ (ed.), *Demokratyczne państwo prawa. Zagadnienia wybrane*, cit., 27.

[28] Judgment of the Constitutional Tribunal of Poland of 25th of November 1997, *K 26/97,* OTK ZU nr 5 - 6, pos. 64, pp. 22. In presented judgment CT confirmed earlier (pre-Constitutional) judgments on the *rule of law* as still actual

[29] In English, it is precisely presented in: BRZEZIŃSKI, GARLICKI, *Judicial Review in Post Communist Poland: The Emergence of a Rechstaat,* J. Int'l L. no 13, 1995, 36-40.

[30] Judgment of the Constitutional Tribunal of Poland of 24th of February 2010, *K 6/09* (Dz. U. on 10th of March 2010, nr 36, pos. 204), pp. 553. CT emhasized " According to the settled position of the Constitutional Tribunal, the principle the protection of acquired rights does not apply to rights acquired unduly or illegally, as well as rights without support in the assumptions in force on the date of adjudication of the constitutional order ". There is also significant difference in interpretation of this principle in matters on Social Protection System.

[31] Judgment of the Constitutional Tribunal of Poland of 2nd of March 1993, *K 9/92,* OTK ZU 1993, n. 1, pos. 6.

[32]. In other words, it can be called a principle banning creation of illusory entitlements. Crucial for this principle is trust in existing law, which is based on the assumption that the State creates law in a predictable manner and that it is not willing to act surprisingly for the citizens. In some sense, it leads to the principle of certainty of law. The Presented principle does not have absolute character and basically it is analyzed under following conditions: 1) whether the basis for the introduced restrictions are other norms, constitutional principles or values, 2) whether there is a possibility of implementing a given norm, principle or constitutional value without violating already acquired rights, 3) whether constitutional values for which the legislator limits acquired rights, in a given specific situation, can be granted priority among values being fundamental for vested rights, 4) whether the legislator has taken the necessary measures to ensure the individual's conditions to adapt to the new regulation[33]. The principle of sufficient definition of law cannot be omitted neither. It corresponds to the rules of correct creation of legal text. It was explicitly mentioned, that legislator should use clear and precise formulas in the process of "law - making". Despite the fact law should be interpreted in certain circumstances that accompany the regulation being taken […] "it is the legislator's duty to create legal provisions that are as specific as possible in a given case, both in terms of their content and form"[34]. In order to ensure a correct legislative process, it is necessary to guarantee the application of the principle of appropriate *vacatio legis*, that is to say to guarantee a certain period of time between the moment in which the law is passed and when it comes into force[35]. The principle of the *rule of law* also concerns a precise, hierarchical structure of the sources of law. Thus, the next principle resulting from that is the one of banning those normative acts which are in contrast with acts of higher level and order to act within limits of the competences established by law[36]. Moreover, another important one is also the principle of proportionality. In this sense, it cannot be confused with the principle of proportionality from art 31 p. 3 of the Constitution. Principle of

[32] Judgment of the Constitutional Tribunal of Poland of 19th of December 2002, *K 33/02,* OTK ZU 7A/2002, pos. 97, 155.

[33] See: Judgments of the Constitutional Tribunal of Poland of 11th of February 1992, *K 14/91,* OTK 1992, no 1, pos. 7, Judgments of the Constitutional Tribunal of Poland of 14th of July 2003, *SK 42/01,* OTK-A 2003, n. 6, pos. 63).

[34] Judgment of the Constitutional Tribunal of Poland of 28th of October 2009, *Kp 3/09,* OTK ZU 9A/2009, pos. 138), p. 6.2 and next passage.

[35] F.e in judgments of CT on: 15th of December 1997, *K 13/9* (Dz. U. on 23rd of December 1997, n. 157, pos. 1039), 28.

[36] BANASZAK, *Art. 2. Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warsaw, 2012, 17-57.

proportionality, in a way it results from the CT judgments exercising the *rule of law*, shall be interpreted individually. Hence, it is about setting limits and standards of State's actions, which are found- or quite the opposite not found - legitimate and appropriate. The way that Polish CT understood this principle, shows significant similarities with European standards on that issue[37].

In Poland, those principles result directly from the principle of the *rule of law*. However, there are still more examples of its influence on the process of passing and exercising laws in the Country. Firstly, they relate to the certainty of tax law in Poland, which - shortly speaking - bans the possibility of changing tax law during the "tax year". In some sense it is a continuation of the principles mentioned earlier (especially: certainty of law or proper *vacatio legis*). A State governed by the *rule of law* has to be ruled with ordinary laws, which is also connected with other, more general: principle of law - abidingness and principle of procedural justice. First of presented, bases on material and formal aspect of law and refers to the well - known fact law should be realized - not only - by formal interpretation of legal text, but also pursuant to values it emphasize. Second, refers to the right of fair procedure, both judicial as well as administrative. Some authors stresses also the principle banning "excessive" formalism of procedures of law. Basically, each State has the right to organize - even complicated - formal procedures, but they cannot be found more important than "core" of justice or legality.

3. Backsliding, breakdown or unfinished lesson on the *rule of law*?

The above-mentioned fragment emphasize the practical dimension of the *rule of law,* presenting that its foundations were well developed by domestic judiciary. Seeking for the reason of entitled "breakdown or lesson to repeat", we need to point, that it is acceptable to develop different interpretation between domestic and external constructions on the *rule of law*[38]. Having presented the European and Polish perspectives on the *rule of law*, it is noticeable, they refer to the same standards - focusing mainly on the formal aspect. However, issue begin when there is a political will to breach the well-established foundations of the *rule of law*[39]. The EU does not dispose of

[37] BANASZAK, *op. cit.,* 17-57.

[38] COCCHI, S*trenghtening the rule of law: Sketching a comparison between the domestic and external constructions of an EU foundational principles*, in *Ianus*, nn. 15-16, 2017, 215.

[39] See: BONELLI, *Carrots, Sticks, and the rule of law. EU political conditionality before and after accession*, in *Ianus*, nn. 15-16, 2017, 171-200.

effective tools to prevent Member States from such actions. Only one thing certain are the common European values established i.e. in the preamble, art. 2, art. 19 or 21 of TEU. Thus we are witnessing progressing process of exercising and "making more operative" values fundamental for the EU. Example of such attitude is the judgment C-64/16[40]. Polish doctrine of law is also getting more and more concerned on other cases, among which we determine: C-216/18 *(Celmer)*[41] and C-404/15 *(Aranyosi)*[42]. Presenting it shortly, both these judgments focus on the procedural guarantees of fair trial in cases of individual and on the criteria established in order to make a proper evaluation on the independence of the judiciary power. Further considerations were extended in recent judgment C-619/18 *(European Commission vs. Republic of Poland)*[43]. In the presented judgment, the European Court of Justice pointed out the importance of the *rule of law* as a fundamental value of the EU. It also emphasized its influence on the mutual trust between Member States and the way in which "autonomy of the legal order are preserved" by consistency and uniformity in the interpretation of EU law. On that basis, the most important was making a clear reasoning in which circumstances Member States cannot use argument, that organization of justice in the Member States falls within the competence of those Member States[44]. Thus main requirement is providing sufficient remedies ensuring effective legal (judicial) protection. As it was presented, judgment C-619/18 relates to a series of other cases (here: judgment on joined cases C- 624/18 and 625/18). There, the main reasoning of the ECJ was that in several situations -which considered separately would be legal, but interpreted jointly would present serious breach of the principle of independency and autonomy of judiciary branch - EU law shall be granted priority and applied directly, even if it refers to the organization of internal issues. The competence to

[40] Judgment of the EU Court of Justice (Grand Chamber) of 27 February 2018, *Associação Sindical dos Juízes Portugueses v Tribunal de Contas,* case C-64/16, ECLI:EU:C:2018:142, 30-34. In its content ECJ stated that art. 19 TEU is a substantiation of art. 2 TEU in a scope in which it emphasizes *rule of law* as a fundamental principle of the EU.

[41] Judgment of the EU Court of Justice (Grand Chamber) of 25 July 2018, *Execution of European arrest warrants issued against LM*, case C-216/18, ECLI:EU:C:2018:328, 35-36.

[42] Judgment of the Court (Grand Chamber) of 5 April 2016, *arrest warrants issued in respect of Pál Aranyosi (C-404/15), Robert Căldăraru (C-659/15 PPU),* ECLI:EU:C:2016:211.

[43] Judgment of the Court (Grand Chamber) of 24 June 2019, *European Commission vs. Republic of Poland,* case C-619/18, ECLI:EU:C:2019:531, pp. 42-50. From practical point of view it is worth to mention that in presented judgment ECJ maintained previous interpretation connecting art. 2 and 19 TEU - as in judgment *Associação Sindical dos Juízes Portugueses v Tribunal de Contas.*

[44] *Ibid.*, 52.

decide whether certain judicial bodies are independent or not shall be granted to the Court, which issued a pre-judiciary question (here: Polish Supreme Court)[45].

However, systematic changes concerning the principle of the *rule of law*, which lasts more than 4 years, must be conceived also as a sociological phenomenon. Exercising common values demands at least a similar way of understanding them by the societies of the EU countries - somehow depending on it[46]. At the same time, the scope and range of the issue forces to consider it as a systematic and progressive process rather than an episode. Even if there is at present no formal definitions of this phenomenon, some scholars name it as *rule of law - or even democratic - backsliding.* It is thought to be "the process through which elected public authorities deliberately implement governmental blueprints which aim to systematically weaken, annihilate or capture internal checks on power with the view of dismantling the liberal democratic State and entrenching the long-term rule of the dominant party"[47]. There are also attempts to find another definition. *T.T. Koncewicz,* one of the main researchers on that issue in Poland, used to call it "politics of resentment", which consists in a attack to the *rule of law* and to the separation of powers[48]. Judge *M. Zubik, in* describing constitutional crisis from the insight of CT, formulated the notion of "social sin" against the Basic Law. This concept assumes it as "act of individual violating sphere of duties referring to common good (commonwealth) of the society"[49]. Considering the

[45] See: supra note 14, pp. 131-146. Concrete issue of the case focused upon legal competence of the Extraordinary Chamber of the Polish Supreme Court to decide on retirement of the Supreme Court judges. Court issuing a pre-judiciary question presented doubts concerning legality of the Extraordinary Chamber by presenting faults in the procedure of its appointment. ECJ did not found its competence to decide on that issue directly, however found postponed case justified and relevant. On that basis, ECJ has presented a criteria, which Supreme Court should take into consideration during the process of adjudication of presented case.

[46] Partially on that: VON BOGDANDY, *Common Principles for a plurality of orders. A study on Public Authority in the European Legal Area,* Jean Monet Working Papers, n. 16, 2014, 19-20.

[47] SCHEPPELE, PECH, *What is rule of law backsliding?,* https://verfassungsblog.de/what-is-rule-of-law-backsliding/ (access on: 23-7-2019). According Poland issues: KONCEWICZ, *The Democratic Backsliding and the European constitutional design in error. When will HOW meet WHY?,* https://verfassungsblog.de/the-democratic-backsliding-and-the-european-constitutional-design-in-error-when-how-meets-why/ (access on: 23-7-2019).

[48] KONCEWICZ, *Uncostitutional capture and constitutional recapture. On the rule of law, separation of powers and judicial promises,* Jean Monet Working Papers, 3/2017, p. 4-14. Author interestingly presents the notion rather as a social phenomenon of populist politics encroaching liberal democracy and its foundations.

[49] ZUBIK, *O grzechach społecznych przeciwko ustawie zasadniczej*, in *Państwo i Prawo*, n. 1, 2018, 4-5.

whole thing from another perspective, the polish doctrine sometimes names this process as a special kind of *judicialization of politics*[50].

On that basis, the Polish aspect of the *rule of law* shall be actualized. From the formal point of view, the *rule of law* establishes a catalogue of procedural guarantees, which does not deprive it from a strong, axiological dimension. It concerns a certain vision of the State and Nation - their relation and mutual duties. The exact content of the art. 2 of the Constitution of Poland describes "a democratic State governed by law implementing principles of social justice". Thus, the Polish version of the *rule of law* is both dimensional - formal ("democratic State governed by law) and axiological, but also legally relevant ("implementing principle of social justice"). However, there are also opinions in Poland stating that social aspect of the *rule of law* was underestimated. The procedural aspect of this principle, which was mainly developed during analyzed period, was then found as a kind of "technocratic tool".[51]. Focusing mainly on formal aspect of legality i.e. separation of powers, systematic "check and balances", somehow it lost its social *attitude*. However, when it did consider material aspect of the *rule of law* - like in the case of termination of the pregnancy on social matters - CT was criticized of lack of strictly legal argumentation, basing mainly on the axiological foundations of the ruling[52]. It emphasized well the known assumption of the so-called democratic paradox stating: more rights to be exercised equals less democracy given to the society. As it is sometimes formulated that the *rule of law* and the democracy - unlike European standards - refer to different ways of understanding the political powers[53]. It is the fact that Polish CT was able to find concrete provisions contrary to the Constitution only on the basis of the mentioned "principle of social justice", but only when it is obvious and

[50] BIEŃ-KACAŁA, DRINOCZI, *Illiberal constitutionalism in Hungary and Poland: The case of judicailization of politics*, in BIEŃ-KACAŁA - CSINK - MILEJ - SEROWANIEC (ed.), *Liberal constitutionalism - between individual and collective interests,* 88-108. Authors stated that situation faced in Poland does not fullfill the requirements of the notion of *abusive constitutionalism* as well as pure *political constitutionalism. Judicialisation* though is focusing on a preserving political regime by the law, which is positioning judges as a servants of executive bodies.

[51] CZARNOTA, *Populist constitutionalism or new constitutionalism?*, in *Krytyka Prawa*, n. 1, 2019, 3-16.

[52] PIETRZYKOWSKI, *Trybunał Konstytucyjny na straży rządów prawa w systemie trójpodziału władzy*, in SZMYT - PIOTROWSKI (ed.) *Trybunał Konstytucyjny na straży wartości konstytucyjnych 1986-2016*, Warsaw 2016, 109-119.

[53] SAWICKA, *Does a democratic rule of law Create Opportunity for Civic Engagement*, in *Krytyka Prawa*, n. 1, 2019, 4.

only, when it includes other, detailed principles of Polish Constitution[54]. Such assumption was made cautiously as it had to include a significant discretion of the legislator in creating social policies[55].

On the other hand, each law is exercised on certain aim[56]. Ruling party found such aim. It was well known - both internationally and domestically (in Poland) - lack of democratic legitimacy of Constitutional Tribunal and judges representing it[57]. Even *H. Kelsen*, the creator of the concept of the process of constitutional analysis done by the judiciary bodies, have seen the risk of the "political dimension" of such process. That is why CT is sometimes defined as "negative legislator". The main aspect though was about creating the conviction that all the changes issued by "PiS" (Law and Justice) party, are not breaching the *rule of law*, but simply implementing changes in the composition of the Constitutional Tribunal. The whole issue never stemmed beyond certainty of procedures and proper separation between powers. Moreover, the PiS party maintained narrative in which, they found bodies emerging from public elections as the only legitimate. Hence it was difficult to expect that young, post-communism society will possess an appropriate "cognitive apparatus", able to defend liberal democracy and to identify a systematic threat to the principle of legality. Despite the fact that the European bodies mainly consider the *rule of law* principle in its formal aspect, doctrine of law (especially in Poland) shall maintain broadened and extensive interpretations. Already presented, *rule of law* as a pure notion, can be interpreted in its formal and material aspect. Political system transition, which occurred in Poland, also presents that *rule of law* is also built on strictly political, economic and social factors. Having presented legal and political (and partially economical) aspects, we need to emphasize also the social aspect. It is based on a simple assumption: the breaching of the foundations of the *rule of law* in Poland consists in an interference with the autonomy of judiciary power. If we assume, the whole process was ignited by the bodies of legislative and executive powers, which presents itself representant of the will

[54] Judgments of the Constitutional Tribunal of Poland of 25th of February 1997, *K 21/95,* OTK 1997, n. 1, pos. 7.

[55] Compare: Judgments of the Constitutional Tribunal of Poland of 22nd of June 1999, *K 5/99,* OTK 1999, n. 5, pos. 100.

[56] See: VON DER PFORDTEN, *On the foundations on the Rule of Law and the principle of the Legal State*, in SILKENAT – HICKEY - BARENBOIM (ed.), *The legal doctrines of the Rule of Law and the Legal State (Rechtstaat),* 2014, Switzerland, 15-30.

[57] Interesting on that issue from Italian perspective: FLICK, *50 lat Włoskiego Sądu Konstytycyjnego*, in *Przegląd Sejmowy*, n. 6, 2007, 61-62. In Poland see f.e. MAŁAJNY, *Legitymacja sądownictwa konstytucyjnego*, in *Państwo i Prawo*, n. 10, 2015, 5-22.

of the Nation thus only the Nation (or other words polish society) can modify this process[58].

To remedy to the capture of the Constitutional Tribunal, a possibility could be the direct application of the Constitutional provisions, even by the ordinary Courts. Thus they could have competence to interpret and exercise the Constitution independently from the CT. On the basis of art. 8 of the Constitution "provisions of the Constitution shall apply directly, unless the Constitution provides otherwise". That makes the Constitution a fully enforceable act, which can be limited only by constitutional procedures. Procedurally possible direct application of constitutional norms was considered cautiously by the doctrine[59]. At the same time, Courts sustained a vague discussion, which did not bring to a clear conclusion on that matter. It was even stated that "Constitution is not directly applicable law"[60]. Earlier, the Supreme Court of Poland excluded the possibility of implementing the "interpretative clauses" of the Constitutional Tribunal in Supreme Court's judgments[61]. Hence, it forced to ask justified question whether ordinary Courts ever wanted to use Constitution directly and - as a result - it withdraw some of the unique competences of Constitutional Court. The existing *judicial review (dialogue)* remained insufficient and time given to that - completely lost[62]. The first and foremost factor, which could be exercised during the times of "special necessity", was not effective enough. Polish jurisprudence shall have that issue developed long before the risk of "constitutional crisis". We have seen Polish Constitutional Tribunal as part of the "community of courts" and focused on improving legal standards of jurisdiction - bringing closer

[58] More on the specific of the legitimacy of legal changes and relations between powers: BIEŃ-KACAŁA, DRINOCZI, , *Illiberal constitutionalism in Hungary and Poland: The case of judicailization of politics*, cit., 73-108.

[59] What drives attention is increasing number of recent analysis on that issue f.e. MATCZAK, *Imperium tekstu: prawo jako postulowanie i urzeczywistnianie świata możliwego*, Warsaw, 2019, KORYCKA-ZIRK, *Filozoficznoprawny wymiar kontroli konstytucyjności*, Toruń, 2017.

[60] See: Judgment of Supreme Court of Poland on 13th of April 2015, *SNO 13/15,* Legalis.

[61] Resolution of the 7 judges of Supreme Court of Poland on 17th of December 2009, *III PZP 2/09,* available on: http://www.sn.pl/orzecznictwo/SitePages/Baza_orzeczen.aspx?Sygnatura=III%20PZP%202/09 (access on: 22-7-2019). Presented judgment was granted a role of universal, legal principle. It shall be stated that Supreme Court of Poland emphasized respect for CT judgments, but - in parallel - it refused to implement "interpretative clauses" which were not expressed directly in the sentence of CT judgements. It had certain, negative influence on the possibility of resumption of the proceedings - also in cases of individuals.

[62] On social aspect of legal transformation see: ŁĘTOWSKA, *Prawo i poezja*, in *Monitor Prawniczy*, n. 16, 2017, 878-882.

Western Standards. Partially abandoning the obvious regularity of the more important relation *judges to society,* rather than *judges to judges*[63].

Sociological research on "emotions and political engagement towards the EU" shows that Poles still present a mostly positive attitude towards the EU. Each of the result concerning Poland, were above average EU result - including strong conviction, that "what brings European citizens together is more important than what separates them"[64]. Studies on the common European identity presents other interesting conclusions. Undoubtedly, the main factors creating it were the "values of democracy and freedom"[65]. Obviously, the *rule of law* shall be classified as one of the fundamental among the mentioned values. National and European identity - in the scope of the survey - can exist next to each other. National identity though does not exclude European, common identity. On that basis, it is explicitly paradoxical to present positive attitude towards EU and its institutions, with maintaining consent for breaching values fundamental for the common identity. Hence as long as the multi - dimensional *rule of law* would be considered by the polish society only in its political aspect, despite the fact of its legal relevance - a "lesson" mentioned in the title would be unfinished. Thus it would be justified to state a question on importance of maintaining further analysis on the social aspect of the law - particularly in post-communist countries of Central and Eastern Europe[66].

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[63] Compare with: KONCEWICZ, *The European Comity of Circumspect Constitutional Courts. Searching for Constitutional Reason, Relevance and Voice*, Warsaw, 2015, 56.

[64] *Flash Eurobarometer. Emotions and political engagement towards the EU. Report on 25th of April 2019,* available on: https://www.europarl.europa.eu/at-your-service/en/be-heard/eurobarometer/emotions-and-political-engagement-towards-the-eu (access on 3-12-2019) . Report was made on the basis of the survey made on group of 25 258 EU citizens (in their mother tongues). Poles as their first insight on EU pointed hope (about 30% of examined people). Then Poles mentioned doubts (slightly less than 30%) and hope (29%). Positive insights were above the EU average - by 2-3%, whereas doubts were 3% below the EU average. Answering question on the importance of the unity of the EU, vast majority of Poles gave positive answers (36% totally agreed, whereas 49% tend to agree).

[65] NANCY, *Major Changes in Euroepan public opinion regarding the European Union. Exploratory study*. November 2016, "European Parliament Research Service", European Union, 2016, p. 42. Stated question concerned the most important elements making up European Identity. Precisely 50% of surveyed EU citizens answered, that values of democracy and freedom are the most important to common identy. Further answers were: single currency (33%), culture (32%), history (28%). Access available: https://www.europarl.europa.eu/at-your-service/files/be-heard/eurobarometer/2016/major-changes-in-european-public-opinion-2016/report/en-report-exploratory-study-201611.pdf (access on: 3-12-2019)

[66] Especially, while CT refused to use broad interpretation of the *rule of law* in cases of individuals. Here I refer to "constitutional complaint" from art 79 of the Constitution as

4. Conclusions

Answering to the question stated in the title, there is no point in repeating democratization process, which went well. Obviously, it does not mean accepting changes and breaches to the *rule of law*, Thus, we shall try to find a correct definition for the current situation. All of the theoretical concepts, capturing recent situation and presented above, are correct and somehow connected to each other. The politic of resentments started a process of common doubts in the European principles and values and - as it is correctly pointed - replaced "these founding principles with zero-sum politics a vision of *us vs. them*"[67]. That ignited process of the "*rule of law* backsliding" has been consequently maintained by the ruling party. But it could not have happened, without - even silent - society's consent[68]. Seeking for the purposes of mentioned "breakdown", we shall indicate a kind of *particularity of values* - present in young, post communism societies. Poland still has the will to secure common European values. The way in which they are understood is other relevant aspect. On that basis, there are more and more opinions of creation of non-liberal democracies or even populist oriented democracies. The Polish example shows that the process of breaching the rule of law was

subsequent constitutional control. On its basis "everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a law or another normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations specified in the Constitution". Such formula emphasized "narrow understanding" of *actio popularis*. In parallel CT created rigorous procedural requirements of issuing such complaint. It could not be issued by individual only on the basis of breach of art. 2 of the Constitution - provision on the *rule of law* in Poland. For its procedural correctness, claiming party shall present certain principles presented explicitly in the content of the Constitution (different than art 2) or at least present its connection to the *rule of law*. Constitutional Complaint basing only on the *rule of law* were dismissed. From one perspective, CT was aware of vast catalogue of principles, which were interpreted derivative from the *rule of law*, unlikely other constitutional principles naming them directly. Maintaining such situation was quite dangerous from the scope of correct legislative interpretation, which sometimes could lead to incorrect conclusions. On the other hand during later years there were no proper remarks on that issue - especially considering "relaxed interpretation" in cases of individuals. On that matter see: KUSTRA, *Model skargi konstytucyjnej jako czynnik kształtujący orzecznictwo sądów konstytucyjnych w sprawiach związanyc z członkowstwem w Unii Europejskiej*, in *Państwo i Prawo*, n. 3, 2015, 37-40; BAŁABAN, *Granice interpretacji zasady demokratycznego państwa prawa*, *Ruch Prawniczy Ekonomiczny i Społeczny*, n. 1, 2018, 56. Author ascertained even, the CT weakened the rule of law in Poland being its main defender.

[67] KONCEWICZ, *supra note 34,* 15-16.

[68] It tis easier to formulate such conclusions after third consecutive elections won by governing party „Prawo i Sprawiedliwość" (Law and Justice).

related with implementation of a big social program resulting with financial transfer to the society (families with children). It cannot be omitted that in 2014 - when whole process began - Poland was considered as a Country providing a "low level on expenses on social security and reduction of inequalities"[69].

On that basis, we can assume that the *rule of law* breakdown was unexpected - especially if we consider the range and the structure of the interference. However, the Polish system was not prepared for its occurrence. The axiological part of the *rule of law* turned out to be insufficiently exercised and in some sense it shall be reconsidered and brought closer to the society. Restoring the formal aspect of the *rule of law* shall be a matter of professional bodies - pursuant to the principles of mutual trust or of loyal cooperation between EU and Member States. On the other hand, it will become effective only if the Polish society will understand the relevance of the *rule of law* and it will finally consider this principle as foundation of the common European heritage.

[69] ZGLICZYŃSKI, *Polityka społeczna w państwach UE - wydatki i rozwiązania modelowe*, Biuro Analiz Sejmowych, n. 10(233), 2017, available on: http://www.sejm.gov.pl/sejm8.nsf/publikacjaBAS.xsp?documentId=1F477741D5BACEFDC12581980041F5DA&lang=PL (access on: 24-7-2019)

RULE OF LAW IN POLAND. UNEXPECTED BREAKDOWN OR A LESSON, WHICH NEED TO BE REPEATED?°

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L'articolo 2 della Costituzione del 2 aprile 1997 definisce la Polonia come uno "Stato democratico di diritto che attua i principi di giustizia sociale". Sin dall'avvio della transizione democratica nel Paese, il principio del rule of law rappresenta il fondamento della democrazia polacca. Una corretta comprensione del principio richiede oggi di analizzare le sfide che tale principio deve affrontare. L'articolo inizia con la descrizione dei recenti sviluppi costituzionali della Polonia. Quindi, nella seconda parte, si concentra sull'evoluzione e sulla creazione dello stato di diritto in Polonia durante il periodo di transizione democratica. L'articolo prosegue, nella terza parte, concentrandosi sull'attuale situazione dello stato di diritto in Polonia. L'articolo si conclude con una riflessione sulla "lezione incompiuta" che l'attuale situazione polacca sta ponendo in termini di diritto costituzionale e sulle possibili violazioni dell'identità comune europea.

Article 2 of the Constitution of 2nd April 1997 sets out Poland as "democratic state of law implementing the principles of social justice". However, the rule of law principle was already present in the Polish legal discourse - specifically since December 1989, when the former communist Constitution of 1952 was amended. Since its beginning it is the foundation of Polish democracy. A correct understanding of mentioned principle requires to identify the challenges it has to face. The article starts with the description of current situation in Poland. Then, in the second part, it focuses on the evolution and on the creation of the rule of law in Poland during the transitional period. It presents the core elements of the notion, as long as it considers the rule of law as a multi-dimensional phenomenon, rather than a strictly legal one. In the end of this part, the article focuses on the practical aspect, that is to say on how the rule of law is conceived by the Polish Constitutional Tribunal - presenting principles resulting from it. In the third part, the article focuses on a doctrinal research concerning the recent situation in Poland, trying to capture its social factors. It concludes that the entitled "unfinished lesson" is in fact facing the paradox of breaching the core of common European Identity.

Summary:

° Saggio sottoposto a *double-blind peer review*.

1. Introduction - a glance on current affairs

On 2nd April 1997, the Republic of Poland passed the Constitution of the Third Republic. It happened quite late - 8 years after the beginning of the process of post communism transition. The New Constitution was a modern act, opening the whole system on the process of European integration. It also determined a vast catalogue of modern principles and values - well developed in Western Democracies. Among them, we can point out those referring directly to human rights i.e.: dignity, solidarity, proportionality, sovereignty etc., as well as addressed to the State: democracy, legality, independence and integrity of the territory of the country. Before that (years 1989-1997), the constitutional system of Poland was based on amended, but former-communist Constitution on 22nd July 1952. From that point of view, the second amendment of December 1989), which introduced the *rule of law* clause into Polish legal system, was the most important one. Then, new art. 1 par. 1 of the Constitution on 22nd July 1952 set up Poland as a "democratic State of law implementing the principles of social justice". Its content did not change in the newly passed Constitution of 1997. However, the *rule of law* principle was moved to art. 2 of the Constitution, being replaced by new art. 1, according to which "Republic of Poland shall be the common good of all citizens".

On 12th November 2015, the VIII tenure of the Polish parliament began. The Majority belonged to PiS (Law and Justice) party, which formed the government. President of the Republic who won the election on 24th May 2015, was also the candidate supported by the PiS. That meant the whole *executive* power in Poland belonged to the same political party. The Ruling party immediately started a series of legal changes. On 20th December 2017, the European Union (further: EU) issued a Reasoned Proposal in Accordance with art. 7(1) of the Treaty on European Union (further: TEU) regarding the *rule of law* in Poland[1]. Despite the fact that in the official Polish version the above mentioned document was named as "recommendations", it was the formal background for a Council Decision on the determination of a clear risk of a serious breach of art. 7(1) TEU by the Republic of Poland. Opening proceedings of art. 7(1) TEU is sometimes considered as a "nuclear option". The reasoning for such a decision was the "clear risk of a serious breach by a

[1] *Reasoned proposal on 20th of December 2017 in accordance with article 7(1) of the Treaty on European Union Regarding the Rule of Law in Poland,* European Commission, Brussels, 2017/0360 (NLE), COM(2017) 835 final; further called: reasoned proposal. It included also earlier recommendations on: 2016/1374, 2017/146, 2017/1520.

Member State of the values referred to in Article 2". Among them we indicate: respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. Obviously, the main charges concerned the breaching of the *rule of law* by the Polish government. It also resulted with the legal discourse between the Republic of Poland and European bodies - especially Venice Commission. On that basis a catalogue of opinions on broadly interpreted certainty of law and its procedures in Poland were created[2]. In parallel, European Commission issued a complaint on *rule of law* in Poland to the European Union Court of Justice (further: ECJ). ECJ adjudicated on that on 24th of June 2019 (C-619/18 - analyzed further).

From the European perspective, the main threats to the *rule of law* in Poland concern the separation of powers. The Executive and legislative powers took advantage of the judiciary, whereas *minimum minimorum* safeguards of the legal and political system were subdued. Initially whole issue focused upon the legality of the judges of the Constitutional Tribunal (further: CT) nominated by the previous government. The biggest controversies related to the fact of nomination, which happened right before the end of tenure of the former Parliament (VII tenure). According to the PiS party, it was an unjustified action. In that opinion, it was supposed to keep the majority of the judges (helpful for opposite political parties) in the content of the Constitutional Tribunal. It was subject of CT considerations in judgments on 3rd and 9th of December 2015[3]. According that, CT ruled that actions taken by the ruling party, threatened the procedure, excluded three correctly appointed judges from the status of a Judge of a Constitutional Tribunal, opening the composition of CT on newly elected (by the new political majority) judges[4]. Analyzed interference led to take over in the Polish Constitutional Tribunal. Further changes concerned the acts on Supreme

[2] See: Venice Commission. *Opinion on amendments to the act on 25th of June 2015 on the Constitutional Tribunal,* CDL-AD(2016)001, *Opinion on the act of 15th January 2016 amending the Police act and certain other acts,* CDL-AD(2016)012, *Opinion on the act on Constitutional Tribunal,* CDL-AD(2016)026, *Opinion on the act on the Public Prosecutor's office as amended*, CDLA-AD(2017)028, *Opinion on the draft acts: amending the act on the National Council of the Judiciary, amending the act on the Supreme Court, on organisation of ordinary courts,* CDL-AD(2017)031,

[3] Judgment of CT of Poland on 3rd of December 2015, *K 34/15*, OTK ZU 2015, nr 11A, pos. 185; Judgment of CT of Poland on 9th of December 2015, *K 35/15*, Dz.U. 2015, pos. 2147. Issuing presented judgments was preceded with controversies as Polish government refused to publish it in official journal.

[4] According to uncertain legal status of mentioned judges, they are sometimes called in Poland "understudy judges"

Court and National Council of Judiciary. Such interference focused upon personal changes in composition of those bodies[5]. On that basis, the European Commission acknowledged a "lack of an independent and legitimate constitutional review in Poland". These changes could be considered as systematic as it referred to: composition of fundamental Constitutional bodies, procedures of passing and exercising law, respect to CT judgments[6]. ECJ maintained such reasoning in judgment C-619/18 stating that "the measure consisting in lowering the retirement age of the judges of the Sąd Najwyższy (Supreme Court, Poland) " and granting the President of the Republic the discretion to extend the period of judicial activity of judges of that court beyond the newly fixed retirement age, the Republic of Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU[7].

Circumstances of changes cannot be omitted neither. A vast catalogue of laws was passed urgently (at night) without proper procedures, civic consultations and especially - *vacatio legis*. Obviously, the Polish government consequently presented opposite standpoint[8]. Thus, it presented itself as the guard of the principle of sovereignty of Nation, assuming to represent the interests of the Sovereign against the corrupted and non-reformed judiciary. The implemented changes were - up to their point of view - leading to a strengthen of the *rule of law* in Poland (i.e. by merging offices of Public Prosecutor General and Minister of Justice - noted even by the Venice Commission in opinion CDL-AD (2017)028).

Referring to the "*Rule of law* checklist" issued by the Venice Commission, we should consider it a basic, universal principle. Hence it includes the following "core" elements: 1. Legality, including a transparent, accountable and democratic process for enacting law; 2. Legal certainty; 3. Prohibition of arbitrariness; 4. Access to justice before independent and impartial courts, including judicial review of administrative acts; 5. Respect for human rights;

[5] Estimated changes in composition of Supreme Court was about 37%. It was connected with shortening retirement age of the Judes of the Supreme Court. Tenure of National Council of Judiciary was also discontinuated beforre its termination.

[6] On how changes influenced Polish judiciary see the report of Helsinki Foundation on the Human Rights (HFHR's): https://www.hfhr.pl/en/hfhrs-report-the-time-of-trial-how-do-changes-in-justice-system-affect-polish-judges/ (access on: 3-12-2019).

[7] Judgment of the Court (Grand Chamber) on 24 June 2019, *European Commission vs. Republic of Poland*, case C-619/18, ECLI:EU:C:2019:531,

[8] White Paper on the Reform of the Polish Judiciary. Available on: https://www.premier.gov.pl/files/files/white_paper_en_full.pdf (access: 25-5-2019). Practically whole paper was a set of fragmentary thesis from recent opinions of Venice Commissions, enriched with subjective standpoint of need of reforms in Polish judiciary system.

6. Non-discrimination and equality before the law[9]. The European Commission itself also stressed out the importance of the respect for fundamental law and equality before the law[10]. In parallel it is assigned to the principle of democracy with its main assumption, which is protection of minorities before the will of political majority. Considering Polish example: changes in composition of constitutional judiciary bodies, breaching procedures of passing and exercising ordinary laws, rejecting candidates on Judges of Polish CT by the President of the Republic of Poland - each contrary to exact provisions of the Constitution - indicated certain threat to the *rule of law* in Poland. On July 2018 Polish society commenced a huge strike against acts (ordinary laws) on Supreme Court, which aimed to break its integrity before executive and legislative powers in Poland. It represented a tremendous attempt to secure the *rule of law* in Poland - resulting with unexpected reaction from the President of the Republic. Acting on the basis of art. 122 p. 5 of the Constitution, he referred the act, with given reasons, to the Sejm (lower chamber of Polish parliament) for its reconsideration (*veto* procedure). Nevertheless, it did not stop unconstitutional changes and the new act on Supreme Court was passed on Autumn 2018, without society's objection, with minor changes. We can assume that since January 2018 there was no progression on securing *rule of law* in Poland coming from internal (Polish) entities[11]. One significant exception was the so-called *Reinstatement Law* on 21st November 2018. On its basis, the judges previously forced (by the ordinary law) to retire, could be moved back to normal services. It was possible only as a result of the efforts made by the EU Commission and following the proceedings initiated before the ECJ (C-619/18 Commission vs. Poland)[12]. In relation to this judgment, the ECJ adjudicated also on 19th of November 2019 (joined cases C-585/18, C-624/18 and C-625/18) where Polish Supreme Court (Sąd Najwyższy) issued a pre-judiciary question. The

[9] *Venice Commission - Rule of law checlist*, CDL-AD (2016)007, 14-18.

[10] European Commission. *A new EU Framework to strenghten the Rule of Law*, COM(2014) 158 final, 4.

[11] GRZELAK, *Odpowiedź Polski na czwarte zalecenie Komisji Europejskiej w sprawie praworządności* [Answer on 4th recommendation of European Commission on the rule of law] in BARCZ - ZAWIDZKA-ŁOJEK (ed.) *Sądowe mechanizmy ochrony praworządności w Polsce w świetle najnowszego orzecznictwa Trybunału Sprawiedliwości*, Warsaw, 2018, 107-136. Whole discussion was maintained with mechanisms of soft law, presenting its drawbacks. More on that: POPŁAWSKI, *Role and fuctions of soft law in public international law. Remarks on the basis of the opinion of the Venice Commission*, *Krytyka Prawa*, n. 3, 2019.

[12] More on whole process: TABOROWSKI-MARCISZ, *The first judgment of the ECJ regarding a breach of the rule of law in Poland?*, https://verfassungsblog.de/the-first-judgment-of-the-ecj-regarding-a-breach-of-the-rule-of-law-in-poland/ (access on: 3-12-2019).

main issue of the judgment was the consideration on the acceptable level of legal guarantees granted to the Member States by the art. 47 of the EU Charter of Fundamental Rights (discretional, internal power of the Member States), when there are justified doubts concerning independence and autonomy of certain judicial bodies[13]. The presented level of interference to the autonomy of judiciary power, could be considered a serious threat not only to the proper separation of powers, but a danger for the whole liberal democracy in Poland and for its citizens. Nevertheless, the civil society is still granting a strong voice of support to the ruling party, by assuring to the PiS the power to govern in IX tenure of the Parliament (in principle: years 2019-2023). We shall then ask: do Poles understand the importance of the *rule of law*? And do they see its breaches?

2. Rule of law in Poland - an issue between theory and practice

When presenting the Polish standpoint, we need to start the analysis from the beginning. Despite the fact that the "Rechtsstat" and the *rule of law* were well developed in Western Europe and in the Countries of *common law,* for Poland it was kind of *terra incognita.* Before 1989 it was an unknown concept in Poland. In the legal discourse it was presented in its basic assumptions - deriving its initial content from the experiences of German constitutionalism[14]. A fundamental moment for the implementation of the *rule of law* in Poland was the amendment of the Constitution (from December 1989), which can be seen as the initial point of the transforming process. By amending the existing communism Constitution, the new art. 1 par. 1 of the Constitution of 22nd July 1952 defines Poland as a "democratic State of law implementing the principles of social justice". The Mentioned democracy meant to be universal, without any adjectives describing it - and in fact limiting it[15]. In early 1990's there was an open question what is behind the

[13] Judgment of the Court (Grand Chamber) on 19 November 2019, *A.K. vs. Krajowej Radzie Sądownictwa (National Coucil of Judiciary) and CP; DO vs. Sąd Najwyzszy (Supreme Court),* joined cases: C-585/18, C- C-624/18 and C-625/18) ECLI:EU:C:2019:982.

[14] TULEJA, *Zastane pojęcia państwa prawnego,* in WRONKOWSKA, *Zasada demokratycznego państwa prawnego*, Warsaw, 2006, 70.

[15] SOKOLEWICZ, *Rzeczpospolita Polska - demokratyczne państwo prawne (uwagi na tle ustawy z dnia 29 XII o zmianie Konstytucji),* in *Państwo i Prawo*, n. 4, 1990, 17-18. It is worth to mention that during the communist period, former Constitution also recognised notion of democracy (art. 7), but as a "social democracy", which was pursuant to the needs of uniformal, totalitarian leadership.

words "democratic State of law", which was considered as combination of "law - abiding" State as well as democratic one. It consisted of two aspects: theoretical and - in some sense - ideological[16]. The Theoretical one was focused on a well know dilemma: the relation of the State and the law (created and exercised). Moreover, the new order had to be based on *rule of law* maintained in a democratic State. Thus, it was about securing democratism on procedural, merits influence of the public opinion on decisions of the Bodies of the State. In this sense countries meant to be "instrumentally" obedient to the society[17]. Ideology results from the need of realizing the principle of social justice. Kind of a split between legality and democratism was obvious and important. However, it was not so obvious if newly established democratic State of law will be basing on tripartition of powers - important for independent judicial power. Early Polish doctrine focusing on the *rule of law*, emphasized it had to be based on limitation of powers of each other, where legislative or executive bodies had to abide - with its own initiative - limits of competences. Polish *rule of law* - in its initial process - wanted to create situation, when State passing and exercising rights is considering and protecting dignity or other fair rights and freedoms of individuals[18]. It was also stated that *rule of law* was about political declaration of creating "legal norms of certain standards" as well as creating situation, where State actions could be "judged from the concept of the rule of law"[19].

As it follows, the whole process was also about a sociological change. Since that moment, whole system of exercising powers or competences, had to be strictly legal. What is more, civil society though needed to be aware of their special position as the Sovereign power and concrete legal tools it was given. The judiciary power played a crucial role in the early process of transition. It is strictly connected with judicial activity in interpretation the clause of the *rule of law* until new Constitution was established. It seemed problematic, when works on the content of the Constitution on 2nd of April 1997 was prolonging. At the same time there was an urgent need of creating a new, modern axiology, able to bring Poland - even if slowly - closer to the legal standards of the Western Democracies. This role started to be fulfilled by the Polish Constitutional

[16] WRÓBLEWSKI, *Z zagadnień pojęcia i ideologii demokratycznego państwa prawnego (analiza teoretyczna)*, in *Państwo i Prawo*, n. 3, 1990, 12.

[17] WRÓBLEWSKI, *supra note 12*, 13.

[18] SOKOLEWICZ, *Rzeczpospolita Polska - demokratyczne państwo prawne…*, p. 25.

[19] JASKIERNIA, *Problem adekwatności konstytucjonalizacji państwa prawnego w kategoriach odzwierciedlenia rzeczywistości ustrojowej*, in SKOTNICKI, *Demokratyczne państwo prawne w teorii i praktyce w państwach Europy Środkowej i Wschodniej*, Łódź 2010, 33.

Tribunal, which then started to base its rulings mainly on the principle of the *rule of law*. The whole process was based on assumption, that *rule of law* is a condensation of other more specific principles. Works of the CT initially focused on: setting constitutional framework for proper law making or developing principles of fair and decent legislation. All under the main goal: protecting proper procedures impinging on citizen's confidence in the State apparatus[20]. However, it did not only refer to the general aspect of constitutional law, because it sometimes had a certain, individual dimension - by being created a source of individual rights and freedoms not explicitly mentioned in the Constitution. As it was presented, it mainly concerned the guarantees of the judicial branch, but also: dignity of man, right to protection of life, right to privacy[21]. Important for early judgments was also the financial situation of the State and the conditions of the economical transitions. In its concept *rule of law* was about to establish minimum of new, modern democracy. It has soon turned out that criteria worked out in described period, became a corner stone of further development. It is also worth stressing out the third dimension of "democratic transition", which focused on the legal changes referring to issues of economy and free market[22].

The complexity of political circumstances (especially pending process of the European *integration through law*) forced Poland to undertake certain actions. The actions needed to be taken urgently. Until 1997, there has been an intense judicial activism. The Years 1989 - 1997 are even called times of "judicial made Constitution", where creative interpretation of the Constitution went rather far[23]. On the other hand, it made foundations for the whole system. It played a crucial role in the creation of the new Constitution. Works were maintained in parallel to the exercising the *rule of law* principle by the CT. Fundamental principles of new Constitution were already interpreted by the CT and only needed to be implemented into legal text. The source of such interpretation was the *rule of law*. Polish constitutionalism was then prepared for further changes, specifically concerning the democratization and the internationalization of the Polish legal system. This mainly occurred through the implementation of the *rule of law* and thanks to the efforts of the Polish Constitutional Tribunal. Later - after the

[20] GARLICKI, *Constitutional Law*, in FRANKOWSKI (ed.), *Introduction to Polish Law*, Cracow 2005, 7-8.

[21] Ibid. Concrete provisions resulting from described principle will be presented further.

[22] WYRZYKOWSKI, *Legislacja - demokratyczne państwo prawa - radykalne reformy polityczne i gospodarcze*, SUCHOCKA (ed.), *Tworzenie prawa w demokratycznym państwie prawnym*, 44.

[23] See: GARLICKI, *Constitutional Court of Poland: 1982-2009*, in PASQUINO - BILLI (ed.), *The political origins of Constitutional Courts*, Roma 2009, 25-26.

enactment of the new Basic Law - the process of European integration on the basis of the new Constitution began. Obviously, the entry into the European Union had an influence on the understanding of the - relatively still new - principle of the *rule of law*. That is why the final remarks on the described aspect shall be found in modern descriptions. Relatively modern analysis is focused on the material and formal aspects of principles of law in the process of exercising the *rule of law*. Presenting it shortly, material aspect focuses on the content of the principle, defines rights or competitions, is concerned about individuals. Formal aspect concerns issues related to the process of creation of the law or other guarantees different from the content of the principle. Is about to limit competences of the State and creates form of correct governing[24]. On that basis it is emphasized that in Polish system, *rule of law* played mainly - but not only - formal aspect. As it will be presented it mainly focuses on methods of right government, passing and exercising law. Material aspect- if occurs - is usually connected with a formal dimension (i.e. principle of certainty of law reflecting on the situation of individuals, but concerning requirements of correct legislation - more presented in below passage). It is sometimes stressed out that Polish *rule of law* is filled with axiology, which in fact make it far from initial (continental) meaning of *rule of law*[25]. Then it shall be admitted that the concrete provision of *rule of law* in Poland is a combination of the above presented *rule of law* (in a "common law" sense) and of the "State governed by law" (similar to German *Rechtsstaat* and its assumptions). In some sense, it presents the objective attitude of the State ruled by certain and predictable provisions, but it still maintains an individual *pedigree* focused on the individuals and on their rights. It even results from the provision of art. 2 of the Constitution, which (since the moment of democratic transition) presents Poland as a democratic State- implementing principles of social justice. In general, *rule of law* can be perceived as a guarantee of the proper evolution of the political regime, being itself "axiomatically tied" with principles of: democracy, freedom, dignity etc. Hence, we can cite *T. Carothers* pointing that "one cannot get through a foreign policy debate these days without someone proposing the rule of law as a solution to the world's troubles"[26]. Thus, a proper understanding of the *rule of law*

[24] KORDELA, *Formalna interpretacja klauzuli demokratycznego państwa prawnego w orzecznictwie Trybunału Konstytucyjnego,* in WRONKOWSKA, *Zasada demokratycznego państwa prawnego*, cit., 142.

[25] KORDELA, *Formalne państwo prawne,* in ALEKSANDROWICZ, A. JAMRÓZ, L. JAMRÓZ (ed.), *Demokratyczne państwo prawa. Zagadnienia wybrane,* Białystok 2014, 92.

[26] Following: JANSE, *A turn to legal pluralism in Rule of Law promotion?,* in *Erasmus Law Review*, n. 3, 2013, 182-183.

(especially during transition period) forces the researchers to consider it as a multi-dimensional phenomenon, which concerns not only legal but also political and economical factors.

Here it is worth to point out the main principles, which was derived from the *rule of law*. It shall be stressed out that primary role, in the proper interpretation of the *rule of* law, was played by the judiciary.[27]. R*ule of law* shall be then considered as combination of values, which are implemented and expressed in the content of the Constitution[28].

As it follows, one of the fundamental is the principle of the citizens' confidence in the State - reduced to the mutual relation between State and citizens. It is based on the assumption that State has to preserve legitimate interests of the citizens' - remembering that they are organizing their "everyday" activities within created norms, which though need to be certain and predictable. Sometimes it is connected with the concept of the Latin maxim *pacta sund servanda* and it corresponds to the idea of the Constitution as social contract. Following that, CT interpreted from the *rule of law* well known concepts of the "principle of non retroactivity of law" (*lex retro non agit).* In general, it forbids to exercise laws to the past situation and protects the "principle of security of vested rights". The "vested rights" shall be then understood as rights, which were correctly acquired and - on that basis - cannot be withdrawn or interfered[29]. It is worth mentioning that the above mentioned principle secures only fairly acquired laws[30]. The Constitutional Tribunal enlarged the above criteria also to a situation in which the State should secure "interests in progress"[31]. It also affirmed the prohibition for the legislator "to create normative constructions, which are unfeasible, constitute the illusion of the law and its security aspect"

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[27] BIERNAT, *Zasada "the rule of law",* in ALEKSANDROWICZ - A. JAMRÓZ - L. JAMRÓZ (ed.), *Demokratyczne państwo prawa. Zagadnienia wybrane*, cit., 27.

[28] Judgment of the Constitutional Tribunal of Poland of 25th of November 1997, *K 26/97,* OTK ZU nr 5 - 6, pos. 64, pp. 22. In presented judgment CT confirmed earlier (pre-Constitutional) judgments on the *rule of law* as still actual

[29] In English, it is precisely presented in: BRZEZIŃSKI, GARLICKI, *Judicial Review in Post Communist Poland: The Emergence of a Rechstaat,* J. Int'l L. no 13, 1995, 36-40.

[30] Judgment of the Constitutional Tribunal of Poland of 24th of February 2010, *K 6/09* (Dz. U. on 10th of March 2010, nr 36, pos. 204), pp. 553. CT emhasized " According to the settled position of the Constitutional Tribunal, the principle the protection of acquired rights does not apply to rights acquired unduly or illegally, as well as rights without support in the assumptions in force on the date of adjudication of the constitutional order ". There is also significant difference in interpretation of this principle in matters on Social Protection System.

[31] Judgment of the Constitutional Tribunal of Poland of 2nd of March 1993, *K 9/92,* OTK ZU 1993, n. 1, pos. 6.

[32]. In other words, it can be called a principle banning creation of illusory entitlements. Crucial for this principle is trust in existing law, which is based on the assumption that the State creates law in a predictable manner and that it is not willing to act surprisingly for the citizens. In some sense, it leads to the principle of certainty of law. The Presented principle does not have absolute character and basically it is analyzed under following conditions: 1) whether the basis for the introduced restrictions are other norms, constitutional principles or values, 2) whether there is a possibility of implementing a given norm, principle or constitutional value without violating already acquired rights, 3) whether constitutional values for which the legislator limits acquired rights,in a given specific situation, can be granted priority among values being fundamental for vested rights, 4) whether the legislator has taken the necessary measures to ensure the individual's conditions to adapt to the new regulation[33]. The principle of sufficient definition of law cannot be omitted neither. It corresponds to the rules of correct creation of legal text. It was explicitly mentioned, that legislator should use clear and precise formulas in the process of "law - making". Despite the fact law should be interpreted in certain circumstances that accompany the regulation being taken […] "it is the legislator's duty to create legal provisions that are as specific as possible in a given case, both in terms of their content and form"[34]. In order to ensure a correct legislative process, it is necessary to guarantee the application of the principle of appropriate *vacatio legis*, that is to say to guarantee a certain period of time between the moment in which the law is passed and when it comes into force[35]. The principle of the *rule of law* also concerns a precise, hierarchical structure of the sources of law. Thus, the next principle resulting from that is the one of banning those normative acts which are in contrast with acts of higher level and order to act within limits of the competences established by law[36]. Moreover, another important one is also the principle of proportionality. In this sense, it cannot be confused with the principle of proportionality from art 31 p. 3 of the Constitution. Principle of

[32] Judgment of the Constitutional Tribunal of Poland of 19th of December 2002, *K 33/02*, OTK ZU 7A/2002, pos. 97, 155.

[33] See: Judgments of the Constitutional Tribunal of Poland of 11th of February 1992, *K 14/91*, OTK 1992, no 1, pos. 7, Judgments of the Constitutional Tribunal of Poland of 14th of July 2003, *SK 42/01*, OTK-A 2003, n. 6, pos. 63).

[34] Judgment of the Constitutional Tribunal of Poland of 28th of October 2009, *Kp 3/09*, OTK ZU 9A/2009, pos. 138), p. 6.2 and next passage.

[35] F.e in judgments of CT on: 15th of December 1997, *K 13/9* (Dz. U. on 23rd of December 1997, n. 157, pos. 1039), 28.

[36] BANASZAK, *Art. 2. Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warsaw, 2012, 17-57.

proportionality, in a way it results from the CT judgments exercising the *rule of law*, shall be interpreted individually. Hence, it is about setting limits and standards of State's actions, which are found- or quite the opposite not found - legitimate and appropriate. The way that Polish CT understood this principle, shows significant similarities with European standards on that issue[37].

In Poland, those principles result directly from the principle of the *rule of law*. However, there are still more examples of its influence on the process of passing and exercising laws in the Country. Firstly, they relate to the certainty of tax law in Poland, which - shortly speaking - bans the possibility of changing tax law during the "tax year". In some sense it is a continuation of the principles mentioned earlier (especially: certainty of law or proper *vacatio legis*). A State governed by the *rule of law* has to be ruled with ordinary laws, which is also connected with other, more general: principle of law - abidingness and principle of procedural justice. First of presented, bases on material and formal aspect of law and refers to the well - known fact law should be realized - not only - by formal interpretation of legal text, but also pursuant to values it emphasize. Second, refers to the right of fair procedure, both judicial as well as administrative. Some authors stresses also the principle banning "excessive" formalism of procedures of law. Basically, each State has the right to organize - even complicated - formal procedures, but they cannot be found more important than "core" of justice or legality.

3. Backsliding, breakdown or unfinished lesson on the *rule of law*?

The above-mentioned fragment emphasize the practical dimension of the *rule of law*, presenting that its foundations were well developed by domestic judiciary. Seeking for the reason of entitled "breakdown or lesson to repeat", we need to point, that it is acceptable to develop different interpretation between domestic and external constructions on the *rule of law*[38]. Having presented the European and Polish perspectives on the *rule of law*, it is noticeable, they refer to the same standards - focusing mainly on the formal aspect. However, issue begin when there is a political will to breach the well-established foundations of the *rule of law*[39]. The EU does not dispose of

[37] BANASZAK, *op. cit.*, 17-57.

[38] COCCHI, S*trenghtening the rule of law: Sketching a comparison between the domestic and external constructions of an EU foundational principles*, in *Ianus*, nn. 15-16, 2017, 215.

[39] See: BONELLI, *Carrots, Sticks, and the rule of law. EU political conditionality before and after accession*, in *Ianus*, nn. 15-16, 2017, 171-200.

effective tools to prevent Member States from such actions. Only one thing certain are the common European values established i.e. in the preamble, art. 2, art. 19 or 21 of TEU. Thus we are witnessing progressing process of exercising and "making more operative" values fundamental for the EU. Example of such attitude is the judgment C-64/16[40]. Polish doctrine of law is also getting more and more concerned on other cases, among which we determine: C-216/18 *(Celmer)*[41] and C-404/15 *(Aranyosi)*[42]. Presenting it shortly, both these judgments focus on the procedural guarantees of fair trial in cases of individual and on the criteria established in order to make a proper evaluation on the independence of the judiciary power. Further considerations were extended in recent judgment C-619/18 *(European Commission vs. Republic of Poland)*[43]. In the presented judgment, the European Court of Justice pointed out the importance of the *rule of law* as a fundamental value of the EU. It also emphasized its influence on the mutual trust between Member States and the way in which "autonomy of the legal order are preserved" by consistency and uniformity in the interpretation of EU law. On that basis, the most important was making a clear reasoning in which circumstances Member States cannot use argument, that organization of justice in the Member States falls within the competence of those Member States[44]. Thus main requirement is providing sufficient remedies ensuring effective legal (judicial) protection. As it was presented, judgment C-619/18 relates to a series of other cases (here: judgment on joined cases C- 624/18 and 625/18). There, the main reasoning of the ECJ was that in several situations -which considered separately would be legal, but interpreted jointly would present serious breach of the principle of independency and autonomy of judiciary branch - EU law shall be granted priority and applied directly, even if it refers to the organization of internal issues. The competence to

[40] Judgment of the EU Court of Justice (Grand Chamber) of 27 February 2018, *Associação Sindical dos Juízes Portugueses v Tribunal de Contas*, case C-64/16, ECLI:EU:C:2018:142, 30-34. In its content ECJ stated that art. 19 TEU is a substantiation of art. 2 TEU in a scope in which it emphasizes *rule of law* as a fundamental principle of the EU.

[41] Judgment of the EU Court of Justice (Grand Chamber) of 25 July 2018, *Execution of European arrest warrants issued against LM*, case C-216/18, ECLI:EU:C:2018:328, 35-36.

[42] Judgment of the Court (Grand Chamber) of 5 April 2016, *arrest warrants issued in respect of Pál Aranyosi (C-404/15), Robert Căldăraru (C-659/15 PPU)*, ECLI:EU:C:2016:211.

[43] Judgment of the Court (Grand Chamber) of 24 June 2019, *European Commission vs. Republic of Poland*, case C-619/18, ECLI:EU:C:2019:531, pp. 42-50. From practical point of view it is worth to mention that in presented judgment ECJ maintained previous interpretation connecting art. 2 and 19 TEU - as in judgment *Associação Sindical dos Juízes Portugueses v Tribunal de Contas.*

[44] *Ibid.*, 52.

decide whether certain judicial bodies are independent or not shall be granted to the Court, which issued a pre-judiciary question (here: Polish Supreme Court)[45].

However, systematic changes concerning the principle of the *rule of law*, which lasts more than 4 years, must be conceived also as a sociological phenomenon. Exercising common values demands at least a similar way of understanding them by the societies of the EU countries - somehow depending on it[46]. At the same time, the scope and range of the issue forces to consider it as a systematic and progressive process rather than an episode. Even if there is at present no formal definitions of this phenomenon, some scholars name it as *rule of law - or even democratic - backsliding.* It is thought to be "the process through which elected public authorities deliberately implement governmental blueprints which aim to systematically weaken, annihilate or capture internal checks on power with the view of dismantling the liberal democratic State and entrenching the long-term rule of the dominant party"[47]. There are also attempts to find another definition. *T.T. Koncewicz,* one of the main researchers on that issue in Poland, used to call it "politics of resentment", which consists in a attack to the *rule of law* and to the separation of powers[48]. Judge *M. Zubik, in* describing constitutional crisis from the insight of CT, formulated the notion of "social sin" against the Basic Law. This concept assumes it as "act of individual violating sphere of duties referring to common good (commonwealth) of the society"[49]. Considering the

[45] See: supra note 14, pp. 131-146. Concrete issue of the case focused upon legal competence of the Extraordinary Chamber of the Polish Supreme Court to decide on retirement of the Supreme Court judges. Court issuing a pre-judiciary question presented doubts concerning legality of the Extraordinary Chamber by presenting faults in the procedure of its appointment. ECJ did not found its competence to decide on that issue directly, however found postponed case justified and relevant. On that basis, ECJ has presented a criteria, which Supreme Court should take into consideration during the process of adjudication of presented case.

[46] Partially on that: VON BOGDANDY, *Common Principles for a plurality of orders. A study on Public Authority in the European Legal Area,* Jean Monet Working Papers, n. 16, 2014, 19-20.

[47] SCHEPPELE, PECH, *What is rule of law backsliding?*, https://verfassungsblog.de/what-is-rule-of-law-backsliding/ (access on: 23-7-2019). According Poland issues: KONCEWICZ, *The Democratic Backsliding and the European constitutional design in error. When will HOW meet WHY?,* https://verfassungsblog.de/the-democratic-backsliding-and-the-european-constitutional-design-in-error-when-how-meets-why/ (access on: 23-7-2019).

[48] KONCEWICZ, *Uncostitutional capture and constitutional recapture. On the rule of law, separation of powers and judicial promises,* Jean Monet Working Papers, 3/2017, p. 4-14. Author interestingly presents the notion rather as a social phenomenon of populist politics encroaching liberal democracy and its foundations.

[49] ZUBIK, *O grzechach społecznych przeciwko ustawie zasadniczej*, in *Państwo i Prawo*, n. 1, 2018, 4-5.

whole thing from another perspective, the polish doctrine sometimes names this process as a special kind of *judicialization of politics*[50].

On that basis, the Polish aspect of the *rule of law* shall be actualized. From the formal point of view, the *rule of law* establishes a catalogue of procedural guarantees, which does not deprive it from a strong, axiological dimension. It concerns a certain vision of the State and Nation - their relation and mutual duties. The exact content of the art. 2 of the Constitution of Poland describes "a democratic State governed by law implementing principles of social justice". Thus, the Polish version of the *rule of law* is both dimensional - formal ("democratic State governed by law) and axiological, but also legally relevant ("implementing principle of social justice"). However, there are also opinions in Poland stating that social aspect of the *rule of law* was underestimated. The procedural aspect of this principle, which was mainly developed during analyzed period, was then found as a kind of "technocratic tool".[51]. Focusing mainly on formal aspect of legality i.e. separation of powers, systematic "check and balances", somehow it lost its social *attitude*. However, when it did consider material aspect of the *rule of law* - like in the case of termination of the pregnancy on social matters - CT was criticized of lack of strictly legal argumentation, basing mainly on the axiological foundations of the ruling[52]. It emphasized well the known assumption of the so-called democratic paradox stating: more rights to be exercised equals less democracy given to the society. As it is sometimes formulated that the *rule of law* and the democracy - unlike European standards - refer to different ways of understanding the political powers[53]. It is the fact that Polish CT was able to find concrete provisions contrary to the Constitution only on the basis of the mentioned "principle of social justice", but only when it is obvious and

[50] BIEŃ-KACAŁA, DRINOCZI, *Illiberal constitutionalism in Hungary and Poland: The case of judicailization of politics*, in BIEŃ-KACAŁA - CSINK - MILEJ - SEROWANIEC (ed.), *Liberal constitutionalism - between individual and collective interests*, 88-108. Authors stated that situation faced in Poland does not fullfill the requirements of the notion of *abusive constitutionalism* as well as pure *political constitutionalism*. *Judicialisation* though is focusing on a preserving political regime by the law, which is positioning judges as a servants of executive bodies.

[51] CZARNOTA, *Populist constitutionalism or new constitutionalism?*, in *Krytyka Prawa*, n. 1, 2019, 3-16.

[52] PIETRZYKOWSKI, *Trybunał Konstytucyjny na straży rządów prawa w systemie trójpodziału władzy*, in SZMYT - PIOTROWSKI (ed.) *Trybunał Konstytucyjny na straży wartości konstytucyjnych 1986-2016*, Warsaw 2016, 109-119.

[53] SAWICKA, *Does a democratic rule of law Create Opportunity for Civic Engagement*, in *Krytyka Prawa*, n. 1, 2019, 4.

only, when it includes other, detailed principles of Polish Constitution[54]. Such assumption was made cautiously as it had to include a significant discretion of the legislator in creating social policies[55].

On the other hand, each law is exercised on certain aim[56]. Ruling party found such aim. It was well known - both internationally and domestically (in Poland) - lack of democratic legitimacy of Constitutional Tribunal and judges representing it[57]. Even *H. Kelsen*, the creator of the concept of the process of constitutional analysis done by the judiciary bodies, have seen the risk of the "political dimension" of such process. That is why CT is sometimes defined as "negative legislator". The main aspect though was about creating the conviction that all the changes issued by "PiS" (Law and Justice) party, are not breaching the *rule of law*, but simply implementing changes in the composition of the Constitutional Tribunal. The whole issue never stemmed beyond certainty of procedures and proper separation between powers. Moreover, the PiS party maintained narrative in which, they found bodies emerging from public elections as the only legitimate. Hence it was difficult to expect that young, post-communism society will possess an appropriate "cognitive apparatus", able to defend liberal democracy and to identify a systematic threat to the principle of legality. Despite the fact that the European bodies mainly consider the *rule of law* principle in its formal aspect, doctrine of law (especially in Poland) shall maintain broadened and extensive interpretations. Already presented, *rule of law* as a pure notion, can be interpreted in its formal and material aspect. Political system transition, which occurred in Poland, also presents that *rule of law* is also built on strictly political, economic and social factors. Having presented legal and political (and partially economical) aspects, we need to emphasize also the social aspect. It is based on a simple assumption: the breaching of the foundations of the *rule of law* in Poland consists in an interference with the autonomy of judiciary power. If we assume, the whole process was ignited by the bodies of legislative and executive powers, which presents itself representant of the will

[54] Judgments of the Constitutional Tribunal of Poland of 25th of February 1997, *K 21/95*, OTK 1997, n. 1, pos. 7.

[55] Compare: Judgments of the Constitutional Tribunal of Poland of 22nd of June 1999, *K 5/99*, OTK 1999, n. 5, pos. 100.

[56] See: VON DER PFORDTEN, *On the foundations on the Rule of Law and the principle of the Legal State*, in SILKENAT – HICKEY - BARENBOIM (ed.), *The legal doctrines of the Rule of Law and the Legal State (Rechtstaat)*, 2014, Switzerland, 15-30.

[57] Interesting on that issue from Italian perspective: FLICK, *50 lat Włoskiego Sądu Konstytycyjnego*, in *Przegląd Sejmowy*, n. 6, 2007, 61-62. In Poland see f.e. MAŁAJNY, *Legitymacja sądownictwa konstytucyjnego*, in *Państwo i Prawo*, n. 10, 2015, 5-22.

of the Nation thus only the Nation (or other words polish society) can modify this process[58].

To remedy to the capture of the Constitutional Tribunal, a possibility could be the direct application of the Constitutional provisions, even by the ordinary Courts. Thus they could have competence to interpret and exercise the Constitution independently from the CT. On the basis of art. 8 of the Constitution "provisions of the Constitution shall apply directly, unless the Constitution provides otherwise". That makes the Constitution a fully enforceable act, which can be limited only by constitutional procedures. Procedurally possible direct application of constitutional norms was considered cautiously by the doctrine[59]. At the same time, Courts sustained a vague discussion, which did not bring to a clear conclusion on that matter. It was even stated that "Constitution is not directly applicable law"[60]. Earlier, the Supreme Court of Poland excluded the possibility of implementing the "interpretative clauses" of the Constitutional Tribunal in Supreme Court's judgments[61]. Hence, it forced to ask justified question whether ordinary Courts ever wanted to use Constitution directly and - as a result - it withdraw some of the unique competences of Constitutional Court. The existing *judicial review (dialogue)* remained insufficient and time given to that - completely lost[62]. The first and foremost factor, which could be exercised during the times of "special necessity", was not effective enough. Polish jurisprudence shall have that issue developed long before the risk of "constitutional crisis". We have seen Polish Constitutional Tribunal as part of the "community of courts" and focused on improving legal standards of jurisdiction - bringing closer

[58] More on the specific of the legitimacy of legal changes and relations between powers: BIEŃ-KACAŁA, DRINOCZI, , *Illiberal constitutionalism in Hungary and Poland: The case of judicailization of politics*, cit., 73-108.

[59] What drives attention is increasing number of recent analysis on that issue f.e. MATCZAK, *Imperium tekstu: prawo jako postulowanie i urzeczywistnianie świata możliwego*, Warsaw, 2019, KORYCKA-ZIRK, *Filozoficznoprawny wymiar kontroli konstytucyjności*, Toruń, 2017.

[60] See: Judgment of Supreme Court of Poland on 13th of April 2015, *SNO 13/15*, Legalis.

[61] Resolution of the 7 judges of Supreme Court of Poland on 17th of December 2009, *III PZP 2/09*, available on: http://www.sn.pl/orzecznictwo/SitePages/Baza_orzeczen.aspx?Sygnatura=III%20PZP%202/09 (access on: 22-7-2019). Presented judgment was granted a role of universal, legal principle. It shall be stated that Supreme Court of Poland emphasized respect for CT judgments, but - in parallel - it refused to implement "interpretative clauses" which were not expressed directly in the sentence of CT judgements. It had certain, negative influence on the possibility of resumption of the proceedings - also in cases of individuals.

[62] On social aspect of legal transformation see: ŁĘTOWSKA, *Prawo i poezja*, in *Monitor Prawniczy*, n. 16, 2017, 878-882.

Western Standards. Partially abandoning the obvious regularity of the more important relation *judges to society*, rather than *judges to judges*[63].

Sociological research on "emotions and political engagement towards the EU" shows that Poles still present a mostly positive attitude towards the EU. Each of the result concerning Poland, were above average EU result - including strong conviction, that "what brings European citizens together is more important than what separates them"[64]. Studies on the common European identity presents other interesting conclusions. Undoubtedly, the main factors creating it were the "values of democracy and freedom"[65]. Obviously, the *rule of law* shall be classified as one of the fundamental among the mentioned values. National and European identity - in the scope of the survey - can exist next to each other. National identity though does not exclude European, common identity. On that basis, it is explicitly paradoxical to present positive attitude towards EU and its institutions, with maintaining consent for breaching values fundamental for the common identity. Hence as long as the multi - dimensional *rule of law* would be considered by the polish society only in its political aspect, despite the fact of its legal relevance - a "lesson" mentioned in the title would be unfinished. Thus it would be justified to state a question on importance of maintaining further analysis on the social aspect of the law - particularly in post-communist countries of Central and Eastern Europe[66].

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[63] Compare with: KONCEWICZ, *The European Comity of Circumspect Constitutional Courts. Searching for Constitutional Reason, Relevance and Voice*, Warsaw, 2015, 56.

[64] *Flash Eurobarometer. Emotions and political engagement towards the EU. Report on 25th of April 2019*, available on: https://www.europarl.europa.eu/at-your-service/en/be-heard/eurobarometer/emotions-and-political-engagement-towards-the-eu (access on 3-12-2019) . Report was made on the basis of the survey made on group of 25 258 EU citizens (in their mother tongues). Poles as their first insight on EU pointed hope (about 30% of examined people). Then Poles mentioned doubts (slightly less than 30%) and hope (29%). Positive insights were above the EU average - by 2-3%, whereas doubts were 3% below the EU average. Answering question on the importance of the unity of the EU, vast majority of Poles gave positive answers (36% totally agreed, whereas 49% tend to agree).

[65] NANCY, *Major Changes in Euroepan public opinion regarding the European Union. Exploratory study*. November 2016, "European Parliament Research Service", European Union, 2016, p. 42. Stated question concerned the most important elements making up European Identity. Precisely 50% of surveyed EU citizens answered, that values of democracy and freedom are the most important to common identy. Further answers were: single currency (33%), culture (32%), history (28%). Access available: https://www.europarl.europa.eu/at-your-service/files/be-heard/eurobarometer/2016/major-changes-in-european-public-opinion-2016/report/en-report-exploratory-study-201611.pdf (access on: 3-12-2019)

[66] Especially, while CT refused to use broad interpretation of the *rule of law* in cases of individuals. Here I refer to "constitutional complaint" from art 79 of the Constitution as

4. Conclusions

Answering to the question stated in the title, there is no point in repeating democratization process, which went well. Obviously, it does not mean accepting changes and breaches to the *rule of law*, Thus, we shall try to find a correct definition for the current situation. All of the theoretical concepts, capturing recent situation and presented above, are correct and somehow connected to each other. The politic of resentments started a process of common doubts in the European principles and values and - as it is correctly pointed - replaced "these founding principles with zero-sum politics a vision of *us vs. them*"[67]. That ignited process of the "*rule of law* backsliding" has been consequently maintained by the ruling party. But it could not have happened, without - even silent - society's consent[68]. Seeking for the purposes of mentioned "breakdown", we shall indicate a kind of *particularity of values* - present in young, post communism societies. Poland still has the will to secure common European values. The way in which they are understood is other relevant aspect. On that basis, there are more and more opinions of creation of non-liberal democracies or even populist oriented democracies. The Polish example shows that the process of breaching the rule of law was

subsequent constitutional control. On its basis "everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a law or another normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations specified in the Constitution". Such formula emphasized "narrow understanding" of *actio popularis*. In parallel CT created rigorous procedural requirements of issuing such complaint. It could not be issued by individual only on the basis of breach of art. 2 of the Constitution - provision on the *rule of law* in Poland. For its procedural correctness, claiming party shall present certain principles presented explicitly in the content of the Constitution (different than art 2) or at least present its connection to the *rule of law*. Constitutional Complaint basing only on the *rule of law* were dismissed. From one perspective, CT was aware of vast catalogue of principles, which were interpreted derivative from the *rule of law*, unlikely other constitutional principles naming them directly. Maintaining such situation was quite dangerous from the scope of correct legislative interpretation, which sometimes could lead to incorrect conclusions. On the other hand during later years there were no proper remarks on that issue - especially considering "relaxed interpretation" in cases of individuals. On that matter see: KUSTRA, *Model skargi konstytucyjnej jako czynnik kształtujący orzecznictwo sądów konstytucyjnych w sprawiach związanyc z członkowstwem w Unii Europejskiej*, in *Państwo i Prawo*, n. 3, 2015, 37-40; BAŁABAN, *Granice interpretacji zasady demokratycznego państwa prawa, Ruch Prawniczy Ekonomiczny i Społeczny*, n. 1, 2018, 56. Author ascertained even, the CT weakened the rule of law in Poland being its main defender.

[67] KONCEWICZ, *supra note 34*, 15-16.

[68] It tis easier to formulate such conclusions after third consecutive elections won by governing party „Prawo i Sprawiedliwość" (Law and Justice).

related with implementation of a big social program resulting with financial transfer to the society (families with children). It cannot be omitted that in 2014 - when whole process began - Poland was considered as a Country providing a "low level on expenses on social security and reduction of inequalities"[69].

On that basis, we can assume that the *rule of law* breakdown was unexpected - especially if we consider the range and the structure of the interference. However, the Polish system was not prepared for its occurrence. The axiological part of the *rule of law* turned out to be insufficiently exercised and in some sense it shall be reconsidered and brought closer to the society. Restoring the formal aspect of the *rule of law* shall be a matter of professional bodies - pursuant to the principles of mutual trust or of loyal cooperation between EU and Member States. On the other hand, it will become effective only if the Polish society will understand the relevance of the *rule of law* and it will finally consider this principle as foundation of the common European heritage.

[69] ZGLICZYŃSKI, *Polityka społeczna w państwach UE - wydatki i rozwiązania modelowe*, Biuro Analiz Sejmowych, n. 10(233), 2017, available on: http://www.sejm.gov.pl/sejm8.nsf/publikacjaBAS.xsp?documentId=1F477741D5BACEFDC12581980041F5DA&lang=PL (access on: 24-7-2019)