



Radboud Universiteit Nijmegen

The influence of domestic constellations

A case study on the Polish shift towards an illiberal judicial system

Master thesis political science 2017/2018

Brigitte Dekker - s4350383

August 13, 2018

Master political science: International Relations, Radboud University Nijmegen

Brigitte.dekker@hotmail.com

Supervisor: Dr. T. Eimer

ABSTRACT

In the last three years, the Polish judiciary has been reformed from a liberal judicial system to an illiberal judicial system, thereby affronting the European Union. The incentives behind this shift cannot be derived from major changes in the international political climate or the economic situation in Poland. From the norm diffusion literature, it becomes evident that exogenous factors, such as transnational actors, can trigger norm change, but ultimately the success of norm diffusion depends on the domestic constellations. This thesis, therefore, aims to understand whether or not an explanation for the shift can be found in the domestic constellations of Poland. In order to do this, the congruence between three domestic constellations, namely cultural match, interest constellations and institutional fit, and illiberal norms has been analyzed using an inductive research design. The results of the analysis indicate the existence of a causal pathway between the domestic constellations which have led to the shift towards an illiberal judiciary. This means that the Polish domestic constellations favor illiberal norms over liberal norms and are the decisive factor in the norm diffusion process.

Key words: Norm change, judicial reforms, Poland, domestic constellations, transnational actors.

ACKNOWLEDGEMENTS

In the last half year, this thesis has been realized under the close supervision of dr. Thomas Eimer. With the help of his constructive comments and the discussions we had during our meetings, this thesis has become a research product to be proud of.

Secondly, I want to thank drs. Monika Sie Dhian Ho. As general director of the Clingendael Institute of International Relations, she offered me an internship and gave me the opportunity to write this thesis at the Clingendael Institute. I especially appreciate the time she reserved to discuss my thesis one-on-one and the assistance she offered me during the process of data gathering.

Table of contents

List of abbreviations and acronyms	6
List of tables and figures	7
Chapter 1: Introduction	8
1.2 Puzzle and research question	9
1.3 Justification	10
1.4 Structure	12
Chapter 2: Theoretical framework	13
2.1 Norms and their introduction in political science literature	13
2.2 Norm change	14
2.3 Norm diffusion	15
2.4 Ideal types of norm diffusion mechanisms	16
2.4.1 Coercion	16
2.4.2 Competition	18
2.4.3 Persuasion	19
2.5 Influence of transnational actors	20
2.6 Domestic constellations	22
2.6.1 Cultural match	24
2.6.2 Interest match	25
2.6.3 Institutional match	27
2.7 Overview of the theoretical framework	28
3. Methodology	29
3.1. Inductive, Y-centered, single case study research approach.	29
3.2. Hypotheses and operationalization	31
3.2.1. Dependent variable: Norm change	31
3.2.2 Cultural match	32
3.2.3 Interest constellations	33
3.2.4 Institutional match	34
3.3 Method of inquiry	35
3.3.1 Document analysis	35
3.3.2 Semi-structured interviews	36
3.4 Research limitations	37
4. Empirical analysis	39

4.1 Overview of the norms	39
4.1.1 Liberal norms	39
4.1.2 Illiberal norms	40
4.2 Description of the case	41
4.2.1 Summary: Poland's shift towards an illiberal judiciary	49
4.3 Analysis of the domestic constellations	49
4.3.1 Cultural Match	50
4.3.2 Interest constellations	53
4.3.3 Institutional fit	56
4.4 Synopsis of the findings	58
5. Conclusion	60
6. References	64
7. Annexes	82
Annex 1: Interview Guide	82
Annex 2: Interview 1, Ambassador A. (András) Kocsis	83
Annex 3: Interview 2, Ambassador R. (Roman) Buzek	86
Annex 4: Interview 3, Ambassador M. (Marcin) Czepelak	89
Annex 5: Interview 4, Piotr Buras	93
Annex 6: Statement 1, Ambassador J. (Jana) Reinišová	97

LIST OF ABBREVIATIONS AND ACRONYMS

CCBE:	Council of Bars and Law Societies of Europe
CBOS:	Centre for Public Opinion Research
CCJE:	Consultative Council of European Judges
CT:	Constitutional Tribunal
EC:	European Commission
ENCJ:	European Network of Councils for the Judiciary
EP:	European Parliament
EU:	European Union
HFHR:	Helsinki Foundation for Human Rights
IGO:	International Governmental Organization
INGO:	International Non-Governmental Organization
IR:	International Relations
KOD:	Committee for the Defence of Democracy
KRS:	The National Council for the Judiciary
MEP:	Member of the European Parliament
MFA:	Ministry of Foreign Affairs
MoJ:	Minister of Justice
NGO:	Non-governmental organizations
OHCHR:	United Nations High Commissioner for Human Rights
PiS:	Prawo I Sprawiedliwość – Law and Justice Party
PO:	Platforma Obywatelska – Civic Platform
PT:	Process-Tracing
SC:	Supreme Court
TEU:	Treaty of the European Union
VC:	Venice Commission

LIST OF TABLES AND FIGURES

Table 1: list of interviewees.

p. 37

CHAPTER 1: INTRODUCTION

At the beginning of July 2018, Małgorzata Gersdorf, former head of the Polish Supreme Court (SC), appeared in the international media as a result of her defiance against the newly introduced Polish retirement law, which forces judges over 65 years to retire immediately (Davies, 2018). Armed with a white rose and protected by anti-government protesters she entered the building of the SC, ready to resume her daily activities after her forced retirement.

The law that created this situation has been one of the eleven new amendments or laws that have been approved to reform the Polish judicial system and forced 40 percent of the judges to retire before the end of their tenure (Davies, 2018). The laws were introduced by the Polish party, Prawo I Sprawiedliwość (PiS), which has been governing Poland as a majority government since 2015 (ibid.). Whereas reform of a judicial system is nothing special per se, the Polish reforms caught the attention of the European Commission (EC) due to their allegedly illiberal nature (EC, 2017). The EU, for example, claims that preliminary breaking the tenure of the judges serves the goal of political appointments within the judicial system, which is contrary to the liberal system. After long consideration and numerous dialogues, the EC deemed the laws a threat to the liberal judicial system propagated by the European Union (EU). This decision resulted in an ongoing dispute between the EC and the Polish government, resulting in the EC triggering Article 7¹.

The difference in interpretation of the rule of law seems at the heart of the discussion between the EC and the Polish government (Hancocks, 2018). Whereas the Western liberal democratic concept is being promoted by the EC, Poland makes endeavors to adopt a system closer to an illiberal concept of the rule of law. As will be discussed more extensively in chapter four, the two judicial systems differ primarily in the way the system assigns power to the democratically elected government. In a Western liberal democracy, an independent judiciary is put on a pedestal as the most important feature of the judicial system. The protection has even been officially described in Article 2 of the Treaty of the European Union (TEU) (ibid.; Fukuyama, 2011). It primarily underwrites two elements, namely protecting citizens from possible misbehavior or arbitrary behavior of the ruling legislature and providing the opportunity to citizens to sue the state when being a victim of these crimes. To reach those goals, judges involved in this process should be completely independent of the ruling legislature to assess situations as objectively as possible (Fukuyama, 2011). The illiberal judicial system counters

¹ Article 7 has been adopted as protection for Article 2, which entails the outline of the EU norms. Article 7, often referred to as ‘the nuclear clause’, can be used to correct member-states who violate the shared norms by suspending certain rights, such as the voting rights of the representative of the government of that Member State in the European Council (Treaty of Lisbon, 2007).

this by stressing that the independent judicial system is in itself undemocratic, as it grants unelected judges the power to block government decisions even though these governments are democratically elected and represent the majority of the population (Hancocks, 2018). Hence, the illiberal system assigns more power to the will of the people.

Even though complete independence of the judiciary is virtually impossible in practice, liberal states try to approximate this ideal. Therefore, it is useful to examine the variations between judicial systems on a continuous scale ranging from the ideal type of a liberal judicial system to an ideal type of an illiberal judicial system, because every judicial system will have features of both systems.

1.2 PUZZLE AND RESEARCH QUESTION

The change to an illiberal, judicial model is rather puzzling at first sight as Poland has favored liberal norms since the fall of the Berlin wall in 1990. Even in 2016, PEW Research Centre (2016) marked Poland as EU-member state with the highest approval rate for the EU and a ‘Polexit’ was deemed almost impossible (Clingendael, 2016). More than 75% of the Poles between 18 and 34 had a positive view regarding the values of the EU and even the Poles over 50 years, often considered the most skeptical group towards the EU, had an approval rate of 65% (PEW Research Centre, 2016). These numbers are exceptionally high, since, in comparison, the approval rate of French citizens older than 50 years is only 31% (ibid.). In the field of economics, Poland also seems the EU’s integration role model and it even managed to maintain an economic growth of 3% in the storm of the financial crisis of 2008 (The World Bank, 2018). This constant growth is noteworthy since Poland only started to implement a free market economy 28 years ago. In September 2017, Poland has even been reclassified as a Developed market rather than an Advanced Emerging market (FTSE Russell, 2017). Moreover, the economically growing Poland can be considered a valuable asset to the EU, initially established to increase convergence between member states (European Union, n.d.). With Donald Tusk, former prime minister of Poland, as President of the European Council since 2014, the success story of Poland appeared to be finished and future proof.

However, a new tendency can be observed since the elections of 2015. The ruling majority government started to implement judicial reforms which could hamper the strict separation of powers. Those reforms have been strongly condemned and portrayed as populism by the EC, but with anti-EU and populist segments blowing through the EU, the Prime Minister of Poland stated: *“You can call it populism, but, sooner or later, the following question must be asked: is meeting the expectations of our citizens truly populist or maybe – it is the essence of democracy.”*(Davies, 2018).

The sudden change towards an illiberal system appears to be unexpected. Poland has been a respected, promising member state since its accession to the EU and no sudden negative changes in economics or their perception vis-à-vis the EU as a political institution have occurred (Bershidsky, 2018).

Subsequently, this puzzling situation results in the following research question:

'How can the Polish shift towards an illiberal judicial system be explained?'

In order to answer this research question, norm diffusion theory will be used. This theory is normally applied to cases whereby the adherence to and spread of (new) liberal norms are being analyzed, such as human rights. For this thesis, norm diffusion theory could provide a heuristic answer to the research question regarding the norm change from liberal towards illiberal norms in Poland.

Norm diffusion theory entails three prominent mechanisms of diffusion, namely coercion, competition, and persuasion. The diffusion of the norm can be supported by transnational norm entrepreneurs who influence both the government and society to legitimize a norm. Even though those actors can have a significant impact on the norm diffusion process, various norm diffusion scholars argue that the success of the diffusion depends on the receptiveness of the domestic actors (Checkel, 1999; Acharya, 2004). Therefore, the pre-existing domestic context should be taken into account in the process of norm diffusion. The strength of the match between the pre-existing contextual domestic factors and the imposed norm will determine whether a state is receptive towards a norm, whether the norm will be promoted by transnational norm entrepreneurs, and the likeliness that the norm will be adopted. Those domestic factors can be divided into three domestic constellations: cultural match, interest constellations, and an institutional fit. In short, these concepts entail the condition that there has to be a match between either the domestic political culture or the interest constellations of the dominant political actor and the proposed norm or a congruence between the institutional configurations of a state and the proposed norm. This thesis will focus on those domestic constellations as those can be the key to successful norm diffusion. This will be researched by opening up the 'black box' of the state and investigating the match between illiberal norms and the domestic constellations of Poland.

1.3 JUSTIFICATION

The scientific relevance of this thesis has two dimensions. Firstly, this thesis makes an endeavor to close a gap in the existing literature on norm diffusion. The vast majority of norm diffusion literature is focused on changes towards a liberal norm, often empirically supported by successful cases of norm diffusion (Checkel, 1999: p. 86; Acharya, 2013: p. 468; Hofmann, 2010). This limited focus excludes

cases wherein international norm diffusion failed or movements towards illiberal norms can be observed. As this field is relatively unknown, this thesis could be a starting point to explore the attractiveness of illiberal norms, especially when these norms are preferred over liberal norms which have been internalized for decades.

Secondly, this thesis can contribute to the norm diffusion literature by examining whether or not the domestic constellations have an influence on the norm change towards illiberal norms. The influence of domestic factors has not been researched extensively with regards to norm diffusion, especially not in comparison with exogenous factors. This research could contribute scientifically to the norm diffusion literature by investigating whether or not the three domestic constellations, cultural match, interest constellations and institutional fit, yield explanatory power and could expose a possible mutually constitutive relationship between the constellations. This way, the thesis contributes to a scientific debate on the strength of internal pressures as the decisive factor in the norm diffusion processes and could expose a causal pathway between the three domestic constellations.

In terms of social relevance, this thesis contributes to two discussions. Firstly, this thesis investigates whether or not the rise of illiberal democracies within the EU can be foreseen, to some extent, based on the domestic constellations of a country. If it turns out that specific domestic constellations influence the norm change towards an illiberal system, the EU could take this into account and analyze member states that could become a threat to liberal norms promoted by the EU. If the cause of the norm change towards illiberal judicial systems and illiberal democracies can be found in the domestic constellations, the EU can act upon this by influencing the domestic constellations through institutional means. Moreover, it could enable the EU to analyze whether or not a state could fall prone to illiberal norm change.

Secondly, this thesis can contribute by exposing the influence of domestic constellations and their relation to the attractiveness of illiberal norms. Even though the EU has documented the protection of the liberal norms and condemns illiberal norms strongly, some member states are attracted to the illiberal norms.

If the domestic constellations yield explanatory power in this respect, endeavors can be made to counter illiberal norms by influencing the constellations. Without knowing the cause of the attractiveness, however, liberal norms will always draw the short straw as the attractiveness of these norms is unknown. The cause of the illiberal norm's attractiveness could also shine a light on the likeliness that not only Central European member states will shift and adopt illiberal norms, but also older democracies as the Netherlands or South European member states. While their domestic contexts

do vary, this thesis could expose whether or not those states could also be prone to the change towards illiberal norms.

1.4 STRUCTURE

This thesis will be structured as follows. Firstly, the theoretical section will provide an outline on norm diffusion theory, thereby focusing on the influence of transnational actors and discussing the domestic constellations. Subsequently, the methodology will be presented and the data inquiry methods, semi-structured interviews and document analysis, will be discussed. Thereafter, the influence of domestic constellations will be analyzed in the empirical analysis to find a heuristic explanation for the norm change in Poland. Lastly, in the conclusion the research question will be answered, the used theories will be reflected upon and possible avenues for further research will be suggested.

CHAPTER 2: THEORETICAL FRAMEWORK

This theoretical framework will provide a foundation to explain the empirical case. Norms, norm change, and norm diffusion will be discussed and the influence of transnational actors will be linked to the norm diffusion strategies. Thereafter, the importance of domestic constellations will be explicated and a short overview of the most important elements of the theory will be presented.

2.1 NORMS AND THEIR INTRODUCTION IN POLITICAL SCIENCE LITERATURE

In political science literature, norms are defined as ‘*a standard of appropriate behavior for actors with a given identity*’ (Finnemore and Sikkink, 1998: p. 891). This definition has been derived from the various attempts to define norms as social expectation prior to the acceptance of unobservable variables in the field of political science.² The definition of Finnemore and Sikkink (1998) is widely used as it emphasizes single standard behavior and social expectation, also referred to as logic-of-appropriateness, thereby excluding the concept of institution which is frequently used interchangeably with norms (Hoffmann, 2010). Institutions and norms are, however, different concepts, since institutions are ‘*relatively stable collections of practices and rules defining appropriate behavior for specific groups of actors in specific situations*’ (March and Olsen 2006: p. 3). Hence, institutions emphasize structure and interrelatedness of norms in plural while norms focus on single standard behavior. In general, political scientists agree that a norm arises when a specific concept enjoys the broad consensus of a specific group (Finnemore and Sikkink, 1998). Norms can be divided into three categories: regulatory norms, constitutive norms and prescriptive norms (ibid.). Regulatory norms define the appropriate behavior of a state, hence what states are preferred to do and what not. Constitutive norms relate to new actors, behaviors or interests which are established by these norms, and prescriptive norms prescribe the desirable action a specific actor should undertake in certain situations. In order to analyze norm change within a state, regulatory norms are most useful as these identify the internalized domestic norms and the deviation of these norms. Therefore, only regulatory norms will be discussed in this thesis.

The acknowledgement of the influence of norms has been present for thousands of years. The ancient Greek already documented debates on the philosophical interpretation of appropriate behavior (Finnemore and Sikkink, 1998). Norms also played a major role in other fields of science, such as anthropology and human geography, stressing the importance of cultural symbols and tradition, and the variation of norms across time and space (Geertz, 1973; Lowenthal, 1961: p. 251). In the field of

² For example, Bierstedt (1963, p. 222) defines norms broadly as a social expectation. Homans (1961, p. 46) describes norms as ‘*a statement made by a number of members of a group, not necessarily by all of them, that the members ought to behave in a certain way in certain circumstances*’.

political science, however, the focus on domestic norms is a relatively new concept. For decades, political science literature followed the dominant course of structural realism (Finnemore and Sikkink, 1998). Structural realists primarily emphasized unitary state actors who used norms to provide structural, international solutions to coordination problems in order to survive in an anarchic international system (Stein, 1983). Norms were also used to justify the content of language used in negotiations to increase absolute gains (Cortell and Davis, 2000). After the fall of the Berlin wall, however, the systemic use of norms failed to explain the sudden collapse of the Soviet Union and a need for reflectivist and constructivist theories to explain the situation arose (Behravesch, 2011). The Third Great Debate in International Relations (IR) followed and the positivist research methods adopted by social scientists in the Second Great Debate in IR became receptive for middle-range, agency-focused approaches allowing scholars to apply norm theory to domestic contexts (Guzzini, 1998; Finnemore and Sikkink, 1998; Moravcsik, 1997; Cortel and Davis, 2000). This new application of norms, also referred to as the second wave of norm theory³, has been embraced to show the influence of domestic processes on state behavior (Cortel and Davis, 2000: p. 66). Especially the domestic salience of the norm and the structural context of the domestic policy debate showed new insights in the cross-national variation of interpretation of promoted international norms (ibid.).

2.2 NORM CHANGE

Norm change can either refer to a norm being adopted for the first time in a specific field or a change in the ontological meaning of pre-existing, internalized norms (Krook and True, 2010). Internalized norms have a major impact on the decision-making process of a state, as norms will determine how policy-makers interpret problems and deal with them accordingly. Therefore, a change in the ontological meaning of a norm or adopting a new norm can result in a different translation of those norms into practices, thereby altering the course of a state radically (Finnemore and Sikkink, 1998; Nadelmann, 1990).

The underlying incentives to change norms can be either ideationally based or materially based (Finnemore and Sikkink, 1988). Materially, an incentive for norm change can arise as an outcome of a rational cost-benefit analysis. The material gains of a new norm can outweigh the benefits of the pre-existing norm. Hence, the incentive is the international distribution of material capabilities between unitary state actors. The ideational incentive can be analyzed when the international system is perceived as a sphere of social interaction and a platform for the exchange of knowledge (ibid.). By interacting on the international level, states are exposed to various norms and introduced to new norms which can align with domestic ideas or states can be persuaded to adopt different norms (Risse-

³ In the last years, a third wave of norm diffusion theory has emerged, whereby the static character of norms is being challenged (Krook & True, 2012). This is, however, not relevant for this thesis as this thesis does not focus upon the meaning of the liberal and illiberal norms with regards to the judicial system.

Kappen, 1994). The inclusion of material incentives is noteworthy, as literature on norm change frequently excludes rational choice as a possible incentive for norm change. Norm change could, however, also be caused by actors who strategize rationally to reconfigure preferences, identities or social context in order to increase their material gains (Kahler, 1993). Hence, as an ontological change of internalized norms does not have to rely on ideational persuasion per se, norm change can better be conceptualized as a synthesis between constructivist and rational choice approaches.

As described above, norm change can be triggered by exogenous factors operating in the international system. The strategies used can be categorized in three, not mutually exclusive, ideal categories: coercion, competition, and persuasion⁴. In practice, however, it has become apparent that the external norm diffusion strategies do not completely account for the success of the norm diffusion (Acharya, 2004). Even when norm diffusion mechanisms are carried out flawlessly, the diffusion process can still fail. In order to explain the varied success of norm diffusion, one should turn to the domestic constellations of a state. As proposed by second wave norm diffusion theorists, the domestic constellations of a state will determine the likeliness of adoption (Checkel, 1999). Acharya (2004) was one of the first scholars to acknowledge the influence of the domestic context in the success of norm diffusion, by stating that norms should match with pre-existing norms as norms are not diffused to a 'clean slate' but interfere in an already existing domestic context. If a newly diffused norm can be linked to a pre-existing norm to a certain degree, the likeliness the norm will successfully be adopted increases. In other words, norm change can be triggered by exogenous factors, namely norm diffusion, but ultimately the success of norm change depends on the domestic constellations.

2.3 NORM DIFFUSION

Trying to change the ontological meaning of norms to alter states' behavior is nothing new per se (Simmons, Garret and Dobbin, 2007: p. 450). Norms underlying models of participatory democracy, mercantilism, and Keynesianism, have all spread around the world and influenced a great amount of political and economic policies in the last decades (Wampler and Avritzer, 2005; Cortell, and Davis JR, 2000: p. 75). Alongside these comprehensive economic models, often based on rational-choice, ideational norms have also spread in the last decades. For example, human rights, women's rights, and environmental norms have been diffused with varied results in a state's behavioral changes (Joachim, 2003; Cass, 2016).

Underlying the endeavors to alter states' behavior is the process of norm diffusion, a concept explaining the spread of policies and norms across and within political systems (Rogers, 1995: p. 13; Hugill and Dickson, 1998: p. 263-264). Dolowitz and Marsh (2000, p. 5) have defined norm diffusion

⁴ These strategies will be described more extensively in the next paragraph.

as ‘a process by which knowledge about how policies, administrative arrangements, institutions and ideas in one political setting (past or present) is used in the development of policies, administrative arrangements, institutions and ideas in another political setting’. Hence, the diffusion of norms can take place both within and across political systems, influencing the state both internally and externally. This implies that norm diffusion focuses upon the process and pre-conditions necessary to successfully adopt promoted norms rather than the effects and consequences of the norms diffused (Elkins and Simmons, 2005: p. 36). As norms are present in every policy decision, norm diffusion emerges at the edge of sub-disciplines of political science, thereby not limiting itself to the literature on IR. The mechanisms of norm diffusion are relatively broad and the relation between states can be perceived as uncoordinated interdependence. This implies that states are capable of making their own independent choices, however, the choices of other states have to be taken into consideration as this could influence outcomes of decisions (Simmons and Elkins, 2004). Learning, imitating of other states, bandwagoning, emulation, and economic competition are all examples of diffusion mechanisms (Elkins, Guzman, and Simmons 2006; Simmons and Elkins, 2004). In general, these are divided into three ideal categories, which will be described in the next paragraph.

2.4 IDEAL TYPES OF NORM DIFFUSION MECHANISMS

Norm diffusion can be expressed and practiced through three (ideal) mechanisms, all stressing different incentives for the diffusion of norms: (1) coercion theories, (2) competition theories, (3) constructivism / persuasiveness theories. The types are perceived as ideal types as they are not mutually exclusive,. Thus they can influence each other and can have a certain overlap.

2.4.1 COERCION

Central to coercion theories is the power of states and IOs. By using their power to either sanction or support norm changes, these actors can execute their power on third parties (Simmons, Garret and Dobbin, 2007: p. 455). Critics of this theory argue that this form of norm diffusion is not entirely fair, as third parties do not have but to implement the imposed norms (ibid.). Supporters counter this by stating that imposing norms can also work beneficially as a government can counter domestic opposition by referring to the internationally imposed norms, thereby remaining blameless (Nelson et al. 1996; Vreeland, 2003). Coercion strategies can be divided into three categories, namely: conditionality, policy leadership and hegemonic ideas. Conditionality is the most prominent and well-known form of coercion. Policy leadership and hegemonic ideas are often perceived as soft forms of coercion (Simmons, Garret and Dobbin, 2007: p. 455). Strange (1988) described the last two in her related concept, structural power: *Structural power confers the power to decide how things shall be done, the power to shape frameworks within which states relate to each other, relate to people, or*

relate to corporate enterprises (Strange 1988, 24–25; quoted in Helleiner 2005: p.2). Hence, it is the power to let other states follow you, thereby changing the international structure to one's favor without using direct coercion. It, however, constrains states as they have no other choice than to follow the coercive power as the consequences of non-compliance will most likely be worse than following.

Conditionality can be used by both international institutions, such as the World Bank or International Monetary Fund (IMF), and IOs. Especially research on international (financial) institutions in relation to coercion and norm diffusion show friction in the literature (Biersteker, 1990; Grigorescu, 2010; Park, 2005). The influence of coercion mechanisms is contested because, on the one hand, scholars argue that even the weakest countries have deviated from World Bank obligations and resisted the pressure and sanctions of international financial institutions, the IMF among them (Brooks, 2005; Weyland, 2007). On the other hand, Vreeland (2003) argues that developing countries succumb under the pressure of international institutions as these countries cannot risk losing the financial aid provided by these institutions. With regards to IOs, the most-known example of the coercion mechanism in practice are the accession conditions of the European Union. Extensive domestic reforms, such as implementation of EU institutional structure and practices are forced upon countries and include a basic set of norms which is implemented simultaneously (Schimmelfennig and Sedelmeier, 2004). The diffusion of norms through EU conditions can most prominently be observed when analyzing the EU accession of Eastern European countries, as they had to adapt their post-communist norms to the EU preferred norms with regards to the rule of law, human rights and political structure before gaining access to EU membership and benefits (Moravcsik and Vachudova, 2003).

A softer form of coercion is policy leadership, as this can force states to adopt a specific set of norms without actually being threatened with negative (material) consequences. Policy leadership emerges when a state has obtained a hegemonic position in a specific area and deliberately alters the status quo of this domain by its position as structural power. Other states will feel the need to follow the course of the hegemonic state, even if it is not the most favorable course for them (Simmons, Garret and Dobbin, 2007: p. 456). Policy leadership is most noticeable when a new problem enters the international domain, such as climate change. The problem needs to be addressed and one or more countries take the lead on the problem, in this case the EU. By framing climate change as extremely important and a common goal to prevent, the EU gained the hegemonic status to shame non-compliers in order to influence their policies. The alternative for the state would be to maintain its own course, but this could lead to serious implications such as reputational losses resulting from non-compliance (Oberthür and Roche Kelly, 2008). In other words, policy leadership can be perceived as coercion as it entails negative consequences, such as reputational losses, for non-compliers.

Thirdly, hegemonic ideas can serve as a basis for coercion. This form is closest to the constructivist view as it presumes that ideas spread through epistemic communities and policy entrepreneurs (Simmons, Garret and Dobbin, 2007: p. 456). It is, however, a form of coercion because states do not have a voluntary choice and noncompliance can result in reputational losses. If states do not adopt the hegemonic ideas, certain concepts can cause friction between states as they operate in different policy paradigms with different ontological meanings to the same concepts. When the system of hegemonic ideas has become widely adopted, the adherence to the previous ideas can be hard as it results in reputational losses due to the miscommunications around the ontological meaning of the concepts used. Hence, states do not have a choice but to adopt the hegemonic ideas in advance. An example of a hegemonic idea is the Washington consensus, a set of policy prescriptions that flow from the neoliberal economic model. If states did not comply with those new prescriptions negative trade consequences occurred due to reputational losses related to non-compliance.

2.4.2 COMPETITION

Competition theorists primarily focus on changing economic incentives of a country. Policy-makers are trying to create beneficial economic conditions to attract or retain investors and companies. States compete with others by altering and optimizing domestic economic conditions (Gilardi, 2012). According to competition theorists, the incentives of states to change their policies are caused by directly competing states rather than the most powerful actors in the international sphere, as coercion theorists emphasize. The government can perceive competitive pressure via choices made by other states (i.e. other governments) and/or via domestic business actors, as both actors may anticipate that a norm change is needed to remain or become attractive for foreign investors. Business actors, which will be described in more detail in the next chapter, will try to influence policy-makers to adopt more beneficial measures in order to maintain or retain foreign investors. By trying to gain access to high-level conferences, using media outlets, building coalitions and using the legal system, business actors will try to persuade politicians with rational arguments about the cost-benefit analysis of certain measures (Accenture Foundation, 2009). Choices of other governments can pressure the government to compete economically with the other states. The interdependence between states can cause a race to the bottom when optimizing the domestic conditions, but a ‘filter function’ of national governments, which constrains competitiveness among states, has avoided this scenario (Basinger and Hallerberg, 2004; Ring, 2014). The most common form of competition is jurisdictional competition and the results of this competition differ between developing and developed countries (Brueckner, 2000). Developed countries will more likely compete by adopting policies that facilitate market harmonization and market-conforming policies. Developing countries will oftentimes engage in a jurisdictional race to the bottom, by increasingly adopting favorable policies for companies, with no national government that can function as a filter to prevent this from happening (ibid.; Simmons, Garret and Dobbin, 2007: p. 458).

As the primary focus of this theory is the attractiveness for foreign investors, this theory leans more towards rational choice theory as considerations and changes will primarily be based upon costs and benefits calculations. In general, competition theorists focus on juridical policy changes that have a direct, short-term impact on the economic situation in a country as these will attract the attention of investors and traders. This is preferred over long-term changes, as these changes are implemented at a slower pace and the direct effect is not that high on investors and traders who want to relocate for short-term benefits.

2.4.3 PERSUASION

Scholars emphasizing the power of persuasiveness argue that norm diffusion is restricted to diffusion processes of voluntary norm transfer (Busch and Jörgens, 2005). Norm diffusion is narrowed down to 'national policy-makers voluntarily adopting norms that are communicated internationally' (Busch and Jörgens, 2005: Knill, 2005: p. 766). Constructivists, the firmest supporters of norm diffusion through persuasion tactics, acknowledge that coercion can be a powerful mechanism to transfer norms. The norm will, however, lack legitimacy on the domestic level in their view, which makes actual internalization more difficult (Crawford, 1998: p. 52). Instead, constructivists consider that bounded rationality, the lack of information on the success of policies and the lack of cognitive capacity to assess all possible alternative norms - including their costs and benefits - influence governments' decisions (March and Simon, 1993). Therefore, their main focus surrounds the convincingness of communicatively transmitted ideas which can cause norms to diffuse. (Payne, 2001: p. 42). Governments have to be convinced of the norm on an ideational level and need to adopt it because it feels like the appropriate course of action. Hence, persuasion almost exclusively relies on the ideational incentive of norm change rather than the material incentives. As the domestic constellations will partly determine whether or not a government supports a new norm, as the norm has to gain domestic salience, the influence of domestic actors is of paramount importance in this mechanism. This is in contrast with the other two mechanisms as those two mechanisms only influence the government top-down and exclude the domestic constellations in their diffusion process as it is not necessary to persuade them.

The inclusion of domestic actors and the voluntary basis of implementation also creates a space for transnational actors to operate in, in contrast to the other two mechanisms where transnational actors have a limited role. Transnational actors, which will be discussed more extensively in the next paragraph, often try influencing government officials and domestic actors simultaneously in order to gain salience for their promoted norm. This way, transnational actors make, an exogenous factor, endeavors to persuade the government bottom-up and top-down. In their persuasion tactic, the interplay with domestic actors is important as social actors can either feel empowered by a

transnational actor when a transnational actor starts to support their norm or society can start advocating for a new norm introduced by a transnational actor. In order to influence government officials, transnational actors try to gain access to high-level conferences to convince and announce their ideas. The technological advancements, such as social media, and a higher degree of globalization have also made it easier to gain access to society in the last decades.

Hence, the degree to which actors are able to convince governments of their ideas is central to the persuasion mechanism as non-compliance does not result in negative consequences. The diffusion of norms is strictly based upon the conviction of the government vis-à-vis a specific norm. Governments can be influenced by domestic actors promoting a different norm. These domestic actors can be influenced and empowered by transnational actors, which will be described below.

2.5 INFLUENCE OF TRANSNATIONAL ACTORS

As described above, in the process of norm diffusion via persuasion, the interplay between transnational and domestic actors is of paramount importance, because the adoption of a norm is voluntary. In this thesis, transnational actors cover all actors operating across national borders or having regular interactions across national borders (Keohane and Nye, 1971: p. 332). By operating transnationally, actors try to penetrate a state apparatus by promoting their interpretation of a norm on both state and society level. By participating simultaneously on international and domestic level, transnational actors draw upon a variety of resources to affect a world of states and IOs constructed by those states (Keck and Sikkink, 1999). Despite their influence in national and international politics, the legitimate means of transnational actors to actually change domestic legislature are lacking as only national governments possess executive rights (Antoniadas, 2003). Therefore, transnational actors are defined solely as norm proposers, while governments are perceived as veto-players since they have the actual authority to change policies (ibid.). By influencing domestic discourse, providing and framing information and (financially) supporting domestic initiatives, transnational actors make endeavors to not only influence governments directly but also indirectly via domestic actors. Domestic actors and transnational non-state actors can also amplify their influence on the government via the boomerang effect: oppressed domestic actors seek out state non-state allies to influence the government from above (Keck and Sikkink, 1998).

The influence of states and transnational actors on domestic actors should not be perceived as a zero-sum game (Risse, 2007). When an increasing number of transnational actors enters the international stage, a discussion emerges on the replacement of a state-centric view with a society dominated perspective (ibid: p. 258). This is, however, not (yet) possible as transnational actors and states do not exist without each other, as transnational implies that the system exists of states (ibid.). Therefore, the

interplay between those actors should be analyzed more thoroughly rather than choosing between them.

As mentioned before, every actor operating across national borders can be perceived as a 'transnational actor'. Transnational actors all make, to a greater or lesser extent, use of the different mechanisms of norm diffusion to influence society and government. Depending on the incentives for norm change and the possibility to impose negative sanctions or positive support, the dominant mechanism used will differ between the various transnational actors. This does, however, not mean that they cannot use the other mechanisms as the categorization described in the previous paragraph has been based upon the ideal types of the mechanisms.

The competition mechanism will mainly be used by transnational business actors. Reasoning from a rational choice perspective, business actors want to create a feeling of competition with other states in order to alter the decisions of policy-makers. Globalization has increased this process as the production of goods and services is exceeding national boundaries more often. By highlighting material gains, the lobby activities are not aimed at persuading policy-makers to believe in their promoted norms but to emphasize the necessity to change legislature to maintain or enhance the economic position of the lobbyist (Grossman and Helpmann, 1995).

Coercion strategies are, on the other hand, predominantly used by IOs. Divided into international non-governmental organizations (INGOs) and international governmental organizations (IGOs), these actors use coercion to alter states' policies (Steffek, 2003). By using coercion strategies, IOs acknowledge that norm change does not have to be voluntary per se and states do not have to be convinced intrinsically of the norm change. Moreover, IOs have obtained the power to act as independent actors by enforcing their policies and norms onto its founding members and threaten them with negative consequences, such as fines, when policies or norms are not respected. Commonly used coercion strategies are shaming, blackmailing and stressing potential reputational losses. The norms introduced and coerced by the IOs are, however, only exist because (influential) states and non-governmental organizations (NGOs) have introduced and internalized these norms within the IOs, therefore the emergence of the norm within the IO is primarily ideationally based. The compliance of states with the norm can be both rational-choice or ideationally based, as they can be convinced of the content of the norm or can adopt it just to avoid negative consequences.

The majority of transnational actors use persuasion as their main mechanism. Epistemic communities, think tanks, advocacy networks, and individual norm entrepreneurs are the most prominent transnational actors making use of this mechanism and emphasize the importance of convincing state and society to change their convictions concerning a specific norm. While all transnational actors are

slightly different, they all stress the importance of convincingness of communicatively transmitted ideas. With this focus, it excludes rational choice and primarily focuses on constructivist approaches. Epistemic communities, also referred to as thought communities, are groups of experts in a specific domain with an authoritative claim on knowledge in their specific field (Antoniadas, 2003). Epistemic communities share normative principles and causal beliefs in combination with a shared notion of validity in one specific subfield (Haas, 1989). Fairly similar to epistemic communities are think tanks, as they also have a claim on knowledge in a specific subfield. Think tanks can be defined as *'independent (and usually private) policy research institutes containing researches involved in studying a particular policy area or a broad range of policy issues, actively seeking to educate or advice policy making and the public through a number of channels'* (Stone, 2000: p. 154). The knowledge-power balance of think tanks is, however, frequently higher as they can theorize the effects of a new policy, thereby giving policy-makers rationales for adopting a certain policy (ibid.). In addition to this, the scope of the research subjects of think tanks is broader than that of epistemic communities. The third kind of transnational actors using persuasion as main mechanism are advocacy networks. Keck and Sikkink (1998: p. 9) define advocacy networks as organized individual actors promoting the same causes, principled ideas, and norms that do not directly, rationally, align with their interests. The actors within a transnational advocacy network can be located in various states and are bound together by shared values, common discourse and dense exchanges of information and services (Mitchell, 1973, p. 23). By influencing and empowering civil society actors, advocacy networks are trying to create a boomerang pattern of influence and influence the government both bottom-up and top-down (Keck and Sikkink, 1999). Lastly, individual policy entrepreneurs can persuade a state to adopt a new or divergent norm relative to the internalized norms. Kingdon (2003) defines policy entrepreneurs as individuals who create opportunities to define problems and influence the appropriate behavior to solve these newly defined problems. By defining problems, policy entrepreneurs make endeavors to influence the agenda-setting process and by recommending certain solutions, policy entrepreneurs are trying to increase their own material, purposive or solidary benefits (Kingdon, 2003.). To define a problem and put it on the agenda, policy entrepreneurs make use of their network of influential people, even though the process can be time-consuming.

2.6 DOMESTIC CONSTELLATIONS

While the three ideal types of norm diffusion have been most influential in the literature on norm diffusion, up to now the focus has mostly been on outside-in structural explanations. The characteristics of the population of a norm adopting state have been neglected even though its importance has been emphasized (Checkel, 1999). Hugill and Dickson (1988: p. 270-271) have put it as follows: *'While the nature of the adaptation environment is central to the diffusion process, it remains poorly understood.'* Despite the strong focus on norm entrepreneurs, the second wave of norm

diffusion literature started to emphasize the importance of including local agents and norm takers (Capie, 2008: p. 639). This strand of literature does not consider imported norms and norm takers as blank slates but includes the relative strength of pre-existing local beliefs and traditions (ibid.). The likelihood that new foreign norms will be adopted depends on the consonance with the pre-existing domestic norms (Acharya, 2004: p. 248). Hence, domestic constellations determine the success of the norm diffusion attempts of transnational actors.

The domestic structure includes the nature of political institutions, state-society relations and the values and norms embedded in the domestic political structure (Risse-Kappen, 1994). The government determines the conditions of access for domestic and transnational actors in decision-making processes and can favor specific groups over others (Cortell and Davis JR, 2000). In order to influence policy decisions, it is important for transnational actors to understand the domestic structure before trying to alter the balance of a government's preferences. The process through which norm promoters provide norm takers with new understandings of a specific norm is called domestic agency and through this process, a state's interests and understandings of a specific concept can be altered. Norm promoters can try to influence the government directly or indirectly using the influence of domestic groups with connections to the government. Lastly, the degree of domestic salience will shape the preferences of agents, thereby domestic salience determines whether or not norms resonate and have a constitutive effect (Checkel, 1999: p. 84). Cortel and Davis JR (2000: p. 70) argue that domestic salience determines the legitimacy of norms in a specific national context and the domestic policy debate. In addition to this, they argue that norms can enter the national arena via empowerment, such as their appearance in social or political discourse or behavior (Checkel, 1999).

The importance of domestic preferences is key to the political structure, political agency, and norm salience. Therefore, transnational actors should align their preferences with domestic preferences in order to succeed (Risse-Kappen, 1994). By influencing domestic coalitions, transnational actors can gain support from within the state in order to influence the government to change their approach. This implies that the domestic factors function as gatekeepers when a state is subject to various opposing norms promoted by transnational actors (Cortell and Davis JR, 2000: 69). The transmission of norms by adapting the norms to the local context has been described by the localization theory of Acharya (2004). In his theory, he demonstrates the success of the synthesis between international norms which are adjusted to be combined with local preferences. Hence, the most important factors for norm diffusion are ideational, material, and institutional domestic constellations. These three domestic constellations will be described in detail below.

2.6.1 CULTURAL MATCH

For an international norm to become salient on the domestic level, it is important that there is a convergence between the international norm and the pre-existing domestic norm (Cortell and Davis JR., 2000: p. 73). The convergence can appear in legal systems, such as the constitution, judicial codes, and laws, or in bureaucratic agencies, such as organizational ethos and administrative procedures (Checkel, 1999: p. 87). When an international norm tends to resonate with the domestic context, domestic actors are more likely to treat the international norm as given and instinctively recognize the obligations associated with the norm (Hugill and Dickson, 1988; Cortell and Davis JR., 2000). For example, between the 18th and 20th-century democracies only took root in European countries with national churches established after the reformation. These churches had an important liberal sector, which included the defense of parliamentary powers and the interest of ordinary citizens, and people had been used to this system before a democratic political system was established (Fernandes, 2013). Another example is the link between pre-existing Lutheran religious feelings and loyalty to a strong and militaristic state (Mann, 1993: p. 243-244, p. 323). Hence, the congruence between the political culture and the norms determined whether or not a norm gained salience in the domestic context. A cultural match between a domestic norm and an international norm can also gain salience when the match can be described as a cultural understanding between two entities, implying that they belong to the same social category (Strang and Meyer, 1993: p. 490). There has to be a basic understanding of each other's main aims and means, as this could otherwise lead to distrust and miscommunication. This basic understanding can, for example, be found in a similar historical heritage, which could lead to an increased understanding of the norm and therefore, the domestic population or government could be persuaded to adopt the new norm.

The level of salience and the cultural match are no dichotomous variables. The level of salience can differ and is no 'either/or' dynamic because even when an international norm clashes with the national identity it can become salient and vice versa. The dynamic between salience and a cultural match is more of a spectrum, with on one side a positive match, meaning a full cultural match between the proposed norm and the domestic culture. In the middle, the domestic cultural does not have any constrictions for the norm to be applied, however, it does also not support and encourage the new norm. A negative match on the other end of the spectrum can be identified, which means that the domestic norm challenges the international norm as no cultural match is found and therefore, it is extremely hard for the new norm to become salient. Even though the latter does not mean a norm cannot be diffused to the specific country, however, it is more effective when an obvious cultural match exists and international norms resonate with the pre-existing domestic norms (Meyer, Ramirez, and Soysal, 1992). The range of the cultural match a pre-existing norm and an international norm can have and the influence of this match on the diffusion process can be explained by the use of the

diffusion mechanisms. The cultural match will only make use of persuasion mechanism as the state and its population should be convinced of the match as oftentimes the cultural match is untouchable and focused on ideational characteristics or experiences rather than materialist gains. A cultural match can be found in religion, legal traditions, historical legacies, specific customs or even specific manners in a school system. A cultural match may change over time, as these concepts are also subject to a dynamic process of change. Therefore, a cultural match between an international norm and a domestic situation can be a perfect fit at a certain moment, while decades later the domestic situation has changed and the norm has lost its domestic salience.

Besides, the cultural match can be part of a process of strategic framing activities (Blyth, 2001). States turn to existing cultural and symbolic resources in order to increase awareness of a cultural match (Blyth, 2002). This way, the domestic salience will be emphasized, while the cultural context can be strategically framed to benefit the dominant political actors (Campbell, 2002). Therefore, strategic framing can also be perceived as a form of persuasion, because the population needs to be convinced of the cultural match and the effectiveness of the proposed norms. The success of strategic framing depends on the ability to frame issues in congruence with the preexisting domestic culture in order to gain legitimacy for a new norm. For example, human rights issues should be framed in a community context to gain legitimacy in a state with a low appreciation for individuality. Whereas, in states supporting individuality, a whole different approach is needed to gain salience for the same issue.

2.6.2 INTEREST MATCH

In addition to a cultural match, which is primarily based upon persuasion, the interest constellations of dominant political actors can be analyzed. This domestic precondition can be placed on the edge between persuasion and competition, as the interest of certain domestic groups can be used to frame an international norm as a matter of competition, but these groups have to convince the government that the new norm is actually a more beneficial option. This can be done by using cost-benefit analysis, but as it does not always include material benefits for a group, persuasion can also play a part in this domestic constellation to change the ideational perception of the government vis-à-vis a norm. The internal power balance between the domestic social groups could determine whether or not a norm can gain salience domestically as the ruling party can respond to domestic interests (Héritier and Knill, 2001).

The interests of the dominant political actors will most likely reflect the wishes of the dominant domestic actors. The domestic policy context can provide platforms for social groups in order to debate a specific norm, while the distribution of power and resources among the various domestic actors can determine the influence on dominant political actors. If the distribution of powers and

resources is equal among the various actors, these actors all have the chance to impact government decisions. However, if the distribution of powers and resources is uneven and in favor of, for example, the party opposing the new international norm, their influence in government decisions will be greater and, obviously, the impact of the international norm will be much lower in the given policy context (Knill and Lehmkuhl, 2002: p. 261). The interest match between the interest of dominant political actors and an international norm depends on three aspects, namely the origin of the interest constellation, the cleavages in society, and the strength of the domestic group.

Firstly, Cortell and Davis JR. (2000) argue that the origin of the interest constellation is important, as it can both cover material interests and ideational interests. Both factors connect with the domestic actors' general beliefs and durable national priorities and can thus not be limited to material interests in the rationalist sense or covered by competition theorists. The contemplation of the origin of the norm can shed light on the aims of the domestic actors and the degree of influence this group needs to obtain to alter the political course in their domain. Secondly, the cleavages and ideologies which polarize the different groups in society should be identified in order to determine the internal power distribution among those groups. Citizens can be polarized on various levels, such as demography, educational level, ideology, and socio-economic class cleavages (Risse-Kappen, 1995). The characteristics of a particular group vis-à-vis the ruling political parties can give insight into the degree of political influence of certain domestic groups. The degree to which political parties are receptive to the domestic actors can depend on whether their interests are beneficial for the governing party. Dominant political actors will need a strong, supportive electorate which can be established by reflecting the wishes of this electorate. The various sentiments and wishes within society should be represented by the party in a way the domestic actors feel connected to the political actors. Hence, when diffusing norms, transnational actors should focus on influencing strong domestic actors in order to influence government decision regarding a specific norm bottom-up, because they will try to reflect the wishes of their electorate (Knill and Lehmkuhl, 2002: p. 259). The relative influence of domestic groups can also be analyzed by a third aspect: the finances, human resources, and cohesion within the group. Financial and human resources have an intertwined relationship as without any finances, human resources cannot operate. Domestic groups with high numbers of participants can have a more direct impact by influencing the elections through protests and demonstrations. A domestic group with a large budget, but relatively low human resources will, on the other hand, focus on formal lobby activities, such as attending conferences. Young and Everitt (2004) have their doubts of advocacy groups which are only powerful because of their financial resources, as these only exist of donors rather than members and therefore have little accountability to their constituency. Hudon (2005: p. 769) counters this doubt as he argues that only supporters of the advocacy group will support them financially and thus are active supporters instead of mere donors. Secondly, the cohesion of a domestic group is important because a unified opposition with a clear motivation for a specific aim is

more likely to change the interest of dominant political actors. The unifying factor of a specific advocacy group can differ among the lines of the cleavages within society, such as religion, demographic area, age or socio-economic class (Young and Everitt, 2004: p. 142). These unifying factors can be used by dominant political actors to invigorate their statements and decisions, especially when the unifying factors can be covered by the same aim. In other words, when several different domestic groups advocate with different reasons for the same aim congruent with the interest of the dominant political actors and the internationally promoted norm, this norm is more likely to gain salience within the domestic context.

2.6.3 INSTITUTIONAL MATCH

The third domestic constellation entails the fit between the domestic institutions and the international norm, including the corresponding institutional changes when a norm is adopted. Rigorous transformation of institutions is generally not expected in a politically stable country, as continuity and stability are domestically naturally preferred over reforms (Borzel and Risse, 2007: p. 491). Hence, states will most likely only reform their domestic institutions when a certain degree of misfit between domestic institutions and the implemented norms emerges (ibid.). The degree of misfit is determined by the congruence, also referred to as ‘the goodness of fit’, between the implemented norm, the alternative international norm and the domestic institutions. If a severe misfit between the norms and institutions arises, reforms are likely to occur as the misfit exposes the ineffectiveness of the system to deal with domestic, context-related problems. If a misfit occurs, norms can be diffused to solve the misfit and increase the effectiveness of the system.

The degree of misfit will be reflected in the effectiveness of the system to deal with domestic problems in the specific area of the institutions. The misfits can either be policy based or institutionally based. The policy misfit will equal compliance problems to policies proposed by the international framework a state adheres to. The second misfit, institutional misfit, challenges domestic rules and the internal collective understandings attached to these domestic rules (Borzel and Risse, 2007: p. 492; Knill and Lenschow, 2001). In this thesis, the focus will be on the institutional fit as this fit is related to the underlying norms and conceptions of a state. In order to create and emphasize an institutional fit between the domestic framework and a norm, states both rely on fraternity and emotional appeal to symbols on the one hand and materialist approaches to emphasize the effectiveness of the system on the other hand (Etzioni, 1975: p. 265). More specifically, the effectiveness of the institutional system in a specific area can be both materially based - is it actually effective - and ideationally based: do citizens believe that institutions reflect the thoughts and interests of the population and do they perceive institutions as effective? Both are substantial because institutions, identities and material matters are connected on the domestic level. For instance, institutions have influence on the front of a passport cover, a crucial element for one’s identity

(Herrmann, Risse-Kappen and Brewer, 2004: p. 84). Thus, the effectiveness of the system and the trust in the system to handle situations adequately will determine whether or not a fit between the institution and the norms arises.

With regards to Europe specifically, the EU has obtained a hegemonic power by forcing states to comply with their institutional framework. Different potential institutional frameworks have been present, but pale in comparison to the institutional density or power of the EU (Herrmann, Risse-Kappen and Brewer, 2004: p. 2). When a strong, institutional alternative does arise, it is not unlikely it can replace the institutional framework of the EU when the congruence between the alternative institutional framework and the domestic institutional framework seems to be higher than the adapted institutional framework of the EU. The institutional congruence will be more apparent in older member-states, inasmuch that these states have created the institutional framework as such (Wasner, 2006: p. 142.). Hence, the institutional fit depends partly on coercion as the institutional situation before norm diffusion is likely imposed on the member states of the EU. On the other hand, the institutional fit is based upon persuasion mechanisms as the people have to believe that the new norm will increase the effectiveness of the system.

2.7 OVERVIEW OF THE THEORETICAL FRAMEWORK

In this theoretical framework, it becomes evident that norm change can be triggered by exogenous factors, namely by the norm diffusion strategies: coercion, competition, and persuasion. Furthermore, transnational actors, as an exogenous factor, occupy an important role in the norm diffusion process, however, this theoretical framework shows that ultimately the success of the transnational actors depends on the domestic constellations. This implies that to successfully diffuse a norm, the domestic constellations should be congruent with the diffused norms. The match between the domestic constellations and the diffused norm can be divided into three, not mutually exclusive, variables: the cultural match, the interest constellations, and the institutional fit. The focus, therefore, will be on the domestic constellations as those are, ultimately, a necessary condition for successful norm diffusion.

3. METHODOLOGY

In this chapter, the research design will be presented. First, an elaboration on the use of an inductive research approach will be given. Subsequently, the justification of the chosen case, the judiciary reforms in Poland, will be discussed. Subsequently, the independent and dependent variables will be operationalized and the hypothesis will be formulated. Thereafter, the methods of data inquiry will be explicated and the limitations of the research will be discussed.

3.1. INDUCTIVE, Y-CENTERED, SINGLE CASE STUDY RESEARCH APPROACH.

In the philosophy of science, two approaches to scientifically analyze phenomena can be distinguished: *verstehen* and *erklären* (Bransen, 2010). On the one hand, positivists stress the importance of *erklären* in scientific research which entails law-governed explanations (Halperin and Heath, 2016: p. 131). Regarding the analytical process, positivists use a deductive research approach: a theory-guided research approach, whereby explanations are externally derived from deductions based on prescribed law and tested with empirical evidence using methods as falsification. There is no need for greater understanding of the world, because the general laws provide a sufficient explanation supported by empirical evidence (Bransen, 2010; Halperin and Heath, 2016: p. 131). This approach is, however, not suitable to understand the Polish norm change towards an illiberal judiciary system. As norms are not an empirically observable phenomenon and derive from actors' internal understanding of the situation, positivist research methods aimed at *erklären* will not be applicable to this case.

Contrary to the positivistic approach, interpretivists use *verstehen*, interpretative understanding, in order to make empathic sense of social phenomena (ibid.). By emphasizing the socially constructed world, thoughts, norms, and ideas also became included in social sciences. Interpretivists believe, contrary to positivists, that those non-observable variables are not externally given in a timeless conceptual realm; they are variables, part of the world and the reality of actors. Therefore, interpretivists argue that those variables should be studied as well to gain comprehensive insights into social phenomena (ibid.). *Verstehen* has been perceived as merely explaining social phenomena, without ever reaching complete comprehensive knowledge on the social phenomena as the social phenomena are too extensive and too many variables could have an impact on the outcome. Grasping the meaning of the phenomena in a specific context is the aim, instead of creating a covering law which can explain the phenomena in general. An inductive research approach is used by interpretivists to reach the goal of *verstehen*. This approach stresses that explanations of social phenomena should be derived from the meaning that a specific actor has given to that phenomenon in a specific context. In other words, the interpretivists' explanations are internal and the theory can be perceived as the

outcome of the empirical research (Hampsher-Monk and Hindmoor 2009:48). Hypotheses are in this case used as guidelines to identify the possible underlying causes for the outcome.

As the case of Poland's norm change towards an illiberal judiciary is foremostly aimed at understanding possible domestic constellations leading to the norm change, an inductive approach aimed at *verstehen* will be used. In general, inductive research entails *a search for a pattern from observation and the development of explanations – theories – for those patterns through series of hypotheses* (Bernard, 2011: p. 7). It aims at generating meanings from empirical data in order to build a theory, without excluding existing theories to formulate research questions. It stresses the importance of learning from experience and those experiences are used to reach conclusions and create guidelines which could serve as a base for a theory or an extension of an already existing theory. Hence, the hypotheses used to observe the Polish case are not used to test the theories proposed in the theoretical framework, even though the hypotheses do derive from these theories. The main aim is to identify interconnections between the different assumptions in order to reach a heuristic explanation of the mechanisms leading to the outcome norm change (Y), hence, a y-centered research design.

As only Poland will be examined in this thesis, the inductive research design will not purely focus on generating generalizable conclusions, as the case will include case-specific context and the explanations found for the norm change in Poland are not likely to hold when analyzing other countries. The Polish case can be perceived as a crucial case, as their discrepancy between support for the EU as an institution and the rejection of the EU as an intervening variable in domestic reforms is high (Gerring, 2007 P: 115). With the current trend of changes towards illiberal norms regarding the judicial system and the wind of anti-EU segments blowing through the EU, the Polish case will be crucial for the EU in handling other cases, which are probably favoring the EU less than Poland. If the EU and Poland can set an example for the rest of the EU, it will set a tone for the future. If this fails, the EU will most likely have a hard time to deal with other states implementing illiberal norms, as those countries have also witnessed a failure between the EU and Poland. Understanding possible underlying incentives that made Poland change their norms, could not only help the EU with handling Poland, but could also be useful in defending the liberal rule of law in the future (Knaus and Buras, 2018). Hence, the crucial case of Poland as researched in this thesis inherently entails social relevance for this thesis and justifies why especially this case has been chosen.

Since only Poland will be examined in this thesis, it can be considered a single-case study, as only the case of Poland will be examined (Odell, 2001: p. 164-165). The method used in this thesis will be on the cross-section of a disciplined interpretative (DI) case study and a hypothesis-generating case study (ibid.). It can be perceived as a DI case study as it applies old theories of norm diffusion and norm change on a new situation (ibid.). The influence of domestic constellations and transnational actors on

norm change has been researched for quite some time, but has mostly been applied to cases whereby a liberal norm change has been witnessed. This implies that it can also be perceived as a hypothesis-generating case study as the current literature tends to focus on cases with a successful norm change towards a liberal⁵ norm. As this thesis will research the Polish norm change towards an illiberal judiciary, it could generate new hypothesis on norm change and the influence of domestic actors, and it could stimulate scholars to include ‘unsuccessful’ norm diffusion cases in the literature (Checkel, 1999).

3.2. HYPOTHESES AND OPERATIONALIZATION

As explained in the previous section, the hypotheses presented will be used as guidelines to explain the norm change in Poland and will not confirm nor refute the theories per se. The hypothesis will be operationalized in order to serve as a heuristic to explain the case. The use of hypotheses in this matter also implies that more than one hypothesis can be confirmed and the empirical analysis will help to expose the interconnections between the different assumptions.

3.2.1. *DEPENDENT VARIABLE: NORM CHANGE*

The dependent variable has already been known as this research revolves around an y-centered research design and tries to explore possible pathways towards the outcome. In this thesis, the dependent variable entails the Polish change towards an illiberal judicial system. Norms, as described in the theoretical framework, are the appropriate behavior for ‘*a standard of appropriate behavior for actors with a given identity*’ (Finnemore and Sikkink, 1998: p. 891). The change towards an illiberal judicial system can be perceived as a norm change, as the internalized norms underlying the judicial system are being replaced with norms covering a different ontological meaning. As described in paragraph 2.2, internalized norms guide the decision-making process of a state, as the internalized norms are used to interpret and deal with problems. The adoption of different norms should therefore be visible in the interpretation of a system and in the translation of the norms into practices.

The judicial system of Poland has been built on liberal norms since the 1990s. Liberal norms, as described in the next chapter, stresses the importance of the separation of power, whereas the illiberal norms emphasize the importance of the democratically elected government. Since the elections of 2015, PiS has first adjusted the Constitutional Tribunal (CT), whereafter it implemented four laws which have reduced the separation of power and allocated more power to the government. The different interpretation of the domestic problems and the way those problems should be handled, namely through an illiberal judicial system rather than a liberal judicial system, reflect the new interpretation of the system and the new translation of the norms into practices. The change in political

⁵ In this thesis, liberal refers to the liberal ideology rather than the IR theory.

course can be traced back to a change in the ontological meaning of the norms underlying the judiciary. In other words, the underlying perception of the organizational structure and responsibilities of the judiciary has changed and this has resulted in a different translation of the new norms into practices resulting into policy changes in the CT and the adoption of four laws.

3.2.2 CULTURAL MATCH

The cultural match entails the convergence between prescriptions embodied in an international norm and domestic-pre-existing norms (Checkel, 1999). This cultural match can be observed in a shared historical heritage, religious similarities or specific conceptions towards the interpretations of the rule of law or the power of the state apparatus. The degree of cultural match between illiberal norms and the domestic political culture can generate predictions on the likeliness of constitutive effects of an illiberal norm, as a higher degree of a cultural match will most likely translate in a greater constitutive effect. In the case of the judiciary changes of Poland, a higher cultural match between Poland and illiberal norms, promoted by norm entrepreneurs, would likely lead to a change towards an illiberal judiciary.

Subsequently, the following hypothesis is derived from this perception:

H1: *If illiberal norms are congruent with the domestic political culture, norm change towards an illiberal judiciary becomes more likely.*

In order to confirm this hypothesis, the convergence between the domestic political culture and illiberal norms should be observable in the domestic discourse (Checkel, 1999). This could be triggered by historical or religious experiences. A strong indicator could be a statement about the lack of congruence between the liberal norms of the EU and Poland with reference to the different historical heritage resulting from divergent cultural backgrounds in the West and East of the EU resulting from the SU oppression. For example, statements about the idea that illiberal norms could better handle the remains of the communist past than liberal norms or statements that admire the experiences of other countries using an illiberal judiciary to deal with the communist past. Religious experiences could confirm the hypothesis if those entail statements about the protection of the Christian values by adopting illiberal norms or if liberal norms are framed as a threat to Christianity. In addition to this, the adoption and mimicking of illiberal judicial legislature of other EU member states would also confirm the hypothesis.

To refute the hypothesis, evidence that the current reforms are justified and based upon liberal norms should be found. Those liberal norms could be spread by the EU, therefore, statements directly supporting the enforcement of Article 2 by the EC, the importance of the separation of power and

condemning the judiciary changes in Hungary will refute the hypothesis. A strong piece of evidence would be an official statement from the Polish government underwriting the importance of the rule of law as interpreted by the EU and resentment of the illiberal judiciary system in Hungary.

3.2.3 *INTEREST CONSTELLATIONS*

In order to observe the interest constellations, the interests of dominant political actors should align with the change towards an illiberal judicial system. The interest of dominant political actors can either be expressed directly through statements, but also indirectly via journalistic and academic comments/observations about the dominant actors' motivations. By analyzing the domestic power balance, congruence between preferences of domestic actors and the government's decisions can be exposed. Those preferences and the influence of the domestic actors on dominant political actors can alter the perception of the latter as the main motivation of dominant political actors will be re-election. Therefore, the electorate should be kept satisfied. Subsequently, the following hypothesis can be formulated:

H2: *If illiberal norms fit with the interest of the dominant political actors, norm change towards an illiberal judiciary becomes more likely.*

To confirm the hypothesis, clear evidence that the change towards an illiberal judiciary is in line with the interest of dominant political actor, in this thesis the governing party PiS, should be found. A strong piece of evidence would be statements from Polish officials stating that every reform will benefit their electorate, and preferably also the rest of the Polish citizens or a statement emphasizing that the reforms are in line with the will of the majority. A milder version of evidence would be growing support for the Polish government during their tenure as measured by polls. A downside of this is that polls can be wrong. They give, however, a general overview of the changing perceptions towards the government and the reforms. Either decreasing or increasing electoral support can resemble the interest of the governing party.

The hypothesis will be refuted when the reforms are against the interests of the governing party, which can be derived from statements of the government stressing the importance of the reforms while simultaneously losing electorate. A strong indicator would be journalists and academic comments/observations stressing the decreased likelihood that the governing party would be re-elected in the next elections. A milder version would be massive protests of the opposition in combination with decreasing support of the governing party, without action being undertaken to address the issues of the opposition to regain their vote.

3.2.4 INSTITUTIONAL MATCH

The institutional fit entails the ‘goodness of fit’ between an institutional framework and the effectiveness of this framework to deal with domestic problems effectively. In order to determine if an illiberal institutional framework, hence illiberal norms, is a more suitable fit for Poland, specific indicators to measure the effectiveness of the systems should be established. Moreover, the perception of the population towards the norms and corresponding institutional framework should be included, because institutional reforms could have been implemented successfully but the effectiveness of the system could be hampered in this transition phase. The perception of the population entails the ideational part of the institutional fit. Specific indicators are the speed of the system, the trust in the system and the effective use of the judicial system.

H3: *If illiberal norms are better suited to fit with a country’s institutional configurations, norm change towards an illiberal judiciary becomes more likely.*

In order to confirm the hypothesis, clear indicators of the increased effectiveness and functionality of the judicial system should be present after the reforms. This could both be expectations of citizens regarding the effectiveness of the judicial system, for example, the speed, will increase through the changes made or actual improvement of functionality after implementation of the changes. Statements of politicians regarding this subject should be analyzed in order to find leads which could determine whether or not the effectiveness of the system has changed after implementation of the measures. A strong piece of evidence would be a study on the effectiveness of the system or surveys emphasizing the changes. A milder version of evidence would be statements of Polish politicians emphasizing the effectiveness of the system.

To reject the hypothesis, the effectiveness and functionality of the judicial system should be unchanged or worsened and expectations that it will change for the better should be absent. Dissatisfaction can be exposed through decreased trust in the effectiveness of the judicial system in surveys carried out in Poland or through opinionated pieces and news articles emphasizing the worsened effectiveness of the system. Another strong piece of evidence would be a report of a human rights organization or other NGOs emphasizing the negative effects with regards to effectiveness after the implementation of the reforms and clear support for these reports among the citizens of Poland.

It is important to note that the above-presented hypotheses serve as a guiding principle for this research as the aim is to understand the change rather than confirm or refute the theories used. The hypotheses, used as possible explanations, are not mutually exclusive as all three can provide a component of the answer to the research question.

3.3 METHOD OF INQUIRY

As mentioned above, the hypotheses will serve as guiding principles to provide a heuristic explanation of the outcome, norm change towards an illiberal system. In order to construct a sufficient and non-redundant causal mechanism between the dependent and independent variables in the specific case of Poland, process tracing (PT) will be used as a research method. The research method is primarily used for single-case analysis and provides a detailed case study with careful, case-specific descriptions. To expose the causal process between variables, an in-depth within case analysis will be conducted (Bennett, 2010). Process tracing is primarily used to offer a deterministic alternative to the probabilistic research methods, thereby not only exposing correlation but also causation. Three types of process tracing can be distinguished, namely theory testing PT, theory building PT and explaining outcome PT (Beach and Pederson, 2013: p. 18). As this research has an explanatory aim, the latter will be used to obtain a minimally sufficient, non-redundant causal mechanism for the case and will include non-systematic, case-specific features for the Polish norm change towards an illiberal judiciary. Explaining outcome PT distinguishes itself from the other types by being empirically oriented and inductive while the other types are theory-oriented, hence deductive. Explaining outcome PT focuses on pathways and combination of causes which could have caused the (already known) outcome rather than building a generalizable theory of mechanisms (Beach and Pederson, 2011).

In order to obtain data, two different methods of inquiry will be used to investigate the influence of three theoretical angles of approach, namely document analysis and semi-structured interviews. As two different methods of inquiry are used, this will increase the internal validity of the research, often criticized when using a single-case study. The different methods can shed light on various sides of the norm change and can be combined to obtain a complete, unbiased view of the situation.

3.3.1 DOCUMENT ANALYSIS

Document analysis will be used as a method to inquire data, divided into informal and formal data sources. The informal sources can provide an overview of the Polish domestic discourse and the perceptions of foreign (transnational) actors towards the changes. Especially the website Politico, the Verfassungsblog and RadioPoland have been used, because these informal sources have extensive media coverage from different angles on the case. In addition to those sources, The Guardian and The Financial Times have also been used to obtain background information. In addition to the informal sources, formal sources have been used: documentation by the EC, the white paper presented by the government of Poland and government statements. These present an extensive overview of the dispute's course, the approved and implemented laws and the vision of Poland. The whole dispute has been documented closely by the EC, which is both an advantage and a disadvantage. On the one hand,

it presents a detailed overview and extremely in-depth information about the case. On the other hand, the case has been described from the standpoint of the EC, which could express a biased view of the situation. Therefore, the choice has been made to also include semi-structured interviews to obtain more in-depth information on the case from a Polish perspective. In addition to the formal reports about the Polish case, existing surveys will be used to obtain knowledge about the support for the government and opinions about the reforms.

3.3.2 SEMI-STRUCTURED INTERVIEWS

In order to obtain in-depth, case-specific knowledge, interviews can be a useful tool. Interviews can offer insights into how behavior, systems, and perceptions are changing or maintained. Moreover, interviews can help to interpret specific behavior and actions of actors in their social environment (Halperin and Heath, 2016: p. 253). As qualitative, inductive research tries to understand a specific event, interviews can cover the level of meaning of the socially constructed world (Kvale, 1996). In this thesis, the main aim of the interviews is to uncover the interpretation of the norm change from a Polish perspective. Both face-to-face interviews and telephone interviews have been held. The lack of visual cues when conducting telephone interviews could be a disadvantage, as the loss of contextual and nonverbal data could hinder the interpretation of the conversation (Van Teijlingen, 2014). In this case, however, the benefits outweighed the disadvantages of telephone interviewing, as a telephone interview was the only way to include a Polish resident. By using a semi-structured interview method, every interviewee got the same key questions, but flexibility in how those questions were asked was still allowed (ibid.). Semi-structured interviews can be particularly useful to explore specific thoughts and interpretations as this flexibility allows different follow-up questions and additional questions for particular interviewees can be included (ibid.).

The interviewees have been chosen non-randomly, namely three Central European Ambassadors, from Poland, Slovakia, and Hungary, stationed in the Hague and the head of the ECFR in Poland. The choice to interview those specific people has been made as the Central European countries have expressed their support for the reforms. The latter has been interviewed as he has published critical articles about the reforms and is living in Warsaw, which allows him to experience the reforms more closely. In addition to those interviews, the Ambassador of the Czech Republic has sent his official position on the Polish situation as he could not find an opportunity to be interviewed. In order to secure the privacy of the interviewees, the interviews have not been recorded on tape or transcribed. Instead, a summary of every conversation has been written and approved by the interviewee. The interview guide, as well as the summaries of the interviews, are attached in Annex 2 to 6. Table 1 schematically presents the interviews that have been held.

Interviewee 1 (Annex 2)	Hungarian Ambassador A. (András) Kociss.
Interviewee 2 (Annex 3)	Slovakian Ambassador R. (Roman) Buzek
Interviewee 3 (Annex 4)	Polish Ambassador M. (Marcin) Czepelak
Interviewee 4 (Annex 5)	Head of the European Council on Foreign Relations in Poland, Piotr Buras
Statement 1 (Annex 6)	Official statement from the Ambassador of the Czech Republic, Ambassador J. (Jana) Reinisova

Table 1: list of interviewees.

3.4 RESEARCH LIMITATIONS

The choices made with regards to research design and data gathering inherently have some consequences and limitations which will be discussed below.

Case-study research has two commonly addressed limitations, namely the absence of methodological guidelines, and the limited internal and external validity. Regarding the first critique, scholars, especially positivists, argue that by choosing a single case-study design, the author absolves him/herself from methodological considerations (Maoz, 2002: 469; Yin, 2009). The prejudice that methodological guidelines or systematic procedures are absent in single case study research has been taken into consideration when conducting this research. In order to overcome this limitation, clear indicators to confirm or refute the hypothesis have been added to the operationalization of the independent variables.

Secondly, the limitations regarding external and internal validity in single case-study research should be discussed. As a single-case study research design only entails one specific case with case-specific variables, the external validity of single-case studies and their ability to confirm or disconfirm a theory is heavily criticized (Gerring, 2004: 350). Traditional scholars argue that the ability to generalize should be one of the main aims of the research conducted in social sciences, however, when conducting a single-case study the main aim is to explain the causal link and describe the case extensively in order to expose the underlying causal mechanisms (Flyvbjerg, 2006). While the limited generalizability of a single case study design can be perceived as a limitation, it can also be perceived as a strength: the researcher will gain in-depth, case-specific knowledge which could be a valuable contribution to the collective process of knowledge accumulation in a given field (ibid.). The internal validity of case-study research is condemned as well, as case studies are perceived as too subjective (Berg and Lune, 2010: 340). Especially the broad scope for researchers' own interpretations of the

data could hamper the internal validity of a case-study research. By acknowledging this limitation of case-study research, methods to cross-check the data obtained, such as triangulation, and reflection on the bias of the data will be included to make the data in this thesis as credible and objective as possible.

In addition to the above-addressed limitations of the research design, the first method used to gather data, document analysis, also presents some serious implications. A common limitation is the language barrier, thereby excluding possible relevant documents from the analysis. In relation to this specific case, a significant amount of documents, such as newspapers or television statements and debates, can only be obtained in Polish. Hence, the language barrier excludes the documents written from a Polish perspective and gives a more prominent role to the documents with a possible Western reporting bias (Yin, 2009: 87). Hopefully, the inclusion of the semi-structured interviews will help to balance this possible bias in the documents, but this method is also not free of limitations.

When conducting semi-structured interviews, the position of the interviewee and possible constraints to speak freely should be taken into consideration. With regards to the data gathered for this thesis, only high officials – ambassadors – have been interviewed and the matters discussed are of enormous political sensitivity. These factors could influence the integrality of the data obtained as the position of the interviewee and the politically sensitive topic could constrain their ability to speak freely about the case. Moreover, only officials from Visegrád group countries have been interviewed. Even though these interviews have been used to augment and complement the document analysis, as discussed more extensively above, it could provide a biased view of the situation. The number of interviewees is a serious limitation of this research and in future research on this topic, other Ambassadors of EU member states should be interviewed as well. The choice to only interview higher officials entails an additional second limitation, namely the underrepresentation of ‘ordinary’ citizens’ views on the case. As these respondents deal with different problems than the higher officials interviewed, it could give a divergent view of the situation if ‘ordinary’ citizens are included in the interview as well.

4. EMPIRICAL ANALYSIS

Prior to presenting the empirical analysis of the case, the liberal and illiberal norms have to be defined in relation to the rule of law. Therefore, the empirical analysis will start with a description of both judicial systems. Thereafter, a concise overview of the situation in Poland between 2015 and 2018 will be presented. This overview will be the foundation of the empirical analysis. Subsequently, the analysis will be divided into three parts, cultural match, interest constellations and institutional fit. Every part will entail an overview of the situation from the perspective of the relevant domestic constellation, an analysis concerning which norms fit better and a synopsis of the findings covering the expected refutation or confirmation of the related hypothesis.

4.1 OVERVIEW OF THE NORMS

Before giving an overview of both judicial systems, it is important to note that the judicial systems described below only reflect an ideal type. The liberal norms promoted by the EC can be perceived as the embodiment of the ideal liberal democratic perception on the rule of law. In practice, however, no member state will completely comply with these theoretical liberal democratic norms, as there is always a certain degree of interference in the judicial system from either the executive or legislative power. The same applies to the illiberal judicial system; even though the Visegrad group countries have adopted these norms, in particular Hungary and Poland, the degree to which these countries have adopted the illiberal norms differs. Hence, the distinction between ‘ideal’ liberal norms and the ‘ideal’ illiberal norms should be perceived as a range rather than a strict dichotomy. Besides, the order in which these judicial systems are discussed does not implicitly reflect a preference for either the liberal or illiberal norms. It is a representation of the norms and does not imply any value judgment.

4.1.1 LIBERAL NORMS

The liberal norms consist of three features with regards to the judicial systems of sovereign states, namely independence, impartiality, and protecting citizens from the government. First, the judicial system should be independent and impartial. This entails the strict separation of powers between the legislative, executive, and judicial powers in a state. Introduced by Montesquieu in the 18th century, this model describes a state organization with strictly separated government responsibilities to limit the influence the different divisions have on each other. In the years to follow, the system of separation of powers has gained the hegemonic status with regards to state organization and the promotion of liberties. While in theory this might work, in reality not one democracy has a strict separation of powers due to the complexity and intentional overlap between the powers (National Conference of State Legislature, 2018). Secondly, the judicial system should be impartial by basing its

decisions upon a set of objective criteria. Decisions based upon racial or gender bias, prejudice or preference for a side in the dispute should be prevented at all costs. The line between impartiality and morality can sometimes be extremely thin, as positive traits or attributes such as empathy or sensitivity can also be perceived as partiality in court (Henberg, 1978). The third feature of a liberal judicial system entails the possibility to hold state officials accountable under the law, which should prevent corruption and misbehavior among officials and protect citizens against government decisions.

As mentioned before, the liberal form of the judiciary is an ideal type and not one state has implemented a perfect liberal judiciary. Article 2 of the Treaty of the European Union (TEU) can be perceived as most influential when establishing a theoretical vision of the liberal judiciary in this case. (Jurada, 2006; Manners, 2006, p. 32; Manners, 2008, p. 68). Article 2 TEU constitutionalizes the shared, liberal, values of the EU, thereby presenting the foundation of a ‘shared European way of life’ (European Parliament, 2016). The interpretation of these values can, however, differ between states as considerable differences with regards to worldview, political system and rule of law exist between the Member States.

Hence, liberal norms regarding the rule of law can be summarized as impartial, independent and it should provide protection for citizens against the state. Moreover, no individual, organization or government can prevail over the rule of law. Therefore, the law represents equality and continuity in the changing domestic political context (Reding, 2013).

4.1.2 ILLIBERAL NORMS

Contrary to the liberal norms, the illiberal norms prevailing in several Visegrád group countries are not formal, institutionalized norms which can be enforced by coercion. The emergence of those norms should not be perceived as a fundamental contestation of European integration, as it does not reject European membership, but can be perceived as a reaction to the transformation failures of the EU (Cichocki, 2017: p. 15). Hungary has been the most prominent supporter of illiberal norms and has openly announced the need for illiberal solutions in EU member states, thereby implying the end of the consensus on the liberal democratic state organization (Orbán, 2014).

Central to the illiberal norms is the emphasis on the nation as a collective community, instead of a sum of individuals. Singapore and Russia are presented as most prominent, successful illiberal democracies (ibid.). The underlying thought is that the community needs to be organized and developed through a strong state apparatus chosen by the majority of the population. Supporters of illiberalism condemn liberalism because it supports (selfish) interests of individuals rather than serving the general interest of the community as a whole (ibid.) The foundational values of liberalism are not denied per se but are not central to this ideal state organization. Illiberal democracies disconnect the concepts of liberal and

democracy in the sense that externally the states seem democratic – elections are held –, however, certain civil rights which can be perceived as liberal, such as freedom of religion, are not protected by an independent legal framework (Zakaria, 1997). Zakaria (1997) has defined illiberal democracies as states who are neither defined as free nor unfree with an increasing centralization of the political power. The degree of centralization determines whether the democracy is closer to ‘nearly liberal’ or ‘openly autocratic’ (Bíró-Nagy, 2017: p. 36).

The degree of centralization also determines whether or not limitations to prevent ‘tyranny of the majority’ are adopted. Contrary to the liberal norms, the illiberal norms have few limits on the powers of a temporary chosen majority, giving this majority the power to implement far-reaching reforms, including the judicial system. The prevalence of the ‘will of the majority’ over the rule of law is justified by referring to the theory of Carl Schmidt. According to Schmidt: “*the sovereign is the one who defines the borders of legal protection, and as such is able to exclude anybody from the law and kill them*” (cited in Szymielewicz, 2017: p. 64). Even though this statement is exaggerating the illiberal democracies positions, it does introduce a state of exception, which implies that the state can suspend the law and act solely in accordance with political rationale, because this reflects the will of the majority of the country.

Hence, illiberal norms are characterized by strong belief in the state, mandated by the will of the majority and the ability to implement far-reaching reforms in the state apparatus and the judicial system.

4.2 DESCRIPTION OF THE CASE

When analyzing the Polish judiciary changes, the roots of the norm change can be traced back to May 2015. Prawo i Sprawiedliwość (PiS)⁶ candidate Andrzej Duda won the Polish presidential elections with 51,5 percent of the vote (Knaus and Buras, 2018). In October later that year, PiS also won the Polish elections, receiving enough votes to obtain a majority of five seats in Parliament and a majority of 13 seats in the Senate (The Guardian, 2015; Knaus and Buras, 2018)⁷. Despite their suspected⁸ victory and the fact that a President and Prime Minister from the same party was not unprecedented, the choice to rule as first one-party cabinet since the end of the cold war was unexpected for both friends and foes (Interview 3).

⁶ In English: The Law & Justice Party

⁷ PiS won with 37,6% of the vote but note that half of the electorate did not vote (The Guardian, 2015; Buras & Knaus, 2018). The governing party received 24,1 % of the votes (ibid.). These election results allocated 51 % (235 of 460 seats) of the seats in the Sejm to PiS.

⁸ The outcome of the elections was suspected to be in favor of PiS as the popularity of the outgoing legislature had decreased significantly and there was no suitable alternative at the left side of the political spectrum (Interview 3)

The paralysis of the CT

Directly after the elections, PiS started to amend legislature concerning the CT. In the summer of 2015, the outgoing government, Platforma Obywatelska (PO)⁹, had appointed five new CT judges, whereof three would start their tenure before the Parliamentary elections of October and two would take their position after the elections (Szuleka et al, 2016). PiS, at that moment still an opposition party, filed a motion to the CT to verify whether the nominations of all five judges were in line with the Polish Constitution (Urbankiewicz, 2016). In the first days after the election, PiS used an accelerated procedure to remove the nominated judges of PO and appointed five new judges, justifying this decision by stating that PO composed a politically-biased CT and that rapid changes in composition were needed to conduct the initiated political reforms of the just elected parliamentary majority (ibid.). To challenge this decision, PO also filed a motion at the CT, resulting in the evaluation of both the decisions made by PO and PiS (ibid.). The CT rendered its verdict on December 3rd 2015, stating that the three judges, whose tenure started in the 7th term of the Sejm, were nominated legally by the previous ruling government, however, the two other nominations could be considered unconstitutional and these judges should, therefore, be replaced by the judges appointed by PiS (CT, 2015). This verdict resulted in three steps leading to the paralysis of the CT. First, the Polish President Duda did not accept this verdict and inaugurated the five judges appointed by PiS. Secondly, PiS adopted an amendment, which adjusted the quorum to 2/3 majority in the presence of at least 13 of the 15 judges, including the CT's President and Vice-President. Verdicts prior to this amendment reviewed with less than the obligated quorum had to be re-assessed according to the amendment, thereby making the verdicts of the CT in December invalid (Sejm, 2015; Urbankiewicz, 2016). Thirdly, the government decided that the verdict of 3 December should not be published in the Official journal, thereby denying the legitimacy of the CT's verdict, as unpublished verdicts cannot become effective or enforced.

The adoption of this amendment attracted the attention of the EC, which expressed its concerns and recommendations in a formal letter addressed to the Polish government (EC, 2016). On the June 1st 2016, the EC decided that the accumulation of events was reason to start the 'rule of law' procedure (EC 2016B; Rankin and Smith, 2016). It, among other things, demanded to retract the amendments and request legal advice of the Venice Commission (VC)¹⁰ (ibid.). The CT had been paralyzed by this time, as the Polish Parliament refused to revoke the amendment, but only twelve lawfully appointed judges¹¹ could be present at every hearing, thereby making all hearings invalid (EC, 2017). After

⁹ In English: Civic Platform

¹⁰ Initially, the VC has been established to provide assistance to Central European countries with the transition towards a liberal democratic system. After this aim had been achieved, the organization began to focus on the promotion of constitutional law and democratic systems in Europe by providing advice concerning the liberal democratic judicial system.

¹¹ As three judges had been appointed unlawfully.

pressure from the EC, PiS decided to approve a new amendment on the CT, decreasing the legally required judges present from thirteen to eleven on the 22nd of July 2016 (Sejm, 2016A; EC, 2016A). The amendment also added a clause which gave the CT President the possibility to alter the order of cases if individual freedoms of citizens, national security or the constitutional order are at stake. The Polish CT (2016) ruled this added part unconstitutional as it could violate the separation of powers.

The first rule of law recommendation followed on the 27th of July (EC, 2016A). During the presentation of the VC's opinion on the 14th of October, the Polish government was absent as it argued that the VC did not take into account arguments made by the Polish Government (EC, 2017). Moreover, the Polish Government accused the VC of not being partial, supporting the opposition and the President of the CT (Janecki, 2016). The Polish Government also argued that the critique on the high quorum of judges is based upon the idea that the CT is acting in bad faith, as there are no clear signs that judges want to block verdicts by not attending case hearings (*ibid.*). The impartial position of the VC caused this biased opinion and increases the concerns with regards to a serious breach. According to PiS, this is unfair to the Polish people and PiS decided to not attend the announcement of the opinion. Moreover PiS decided to reject the opinion and recommendations of the VC to show the Polish people that their interest matters to PiS (*ibid.*).

The final decisions concerning the CT were made in December, just before the tenure of the President of the CT expired. By introducing three new laws¹², the Polish president gained the mandate to appoint an 'acting president', who would govern the CT in the interim period (EC, 2016; Sejm, 2016B; Sejm, 2016C). Moreover, the laws prescribe that the Polish President should appoint a new CT President, by choosing one of three nominated judges (EC, 2016). Hence, the laws allowed the President to interfere in the appointment of the CT's interim presidency and presidential elections, which can be perceived as a violation of the liberal conception of the separation of powers, according to the VC. However, the VC also admits there is no standard procedure for this appointment in the European Union (Janecki, 2016; Helsinki Foundation for Human Rights (HFHR), 2016). The President of Poland directly put the new laws into force by appointing Julia Przyłębska, one of the three unlawfully appointed judges, as Acting President of the CT (EC, 2017). She immediately took action and was appointed President of the CT the following day. Thereafter, she forced the CT's vice-president to take a leave until he passed his retirement age later that year (Knaus and Buras, 2018: p. 6).

On the 20th of February 2017, the Polish government responded to the first recommendation of which the timeframe expired on the 21st of December, 2016. In their official response, the Polish Government

¹² The law on the status of judges, the law on organization and proceedings and the implementation law.

declared that it disagreed on all concerns raised in the recommendation (Ministry of Foreign Affairs (MFA) of the Republic of Poland, 2017). Moreover, PiS emphasized that the appointment of the new President of the CT and the enforcement of the three new laws were necessary to heal the judicial system in Poland and that it was in the best interest of the Polish society (ibid.).

The reforms regarding the CT were not surprising, as Jarowslaw Kaczynski, driving force behind PiS, had been announcing his dissatisfaction towards the CT for decades. As an avid proponent, he condemned the notion that courts have legitimate reasons to limit the executive power of governments, also referred to as ‘impossibilism’ (Knaus and Buras, 2018: p.5). Abolishing impossibilism would be in the best interest of PiS in his view (ibid.). Just before the third amendment on the law of the CT in July, Kaczynski had repeated that ‘*the conflict with the CT is to a large extent a conflict over whether democratic mechanisms and elections are decisive in shaping public life or whether power remains in the hand of professional corporations or lobbies*’ (ibid.). Zibro, Minister of Justice (MoJ), underwrote this statement and argued that CT reforms were necessary to reform the judicial system in Poland. While introducing the slogan ‘healing the judiciary’, Zibro stated that the CT would block any reforms that could cure the Polish judiciary as it has always been a defender of judges’ privileges instead of an institute protecting society (Newsweek, 2016).

Healing the judicial system

After the implementations in the CT, PiS started to implement the announced reforms in the judicial apparatus on the 20th of January, 2017, stating that the judicial system could finally be healed now (EC, 2017). Systematically, those laws have had an impact on every aspect of the judicial system. The four key laws approved so far are (Knaus and Buras, 2018):

Law	In force since
On the National School of Judiciary	June 2017
On Ordinary Courts	August 2017
On the National Council on the Judiciary	March 2018
On the Supreme Court	April 2018

In the course of 2017, the above-presented laws were introduced to parliament, Senate and President. The law on the National School of Judiciary was introduced on May 11 and became effective on the 13th of June without much trouble. The other three laws were also introduced just before the summer, but caused mass protests in the Polish cities. After eight days of protests, the President decided to veto against the implementation of the law on the National Council for the Judiciary and the law on the SC.

The President did sign the law on Ordinary Court Organization on the 25th of July; the other two laws were sent to the parliament to be amended. First, a short overview of the procedure around the vetoed laws will be presented, thereafter the four laws will be discussed in chronological order of effectuation date.

In its official press conference, the President of Poland stated that the vetoed laws were not yet sufficient and that he would develop two new draft laws within two months (New York Times, 2017). PiS reacted to the decision by stating that the reforms are necessary to overhaul the country's judiciary and that the decision of the President to veto these laws slowed this process down (Calamur, 2017). Moreover, PiS accused the court's judges to be elitists and stressed the need to replace the judges to increase the accountability of the courts. Opponents of the reforms expressed their concerns of the two vetoed laws, stating that the independence of the court would be violated (ibid.). In the same period, on the 20th of July, the EC published its third recommendation to which the Polish government responded on August 28, 2017 (MFA of the Republic of Poland, 2017B). In this formal response, the Polish Government emphasized that the ongoing legislative reforms are in line with the European standards and that the concerns of the Commission are therefore groundless. Besides, the laws that raised the most concerns had been vetoed by the President of Poland and therefore could not become effective before amended which weakened the oppositions argument that the President was not impartial (ibid.).

In addition to this statement, a state-financed institution launched a national campaign concerning fair courts at the end of 2017. In the context of the campaign, the National Council for the Judiciary and several ordinary courts published statements rectifying allegations directed against courts and judges. The aim of the campaign was to show young, urban Poles how corruption has taken over the judicial system (Strzelecki, 2017). The campaign was launched a week before the President of Poland introduced his new draft versions (ibid.). Law organizations and opposition highly criticized the campaign as it was funded with national budget and mostly represented PiS' political agenda rather than giving an objective overview of the possible problems of the judiciary (Poland in English, 2018). Two days after the campaign launch, the Polish Deputy Foreign Minister for European Affairs, Konrad Szymanski, stated that the misunderstandings regarding the Polish rule of law were still ongoing and that the dispute revolved around the interpretation of the principle of rule of law. He states that a strong, stable and accountable rule of law is important for both Poland and the EU, however, the EU does not understand that the reforms made in Poland contribute to this rather than demolish it (MFA of the Republic of Poland, 2017C).

The law on the National School of the judiciary

On May 11, 2017, the Senate introduced the law on the National School of Judiciary, which reintroduced the position of ‘junior’ judge. In 2017, this position had been abolished because it gave the MoJ the power to appoint and dismiss junior judges (Iustia, 2018). The CT ruled that this made judges too dependent on the MoJ, thereby violating the separation of power principle (ibid.). By reintroducing this law, the appointment of junior judges differed again from the appointment of regular judges, whose applications are reviewed by the National Council of the Judiciary (Żurek, 2016; Amnesty International, 2017). The new law on the National School of Judiciary constrains the National Council of the Judiciary, only allowing it to raise concerns about the appointment of a new junior judge by the MoJ. The law got Presidential approval and became effective on the 13th of June, 2017.

Law on Ordinary Courts organization

The law on Ordinary Courts Organization was the only approved law in the summer of 2017. The law increases the powers and the influence of the MoJ related to the internal organization of the courts, such as determining the rules of procedure for common courts (VC, 2017). In addition to this, the MoJ gained the possibility to appoint or dismiss a court president without any clarification and became able to extend judges’ tenure beyond the retirement age (ibid.). Moreover, the MoJ gained disciplinary powers vis-à-vis the court’s Presidents and mandated the MoJ to order the courts’ President to assign cases specifically to certain judges, rather than a random allocation of cases (ibid.). The implementation of this law centralized the system of judicial governance even further and as a result, the system of judicial governance became managed externally by the MoJ, who is also the Prosecutor General in Poland since 2016. In other words, the MoJ now not only has a vested interest in court proceedings but also gained power over both individual judges and courts (ibid.: p. 21).

The law on the National Council on the Judiciary

The National Council for the Judiciary (KRS¹³) is a constitutionally designated body consisting of fifteen judges, the Chief Justices of the SC and Supreme Administrative Court, the MoJ, a representative of the President, 4 members of the Parliament elected by the parliament and 2 senators elected by the Senate (Sadurski, 2018). The key role of the KRS is to nominate all candidates for judicial positions, safeguarding the independence of courts and judges, and presenting opinions on draft legislation concerning the justice system (ibid.; HFHR, 2017). The constitution does not provide clear guidelines on how judges have to be chosen, but over the years it became a principle that the representatives of judges were elected by their peers (ibid.). The draft law included the aim to end the tenure of serving judges immediately (VC, 2017). The removed judges should, according to the law,

¹³ Polish acronym

be replaced by judges chosen by a parliamentary majority as this reflects the wishes of the societies majority. The President vetoed this draft as he felt that the opposition should also have an influence on the elected judges, which was not possible with a simple parliamentary majority. Therefore, the President proposed a three/fifth majority and included that new judges must be proposed by either a group of at least 2000 citizens or a group of 25 judges within a 30-day deadline (RadioPoland, 2017A). The revised draft law did not abolish the pre-term removal of all sitting judges. The law got approved in December 2017 and on March 7, 2018, fifteen new judicial members of the KRS were selected by the Parliament (Sadurski, 2018). All opposition parties, with exception of the Kukiz party¹⁴, decided to boycott the elections and did not introduce any candidates. With a super-majority 8 PiS candidates and 6 Kukiz candidates were elected and replaced the sitting judicial members of the KRS (ibid.).

The law on the SC

The Draft law on the SC¹⁵ followed on the 12th of July, 2017, and was introduced by members of the Parliament. The law granted the MoJ the power to terminate the term of every SC judge, to replace those judges with new ones and to assume new competence within the disciplinary proceedings of SC judges (Amnesty International, 2017). The law would exclude all sitting judges already appointed by the MoJ. Moreover, the law lowered the retirement age of judges to 65 years for male judges and 60 years for female judges. If enforced, this would result in the forced retirement of 40% of the sitting SC judges (Pacula, 2017). The president of the SC, Malgorzata Gersdorf, would also be obligated to retire as she would reach the age of 65 in November 2017 (ibid.).

After fierce protests, Duda vetoed this law and introduced his new law on December 8th 2017 and it became effective later that month (Pacula, 2017; Davies, 2017). The draft law differed from the original proposed law as the original version stated that the tenure of every SC judge would be terminated, while the new law only prematurely ended the tenure of judges who reach the retirement age of 65 (ibid.). Moreover, the President added to this that only he can decide whether or not the tenure of a sitting judge will be extended after the retirement age has been reached, instead of the MoJ which was proposed in the previous draft (Zalan, 2017). It also introduced the mechanism of extraordinary appeal. This mechanism can be used to open closed cases wherein the judgment already became final within 5 years in criminal cases and 1 year in civil cases, thereby reopening the cases to be reviewed by the newly appointed judges (HFHR, 2017; Davies, 2017). Moreover, this law

¹⁴ Kukiz is known as satellite party of PiS and also introduced candidates (Sadurski, 2018).

¹⁵ The main task of the Supreme court is to supervise the lower courts, alongside the power to confirm the validity of national elections (VC, 2017B). The influence of the Supreme court had been growing since the elections of 2015, as it took on tasks the CT was not able to perform anymore due to the reforms made by PiS. NGOs such as Human Rights Watch (2017) expressed their concerns about the draft law as those organizations believed it could have the same paralyzing effect as the reforms had on the CT.

introduced the establishment of two new chambers in the SC, namely the Disciplinary Chamber, dealing with disciplinary matters of judges, and the Extraordinary Control and Public Affairs Chamber. The latter deals with the control of general elections, the revision of laws concerning the electoral process and the confirmation of election's validity (Wiewióra, 2017). Overall, the changes in the draft laws concerned some limitation of power granted to the MoJ in the previous laws, however, this power had now been ascribed to the president himself (Pacula, 2017).

Side effects?

As a consequence of the enforcement of these laws, a fourth recommendation was given by the EC on the 20th of December, 2017 (EC, 2017C). Subsequently, the EC also sent a proposal to the European Council to start the procedure of Article 7(1) to defend the rule of law in Poland. On the 2nd of January, the Members of the European Parliament (MEP), approved this proposal by 422 to 147, which exceeds the necessary four-fifths majority. Beata Mazurek, PiS' spokeswoman, declared the decision a political decision with no merit and the Polish MoJ announced that Poland should and will continue the reforms (Deutsche Welle, 2017). Hungarian Prime Minister Orbán stated directly that it would support Poland as the reforms were needed to deal with the communist past, thereby improving the Polish judiciary (ibid; Interview 1).

In December 2017, Polish prime minister Beata Szydło resigned and was succeeded by Mateusz Morawiecki, a former banker. Szydło was liked domestically, however, she had some disputes within Brussels (Broniatowski, 2017). Morawiecki on the other hand, speaks fluent English and German, and had been the economic adviser of Donald Tusk when he was the Polish prime minister between 2010 and 2014 (ibid.). PiS hoped Morawiecki would be a smoother partner for other EU member states in the talks between Poland and the EC and could help to enforce the reforms. In March 2018, Morawiecki presented a 94-page 'white paper' which elaborated the situation in Poland and stated that the reforms were not undermining the rule of law, but addressed the interest of the people (De la Baume, 2018). The 'white paper' used by Morawiecki is a reference to the white paper on EU reform about the future of the EU, which was unveiled by Juncker in 2016 (ibid.). In addition to this, Morawiecki emphasized the concessions already made by Poland to meet the recommendations of the EC. Those concessions entailed publishing three CT verdicts of 2016, the equalization of the retirement age of judges and the government decided that the mandate of the MoJ to remove of court presidents without justification should be revoked¹⁶. Lastly, the government decided that only the Ombudsperson and the MoJ can introduce extraordinary appeals to reopen already closed cases,

¹⁶ Nevertheless, this had been possible between October 2017 and March 2018.

instead of the whole government. According to the EC, those concessions only included elements that without a decisive role in the judiciary system (Kellermann, 2018).

Due to the continuing disagreement, the dispute still not be settled. The Article 7(2) procedure can, however, also not be started as Hungary announced its support for Poland, thereby hindering the anonymous decision. In the meantime, the implemented laws have allocated power from the judiciary to the executive and legislative power. Especially the MoJ became more powerful, as the MoJ obtained the power over the complete career of judges: the education, the appointment to junior judge and the court presidents who manage the work. Moreover, when not functioning as desired, the MoJ can punish a judge and has extensive control in disciplinary cases (Kraus and Buras: p.11). In addition to this, the MoJ is a member of the KRS, a parliamentarian of the ruling majority party (which appointed the fifteen judges in the KRS). Moreover, at the same time the MoJ is the General Prosecutor in charge of all prosecutions. This position of the MoJ, in combination with the paralysis of the CT and SC, shows the increasing power of PiS to implement its own vision without being blocked by the judiciary.

4.2.1 SUMMARY: POLAND'S SHIFT TOWARDS AN ILLIBERAL JUDICIARY

In the last three years, the Polish ruling party PiS has taken steps to dismantle the CT and has implemented four laws that have changed the institutional structure of the judiciary significantly. Before 2015, the judiciary was modeled after the liberal model with a focus on the separation of power. According to PiS, this model was incapable of dealing with multiple problems, such as the communist past of judges, and was also highly inefficient. During the implementation of new the laws, PiS emphasized that the reforms were needed to heal the system, thereby shifting power from the judiciary to the legislative and executive power. In their rhetoric, the will of the majority of the Poles and the importance of allocating power to the democratically elected government was frequently repeated to justify the policy changes. The shift towards an illiberal system seems to derive from a different perspective on how to solve the judicial problems. The change towards this system can be observed from the accumulation of statements of events all referring to elements of illiberal norms.

4.3 ANALYSIS OF THE DOMESTIC CONSTELLATIONS

In order to determine whether or not the above-described change towards an illiberal system can be caused by domestic constellations, the cultural match, interest constellations, and institutional fit will be analyzed below.

4.3.1 CULTURAL MATCH

The cultural match between the Polish dominant political culture and the illiberal norms can be identified observing three consecutive elements, namely the historic legacies, cultural factors, including the aim to be sovereign and protection of Christian values, and the increased disillusion vis-à-vis the EU.

Behind the ideology of many Poles lies a long history of communist oppression and a, arguably, forced transformation towards a liberal democratic system in the 1990s (Interview 6). After the fall of the Berlin wall, Poland had to transform to a liberal democracy in order to gain access to the benefits of the EU. Former party leader, and still most influential member of PiS, Kaczyński has condemned this transformation as only a small elite group would benefit from the economic improvements related to the liberalization measures (Interview 4). Especially the measures to deal with the communist past had been inadequate in his view as the West did not remove former communists from the governing system, including the judiciary. This failure is being emphasized by PiS by referring to a resolution adopted in 2007, which virtually absolved all judges appointed before 1990 from their actions and decisions made under the communist regime (White Paper, 2018: p. 13). In order to become effective, the resolution had to pass an adjudicating panel. This panel, however, included a judge who had been an active member of the former Polish United Workers' Party, the communist party governing Poland until 1990 (*ibid.*). In PiS' view, this resolution shows the inadequacy and failure of the de-communization after 1990 (Interview 1; Interview 4). In order to address this existing influence, PiS proposed to lower the retirement age of judges to 65 years, which forced 40 percent of the judges in the SC to retire. To justify this decision, PiS refers to Spain and Germany, states that took similar measures decades after the dismantling of their totalitarian regimes as the passage of time is no reason to absolve judges from their responsibilities (*ibid.*). In Spain, the socialist party was able to lower the retirement age of judges in 1985, a decade after the death of General Franco (Natorski, 2017). Germany reassessed all 1889 judges and prosecutors from the former German Democratic Republic after the unification of Germany in 1990¹⁷ (Die Presse, 2016; White Papers, 2018). The underlying thought is that it allows the government to reevaluate the competences of judges, as some will still be capable to do their job properly after their retirement age. The MoJ will decide whether or not the judge can resume one's daily activities. The lowering of the retirement age, similar to the policies adopted in Spain and Germany, can be perceived as a shift towards illiberalism. The measures adopted in Spain have been heavily criticized as they only represented the will of the democratically elected majority and violated the separation of powers (Natorski, 2017). The influence of the MoJ in both the Polish and German cases also challenges the separation of power as it allocates the decisive power to

¹⁷ In 1973, over half of the managerial positions in the Federal Ministry of Justice were filled with former NSDAP members. Only 58% of the judges were vetted positive and could resume their work (Die Presse, 2016; White Papers, 2018).

the MoJ rather than the judiciary. Hence, in referring to other judiciaries, Poland has precisely referred to policies which align with the illiberal judicial system. The new allocation of those powers to the MoJ, has opened a space for transnational actors supporting the de-communization of the Polish judiciary. Especially the Hungarian Prime-Minister Orbán advocates for the lower retirement age as he acknowledges the still existing influence of the communist regime and has faced an equal situation (Wróbel, 2018; Interview 1). The other Visegrád group countries, Slovakia and the Czech Republic, also underwrite the need to independently deal with the communist past and the idea that Western European states do not understand the need for this as the historical past of the Western and Central states cannot be compared (Pogany, 2018). Thereby, the Visegrád countries support the de-communization measures taken by PiS.

Secondly cultural factors can be analyzed to explain the shift towards an illiberal judiciary. With the traumatic experiences in mind, an underlying fear and skepticism towards liberalism and centralization of the EU still exists in the political culture of Poland (Interview 1). Especially the historical experiences with the SU has made Polish citizens wary of centralized powers. As victims of colonialism, the region has a relatively different experience than the Western European countries (Pogany, 2018). The Central European countries had to fight for independence and preservation of national identities during several historical dominations, whether Prussian, Ottoman, German or Russian tyranny have been central in their history (ibid.). The current tendency of the European identity, based on the perception that Europe had been infected by nationalism, xenophobia and antisemitism does not match the historical experiences of the Central European countries like Poland. The promoted European identity causes a break between the Western European countries, abiding the promoted norms, and the Central European countries, whose identity is based on pride of the sovereign nation-state and its road to freedom (Overbeek, 2018).

The history of colonialism has resulted in skepticism of the mandatory recommendations of the EU on the one side, and the aim to protect the Christian values on the other side. The centralized character of the EU and the mandatory recommendations of the EU towards the judicial reforms have been framed domestically as a new centralized power trying to violate the sovereignty of Poland. References to the Sovietisation of the EU and the EUSSR have evoked resistance towards liberal norms promoted by transnational actors favoring the EU (Mickiewicz, 2016; Dunai, 2016). In order to fight for their sovereignty, Poland has broken its close alliance with Germany and tightened the cooperation with the Visegrád group countries as those countries are culturally more alike and acknowledge their fears of centralized powers (Bielecki, 2017). The skepticism towards the EU as a threat to the sovereignty has not been linked to the mandatory recommendations only, but also to the protection of Christian values in Poland. The 'EUSSR' has been mentioned in a joint speech of Polish President Duda and Hungarian Prime-Minister Orbán. In this speech, the cultural similarities between Poland and Hungary

have been emphasized by arguing that *'they [Poland and Hungary] carry on the thousand-year-old Christian tradition in Europe and that these traditions are just as important as freedom* (Visegradpost, 2016). For a long time, Poles felt the need to move along with EU imposed multiculturalism to fit into their liberal picture. Starting in Hungary, a transnational discourse emerged which condemns the globalist hostility towards the Christian faith¹⁸ and multiculturalism as promoted by the EU (Byas, 2016). This transnational discourse, most prominently preached by illiberal norm entrepreneur Orbán, inspired Poles to start protecting their Christian values (Gutteridge, 2016). To protect those values, citizens turned to illiberal norms as means, because illiberal norms allocate more power to the democratically elected government which represents the desires of the majority (Interview 4). This has caused a discrepancy in their position vis-à-vis the liberal EU, as Poles do favor the material benefits of the liberal system, but ideationally Poles consider their basic values to have been affected by liberal norms. By allocating more power to the government, instead of the judiciary, the implementation of undesired multiculturalism and the protection of Christian values could be achieved more easily, because the judiciary will not be able to block government decisions anymore (Interview 3). Hence, the shift towards an illiberal judiciary could originate from the distinctive historical experiences of Central European countries and the perception that the true Polish norms have to be protected from the imposed liberal norms.

Lastly, the vision of Poland vis-à-vis the EU has been changing the last couple of years (Kuisz, 2017: p. 51). In the 1990s, Poland felt the need to please the EU by adopting their values in exchange for economic benefits. Before, Poles were afraid not to be accepted by Western European member states, resulting in often outwardly pretending to share the cosmopolitan values they perceived as dominant in the Western hemisphere (Interview 6; Hutton, 2017). After the financial crisis, which did not affect Poland as much as the rest of the EU, an increased disillusion about the EU project has caused a return to their own Christian values as well as the confidence to protect those values (Kuisz, 2017: p. 51). Especially the realization that the liberalization of the 1990s has only served a small group of elites, the creamy layer of society existing of young, high educated, urban Poles, has increased the disillusion about the West and the allegedly beneficial liberal norms (Pogany, 2018). The disillusion has created a discursive space for transnational actors supporting illiberal norms, who frame supporters of the liberal norms as that creamy layer of society and the EU as degenerate from the real Polish society (Interview 1; Interview 4). By using language that focuses on state protection and support of the less-well-off, the electorate of PiS is attracted to the communitarian approach, in comparison to the emphasis on individual successes of the previous governments. Moreover, the historically based affinities of Poland with other Visegrád group countries also got more relevance once the Western EU lost some of its attractiveness and credibility during the financial crisis (Hutton, 2017). This, in turn, has made it

¹⁸ Poland's dominant religion

possible for foreign politicians (e.g. Orbán) to exert transnational influence on the Polish reforms debate. The support of transnational actors from Visegrád group countries, did not have an influence on the emergence of the illiberal ideology, however, it has strengthened the confidence to actually protect the Polish values and increase the disillusion about the West, especially since Hungary shows that alternative norms can be beneficial (Buckley and Foy, 2016). Hence, the influence of transnational actors has amplified the underlying ideological sentiment, which has caused Poles to regain their confidence to protect the Christian values, especially once their disillusion about the EU project grew. Those three factors have caused a shift towards an illiberal judiciary rather than protecting the liberal judicial system.

4.3.2 INTEREST CONSTELLATIONS

The cultural ideology of Poles has created a space for dominant political actors to use the illiberal norms for achieving their own political goals, namely abolishing legal impossibilism and consolidation of PiS' power. In order to widen its electoral base to carry out their political ideology, PiS has built on the wide-spread disappointment of the adoption of Western norms (Pogany, 2017; Interview 4). Focused on less educated Poles and inhabitants of rural areas, PiS stressed that the period of liberalization in the 1990s has primarily served the interest of a small elite group, whereas the larger part of the population has still not significantly benefited from the implementation of Western norms (Bayer, 2018). The ideology resonating with the vision of Kaczyński, includes the restoration of pluralism and balance within the Polish institutions, as these have been expropriated by elites (Szczurbiak, 2017). In order to gain support for their ideology and the judicial reforms, PiS has started to portray the judicial system as inefficient and corrupt. Former PiS Prime Minister Beata Szydło has, for example, stated that: *“PiS is protecting people against liberal elites who want to control the state and its resources under the guise of empty phrases such as “rule of law” and “separation of powers.” It is not about citizens’ rights, but the defense of bank lobbies and foreign corporations, all those interest groups, which in the past eight years got rich at the expense of Poles”* (Szydło cited in Adekoya, 2017). Hence, the motive of liberal elites to criticize the reforms has been questioned by stating that their critique does not derive from a liberal democratic vision, but from the defense of their own interests (ibid.).

In addition to this, protesting judges have been portrayed as part of the corrupt establishment, unable to rise above their own interests in power and politics.

After the illegal appointment of five judges in 2015, people protesting in Warsaw chanting: *‘We want the constitution, not a revolution’* (The Guardian, 2015B). Those opposition protests, especially from the Committee for the Defense of Democracy (KOD), have been marginalized by framing the participants of the protests as solely high educated urban citizens who take part in those protests to

protect their preferential position as future elites of society. The protests in the summer of 2017 gave PiS again an opportunity to marginalize the concerns of the opposition. The president vetoed two questionable laws by stressing that the laws allocated too much power to the MoJ (Szczerbiak, 2017). This showed the international community that the president would interfere whenever the laws were threatening the rule of law (ibid.). The amended laws were, however, almost similar to the laws vetoed. The President only allocated the power to himself instead of the MoJ. The rhetoric used to describe the street protests also matches with illiberalism, as PiS has labeled the street protests as ‘organized attempts to overthrow the democratically elected government’. The influence of transnational actors, such as the United Nations High Commissioner for Human Rights (OHCHR), the National Council of the Judiciary, the Consultative Council of European Judges (CCJE), the Council of Bars and Law Societies of Europe (CCBE), the European Network of Councils for the Judiciary (ENCJ), were portrayed as agents of Western foreign influence trying to manipulate Polish citizens. NGOs and Western Europe (including the supporters of the Western European liberal norms), were labeled as degenerate and culturally alien (Ciesla, 2017). Moreover, PiS finds itself in a strong position to justify the changes as the opposition is in favor of judicial changes only not those introduced by PiS (Wigura, 2018). The opposition is scattered and indecisive, thereby not providing a strong alternative, PiS can state that it at least tries to change the system, framing themselves positively and in line with opposition parties’ aims.

Secondly, the newly amassed power has to be consolidated by winning the next national elections. The constant interference of the EC has been increasing the congruency between the illiberal norms and the interests of the dominant political actor PiS, as the electorate of PiS has been growing by framing the EC as never satisfied and favoring the Polish elite. By stating that ‘*no Brussels bureaucrat will tell Poland what democracy is*’, the EC is being accused of undermining and ignoring the will of the Polish citizens (The Economist, 2018). By making concessions, such as lowering the retirement age to 65 for both male and female judges instead of lowering the retirement age for female judges to 60, PiS argues that concessions have been made and the EC should not demand more changes as this goes against the desires of the Polish electorate (Interview 4). The continuous interference of the EU, including the intimidating rhetoric used, has caused resistance towards liberal norms promoted by the EU (ibid.). The implementation of an illiberal judicial system as alternative to the liberal variant appeals, therefore, to a great part of Polish society and by promoting this, PiS gains more support. Additionally, as most reforms have seriously violated the constitution, winning the next elections has become of paramount importance for PiS to obtain time to legitimize the reforms made in the judicial system (Interview 4). An illiberal judiciary is more useful for this aim, as it allows the ruling party to introduce new electoral laws, favoring the governing party without resistance or interference of the CT or ST (ibid.). Moreover, dominant political actors can use their instruments of power, such as public finances, in their favor. Using the newly amassed power over the judicial system, PiS has introduced a

new extraordinary chamber¹⁹ to deal with electoral protests and the legitimation of elections, entirely existing of judges appointed by the MoJ (Interview 4; Wiewióra, 2017).

In addition to this, PiS has introduced a new law on the electoral process regarding the EP elections. Those elections are important as they provide a first and decisive indication of domestic support of PiS. The law introduces a new electoral process, whereby only the two largest parties will divide the EP seats, thereby violating the principle of proportionality as described in the TEU (Interview 4). This law is highly beneficial for PiS, as the polls show²⁰ that their support rate is the highest with 37%, almost 10% higher than the largest opposition party PO. Moreover, PiS' electorate is highly mobilized, contrary to the opposition parties' electorates (Interview 4). This law would have been tested by the CT if the system would correspond with liberal norms, and the law would most certainly be rejected. As the CT is sidelined, the law could now be implemented by the government without any resistance.

As mentioned above, the outcome of the EP elections provides a first indication of PiS' domestic support. It is in their interest to gain as much domestic support as possible in order to win the next elections. Therefore, the law can be important as it will influence the outcome of the EP elections most likely in favor of PiS (Interview 4). A victory in the EP elections could serve as strong message towards the electorate of PiS just before the national elections as it shows the strength of PiS politically. If PiS loses the EP elections, this can also be useful information for PiS as it heralds a defeat domestically. With this sign, PiS can start to make adjustments to the national electoral law in order to alter the domestic elections results in their favor (ibid.). Moreover, a victory in the EP would not only be useful as herald for the domestic elections but could also be used to obtain a membership to the European People's Party group (EPP). Currently, the PO is the Polish member of this European party. If the PO faces major losses, the EPP could consider replacing PO by PiS in order to maintain their majority in the EP. This would not only boost PiS reputation domestically, but would also result in increased protection at the European level for decisions made at the national level (Keleman, 2017). This derives from the thought that Orbán's party Fidesz enjoys the protection of the EPP and has not yet faced a dispute with the EC and triggering Article 7 against Hungary has been off the table since the beginning of their transition towards illiberal judiciary (ibid.). Hence, a win in the EP would not only serve as a herald for the national elections but could also legalize the change towards an illiberal judicial system by the largest EP party (Interview 4). This is congruent with the interest of the dominant political actors as it simultaneously increases their chances to win the national elections and to obtain protection from the EU (Ibid.).

¹⁹ The Extraordinary Control and Public Affairs Chamber

²⁰ Poll of the Polls (2018) shows the results of 12 different polls, whereby the support of PiS ranges between 36.3 % and 50,6% in June 2018. The support for PO ranges from 18,8 % to 29,3 %.

Hence, PiS' key reasons to shift towards an illiberal judicial system are the need for an open space to carry out their political ideology and an insurance ahead of the elections in case they need to manipulate electoral law in order to maintain their power (ibid.). In addition to this, it could be in the interest of the ruling party to switch the balance of power in the EP and apply for EPP membership to secure protection of the largest EP party for domestic decisions (Keleman, 2017). In order to establish this space, PiS has built on the national sentiment of dissatisfaction with the liberal norms. Moreover, PiS has framed transnational actors supporting liberal norms as culturally alien foreign forces undermining the will of the majority and argue that those transnational actors only sought to secure the power of a small elite group benefiting from liberal norms. In other words, PiS has used the endeavors of transnational actors in their favor by emphasizing their preference for the Polish elite. This way, PiS has stated that adopting illiberal norms is of the utmost necessity as it will protect society from this small group of elites who have been expropriating law and politics since the liberalization of Poland, while simultaneously implementing their own political agenda.

4.3.3 INSTITUTIONAL FIT

The institutional fit of the judicial system with either liberal or illiberal norms can be determined based on two elements: the objective effectiveness of the system and the perceived effectiveness of the judicial system both from a government's and society perspective.

It is noteworthy that the objective effectiveness of the judiciary has not been insufficient before the reforms. In terms of time needed for a specific case, the element most criticized, the Polish judicial system scores mediocre according to the EU Justice Scoreboard (2018: p. 11). The perceived effectiveness of the judicial system has, however, been remarkably low among the whole Polish society, not only among PiS supporters.

From a government perspective, PiS has responded to this perceived ineffectiveness, resonating Kaczyński's vision, by identifying 'legal impossibilism' as source of the judicial ineffectiveness. Simultaneously, PiS feels that it is also the main problem with the governing system of Poland (Balcer, Buras, Gromadzki and Smolar, 2016). Legal impossibilism refers in this case to the perception that the liberal system of checks and balances results in a governing system where no decisions can be made by the government without interference of the judiciary (ibid.). The CT is being perceived as core cause of legal impossibilism as the CT has the possibility to interfere with decisions made by a democratically elected majority. Illiberal norms yield the vision that the CT's possibilities to interfere should be as limited as possible as the democratically elected government should not be obstructed in adequately representing the will of the population.

As the CT can become interwoven with government decisions, the effectiveness of the judicial system should not be viewed as independent problem. It should be analyzed in relation to the legislative and executive power (Interview 4). The system promoted by PiS allocates the first and dominant position, supported by a parliamentary majority (the legislative power), to the executive powers in a state. The decisions made by those two powers may only be limited by the judiciary, the CT in this case, in exceptional circumstances as otherwise governing a state will become impossible (ibid.). In PiS its vision, illiberal norms rejecting legal impossibilism will strengthen the internal sovereignty of Poland as the democratically elected majority can represent its electorate much more effectively (Interview 4; Balcer et al, 2015). Resonating with this aim, the illiberal norms are better suited to fit Poland's domestic institutional configurations as the legislative and executive power do not change, but the perception of the allocated roles will. If a dominant role is ascribed to the executive power, an independent judicial system testing every decision does not fit within this system. This inherently means that an independent judicial institution testing government decisions will be dissolved and the separation of power will become less clear due to the interference of the executive power in the legal system.

Secondly, the perceived institutional effectiveness among society is remarkably low. Only 45% of the Poles describe their experiences with the court as either moderately positive or very positive in 2017 and the figures of 2012 do not deviate far from those numbers with 47% (CBOS, 2018). Both opposition and proponents of PiS' reforms have acknowledged the need for changes in the judicial system, although their proposals on how to change the system differ (Interview 3; Interview 4). Subsequently, the large support for the reforms among society, have caused the reforms to be placed at the highest level of the political agenda as it would benefit the electoral successes of PiS (Interview 3). The proponents of the reforms and ruling party prefer quick reforms over gradual process of implementation. The controversies concerning the reforms addressed by the EC are, however, perpetuating the implementation of the reforms (Interview 1). The Polish citizens especially perceive this interference and the perpetuating of the implementation as evidence of the ineffectiveness of the liberal system promoted by the EC (Interview 4). Poles especially do not understand the need to salvage the judicial system and defend the courts as this system has been failing, in their perception, for years (Koncewicz, 2017). As the 'previous' system had independence and the separation of power as backbone, the importance of these two elements and the institutional congruence with the Polish domestic context have been questioned domestically (ibid.).

This broad perception of ineffectiveness has been noticed by PiS who has used this dissatisfaction towards the judicial system to make the ideological discontent of society tangible. The governing party has framed the judges as *a self-serving clique often out of touch with problems of ordinary citizens* and

point out that the pre-existing system in Poland could be improved as there are already fourteen different variations on the rule of law in Europe (Radio Poland, 2017B; Interview 3). In addition to this, the MoJ has stated that the judicial reforms will soon increase the speed of the court proceedings. The deputy justice minister, Warchol, has stated that *“The result [of the reforms] will be that the courts work quickly and efficiently [with] verdicts that get Poles’ trust. The proposed changes will free the judges from the superiors’ pressure, returning independence and true impartiality.”* (Shotter and Huber, 2017). Those promises have sparked the hope of many Poles that an alternative judicial system could be better suited to fit with Poland’s institutional configurations.

In sum, the institutional shortcomings in the judicial systems are rather a matter of perspective than a matter of actual shortcomings as the effectiveness of the system ranks mediocre compared to other EU member states (EU Justice Scoreboard, 2018: p. 11). This perceived institutional misfit between the liberal norms and the institutional configurations of Poland have been used by PiS. This misfit has been emphasized, especially in relation to legal impossibilism in order to allocate more power to the ruling party. This, in turn, enables the governing party to widen its electorate. From a society perspective, the perceived institutional misfit is being addressed by PiS, as PiS offers an alternative judicial framework based on illiberal norms which allegedly could make the judicial system and politics more efficiently while simultaneously dealing with the elite who have expropriated the institutional system from the ordinary citizens. The interference of the EC amplifies the conception that illiberal norms might be more preferable, as the imposed liberal norms described in the recommendations of the EC have hampered and slowed the reform process immensely. Those recommendations only caused the system to be more inefficient. The promise of a functional judicial system, therefore, sparks the hope of people which results in more support for the reforms, the governing party, and its decision to adopt illiberal norms.

4.4 SYNOPSIS OF THE FINDINGS

In the analysis presented above, the influence of domestic constellations in the process of norm diffusion has been analyzed based on the Polish shift towards an illiberal judicial system. In this paragraph, first, the hypothesis will be either confirmed or refuted. Secondly, a more in-depth analysis of the hypothesis will be given as those have been used to explain the case rather than to test the theory. This is necessary, because the hypotheses cannot be perceived as separate explanatory factors but should be perceived as intertwined, consecutive factors resulting in a causal pathway.

The first hypothesis, *‘If illiberal norms are congruent with the domestic political culture, norm change towards an illiberal judiciary becomes more likely’* can be confirmed as the cultural match has been

necessary as a foundation for PiS to build its electorate. By highlighting the influence of the traumatic past, the influence of former communists and the newly gained confidence to defend the Christian values underlying the Polish ideology, PiS has convinced its electorate that the reforms towards an illiberal system have been inevitable. This is strengthened by portraying transnational actors as foreign influences supporting only a creamy layer of society to maintain their power. The second hypothesis *'If illiberal norms fit with the interest of the dominant political actors, norm change towards an illiberal judiciary becomes more likely'* can also be confirmed. The government, the dominant domestic political actor, has built on the foundation of the cultural ideology in order to create a space to achieve their political ideology. Moreover, the illiberal judicial system can be used to create beneficial circumstances for the EP- and national elections. The third hypothesis can be partly confirmed and reads: *'If illiberal norms are better suited to fit with a country's institutional configurations, norm change towards an illiberal judiciary becomes more likely.'* It can only be partly confirmed as the actual institutional effectiveness does not seem to have influence on the shift towards an illiberal judiciary. The perceived institutional effectiveness in the judiciary institutions, however, does seem to have influence in the shift, because the illiberal norms offer an alternative to the perceived ineffective liberal judiciary.

Even though the hypotheses are being confirmed, the confirmation of the individual hypotheses do not yield much explanatory power on their own. The causal pathway deriving from the three variable dimensions is in this sense much more interesting to reflect upon. The cultural segment, entailing the historical legacies, the protection of the Catholic convictions and an increased disillusion with the Western EU member states, has set a tone, domestically, which represents the dissatisfaction with liberal norms promoted by the EU. During the elections of 2015, this dissatisfactory sentiment has been politicized and used by PiS in order to widen its electorate to obtain power. Hence, the electoral interests of PiS have been served by advocating illiberal norm change to address the citizen's concerns. In PiS' course of action, transnational actors advocating for liberal norms have been portrayed as misleading and solely supporting a small elite group, while transnational actors supporting illiberal norms have been emphasized as beneficial for the society as a whole. The electoral victory has enabled PiS to implement illiberal measures. Resonating with the ideology of Kaczyński, legal impossibilism has been demolished by paralyzing the CT and PiS its actions have been justified by building upon the underlying cultural ideology in Poland. In addition to this, PiS could fall back on the citizens' perceived institutional misfit, expressed as a wide-spread mistrust regarding liberal norms and a feeling of ineffectiveness towards the Polish judiciary. By instrumentalizing this mistrust through the perceived institutional fit, PiS could widen its electorate. Moreover, the illiberal norms still serve the interests of PiS as it enables PiS to change legislation with regards to the upcoming elections.

5. CONCLUSION

As described in the introduction, Poland was the perfect example of European integration. After its EU accession, Poland implemented and internalized liberal norms and built its institutional infrastructure upon those norms. However, after 2015, Poland started to adopt illiberal norms without a direct structural change to prompt this norm change. The adoption of those norms became most prominently visible in the legislation concerning the judicial system. The paralysis of the CT and four far-reaching laws shifted the emphasis from the importance of the separation of powers, as supported by liberal norms, towards a system stressing the importance of the powers allocated to the democratically elected government. In the case of Poland, this concretely means that PiS assigned a dominant role to the executive power, thereby preventing any possible interference of the judiciary in the decision-making process. This empirically observed change in behavior led to the following research question:

‘How can the Polish norm change towards an illiberal judicial system be explained?’.

The answer to the research question derives from the interrelatedness of the three hypothesis. The first hypothesis, *‘if illiberal norms are congruent with the domestic political culture, norm change towards an illiberal judiciary becomes more likely’*, has been confirmed but more importantly the confirmation of this hypothesis shows that a space has been created for the dominant political actor to pursue its interests by strategically using the encountered political culture. This leads to the confirmation of the second hypothesis, *‘if illiberal norms fit with the interest of the dominant political actors, norm change towards an illiberal judiciary becomes more likely’*. The dominant political actor, PiS, encountered a political culture which was receptive of illiberal norms due to society’s dissatisfaction with liberal norms. By strategically using the illiberal norms, not only PiS’ electorate widened, their power also increased as the illiberal norms caused a shift of power from the judiciary towards the legislative and executive power. The widespread dissatisfaction with the judiciary allowed PiS to emphasize the need for illiberal norms, as these norms offered a solution to judicial inefficiency. In other words, PiS has used illiberal norms to address the encountered cultural dissatisfaction with liberal norms and the dissatisfaction with the judicial system in order to pursue their own interests, namely electoral victory and implementing the vision of Karsincy. This does not necessarily lead to the confirmation or refutation of the third hypothesis, *‘if illiberal norms are better suited to fit with a country’s institutional configurations, norm change towards an illiberal judiciary becomes more likely’*, because the quality of the fit between the liberal or illiberal norms and the judiciary has not been proven. However, the perceived institutional fit seems to be congruent with illiberal norms as it offers an alternative to improve the judiciary, whereas the liberal norms caused a perceived institutional misfit. PiS solely used this perceived institutional fit at the right time and in combination with its own interests and the dissatisfaction in the cultural context. In the analysis, it could be seen

that the influence of transnational actors has been limited, as was expected from the theoretical framework, because the supporters of the reforms were not receptive of the liberal norm entrepreneurs as their vision did not align with the vision of the Poles. This shows that the influence of transnational actors can only strengthen or weaken a certain course, but their success depends on the domestic constellations.

In sum, the causal pathway deriving from the three variables can thus be formulated as follows: a state's political culture can create a space for domestic actors whose electoral interests could be served by promoting a norm change towards illiberalism. In order to persuade society to support this change, transnational actors sharing the mistrust against liberalism are supported domestically, whereas transnational actors who defend liberalism are portrayed as culturally alienated and as defenders of a small group of elites in society. The perceived institutional misfit has been of use, as the opponents of liberalism can draw on prevailing popular perceptions to promise a better 'institutional fit' with an illiberal judiciary with the overall political system, even though it cannot be objectively confirmed that the liberal judiciary system is indeed ineffective or will be more effective due to the changes. Therefore, the perceived institutional misfit based on the underlying cultural ideology can be used by dominant political actors to achieve their goals.

As the thesis has been aimed at *Verstehen* rather than *Erklären*, the hypotheses have only been used to better understand the case. This implies that the hypotheses were not mutually exclusive in order to test divergent theoretical explanations, but were used to find a heuristic answer to the research question. In order to give a more comprehensive answer, the broader change towards illiberalism in Poland should be taken into consideration. Whereas the shift towards an illiberal regime can be most prominently witnessed in the judiciary, several other laws have been implemented, such as the Media law and the NGO law, which can undermine the democratic principles (Interview 3). These laws could also have an impact on the shift towards an illiberal system and have influenced the domestic constellations. In future research, it would also be interesting to investigate whether or not the government also wants to implement an illiberal economic model or wants to maintain the neo-liberal model. Using authoritarian liberalism, future research could expose that the illiberal judiciary only serves as means to strengthen the neoliberal market model even at the expense of democratic political proceedings (Wilkinson, 2013: p. 528).

With regards to the domestic constellations, the empirically analyzed institutional fit shows a new phenomenon: the perceived institutional fit. Theories about institutional fit only include the objective institutional fit. The empirical analysis shows that the objective institutional fit does not always reflect the opinion of citizens of a state of the institutional fit. In other words, people could perceive an institutional misfit, while there is no evidence of an actual institutional misfit. In the case of Poland,

the perceived institutional fit even prevails over the objective institutional fit and has more influence in the decision-making process than the actual institutional fit. In future research, this perceived institutional fit should be analyzed more thoroughly in order to determine whether or not the perceived institutional fit could be more important than the actual institutional fit. If this holds up, a new theory could be built on the perceived institutional fit as a domestic constellation.

Reflecting upon the theories used to explain the case, an alternative answer on a theoretical level should also be included, namely a structural rationalist explanation. The international system has been changing immensely in the last years, especially with the shifting role of the United States, the rise of authoritarian China and the decreasing role of the EU as a result of BREXIT (Steinbock, 2017). In future research, it could be analyzed whether or not those changes also had an impact on the norm change in Poland, from a structural rationalist perspective. Poland could, for example, have made a cost-benefit analysis and decided that a shift towards illiberalism would be more beneficial in the future international political climate due to the rise of China and the geographical location of Russia. From a constructivist perspective, on the other hand, those international structural changes could also be interesting if one takes the ‘perceived rational choice’ into account, as Poles could feel that, in the long-term, authoritarianism would be better fitting, even though the liberal system fits just fine and the EU, the US and, NATO are still Poland’s allies. In future research, the perceived rational choice can be included in order to determine whether the actual changing international power balance or the perceived changes in the international power balance have more explanatory power.

The most prominent limitation of this thesis is the language barrier. Not being able to read Polish newspapers, to watch Polish television, or to speak with Polish citizens in their native language has the inherent consequence that the understanding of the domestic culture and the perception of the reforms are suboptimal and possibly biased. In future research, the internal validity could be increased by including Polish written/spoken sources to create a more extensive analysis of the Polish culture. Additionally, it is interesting to reflect upon the bias in this research and the data used. The Western media outlets have a strong bias towards the liberal norms and the EC’s actions. This results from a perception that the illiberal norms are inherently worse than liberal norms. In the literature and the media, the norm change has been portrayed as a worsening of the situation, while many Poles support the reforms. Therefore, it could be useful to research the philosophical/normative question if the illiberal judicial system is ‘worse’ than the liberal judicial system.

Secondly, the limited generalizability of this thesis decreases the external validity. This study has been constructed as an explorative single-case study, which allows for a comprehensive overview of the case and gaining understanding about possible domestic constellations causing the norm change in Poland. While the generalizability of this method is low, as the results are only valid for Poland, a

strength of this research method is the in-depth knowledge gained about a causal pathway towards an illiberal judiciary. In future research, the causal pathway could be applied to more cases and expose a general causal pathway. This way, this thesis contributes scientifically to theory-building within the norm diffusion literature. In future research, it could be analyzed if the causal pathway entailing the domestic constellations could also be used to investigate failed norm diffusion.

To conclude one can, taking the broader trend towards authoritarianism into account, discuss whether or not it to be expected that more states follow the path of Poland, especially in Central Europe. According to the findings of this thesis, this shift has been the result of a political party who recognized the underlying dissatisfaction in the political culture whereby the perceived institutional fit has been instrumentalized to address the dissatisfaction of people. On the one hand, this trend could be broken if the political culture does not allow for such an opportunity for parties. Therefore, it could be useful to research what the precise dissatisfaction of people is and to address those problems directly instead of creating a space for parties using the problems to achieve their own interests in the next elections. Moreover, it could be useful to research the perception of situations, such as institutional fit or international power balances, as changing the perception could be key to solve specific domestic problems. On the other hand, the outcome of this thesis implies a causal pathway of domestic constellations leading towards norm change. This could mean that every state could turn towards illiberal norms once a political actor detects a space wherein a turn to illiberal norms could benefit its own interests. A perceived institutional fit would in this case be beneficial as it can be instrumentalized to reach the political actor's goals. Moreover, this means that Western states who are currently condemning the Polish reforms could also be prone to illiberal norms. In the Netherlands, for example, the first signs of problems between the judiciary and the executive and legislative power have been witnessed at the beginning of July 2018. A national debate covered the question if the judiciary could block the government's decision to abolish the consultative referenda. A liberal judiciary should have this power, if it believes that the citizens should be protected from a government decision, it was, however, decided that the judiciary could not interfere with this government decision. If Western states, as they state, honestly want to protect the liberal rule of law, such moments should serve as reflection to prevent a shift towards an illiberal judiciary in the future.

6. REFERENCES

- Accenture Foundation. (2009) *Strategic research and political communications for NGOs: initiating policy change*. New Delhi: Sage.
- Acharya, A. (2004) How ideas spread: Whose norms matter? Norm localization and institutional change in Asian regionalism. *International organization* 58(2): 239-275.
- Acharya, A. (2013) The R2P and norm diffusion: towards a framework of norm circulation. *Global responsibility to protect* 5(4): 466-479.
- Adekoya, R. (2017) Why Poland's Law and Justice Party remains so popular. <https://www.foreignaffairs.com/articles/central-europe/2017-11-03/why-polands-law-and-justice-party-remains-so-popular>, accessed 26 June 2018.
- Amnesty International (2017) Poland: independence of the judiciary and the right to fair trial at risk. <https://www.amnesty.org/en/latest/news/2017/08/poland-independence-of-the-judiciary-and-the-right-to-fair-trial-at-risk/>, accessed 16 March 2018.
- Antoniades, A. (2003) Epistemic communities, epistemes and the construction of (world) politics. *Global society* 17(1): 21 - 38.
- Balcer, A., Buras, P. Gromadzki, G. and Smolar, E. (2016) Change in Poland, but what change? Assumptions of Law and Justice party foreign policy. <http://www.batory.org.pl/upload/files/Programy%20operacyjne/Otwarta%20Europa/Cchange%20in%20Poland.pdf> , accessed 14 July 2018.
- Basinger, S. and Hallerberg, M. (2004) Remodeling the competition for capital: how domestic politics erases the race to the bottom. *American political science review* 98(2): 261–276
- Bayer, L. (2018) The new communists. <https://www.politico.eu/article/new-communists-hungary-poland-viktor-orban-jaroslaw-kaczynski/>, accessed 26 June, 2018
- Beach, D. and Pedersen, R. B. (2013) *Process-tracing methods: foundations and guidelines*. Michigan: University of Michigan Press.

- Behraves, M. (2011) *Constructivism: an introduction*.
<http://portal.research.lu.se/portal/files/5629509/3053097.pdf>, accessed 14 April 2018.
- Bennett, A. (2010) Process tracing and causal inference. In: H.E. Brady and D. Collier (eds.) *Rethinking social inquiry. Diverse tools, shared standards*. Lanham: Rowman and Littlefield Publishers, pp. 207-220.
- Berg, B. and Lune, H. (2012) *Qualitative research methods for the social sciences*. Pearson: London.
- Bernard, H.R. (2011) *Research methods in anthropology*. Oxford: AltaMira Press.
- Bershidsky, L. (2018) Poland pitches Europe on its war on judges.
<https://www.bloomberg.com/view/articles/2018-02-26/poland-s-war-on-judges-faces-european-backlash> , accessed 20 April 2018.
- Blyth, M. (2001) The Transformation of the Swedish model: economic ideas, distributional conflict and institutional change. *World politics* 54 (1): 1-26.
- Bielecki, T. (2017) Kaczynski's PiS pulls Poland to periphery of European Union.
<http://www.dw.com/en/kaczynskis-pis-pulls-poland-to-periphery-of-european-union/a-41394415>, accessed 25 June 2018.
- Biersteker, T. (1990) Reducing the role of the state in the economy: a conceptual exploration of IMF and World Bank prescriptions. *International studies quarterly* 34(4): 477–492.
- Bíró-Nagy, A. (2017) Illiberal democracy in Hungary: the social background and practical steps of building an illiberal state. In: P. Morillas (eds) *Illiberal democracies in the EU: the Visegrad Group and the risk of disintegration*. Barcelona: CIDOB edicions, pp. 31-44.
- Borzel, T. and Risse, T. (2007) Europeanization: the domestic impact of European Union Politics. In: K. E. Jørgensen, M. Pollack and B. Rosamond (Eds.) *Handbook of European Union Politics*. London: Sage, pp. 483 – 504.
- Bransen, J. (2001) Philosophy of verstehen and erklären. In: N.J. Smelser and P.B. Baltes (eds.) *International Encyclopedia of the Social and Behavioral Sciences*. Oxford: Elsevier Science Ltd, pp. 16165-16170.

- Broniatowski, M. (2017) Polish PM Beata Szydło resigns.
<https://www.politico.eu/article/polish-pm-beata-szydlo-resigns/>, accessed 29 June 2018.
- Brooks, S. (2005) Interdependent and domestic foundations of policy change: the diffusion of pension privatization around the world. *International studies quarterly* 49(2): 273–294.
- Brueckner, J. (2000) Welfare reform and the race to the bottom: Theory and evidence. *Southern economic journal* 66(3): 505-525.
- Buckley, N. and Foy, H. (2016) Poland’s new government finds a model in Orban’s Hungary.
<https://www.ft.com/content/0a3c7d44-b48e-11e5-8358-9a82b43f6b2f>, accessed on 26 July 2018.
- Busch, P.O. and Jörgens, H. (2005) The international sources of policy convergence: explaining the spread of environmental policy innovations. *Journal of European public policy* 12(5): 860 – 848.
- Byas, S. (2016) Hungarian and Polish leaders denounce “Sovietization” by EU.
<https://www.thenewamerican.com/world-news/europe/item/24471-hungarian-and-polish-leaders-denounce-sovietization-by-eu>, accessed 25 June 2018.
- Calamur, k. (2017) Poland's President vetoes controversial legislation.
<https://www.theatlantic.com/news/archive/2017/07/poland-supreme-court-veto/534630/>, accessed on 19 March 2018.
- Campbell, J. L. (2002) Ideas, politics, and public policy. *Annual review of sociology* 28(1): 21-38.
- Capie, D. (2008) Localization as resistance: the contested diffusion of small arms norms in Southeast Asia. *Security dialogue* 39(6): 637-658.
- Cass, L. R. (2016) Measuring the domestic salience of international environmental norms: climate change norms in American, German and British climate policy debates. In: M.E. Pettenger (2016). *The social construction of climate change*. London: Routledge, pp. 47-74.

- CBOS (2017) Evaluation of the judiciary.
https://www.cbos.pl/PL/publikacje/public_opinion/2017/03_2017.pdf, accessed 26 June 2018.
- Checkel, J. (1999) Norms, institutions, and national identity in contemporary Europe. *International studies quarterly* 43 (1): 83–114.
- Cichocki, M.A. (2017) The West’s polymorphic crisis and their impact on the Visegrad group. In: P. Morillas (eds) *Illiberal democracies in the EU: the Visegrad Group and the risk of disintegration*. Barcelona: CIDOB edicions, 9-19.
- Ciecsla, W. (2017) A good chance to fight (PiS) propaganda in Poland. <http://www.investigate-europe.eu/a-good-chance-to-fight-pis-propaganda-in-poland/>, accessed 26 June 2018.
- Clingendael (2016) Poland and the EU: membership entails existential security.
<https://www.clingendael.org/publication/poland-and-eu-membership-entails-existential-security>, accessed 20 February 2018.
- CT (2015) The Constitutional Tribunal act. <http://trybunal.gov.pl/en/news/press-releases/after-the-hearing/art/8749-ustawa-o-trybunale-konstytucyjnym/>, accessed 9 March 2018.
- Cortell, A. P. and Davis JR, J. W. (2000) Understanding the domestic impact of international norms: A research agenda. *International studies review* 2(1): 65-87.
- Crawford, N. (1998) Postmodern ethical conditions and a critical response. *Ethics and international affairs* 12: 121–40.
- Davies, C. (2017) Polish MPs pass judicial bills amid accusations of threat to democracy.
<https://www.theguardian.com/world/2017/dec/08/polish-mps-pass-supreme-court-bill-criticised-as-grave-threat>, accessed 9 March 2018.
- Davies, C. (2018) Head of Polish supreme court defies ruling party's retirement law.
<https://www.theguardian.com/world/2018/jul/04/poland-supreme-court-head-malgorzata-gersdorf-defies-retirement-law>, accessed 11 July 2018.
- De la Baume, M. (2018) Poland takes leaf out of Juncker’s book in Brussels battle.
<https://www.politico.eu/article/poland-rule-of-law-brussels-takes-leaf-out-of-junckers-book-in-battle/>, accessed 20 March 2018.

- Deutsche Welle (2017) EC triggers Article 7 against Poland. <http://www.dw.com/en/european-commission-triggers-article-7-against-poland/a-41873962>, accessed 20 March 2018.
- Die Presse (2016) Nazi lawyers dominated after 1945 German Ministry of Justice. <https://diepresse.com/home/zeitgeschichte/5099217/NaziJuristen-dominierten-nach-1945-deutsches-Justizressort>, accessed 20 March 2018.
- Dolowitz, D. and Marsh, D. (2000) Learning from abroad: The role of policy transfer in contemporary policy-making. *Governance* 13(1): 5-23.
- Dunai, M. (2016) Hungary's Orban rejects 'Sovietization' by Brussels, defends nation state. <https://www.reuters.com/article/us-hungary-orban-idUSKCN12NOPJ>, accessed 25 July 2018.
- EC (2016) Commission recommendation regarding the rule of law in Poland: questions and answers. http://europa.eu/rapid/press-release_MEMO-16-4479_en.htm, accessed 9 March 2018.
- EC (2016A) Rule of law: Commission issues recommendation to Poland http://europa.eu/rapid/press-release_IP-16-2643_en.htm, accessed 9 March 2018.
- EC (2016B) Commission adopts rule of law opinion on the situation in Poland. http://europa.eu/rapid/press-release_IP-16-2015_en.html, accessed 9 March 2018.
- EC (2017) Reasoned proposal in accordance with article 7(1) of the Treaty on European Union regarding the rule of law in Poland 2017/0360. <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1520597390561&uri=CELEX:52017PC0835>, accessed 1 March 2018.
- Elkins, Z. and Simmons, B. (2005) On waves, clusters, and diffusion: A conceptual framework. *The annals of the American academy of political and social science* 598(1): 33-51.
- Elkins, Z., Guzman, A. T. and Simmons, B. A. (2006) Competing for capital: the diffusion of bilateral investment treaties, 1960–2000. *International organization* 60(4): 811-846.
- Etzioni, A. (1975) *Comparative analysis of complex organizations, rev.* New York: The Free Press of Glencoe Inc.

EU (n.d.) The history of the European Union. https://europa.eu/european-union/about-eu/history_en, accessed on 27 February 2018.

EU justice Scoreboard (2018) The 2018 EU justice scoreboard. https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2018_factsheet_en.pdf, accessed 29 June 2018.

European Parliament (2016) Understanding the EU rule of law mechanisms. [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/573922/EPRS_BRI\(2016\)573922_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/573922/EPRS_BRI(2016)573922_EN.pdf), accessed 5 March 2018.

Fernandes, T. (2013) Religion and politics: revisiting interwar democracy and dictatorship. *Análise social* 209(4): 970 – 975.

Finnemore, M., and Sikkink, K. (1998) International norm dynamics and political change. *International organization* 52(4): 887-917.

Flyvbjerg, B. (2006) Five misunderstandings about case-study research. *Qualitative inquiry* 12(2): 219-245.

FTSE Russell (2017) FTSE Russell announces results of FTSE annual country classification review. <http://www.ftserussell.com/files/press-releases/ftse-russell-announces-results-ftse-annual-country-classification-review-092917>, accessed on 27 February 2018.

Fukuyama, F. (2011) Transitions to the rule of law. *Journal of democracy* 21(1): 33-44.

Geertz, C. (1973) *The interpretation of cultures*. New York: Basic Books, Inc., Publishers.

Gerring, J. (2004) What is a case study and what is it good for? *American political science review* 98(2): 341-354.

Gerring, J. (2007) *Case study research: principles and practice*. New York: Cambridge University Press.

- Gilardi, F. (2012) Transnational diffusion: norms, ideas, and policies. In: W. Carlsnaes, T. Risse, and B. Simmons (eds). *Handbook of international relations*. Thousand Oaks: SAGE Publications, pp. 453–477.
- Grigorescu, A. (2010) The spread of bureaucratic oversight mechanisms across intergovernmental organizations. *International studies quarterly* 54(3): 871–886.
- Grossman, G. and Helpman, E. (1995) Trade wars and trade talks. *Journal of political economy*, 103(4): 675-708.
- Gutteridge, N. (2016) Stop the EUSSR! Hungary PM slams Brussels 'Sovietisation' in savage attack on federalism. <https://www.express.co.uk/news/world/724664/European-Union-Viktor-Orban-Sovietisation-Brussels-EU-refugees-migrant-crisis>, accessed 25 June 2018.
- Guzzini, S. (1998) *Realism in international relations and international political economy: the continuing story of a death foretold*. London: Routledge.
- Haas, P. (1989) Do regimes matter? Epistemic communities and mediterranean pollution control. *International organizations* 43(3): 377-403.
- Halperin, S. and Heath, O. (2016) *Political research: methods and practical skills*. Oxford: Oxford University Press.
- Hampsher-Monk, A. and Hindmoor, A. (2009) Rational choice and interpretive evidence: caught between a rock and a hard place? *Political studies* 58(1): 47-65.
- Hancocks, T. (2018) If you're not sure why what's happening in Poland matters so much, here's what you need to know. <http://theconversation.com/if-youre-not-sure-why-whats-happening-in-poland-matters-so-much-heres-what-you-need-to-know-89721>, accessed 25 February 2018.
- Helleiner, E. (2005). Structural power in international monetary relations. Florence: European University Institute: EUI Working Papers no. 2005/10.
- Henberg, M.C. (1978) Impartiality. *Canadian journal of philosophy* 8(4): 715–724.

- Héritier, A. and Knill, C. (2001) Differential responses to European policies: a comparison. In: A. Héritier et al. (eds.) *Differential Europe: new opportunities and restrictions for member state policies*. Lanham: Rowman and Littlefield, pp. 257–294.
- Herrmann, R. K., Risse-Kappen, T. and Brewer, M. B. (2004) *Transnational identities: becoming European in the EU*. Oxford: Rowman and Littlefield.
- HFHR (2016) Chief Justice of Poland’s Constitutional Court elected at illegal session? <http://www.hfhr.pl/en/chief-justice-of-polands-constitutional-court-elected-at-illegal-session/>, accessed 13 March 2018.
- HFHR (2017) New threats to the rule of law. The reform of the judiciary in Poland. <http://www.hfhr.pl/wp-content/uploads/2017/12/New-threats-to-the-rule-of-law-brief-12-2017.pdf>, accessed 29 June 2018.
- Hoffmann, M. J. (2010). *Norms and social constructivism in international relations*. Oxford Research Encyclopedia of International Studies. Oxford: Oxford University Press.
- Homans, G. (1961) *Social Behavior: its Elementary Forms*. New York: Harcourt, Brace and Co.
- Hugill, P. and Dickson, D. (eds) (1988) *The transfer and transformation of ideas and material culture*. Texas: Texas A and M University Press.
- Human Rights Watch (2017) Poland: draft law threatens supreme court. <https://www.hrw.org/news/2017/07/20/poland-draft-law-threatens-supreme-court>, accessed 16 March 2018.
- Hutton, W. (2018) Beware the illiberal alliance of Poland and Hungary, a grave threat to the EU. <https://www.theguardian.com/commentisfree/2018/jan/07/hungary-poland-had-enough-of-liberal-democracy-eu-must-act>, accessed 25 June 2018.
- Iustitia (2018) Response to the white paper compendium on the reforms of the Polish justice system, presented by the government of the republic to the EC. <https://www.iustitia.pl/informacje/2172-response-to-the-white-paper-compendium-on-the-reforms-of-the-polish-justice-system-presented-by-the-government-of-the-republic-of-poland-to-the-european-commission>, accessed 28 June 2018.

- Janecki, S. (2016) The response of the Polish government exposes the manipulative and biased position of the VC. <https://polska.pl/politics/home/response-polish-government-exposes-manipulative-and-biased-posit/>, accessed 12 March 2018.
- Joachim, J. (2003) Framing issues and seizing opportunities: The UN, NGOs, and women's rights. *International Studies Quarterly* 47(2): 247-274.
- Jurada, E. (2006) assigning duties in the global system of human rights: the role of the European Union In: H. Meyer and H. Vogt (eds.) *A responsible Europe? The ethical foundation of EU external affairs*. Basingstoke: Palgrave Macmillan, pp. 119-139.
- Kahler, M. (1993) International relations: still an American social science? In: L. Miller, M.J. Smith (eds.) *Ideas and ideals: essays on politicisism*. Boulder, Colorado: Westview, pp. 395-414.
- Keck, M. E. and Sikkink, K. (1999) Transnational advocacy networks in international and regional politics. *International social science journal* 51(159): 89-101.
- Keleman, R. (2017) Europe's other democratic deficit: national authoritarianism in Europe's democratic union. *Government and opposition* 52(2): 211-238.
- Kellerman, F. (2018) Polen will justizreform nachbessern. http://www.deutschlandfunk.de/streit-mit-der-eu-polen-will-justizreform-nachbessern.795.de.html?dram:article_id=414611, accessed 29 June 2018.
- Keohane, R.O. and Nye, J.S. Jr. (1971) Transnational relations and world politics: an introduction. In R.O. Keohane and J.S. Nye (eds) *Transnational Relations and World Politics*. Cambridge MA: Harvard University Press, pp. 329-349
- Kingdon, J. (2003) *Agendas, alternatives, and public policies*. New York: Pearson.
- Knaus, G. and Buras, P. (2018) The collapse of the rule of law in Poland – and what to do. https://www.esiweb.org/index.php?lang=trandid=67andnewsletter_ID=125, accessed 28 June 2018.
- Knill, C. (2005) Introduction: cross-national policy convergence: concepts, approaches and explanatory factors. *Journal of European public policy* 12(5): 764-774.

- Knill, C. and Lehmkuhl, D. (2002) The national impact of European Union regulatory policy: three Europeanization mechanisms. *European journal of political research* 41(2): 255-280.
- Knill, C. and Lenschow, A. (2001) Adjusting to EU environmental policy: change and persistence of domestic administrations. In: M.G. Cowles, J. A. Caporaso and T. Risse-Kappen (eds.) *transforming Europe: Europeanization and domestic change*. Ithaca and London: Cornell University Press, pp. 116-136.
- Koncewicz, T.T. (2017) In judges we trust? A long overdue paradigm shift within the Polish Judiciary (Part I). <https://verfassungsblog.de/in-judges-we-trust-a-long-overdue-paradigm-shift-within-the-polish-judiciary-part-i/>, accessed 26 June 2018.
- Krook, M. L. and True, J. (2012) Rethinking the life cycles of international norms: the united nations and the global promotion of gender equality. *European journal of international relations* 18(1): 103-127.
- Kuisz, J. (2017) The new iron curtain? The V4 and the refugee crisis as seen from the Polish perspective. In: P. Morillas (eds). *Illiberal democracies in the EU: The Visegrad Group and the risk of disintegration*. Barcelona: CIDOB edicions, pp. 45-55.
- Kvale, S. (1996) *Interviews: an introduction to qualitative research*. Thousand Oaks: Sage Publications, pp. 185–207.
- Lowenthal, D. (1961) Geography, experience, and imagination: towards a geographical epistemology. *Annals of the association of American geographers* 51(3): 241-260.
- Mann, M. (1993) *The sources of social power*. Cambridge: Cambridge University Press.
- Manners, I. (2006) The constitutive nature of values, images and principles in the European Union. In S. Lucarelli, and I. Manners (eds.) *Values and principles in European Union foreign policy*. London: Routledge, pp. 19-41.
- Manners, I. (2008) The normative ethics of the European Union. *International affairs* 84(1): 65-80.
- Maoz, Z. (2002) Case study methodology in international studies: from storytelling to hypothesis testing. In: F. P. Harvey and M. Brecher (eds) *Evaluating methodology in international studies*. Ann Arbor: University of Michigan Press, pp. 455-475.

March, J. G. and Simon H. (1993) *Organizations*. Oxford: Blackwell

March, J. G. and Olsen, J. P. (2006) Elaborating the “new institutionalism”. In: R.E. Goodin (ed) *The Oxford handbook of political institutions*. Oxford: Oxford University Press, pp. 3-20.

Meyer, J., Ramirez, F. and Soysal, Y. (1992) World expansion of mass education, 1870-1980. *Sociology of education* 65(2): 128-149.

MFA of the Republic of Poland (2017) MFA statement on Poland’s response to EC’s complementary Recommendation of 21 December 2016.

http://www.msz.gov.pl/en/p/msz_en/c/MOBILE/news/mfa_statement_on_poland_s_response_to_european_commission_s_complementary_recommendation_of_21_december_2016, accessed 19 March 2018.

MFA of the Republic of Poland (2017B) MFA statement regarding Polish response to EC Recommendation of 26 July 2017

http://www.msz.gov.pl/en/p/msz_en/news/mfa_statement_regarding_polish_response_to_european_commission_recommendation_of_26_july_2017, accessed 19 March 2018.

MFA of the Republic of Poland (2017C) Deputy Minister Konrad Szymanski: one can see that our misunderstanding with the EC regarding rule of law is on-going.

http://www.msz.gov.pl/en/p/msz_en/news/they_wrote_about_us/deputy_minister_konrad_szymanski_one_can_see_that_our_misunderstanding_with_the_ec_regarding_rule_of_law_is_on_going_pap_dispatch_from_13_september_2017;jsessionid=3EE813EF5B2E104118D80D5DE548FC3F.cmsap1p, accessed 19 March 2018.

Mickiewicz, J. (2016) Hongrie : Orban dénonce la «soviétisation» de l’Union européenne et défend ses frontières. [http://www.lefigaro.fr/international/2016/10/24/01003-](http://www.lefigaro.fr/international/2016/10/24/01003-20161024ARTFIG00332-hongrie-orban-denonce-la-sovietisation-de-l-union-europeenne-et-defend-ses-frontieres.php)

[20161024ARTFIG00332-hongrie-orban-denonce-la-sovietisation-de-l-union-europeenne-et-defend-ses-frontieres.php](http://www.lefigaro.fr/international/2016/10/24/01003-20161024ARTFIG00332-hongrie-orban-denonce-la-sovietisation-de-l-union-europeenne-et-defend-ses-frontieres.php) , accessed 25 June 2018.

Mitchell, J. (1973) Networks, norms and institutions. In: J. Boissevian and J. Mitchell (eds) *network analysis*. The Hague: Mouton.

- Moravcsik, A. (1997) Taking preferences seriously: a liberal theory of international politics. *International organization* 51(4): 513-553.
- Moravcsik, A. and Vachudova, M. (2003) National interests, state power and EU enlargement. *East European politics and societies* 17(1): 42–57.
- Nadelmann, Ethan A. (1990) Global prohibition regimes: the evolution of norms in international society. *International organization* 44(4): 479–526.
- National conference of state legislature (2018) Separation of powers, an overview. <http://www.ncsl.org/research/about-state-legislatures/separation-of-powers-an-overview.aspx>, accessed 5 July 2018.
- Natorski, M. (2017) Commission employs double standards in Spain. <https://euobserver.com/opinion/139512>, accessed 25 June 2018.
- Nelson, T., Acker, M. and Manis, M. (1996) Irrepressible stereotypes. *Journal of experimental social psychology* 32(1): 13-38.
- New York Times (2017) Poland's President offers new path to end court crisis <https://www.nytimes.com/2017/09/25/world/europe/poland-courts-andrzej-duda.html>, accessed 29 June 2018.
- Newsweek (2016) PiS wants to take over the courts. Ziobro admits: there is one problem. <http://www.newsweek.pl/polska/zbigniew-ziobro-o-reformie-sadow-problemem-trybunal-konstytucyjny,artykuly,396878,1.html>, accessed 28 June 2018.
- Oberthür, S. and Roche Kelly, C. (2008) EU leadership in international climate policy: achievements and challenges. *The international spectator* 43(3): 35-50.
- Odell, J. S. (2001) Case study methods in international political economy. *International studies perspectives* 2(2): 161-176.
- Onuf, N. G. (1989) *World of our making: rules and rule in social theory and international relations*. Columbia: University of South California Press.

- Orbán, V. (2014). Speech at the 25th Bálványos summer free university and student camp. <http://hungarianspectrum.org/2014/07/31/viktor-orbans-speech-at-the-xxv-balvanyos-free-summer-university-and-youth-camp-july-26-2014-baile-tusnad-tusnadfurdo/>, accessed on 14 July 2018.
- Overbeek, E. (2018) Polen zijn trots op hun vaderland, en dat wringt met de gêne van de EU. <https://www.trouw.nl/home/polen-zijn-trots-op-hun-vaderland-en-dat-wringt-met-de-gene-van-de-eu~a77e237b/>, accessed 29 May 2018.
- Pacula, P. (2017) Polish president disappoints EU on judicial reform. <https://euobserver.com/justice/139148>, accessed 19 March 2018.
- Park, S. (2005) Norm diffusion within international organizations: a case study of the World Bank. *Journal of international relations and development* 8(2): 111-141.
- Payne, R. (2001) Persuasion, frames and norm construction. *European journal of international relations* 7(1): 37-61.
- PEW research Centre (2016) Euroskepticism beyond Brexit. http://www.pewglobal.org/2016/06/07/euroskepticism-beyond-brexit/pm_2016-06-07_brexit-01/, accessed 20 February 2018.
- Pogany, S. (2018) Europe's illiberal states: why Hungary and Poland are turning away from constitutional democracy. <https://www.independent.co.uk/news/world/europe/europe-s-illiberal-states-why-hungary-and-poland-are-turning-away-from-constitutional-democracy-a8143821.html>, accessed 25 June 2018.
- Poland in English (2018) Court rules controversial billboard campaign legitimate. <https://polandinenglish.info/37662357/court-rules-controversial-billboard-campaign-legitimate>, accessed on 7 August 2018.
- Poll of Polls (2018) All polls for the next Polish parliamentary election 2019. <https://pollofpolls.eu/PL>, accessed on 26 July 2018.
- Radio Poland (2017A) Polish president urges constitutional change amid plans for legal reform. <http://thenews.pl/1/9/Artykul/327351,Polish-president-urges-constitutional-change-amid-plans-for-legal-reform>, accessed 9 August 2018.

- Radio Poland (2017B) Warsaw will not give in to pressure over legal changes: PM.
<http://www.thenews.pl/1/9/Artykul/317346,Warsaw-will-not-give-in-to-pressure-over-legal-changes-PM>, accessed 26 June 2018.
- Rankin, J. and Smith, A. (2016) Poland gets official warning from EU over Constitutional Court changes. <https://www.theguardian.com/world/2016/jun/01/poland-gets-official-warning-from-eu-over-constitutional-court-changes>, accessed 9 March 2018.
- Ring, J. (2014) *An agent-based model of international norm diffusion*. Iowa City: University of Iowa.
- Risse, T. (2007) Transnational actors and world politics. In: W.C. Zimmerli, M. Holzinger and K. Richter (eds) *Corporate ethics and corporate governance*. Heidelberg: Springer-Verlag, 251-286.
- Risse-Kappen, T. (1994) Ideas do not float freely: transnational coalitions, domestic structures and the end of the cold war. *International organizations* 48(2): 185 - 214.
- Risse-Kappen, T. (ed.) (1995) *Bringing transnational relations back in: non-state actors, domestic structures and international institutions*. Cambridge: Cambridge University Press.
- Rogers, E.M. (1995) *Diffusions of innovations*. New York: Free Press.
- Sadurski, W. (2018) Bad response to a tragic choice: the case of Polish council of the judiciary. <https://verfassungsblog.de/bad-response-to-a-tragic-choice-the-case-of-polish-council-of-the-judiciary/>, accessed 29 June 2018.
- Schimmelfennig, F. and Sedelmeier, U. (2004). Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe. *Journal of European public policy* 11(4): 661–679.
- Sejm (2015) Wet van 22 december 2015 tot wijziging van de wet op het Constitutioneel Hof.
<http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20150002217>, accessed 9 March 2018.
- Sejm (2016A) Act of 22 July 2016 on the Constitutional Tribunal.
<http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20160001157>, accessed 9 March 2018.

- Sejm (2016B) The Act of 30 November 2016 on the status of the judges of the Constitutional Tribunal.
http://trybunal.gov.pl/fileadmin/content/dokumenty/Akty_normatywne/The_Act_on_the_Status_of_the_Judges_of_the_Constitutional_Tribunal_en.pdf , accessed 9 March 2018.
- Sejm (2016C) The Act of 30 November 2016 on the organisation of the Constitutional Tribunal and the mode of proceedings before the Constitutional Tribunal.
http://trybunal.gov.pl/fileadmin/content/dokumenty/Akty_normatywne/The_Act_on_the_Organisation_of_the_Constitutional_Tribunal_and_the_Mode_of_Proceedings_Before_the_Constitutional_Tribunal_en.pdf, accessed 13 March 2018.
- Shotter, J. and Huber, E. (2017) Poland's ruling party drafts bill to force judges to step down.
<https://www.ft.com/content/9a9796b6-67b2-11e7-8526-7b38dcaef614>, accessed 16 March 2018.
- Simmons, B.A. and Elkins, Z. (2004) The globalization of liberalization: policy diffusion in the international political economy. *American political science review* 98 (1): 171-189.
- Simmons, B., Garrett, G. and Dobbin, F. (2007) The global diffusion of public policies: social construction, coercion, competition, or learning? *Annual review of sociology* 33:449-472.
- Steffek, J. (2013) Explaining cooperation between IGOs and NGOs—push factors, pull factors, and the policy cycle. *Review of international studies* 39(4): 993-1013.
- Stein, A. (1983) Coordination and collaboration: regimes in an anarchic world. *International organization* 36(2): 299-324.
- Steinbock, D. (2017) The global economic balance of power is shifting.
<https://www.weforum.org/agenda/2017/09/the-global-economic-balance-of-power-is-shifting>, accessed on 3 August 2018.
- Stone, D. (2000) Think tank transnationalisation and non-profit analysis, advice and advocacy. *Global society* 14(2): 153-172.
- Strang, D. and Meyer, J. (1993) Institutional conditions for diffusion. *Theory and society* 22(4): 487-511.
- Strange, S. (1988) *States and Markets*. London: Pinter.

- Strzelecki, M. (2017): Polish Officials See 10 to 20 Years Needed Before Euro Adoption. <https://www.bloomberg.com/news/articles/2017-03-15/polish-officials-see-10-to-20-years-needed-before-euro-adoption>, accessed on 20 February 2018.
- Szczerbiak, A. (2017) Explaining the popularity of Poland’s Law and Justice government. <http://blogs.lse.ac.uk/euoppblog/2017/10/26/explaining-the-popularity-of-polands-law-and-justice-government/>, accessed 26 June 2018.
- Szuleka, M. et al. (2016) The constitutional crisis in Poland 2015 – 2016. http://www.hfhr.pl/wp-content/uploads/2016/09/HFHR_The-constitutional-crisis-in-Poland-2015-2016.pdf, accessed 3 March 2018.
- Szymielewczf, K. (2017) Poland after November 2015: the end of the rule of law or a phase of “radical democracy”? In: P. Morillas (eds) *Illiberal democracies in the EU: The Visegrad Group and the risk of disintegration*. Barcelona: CIDOB edicions, pp. 55-66.
- The Economist (2018) Poland’s ruling Law and Justice party is doing lasting damage. <https://www.economist.com/europe/2018/04/21/polands-ruling-law-and-justice-party-is-doing-lasting-damage>, accessed 27 March 2018.
- The Guardian (2015) Rightwing Law and Justice party wins overall majority in Polish election. <https://www.theguardian.com/world/2015/oct/27/poland-law-justice-party-wins-235-seats-can-govern-alone>, accessed 9 March 2018.
- The Guardian (2015B) Tens of thousands march in Warsaw against 'democratorship' government. <https://www.theguardian.com/world/2015/dec/12/poland-thousands-march-warsaw-against-democratorship-government>, accessed 9 March 2018.
- The World Bank (2018) Poland – data. <https://data.worldbank.org/country/poland>, accessed on 5 April 2018.
- Treaty of Lisbon (2007) Treaty of Lisbon. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12007L%2FTXT>, accessed 3 March 2018.

- Urbankiewicz, A. (2016) Current dispute on the Constitutional Court in Poland.
<http://kirp.pl/material-jezyku-angielskim-dotyczacy-sytuacji-trybunalu-konstytucyjnego/>,
accessed 9 March 2018.
- Van Teijlingen, E. (2014) Semi-structured interviews.
<https://intranetsp.bournemouth.ac.uk/documentsrep/PGR%20Workshop%20-%20Interviews%20Dec%202014.pdf>, accessed 20 July 2018.
- VC (2017) Poland opinion on the draft act amending the act on the national council of the judiciary, on the draft act amending the act on the supreme court, proposed by the president of Poland and on the organization of ordinary courts.
[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)031-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)031-e), accessed 16 March 2018.
- Visegradgroup post (2016) Duda and Orbán against Brussels' sovietisation.
<https://visegradpost.com/en/2016/10/24/duda-and-orban-against-brussels-sovietisation/>,
accessed 29 June 2018.
- Vreeland J. (2003) *The IMF and economic development*. New York: Cambridge University Press.
- Wampler, B. and Avritzer, L. (2005) The spread of participatory democracy in Brazil: from radical democracy to participatory good government. *Journal of Latin American urban studies* 7(7): 737-752.
- Wasner, B. (2006) The integration of civil society organisations of new member countries into European networks. In: M. Bach, C. Lahusen and G. Vobruba, (eds.) *Europe in motion. social dynamics and political institutions in an enlarging Europe*. Berlin: Sigma, 141-154.
- Weyland K. (2005) Theories of policy diffusion: lessons from Latin American pension reform. *World politics* 57(2): 262-95.
- White Paper (2018). White paper on the polish judiciary reforms.
<https://www.premier.gov.pl/en/news/news/the-government-presents-a-white-paper-on-the-reforms-of-the-polish-justice-system.html>, accessed 25 June 2018.

- Wiewióra, M. (2017) The new act on the Supreme Court in Poland.
<http://duelamical.eu/en/articles/273/polish-judicial-order>, accessed on 26 July 2018.
- Wigura, K. (2018). Despite fears over Law and Justice, Poland is not sliding into dictatorship.
<https://www.theguardian.com/commentisfree/2018/apr/04/law-and-justice-poland-dictatorship>, accessed 26 June 2018.
- Wolin, S. (1960) *Politics and vision*. Boston: Little, Brown.
- Wróbel, A. (2018) Hungarian parliament votes to support Poland in fight against EU.
<https://www.politico.eu/article/hungarian-parliament-votes-to-support-poland-in-fight-against-eu/>, accessed 20 March 2018.
- Yin, R. K. (2009) *Case study research: design and methods*. SAGE Publications Ltd:London.
- Young, L. and Everitt, J. (2004) *Advocacy groups*. Vancouver: UBC Press.
- Zakaria, F. (1997) The rise of illiberal democracy. *Foreign affairs* 76(6): 22-43.
- Zalan, M. (2017) Article 7 not mentioned in Poland probe update.
<https://euobserver.com/political/139144>, accessed 29 March 2018.
- Zalan, E. (2018) Poland defends judicial reforms, warns against EU pressure. from:
<https://euobserver.com/justice/141256>, accessed 29 June 2018.
- Żurek, W. (2016) The National Council of the Judiciary is under attack in different ways.
<https://verfassungsblog.de/the-national-council-of-the-judiciary-is-under-attack-in-different-ways/>, accessed 20 March 2018.

7. ANNEXES

ANNEX 1: INTERVIEW GUIDE



Brigitte Dekker
*The Clingendael Institute / Radboud University,
Nijmegen*

E-mail: bdekker@clingendael.org

Phone: +31 (0)6 25198652

1. Recent judicial reforms in Poland

- How would you describe the current changes of the Polish judicial system?
- To what extent do you think that the ongoing changes correspond to the norms of the European Union?
- To what extent do you think that the ongoing changes correspond to the norms of the Visegrád states?

2. The role of your organization for the ongoing reforms

- Could you briefly describe the tasks of your organization with regard to the judicial reforms in Poland?
- Could you briefly describe your own tasks?

3. The influence of transnational actors

- To what extent do you think that EU-based actors have an influence on the ongoing reforms in Poland? Which ones would you consider to be important, and why so?
- To what extent do you think that actors from the Visegrád states have an influence on the ongoing reforms in Poland? Which ones would you consider to be important, and why so?

4. The influence of domestic factors

- To what extent do you think that cultural and historical factors in Poland play a role for the ongoing reforms?
- To what extent do you think that political parties and interest groups play a role for the ongoing reform?
- To what extent do you think that the bureaucratic and judicial characteristics of the Polish institutional system play a role for the ongoing reform?

5. Situation in Poland

- In general, how do you assess the future development of Polish judicial system?

Thanks for your cooperation!

Embassy of Hungary - May 31, 2018

Recent developments

At the moment, the Polish citizens' trust in the judicial system has been strikingly low. This is caused by the great number of judges who already operated as a judge in the communist regime and have not been replaced after the fall of the Berlin wall. Therefore, it is understandable that the Polish government is trying to replace those judges and the government has a strong and legitimate claim to bring in some new, young judges into the judicial system. Hence, there is a strong cultural (historical) incentive to reform the judicial system. Hungary has faced the same difficulties when reforming their judicial system, but came to a solution with the European Union. Therefore, Hungary will support Poland as the changes could be beneficial for Poland. A striking example is a comparison between the situation in Poland and the (unthinkable) idea that NSB judges would still be employed in the Netherlands today.

Rule of law mechanism

When the general affairs council (of the EU) agreed on the framework of the rule of law mechanism, both Hungary and Poland welcomed this framework as the rule of law is one of the fundamental pillars of the European Union. However, it was emphasized that the rule of law mechanism should respect common values and norms. In the case of Poland, one country has been singled out, via a more political argument than a legal argument. Thereby, the rule of law framework has been used arbitrarily and has violated respect for sovereignty and self-determination of the Member State Poland. It should be based upon equality, rather than singling out a country. Legal decisions (instead of political) and cultural/historical heritage must be respected before triggering the rule of law mechanism.

The European Commission

Recently, Poland showed considerable flexibility towards the European Commission, as they have amended the last bills twice. First Vice-President of the European Commission Timmermans, however, was not satisfied by the amendments made, as too little change was made to the original bills in his opinion. This could have a discouraging effect on the flexible and open behavior of Poland as the Polish Parliament and Government, rightly, feel that they have made enough concessions to the European Union. Therefore, the European Commission should now show their willingness to compromise on the issue. A small discrepancy can be noticed between the viewpoints of Timmermans

and Juncker, as the latter seems to show more willingness to actually listen to the Polish arguments in this particular dispute. The ambassadors of the Visegrád group in the Netherlands regularly speak with each other, however, the actual settlement of this dispute is not discussed often as it should be handled by the European Commission and Poland. The other Member State embassies are also not involved in the dispute settlement.

The legitimacy of Poland's reforms and double standards

The reforms have been launched with the support of the Polish parliament, elected democratically. Therefore, the aim to reform the judiciary can be considered legitimate. When Poland presented the white paper on their reforms it showed that every element of the reform can be found in another EU-Member State, but somehow these changes are seen as illegitimate when implemented in Poland. The reform of the Polish judicial system is in line with previous recommendations of the Venice Commission. The reforms are not just ideas constructed by Poland, it have been based upon a close examination of judicial systems of other Member States. This tends to confirm the feeling that the European Commission is working with double standards and patronizing the Eastern European Countries. The name 'Oostblok' already feels condescending as the countries of the *Oostblok* refer to themselves as Central European Countries. Hopefully, the incoming Austrian presidency will be more objective and sober with regards to this issue as it still emphasizes the line between West and Eastern Europe, even though the East has been catching up and has even outrun the Southern Member States with regard to economic growth and wealth.

Cultural, interest and institutional fit

Culturally and historically, the differences between Western and Eastern Europe can be traced back to the end of the Second World War. Whereas the West received financial support through the Marshall plan, roughly the same amount of money has been taken away from the Eastern European countries by the Soviet Union. The long period of oppression caused a great upraise in national sentiments once the Iron curtain fell. Both national pride and historical heritage should not be forgotten nor should they form a problem for the European Union. It is worrisome that whatever the governments of Central Europe do, it is always labeled as suspicious. For example, the recent focus on increased anti-Semitism and the allegedly horrible situation for Jews in Hungary is not true. Hungary is one of the safest places for Jews and Hungary has the second biggest synagogue in the world, whilst Jews in Western Europe cannot even be their kippah when going outside.

Constructive dialogues are therefore of paramount importance. The Central European states already have to deal with a lot of prejudice and *headwind* from the Western European states and through

dialogue, hopefully, some differences or concerns can be dealt with. Moreover, the judicial reforms in Poland kept coming up even though the European Union has much more serious issues to deal with, for example, BREXIT. Therefore, the European Union should reconsider its priorities and not waste so much time on the case of Poland. The biggest changes have already been made by amending the last bills, now it is the European Commission who should be willing to listen and make concessions. According to the government of Poland, they cannot make any more concessions as it will decrease the support of their electorate. While a strong, vocal minority still opposes the current reforms, the majority of the Polish citizens have voted for these reforms. The decision of the Polish people must be respected. It is exactly the variety among countries that is characteristic for the European Union: while every Member State is different, we all belong to the same European Union.

Embassy of the Slovak Republic - June 6, 2018

Mr. Bužek stated that in the interview, he could not offer me his opinion on the domestic changes in any European Member State, including Poland, as his expertise does not focus on the domestic changes happening in Poland at the moment. Instead, he offered me a more general overview of changing behavior within the European Union (EU) and the Member States' changing mindsets.

The Visegrád group and reforms in Poland

The current reforms in Poland have not been officially discussed in Visegrád Group meetings. The Visegrád group also has no official statement on the situation, except for the statements of the members individually. These do not, however, represent a shared statement of the Visegrád group. From the start, the Visegrád group has been a flexible, pragmatic group of countries with no regular meetings and no formalized procedure prior to meetings of the European Commission (EC).

At the moment, two Visegrád group countries are being heavily criticised by the EC on an extremely sensitive topic. Slovakia is not in favor of intervening in this discussion as it is a dispute between Poland/Hungary and the EC. Besides, it is always more difficult to establish an opinion about a neighboring state than to establish an opinion about more distant states. Slovakia does support continuation of an intensive, constructive dialogue between the EC and Poland/Hungary in order to address and solve the dispute about the recent judicial reforms.

The Slovak Republic, a firm supporter of the rule of law

For Slovakia, the rule of law is one of the essential principles of European integration. In addition to this, Member States should always be willing to engage in dialogues about topics which could cause disagreements within the EU. Central European countries deal with a similar historical heritage, caused by the Communist regime. To 'overcome' some remnants of this history, all countries undertake different approaches to the challenges they face. The judicial system is probably the most difficult system to change as it is hard to keep a functioning judicial system which is simultaneously fair and deals with the historical remnants. The Polish government argues that the judicial changes are necessary to remove judges who were already employed under the Communist regime. Mr. Bužek acknowledges that it is hard to remove these remnants of the Communist regime. Therefore, it could be understandable that Poland makes these changes with this specific aim. Constructive dialogues

between the EC, Poland and other states could increase the understanding of this specific historical heritage and approaches to deal with these problems.

The changing mindset

In addition to this, the mindset and the situation within the EU is constantly subject to change. In his former position as Ambassador of Ireland, Mr. Bužek had never expected that same-sex marriage or abortion was going to be legalized in Ireland with such a broad support (66 % voted in favor in the recent referendum on abortion laws).

This changing mindset can also be observed in the immigration policies of the Member States. The Visegrád group countries were heavily criticized when they decided to close their borders for immigrants, especially Prime-Minister Orbán has been heavily criticized. Three years later, however, all other Member States have acknowledged that the approach of the Visegrád group countries has been proven more beneficial than the approach the Western European Countries used at the beginning of the crisis. Therefore, the change towards ‘closed borders’ can be observed now.

The same change in mindset can be observed when discussing ‘*flexible solidarity*’. Even though it is now renamed *effective solidarity*, the EU institutionalized this idea while the majority was opposing this idea when the Central European countries introduced it a couple of years ago.

In the discussions between the EC and Central European Countries, the latter are often met with a lack of understanding concerning their historical heritage and specific situation. This does, however, not mean that the Central European Countries’ proposals are not being taken seriously in the meetings of the EC. The EC treats proposals according to the merits and substance of the proposals. Larger Member States introduce more proposals, while smaller Member States will rather take on the role as mediator. All member states attempt to deal with their problems in the best possible way and communication and open dialogue are vital to increase trust and enhance connectivity between member states. The ultimate goal of the Member States should be to keep European integration alive.

Differences between EU countries

Just before the accession of 10 Central European countries, Chirac made a comment towards the EU applicant countries, that they had *missed a good opportunity to keep quiet because when you are in the family, after all, you have more rights than when you are asking to join and knocking at the door*. This represented the differences between the EU Member States within the EU, which are still present today. The differences between the EU countries are, however, not a bad feature of the EU. The Baltic

states have, for example, not the same attitude to certain security questions as the Western countries, as these countries have a different historical heritage and perspective.

These differences can also be observed in the solutions proposed regarding the immigration crisis. The migration crisis has been a difficult problem for all Member States and has had a negative impact on the fourth basic freedom of the EU: the free movement of people. Slovakia, together with other Central European countries, has emphasized the importance of two EU pillars, namely (1) the effective protection of external border and (2) the free movement of people within the protected area.

All 28 European Countries have failed to manage the inflow of refugees properly and effectively, with the result that more than 1 million refugees entered the EU – and this number is still growing -. The situation in the countries of origin of these refugees has not improved over the years. Therefore, changes in these policies are needed to better regulate the border protection as the inflow of people will not decrease or disappear in the coming years.

One could compare it to closing your home in the morning to protect it. The borders of the EU should be protected and effective border control should establish this. Within this area, the right of free movement should be embraced and promoted. The current situation cannot be compared to the time when the asylum treaties were established, therefore it seems that the asylum treaties are outdated and should be reevaluated in order to handle the current refugee crisis. The circumstances are now different and states should act and react accordingly. The need for more coordination can be set in a broader and future-oriented perspective. For example, in the coming years, a huge movement of people from areas with unfavorable geographical location with regards to climate change will commence. To tackle this new inflow of people, also referred to as climate refugees, the EU should already take action in order to handle this future problem more effectively than it has handled the current refugee crisis.

Embassy of Poland - June 15, 2018

The effectiveness of the system and trust of the people

The reforms of Polish judicial system have both impact on the actual effectiveness of the judiciary system and the degree of trust people have in the judicial system. The effectiveness of the judicial system entails, among other things, increasing the speed of the procedures, cutting red tape in court and shifting judges capacities. The Ministry of Justice expects that the latest judicial reforms will soon increase the speed of the proceedings in court. The increased speed and effectiveness of the system can, however, only be researched when the system is fully operating for at least half a year or so. Therefore, this is not yet measurable. People's trust in the system can be explained as people having trust that the court is the place where justice is being done and people that people trust the courts to deal with problems in an appropriate manner.

The long-term effects of the judicial reforms will not appear quickly, as it takes time to deal with the difficulties related to the reforms. These difficulties are also present after the official implementation of a reform, which is usually referred to as a transition period. Currently, Poland has entered this transition phase. A new situation is being imposed on the judges, who need time to get used to the system and familiarize themselves with the new rules and customs. A transition period is nothing special, as it appears in every situation wherein a system is being replaced. In addition to the usual difficulties associated to a transition period, Poland also has to deal with external criticism of the European Commission (EC) about their reforms. The EC states that the reforms have caused a breach of the rule of law. On the one hand, this criticism, expressed in concerns and specific recommendations towards Poland, has induced and amplified the concerns of Polish citizens, judges among them. On the other hand, there has been an undisputable need and desire for judicial reforms in Poland. The reforms are supported by a large part of the population, therefore, the Law and Justice Party has placed the reforms at the highest level of the political agenda. The proponents of the reforms and ruling party prefer quick reforms over gradual process of implementation. The controversies concerning the reforms are, however, perpetuating the implementation. The pressure on the government to deliver and fulfill political promises is increasing as the proponents of the reforms want the process to continue, while at the same time the EC is criticizing all the decisions of Law and Justice Party. In other words, even though the issues raised by the EC has caused concerns among the Polish people, they still feel that the reforms can restore their trust in the system.

In the Western media, exactly this point, restoring the confidence of Polish people, has not been discussed properly. The media has only discussed and emphasized potential problems related to the

new system, excluding the vision of the proponents of the reforms. Despite the political vision of people, almost everyone acknowledges that reforms are necessary and currently these reforms are being made in the deepest of the judicial system.

Two sides of every dispute

Of course, in every case pending, the dispute can be approached from both sides. It is relatively easy to challenge decisions made. For example, the proponents of the reforms state that the reforms do not go far enough while the EC states that the reforms are going too far. It is in these situations important to trace the core of the problem, in this case; to what extent has the EC a say in the reforms of a member state's domestic institutions and to what extent can the opposing perspectives be reconciled. It is evident that the rule of law is one of the EU's core values and the importance of this fundamental principle is emphasized repeatedly. The *rule of law* is, however, a relatively broad concept and the underlying problem between the EC and Poland can be traced back to the separation of powers. 'One size fits all' does not exist with judiciary systems and the separation of powers can be achieved in various ways. In Europe alone, there exist fourteen different legal systems and each of these systems has some modalities in the realization of a separation of powers.

In Poland, similar to the other EU member states, the separation of an executive, legislative and judicial power still exists. In all democracies, the legislative power is elected through elections; the government is chosen by the parliament and is responsible to the parliament. Even though the systems of national elections differ, the outcome after the elections is relatively similar. The nomination of judges and the source of the legitimate base of judges differs, however, greatly between states. In Great-Britain, Germany and the Netherlands, the systems are stable and clear. In Poland, this system is in need of some changes, within the framework of the separation of powers. These changes bring us back to the point of interference of the EC. There should be an open discussion on the appointment of judges in member states and clear decisions have to be made. In addition to this, the margin of the EC's influence in domestic institutional systems should be discussed, whereby the sovereignty of states should be kept in mind. It should, for example, still be possible for states to be able to decide the composition of the court system or the retirement age of the judges. Those changes can be made within the framework of separation of power and still emphasize the importance of the rule of laws.

Even though the EC is the guardian of the Treaty, it is currently labeling the reforms in Poland 'right or wrong', thereby demanding concrete actions to reverse the decisions made by the Polish government. This concrete label of 'wrong' and the accusation of a serious breach of the rule of law has been received quite badly in Poland. The Polish MoJ has explained to the EC why the new system and provisions were needed. Moreover, he showed that every provision made by the Polish

government is present in another member state. This shows that the EC has been applying dual standards on the member states. The provisions are perceived as a breach of the rule of law in Poland, while at the same time similar rules are accepted in other member states. This should not be possible in the EU, as the same regulations should be applied on all member states. The EC justifies this discrepancy by stating that Poland is a young democracy, which needs more control than the older member states. This argumentation was also ill-received in Poland, and is not helpful in continuing constructive dialogues with the EC. Hence, the redline in the discussion became apparent when the EC suddenly had an impact on the shape of the national judicial system.

Poland absolutely wants to be an important part of the EU, but at the same time Poland wants to organize its own national judicial system and improve this system. Now is the time to find out what should be discussed and negotiated, more specifically, the redlines of the influence of the EU are now being established and the margin of what is acceptable should be determined in mutual agreement. It is not unlikely that in a couple of years other states will make attempts to reform their judicial system. Poland can now be the test model to what extent the EU institutions can demand specific solutions or to what extent the EU can assess provisions if these are deviating from the EU conceptions of the rule of law. The dialogue on this subject should be continued to reach consensus. This consensus could serve as an example for member states who want to change the judicial system in the future.

The previous elections and attempts to change the judicial system

It is important to generalize the issue, as the whole process is of considerable length and specific details can already be forgotten. Therefore, the discussion as such should be perceived as the most meaningful factor in this situation. In the previous elections there were clear indicators that Prawo i Sprawiedliwość (PiS) would win them. A new left party had entered the elections and took some seats from the former ruling party, Platforma Obywatelska (PO). In addition to this, other left parties decided to enter the decision in the form of a coalition, thereby increasing the threshold from five to eight percent. In the elections, this block did not receive enough votes (just 7.5%) to pass the threshold. Nevertheless, nobody expected that PiS would start to rule without a coalition.

The changes the elections brought after eight years can also be seen as the beauty of democracy. Change in politics should not be perceived as a negative factor, stagnation should be. Therefore, the present government should already think as itself as future opposition and the future opposition should be making decisions based on the idea that they could be part of a future coalition.

Judicial reforms in Poland

Regarding the reforms, there has been two stages; the law on the national council of judiciary and the SC. After the EC had criticized the latest provisions, a group of PiS deputies wanted to amend the reforms. These will be enforced quite quick now. The amendments have been made to accommodate the EC, have also been criticized by the EC. Moreover, the amendments have been criticized by the electorate of PiS as the proponents of the reforms perceive the amendments as 'giving up' on the fundamental idea of overarching reforms of the polish judicial system. Hence, the government is constantly facing criticism from two sides, the EC / Polish opposition on the one side and the electorate on the other. While the first states that the government should revoke the reforms, the latter wants more reforms and preferably quicker implemented.

It is noteworthy that even Polish people who do not support PiS, are in favor of reforms. The previous government even made an attempt to reform the system, this, however, did not work out as the President vetoed against the reforms at the last moment. These reforms made an attempt to restructure the district courts, because there was an indication the independence of the courts was jeopardized. In small towns, the people knew each other too well and the same composition of judges was present at every hearing. The independence of the judicial system was therefore considered undermined. The proposed solution was to aggregate the smaller courts into courts of larger cities. This would allow courts to exchange judges, thereby appointing different judges to different places.

In conclusion, the irregularities the current situation is meeting can be traced as the source of the problem of the ineffective institutional structure. If a problem occurs, it should be discussed and a solution should be presented. In Poland, however, the problem occurred several years ago and the previous government already tried to tackle the problem but failed. Now, PiS has to fulfill the promise to implement far-reaching changes in a relative short time as the solution to the problem is already overdue. If the reforms had started five years ago, it could have been done gradually.

Head of the ECFR Poland - July 09, 2018

In theory, the situation of Poland can be described as a competition between different models of democracy, the ‘standard’ western model promoted by the European Union (EU) and the model of democracy where the democratic legitimated majority is more emphasized. The latter is being supported by Kaczyński. It is a battle of equal understandings of democracy, however, to impose its power, Kaczyński has to subdue the judicial system to the will of the people. Otherwise, he would not have enough power to impose its will in Poland.

Underlying this theoretical discussion is a simple power grab. If one takes a closer look on the reforms introduced by PiS, and how it has changed the paradigm of the Polish democracy, one can observe that it happened under violation of the Polish constitution. It can better be perceived as rebellion against the Constitutional Tribunal (CT). The Polish government cannot make any constitutional changes, as it does not have a majority of 2/3 in parliament, therefore it tried to change the constitution without actually changing the constitution. It is important to understand this difference, as from a theoretical perspective you can always change the system, but if and how you are allowed to do that should be determined by the rules and your actions should align with the constitution. This has not been the case in Poland, therefore it is the question not which changes have been introduced but how could those changes be introduced.

The international dimension

In the international dimension, the first (related to the first point) reading of the changes in Poland have always been about the power and centralization of power by the ruling party instead of a fair competition about various visions of democracy. This also implies that the references made to other EU member states in the white papers are nothing more than just a game, an attempt to find a false legitimization to the changes introduced. This has nothing to do with a learning process from other countries, but a simple attempt to centralize power and control over the various dimensions of the judiciary. Once this goal had been established, justifications have been sought in other member states in order to find examples of similar solutions to convince international partners in believing the democratic value of the Polish system. It is a cynical approach as it has been used after the introduced changes became effective and not as a learning process before the changes were introduced. In addition to this, the judicial system cannot be debunked into various, separate elements. It has to be perceived as a whole, as it is an extremely complex and sophisticated system. The solutions found to ‘heal the judiciary’ can therefore not be separated from the rest of the system and the solutions should be

placed in a wider context. This has been one of the reasons the white papers backfired unprecedented. International partners were in rage when they found out Poland had been cherry picking legislature from member states and tried to claim that what happened in Poland could be justified by copying legislature from other states. There is resemblance, however, the whole system and the context is different in Poland.

PiS its growing electorate

The judicial system in Poland does not enjoy high support rates in society. It is deemed quite inefficient in public opinion, even though on the EU judiciary scoreboard Poland is marked average in terms of efficiency and time needed for proceedings. The public opinion is, however, negative and changes are deemed necessary and welcomed. People believe the claims made by PiS, for example that corrupt or communist judges have to be removed, as it could be an answer to why the system is inefficient. The claim that the judiciary needs substantial overhaul resonates with the feelings in society. Therefore, it is quite hard to protest against the measures taken by the governing party, as people will believe that the goal of the protesters is to maintain and defend the status quo. This is however not the case, as everyone sees the need for change. The protesters, however, cannot sophisticated announce the message that changes are needed only not in the way they are being introduced right now.

Dominant political interests

The vision of PiS resonates with the vision of its former party leader Kaczyński. He believes that impossibilism, the idea that in a liberal democracy nothing is possible due to the many checks and balances, and barriers, has ruined Poland. The whole transformation since 1990 is in his eyes a failure. He believes that if his ideas had been carried out after the fall of the Berlin wall, Poland would be better off today. He is basically fighting an old 1990 battle that his ideas were better than the ideas of his political competitors. He wants to change social policies, ideological issues (a social conservative approach) and refers to how to deal with the communist past. In this route, the CT and the judicial system as a whole could have been an obstacle in his way of implementing his vision for Poland. By trying to obtain as much power as possible, especially the power over the CT, he wanted to create a free hand or free space for his political actions. The checks and balances in place prevented him from doing what he wanted to do for Poland.

In addition to this, the governing party is extremely tough and does not want to back down on anything as these reforms have all been carried out under the violation of the Polish constitution. The changes of the ST / NJC have all been carried out after the paralysis of the CT, which would normally have interfered and withdrawn the changes. Under normal circumstances, the President who signed the

laws to make them effective would have been punished for doing so by the state tribunal, an institution for punishing politicians for unconstitutional actions. The stakes to succeed have therefore become extremely high. If the governing party loses its power, they could face trials.

There are some indications that the government want to consolidate the newly amassed power in order to win the next elections. There are reasons to believe that the next elections will not be fair, even though they will be free. Even in Russia, Turkey or Hungary there is no need to manipulate the outcome of the elections as the elections have been manipulated in earlier stadia in order to maintain the power. Examples of this are no opposition, no social media, public campaigns sponsored by the national budgeted or state owned companies. This could also become reality in Poland, as, for example, the media is already controlled by PiS. The most recent polls show that PiS still enjoys the support of the society with 37 %, while the second party (PO) has only 27% support. Therefore they will use their instruments of power, public finances etc. to their favorite. As there is no independent judiciary, nobody can prevent them from doing those things. In addition to this, PiS has introduced a new extraordinary chamber, which will deal with electoral protests and elections in general. This new chamber is controlled by the ruling party, which has decided that only newly elected judges of the supreme court can be appointed for this chamber. The new judges of the supreme court will be elected from all judges and prosecutors in Poland, because PiS has lowered the qualifications for supreme court judges significantly. After 10 years of experience, one can be appointed to supreme court judge by the MoJ. This judge will most likely only be grateful to the Minister for choosing him or her.

The real issue is now that precisely this shapes the future of the rule of law. Once the ruling party has taken control of the judiciary courts (CT/ST/local courts), they can start to introduce new electoral laws which favor the ruling party. An excellent example is the new draft law on electoral law for the European Parliament (EP) elections in spring 2019. It is an interesting document as it violates / ignores the principle of proportionality which is required in the EP elections. PiS proposes that only the two largest parties will be elected to take place in the EP, excluding all other parties in the running. This would most likely be PiS and Civic Platform (PO). This introduces a strong beneficial position for PiS as their electorate is strongly mobilized, but the opposition parties are divided. Many people do not agree with PiS, however, those people also have lost their trust in PO. This could lead to a situation whereby only the PiS supporters vote and this means that PiS obtains a high number of seats in the EP.

Under normal circumstances, this law would be tested by the CT which should issue its verdict. Now, however, the CT is no longer independent so they would agree with PiS even though it violates the principle of proportionality. Therefore, this would be a case for the EC court of justice to decide. If this rule is being adopted, it would also create beneficial circumstances for the next parliamentary elections, as the EP elections would be a first and decisive test for the opposition to what extent they

are able to battle with PiS. It is an extremely important signal for the whole Polish electorate, showing the strength of the political forces. If PiS managed to achieve good results, it is a positive signal for them ahead of the Polish elections. If they are able to marginalize their position, people would perceive the ruling party as strong and ready to fight. PiS is trying to win and humiliate the opposition domestically this way. After these elections, the ruling party can conclude whether they will win the elections under the existing laws or that changes should be made in the electoral system of Poland. It has always been a good habit in politics to not change electoral law just before the elections, however, nobody can forbid them changing the laws as they have gained full control.

In sum, the key reasons of the political party to take control are the need for an open space to carrying out their political ideology and an insurance ahead of the elections in case they need to manipulate electoral law. The latter is a point not discussed often as one could not find quotes on it, however, it can be concluded from the draft law on the EP elections. Lastly, one can speculate with the idea that PiS is playing with the idea to apply for the EPP as the balance of power will shift in the next EP elections. Left and right wing populist parties will probably gain more votes, and the EPP will struggle to become the biggest party within the EP. Despite the differences within the EPP, especially around Fidesz, the key goal is to become the strongest party again. Therefore, they need votes and more seats. If PiS manages to win the elections decisively, the EPP could consider to switch from the PO to PiS. A membership to the EPP would result in a protection of PiS, just like Fidesz, against EU punishment.

ANNEX 6: STATEMENT 1, AMBASSADOR J. (JANA) REINIŠOVÁ
Official statement of the Czech Republic

· The Czech Republic has full confidence in the Polish democratic mechanisms and the strong foundation of the rule of law in Poland. We are equally confident in the EU mechanisms which are launched in cases such as this one.

· The Czech Republic fully supports the principle of the rule of law and the system in place for its protection. We believe an independent judiciary is a crucial part of the rule of law. Likewise, we understand that historical developments may require a kind of judiciary reform in certain Member States to bolster the effectiveness and improve public trust in the judiciary. However, we believe that every fundamental judicial reform needs to be carefully scrutinized in order not to endanger the division of powers within the political system.

· The Czech Republic considers it very important for the dialogue between the Polish government and the European Commission to continue with an open mind on both sides. We would like to avoid any escalation and excessive pressure would be counterproductive in our opinion. We take the Commission's proposal for a decision under Article 7 TEU very seriously. It would be in the interest of all involved to avoid a vote at the Council. We are afraid that it could damage both the Commission and Poland and contribute to creating dividing lines among the Member States and have a wide-ranging adverse impact for the whole EU.

· A formal hearing within the context of Art. 7 TEU should not equal an end to the dialogue between the Commission and Poland. A decision within the context of Art. 7 TEU is not a goal in and of itself; it is a last resort solution that should be handled as such. The goal is to solve the underlying issues related to the Rule of Law. If there is a solution to be found outside of an Art. 7 decision then that should and will always be the preferable option.

· As regards to the Visegrad Group, there is a rule that contentious issues related to one of the countries are not raised by the other members unless the concerned state specifically asks for such discussion. I would add that the Czech expert community has a very critical opinion of the Polish judicial reforms as was confirmed by a joint statement signed by the highest representatives of the judicial system. Presidents of the Constitutional Court, Supreme Court and Supreme Administrative Court and the Public Defender of Rights called the steps of the Polish government a threat to the foundation of a democratic state.