

# The rule of law proceedings against Poland: polarising effect of the media coverage<sup>1</sup>

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## **Abstract**

The central research hypothesis of this article is that the rule of law procedure, initiated by the European Commission against Poland in December 2017, added to the pre-existing political polarisation and the growing partisanship. It did not create new political cleavages; it only further deepened the existing gap between different parts of society. As the paper will show, based on quantitative and qualitative analysis of the media, the language and the tone of the news and opinion items, published by media outlets openly taking the political sides, appeared to be purposely conflictual. The debate on Article 7 proceedings also proved to be a fertile ground for fringe, nationalistic and Eurosceptic groupings to flourish on the social platforms.

**Keywords:** European Union, rule of law, media, social media, political polarisation

## **Postępowanie w sprawie praworządności przeciwko Polsce: polaryzacyjny efekt relacjonowania w mediach**

### **Streszczenie**

Artykuł stawia hipotezę, iż rozpoczęcie przeciwko Polsce procedury z artykułu 7 Traktatu, w grudniu 2017 r., nie doprowadziło do wytworzenia nowej linii polaryzacji politycznej w polskim społeczeństwie, a jedynie wzmocniły te podziały polityczne, które już uprzednio istniały. Opierając się na jakościowej i ilościowej analizie mediów, autor stwierdza, że ton i język publikacji, które ukazały się w tytułach nie kryjących swoich politycznych sympatii, był celowo konfliktowy. Autor odnotowuje też, że tocząca się w Polsce debata wokół artykułu 7 okazała się też być niezwykle żywym polem dla nacjonalistycznych i eurosceptycznych głosów w mediach społecznościowych.

**Słowa kluczowe:** Unia Europejska, praworządność, media społecznościowe, polaryzacja polityczna

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On 20 December 2017 European Commission formally requested the Council of the European Union to consider adopting a decision under the Article 7(1) of the Treaty on European Union, confirming that there is a risk of a severe breach of the rule of law in Poland (European Commission 2017).

The European Commission decision to formally trigger the Article 7 proceedings against Poland was unprecedented. For the first time in history, the rule of law procedure – meant to “discipline” member states – went that far. Poland was the first ever European country to be officially referred to the Council under the Article 7.

Did the European Commission decision, extraordinary as it was, impact the political situation in Poland? The author believes it did, although to a specific extent. This paper formulates two research hypotheses: first, that the tone and the intensity of the media coverage of the Article 7 proceedings fitted neatly into the pre-existing political divisions, only to strengthen them. Additionally, Article 7 proceedings appear to have created nourishment for the extreme anti-EU opinions to thrive in the social media environment.

The discussion presented in this paper centres around four research questions. First, how intensive was the media coverage of the rule of law procedure? What was the language used in the media? What was the public opinion reaction to the unfolding events, as presented in the media? And finally, what was the pattern (social characteristics) of the political divisions related to the rule of law procedure?

### **Literature review, theoretical frame and methods used**

The relative newness of the topic translates into a limited amount of available sources and literature. According to the author best knowledge, researchers so far focused on the procedural and legal issues related to the rule of law procedure, putting the rule of law procedure in a broader European context – so did Kochenov and Pech (2016), Kelemen and Blauburger (2016). This paper offers a novel approach to the subject of the rule of law procedure, introducing preliminary insights and identifying a possible path for further studies.

Media effects theories, especially the agenda-setting theory and the spiral of silence theory set the theoretical framework for this article. McCombs’ (2010) and Noelle-Neumann’s (Baran, Davies 2007: p. 372) findings allow assuming the correlation between the media coverage of a given topic and public opinion’s interpretation of it.

The agenda setting theory, although it is almost 50 years old, lost none of its relevance: media profoundly influence people’s thinking, by deciding what is publicly

discussed and what is not, and by giving people an orientation. Media might not be able to tell people what to think, but they are capable of choosing the topic people think about (McCombs 2010: p. 197–205, Wanta 2012: p. 14). Media, in general, have the most potent opinion-forming power, as the media are the most common source of news and news-related judgements (Jaskiernia 2008: p. 166). The less educated the viewer or reader (end recipient of the mediated information) is, the stronger the effect of the agenda-setting could be (Kurtogulu 2012: p. 57).

Noelle-Neumann theory of the spiral of silence goes in the same vein. Members of the public opinion not only learn the news uniquely via the media (as they are not participating in the events themselves nor witnessing them directly). They also use the language and vocabulary found in the media to discuss the news among their peers, acquaintances, members of the family etc. (Baran, Davies 2007: p. 372). Hence, inevitably, they build their views based on what they extract from the media.

The rise of the social media (social platforms) did not change the agenda-setting nor the spiral of silence theory foundations; it only made it more difficult to identify all the agenda setters, as the number of communication channels increased. In the early 1990s, the media meant TV, radio and print press. Today, in the age of the digitalised media, politics need to adjust to a more significant number of different channels and various formats, created by manifold platforms and content-creation tools (Lindgren 2017: p. 22). At the present, the so-called news feeds on Facebook or Twitter seem to be as important as the legacy media. Available studies show that their role is growing, at the expense of the old media channels (newspapers, TV, radio). According to one study, there were 2.78 billion active social media users in the world in January 2017, 482 million more than in January 2016 (a 21% growth). In Europe, the number of social media users has grown by 20 million in the same period. 54% of Western European use social media on a regular basis. In Poland, the share is 39%. An average social media user in Poland spends 1:45 h on the social platforms daily. It is less than in the US (2:06 h) but more than in France (1:23 h) and Germany (1:09 h). 73% of Facebook users in Poland use this particular platform each day. It is the third most important result in the world. In the US, 70% of Facebook users use it each day, 64% in France and Germany (Kemp 2017).

According to the latest available Eurobarometer, 34% of Poles tend to trust news and information available on the social media (10 percentage points more than the EU average). Because of their mere ubiquity (and not negligible level of trust), social

platforms inevitably impact the society, regarding the opinion forming, the same way every media in the history did (Lindgren 2017: p. 290).

A critical analysis of gathered data constitutes the backbone of the research presented in this paper. The collected data included results of media monitoring (approximately 100 different media outlets in December 2017, including all available news and opinion-making outlets, representing all major veins of political preferences: liberal-, conservative-, left-leaning, nonaligned etc.), social media monitoring (social platforms were combed with a dedicated research tools Unami/Monitori, using keywords such as “Unia Europejska”, “UE” etc. that offered a wide sample of different, published items) and the findings of author’s qualitative research. Data related to the public opinion reaction was extracted from the publicly available CBOS polls. To better identify pattern similarities, the author analysed surveys from different periods.

A related method of analysing the media coverage analysis and its potential impact on public opinion was used by Vliegenthart (2008).

### **The rule of law procedure: state of play as of the end of March 2017**

A two-years-long dialogue with the Polish authorities preceded the Commission’s decision to press for legal proceedings. Although politically intensive, this dialogue was leading nowhere (Niklewicz 2017) as Polish authorities refused to back down from controversial changes to the Constitutional Tribunal and judiciary. Eventually, the European Commission concluded that fundamental European values, as described under Article 2 of the Treaty on European Union, were at risk: in Commissions assessment, the Law and Justice government and the parliamentary majority pushed Poland’s judiciary into political coercion. Between December 2015 and December 2017, the ruling majority adopted 13 laws, “affecting the entire structure of the justice system in Poland, impacting the Constitutional Tribunal, Supreme Court, ordinary courts, National Council for the Judiciary, prosecution service and National School of Judiciary” (European Commission 2017). The laws in question shared a common thread: they all enabled politicians, in both government and parliament, to influence the composition and functioning of the courts and the prosecution office.

Together with a formal reasoned proposal to the Council, on 20 December the European Commission adopted a fourth and final Rule of Law Recommendation to Polish authorities. In parallel, the Commission referred Polish government to the European Court of Justice for allegedly breaching two specific parts of the EU law.

According to the Commission's legal analysis, the introduction of different retirement age for female judges (60 years) and male judges (65) was in breach of the Article 157 of the Treaty on the Functioning of the European Union and Directive 2006/54 on gender equality in employment.

By the time of writing, the Council has not presented its final verdict. Following the Commission so-called reasoned proposal, the Council discussed the topic of the rule of law in Poland on 27 February and on 20 March 2018. In between, Polish government presented its first official response to the Commission claims. In a document called "White Paper", it reasserted its point of view, the rationale for reforming the courts, backed by a list of examples of legal solutions, existing in Western European countries and similar to the ones implemented by the Polish government (Koziański 2018). Commission Vice-President Frans Timmermans presented the content of the "White Paper" during the Council meeting on 20 March 2018. The very same day, Polish government sent the additional part of its response to the European Commission: an official letter rejecting the 4th package of Commission's recommendations.

According to media reports, the initial reaction to the Polish "White Paper" was rather sceptical, if not outright cold. Radio RMF FM Brussels correspondent Katarzyna Szymańska-Borginon reported: "The White Paper made EU countries angry" (Szymańska-Borginon 2018). So reported the EUobserver news portal, quoting the European Commission Vice President Frans Timmermans: "There was agreement across the table that this white paper is not the answer to the commission's recommendations" (Rettman, Maurice 2018).

In its "White Paper", Polish government claimed that some of the reforms enforced in Poland after 2015 were similar to legal and political practice applied in other EU member states (Germany, France or Spain). According to media reports, representatives of the countries in question contested that particular claim vigorously. "Rzeczpospolita" daily correspondent reported: "[representatives of] Germany, France and Spain said that information in the "White Paper" is incomplete at best or outright false" (Słojewska 2018).

According to available media reports, a majority of EU Member states (although it was not clear whether it was a 22 member states majority, necessary to adopt a decision based on Article 7.1) supported the European Commission point of view (Bielecki 2018a). It also seemed that a clear majority in the European Parliament, whose approval is a necessary part of the Article 7 proceedings, backed the Commission

stance (Bielecki 2018b). The timing of the final debate and possible vote depended on the Bulgarian Presidency's discretion. By the mid-March 2018 (this paper cut-off date) it was unknown what the Presidency would propose.

### **Media coverage and the public opinion reaction to the rule of law procedure. Research results and discussion**

The media coverage of the European Commission's decision to refer Poland's case to the Council was quite intensive, even if limited to a few days.

In case of the legacy media (TV, radio, press), the number of items (published or aired news or opinion items) related to the Article 7 proceedings started to grow by 12 December 2017, when 59 publications were published. The number raised to 227 publications on December 15. On 20 December 2017 – the day the Commission announced its decision – the number spiked: 1326. The following day it started to decrease: 813 publications on 21 December and 286 items on 22 December.<sup>2</sup>

In the social media, there were 74847 mentions of the Article 7 proceedings in total, including 53940 comments. Stories published on social platforms, mentioning the Article 7, were shared 8349 times. Like in the case of the traditional media, the users' interest in the topic started to grow by 15 December (3560 mentions, reaching up to one million users). A few days later it spiked: 30144 mentions and approximately 8 million people reached on 20 December. In the two following days, the users' interest in Article 7 started to die out (17570 mentions on 21 December, 7457 on 22 December 1307 mentions on 24 December). Of all social platforms, Facebook was by far the most popular: on 20 December, over 80% of all mentions related to Article 7 proceedings were published there; the share of Twitter was less than 10%, other social media (mostly YouTube, Instagram) accounting for the rest.

### **The rise of the fringe voices**

The social media analysis yielded one particularly interesting information. The anti-EU online channels (anti-EU Facebook profiles and groups, far right news portals) generated more significant social media activity than the pro-European ones. They also trumped – regarding reactions and mentions – the moderated legacy media outlets. In December 2017 *Niezależna.pl* Facebook profile reached as much as 557876 people

<sup>2</sup> For the purpose of this research, data were provided to the author by the Internet consultancy "Polityka w Sieci". 100 different Polish media outlets, including the TV & radio stations were monitored in total.

and generated 4066 mentions related to the Article 7. Another staunchly right-wing website, *Fronda.pl*, reached 208440 users. By contrast, the items related to the Article 7 proceedings published by the “*Gazeta Wyborcza*” – the biggest opinion-making newspaper in Poland, openly pro-European and liberal – reached 225043 users.

One should note that the dominance of EU-sceptic or overtly anti-EU channels, regarding the number of reactions, mentions and the generated reach, might be a general pattern rather than an exception. For example, in the period September 2016 – September 2017, the Facebook profile “*Polska chce wyjść z Unii*” (“Poland wants to leave the EU”) generated the biggest number of mentions and reactions that included the acronym “UE” in the body of the text: its total reach was 800 thousand. Most mentions and reactions were negative in tone. By comparison, the pro-European fan page of *Komitet Obrony Demokracji* (Committee for the Defence of Democracy) generated fewer mentions and reactions with the “UE” acronym in the body of the text, reaching approximately 250 thousand.

### **The tone of media coverage: propping up the partisanship**

The aggressively anti-EU tone used by the fringe Facebook profiles should not come as a surprise. What might be surprising is that some of the mainstream media (or pretending to be mainstream) reporting on the topic of the rule of law procedure, wasn't balanced nor nuanced either. To put it just: many media outlets, especially those who seem sympathetic to the ruling party, openly took sides and used overtly partisan tone.

The interview with Ryszard Legutko, Law and Justice MEP, published by *wpolityce.pl* portal on 20 January 2018, was an example of somewhat inflammatory reporting. The tone and the content of both questions and answers were self-evident: editors asked about the EC “harassing Poland”, while the interlocutor explained that “Timmermans’ [European Commission Vice-President] arrogant and categorical demands, he called recommendations, are unrealistic” (Czartoryski-Sziller 2018). Apparently, pro-government media followed the tone and the language used by right-wing parties’ political leaders. Vice Prime Minister and minister for higher education and science Jarosław Gowin was quoted as saying that the stake of the dispute is “whether the continuing attempts of the Brussels bureaucracy to curb the sovereignty of individual member states, against the letter and the spirit of the Lisbon Treaty, can be stopped” (Rettman, Maurice 2018). In an interview published on *TVP.Info*, the news site operated by the Polish state TV, Gowin added: “We better stifle such attempts at the very beginning” (Jarosław Gowin: *Lepiej zdusić* 2017). *TVP Info* also quoted

MEP Jacek Saryusz-Wolski's letter to Commission Vice-President Frans Timmermans: "You keep silent about real corruption problems, breaches in the rule of law in Malta, but you do not stop yourself from false accusations against Poland" (Kłamliwe oskarżenia wobec Polski 2017).

Ryszard Czarnecki, Law and Justice MEP also used a strongly-worded narrative. In one of his blog posts published on the Salon24.pl right-wing blog aggregator, he referred to the rule of law as "Brussels' baseball bat called Article 7" (Czarnecki 2018). Another right-wing news site niezależna.pl commented the Commission decision to trigger Article 7 in its unmistakable style: "How they defend the caste" (Ależ bronią kasty 2017). "The caste" is the contemptuous name right-wing politicians and publicist use to describe judges and lawyers in general.

On the opposite side of the debate, media outlets did not shy away using comparably pugnacious language, while commenting the Commission decision to trigger Article 7 proceedings. "To hell with Poland's reputation. It has been sullied long ago. Now it is about something much more important (...). Marginalising our country in the European Union means something more than political stupidity. It is high treason of Polish history" wrote Jacek Pawlicki in liberal "Newsweek" weekly (Pawlicki 2017). The liberal and pro-European news portal commented, on 20 March 2018: "The EU crushes Law and Justice government White Paper. It is not an answer; it brings nothing" (UE miażdży 2018). Łukasz Pawłowski of "Kultura Liberalna" (another liberal and pro-European outlet) commented in similar language: "After the Article 7. How Law and Justice lack of logic «conquers the world»" (Pawłowski 2017). Some of the liberal outlets draw rather alarmistic conclusions. For example, the Gazeta.pl news portal (linked to the liberal "Gazeta Wyborcza") daily reported: "The spectre of sanctions hovers over Poland. Here goes the 'nuclear option'" (Setta 2017).

### **Public opinion reaction to the rule of law procedure**

According to a poll conducted 9–17 January 2018 by the CBOS<sup>3</sup> polling agency, 43% of Poles found the Commission request to trigger the Article 7 unsubstantiated; 38% of the society shared the opposite conviction – that the legal move was justified (CBOS 2018). 46% of respondents who took part in the poll believed that the European Commission decision was based on its grudge against the Law and Justice party and the

<sup>3</sup> CBOS, Centrum Badań Opinii Społecznej (Public Opinion Research Center) is one of the biggest public opinion research institutes in Poland. Established in 1982, it is publicly funded.



Polish government. 37% of the people who took part in the poll interpreted Commission decision differently: as a sign of its commitment to the preservation of the rule of law in Poland. 45% of Poles believed the Commission request is an unacceptable form of pressure on Polish government; 34% considered it acceptable (CBOS 2018).

The rule of law procedures polarised the society along the well-known political cleavages. Regarding political preferences, the conflict pitched liberal and centre voters on one side and the right wing voters on the another. 86% of Civic Platform (centre) voters and 85% of Nowoczesna voters believed the European Commission move to trigger Article 7 proceedings was justified; only 8% of Civic Platform voters (9% of Nowoczesna voters) found it uncalled-for, with 65% of the remaining undecided. The Law and Justice supporters were on the opposite side: 80% of them considered the EC action groundless, 9% only thought it was justified, and 11% were not sure.

It should not come as a surprise. Better educated, wealthier (with incomes bigger than 2000 PLN monthly) and younger respondents, especially those living in bigger cities (over 100 thousand inhabitants) were much more likely to accept European Commission decision to refer Polish case to the Council and to ask to trigger Article 7.1. People aged 55+, living in rural areas and lesser educated were much more hawkish. Church attendance was another strongly related variable: those respondents who declared going to the church often tended to reject the European Commission stance. It is precisely the same set of social characteristics: place of residence, income, education and religious practices that constitutes the primary marker of political preference. Data from a 2017 CBOS poll showed that the Law and Justice was the party of rural Poland. In 2015 more than 50% of Law and Justice's voters lived in rural areas, while the core of the Civic Party electorate (54%) lived in cities over 20 thousand inhabitants (CBOS 2017). Similarly, the financial situation of Civic Platform average voters, based on own declarations, was better than in the case of Law and Justice voters. Last but not least, Law and Justice supporters are less educated but more religious (as measured by the church attendance) than Civic Platform voters.

The entrenched political division, based on specific cleavages, was strongly visible in all parts of the 2018 CBOS poll dedicated to the rule of law procedure. In the section where respondents answered the question whether they considered the European Commission pressure on the Polish government to be appropriate (or not), of all respondents declaring the intention to vote the Civic Platform, 77% found the European Commission move acceptable; 11% were of an opposite opinion, 12% – not sure. In case of Law and Justice

supporters, 78% considered the pressure on the Polish government inappropriate, only 9% found it acceptable, 13% could not make their mind (CBOS 2018).

The same divisions reappeared in answers to yet another question (how Poland should respond to the situation). 96% of Civic Platform voters and 92% of *Nowoczesna* voters believed Polish government should back down. 77% of Law and Justice voters were of opinion Poland should defy the European Commission.

CBOS poll demonstrated that attitude towards the Article 7 proceedings matched the already existing political preferences (and social background). However, it also showed that Poles were evenly divided in opinion whether the Polish government should back down from controversial changes in law and implement the European Commission recommendations: 44% were in favour, against – 41%. Each of these two groups chose different lines of argumentation. In the first group (those who favoured Poland backing down) 28% claimed that the rule of law in Poland was in danger; 16% argued that refusing to follow the Commission proposal would result in adverse economic and political consequences. In the second group (respondents arguing Poland should not back down), 26% emphasised that Poland is a sovereign country and should not respond to such pressure. Somewhat surprisingly, only 15% of respondents argued that the rule of law in Poland not be under threat.

Available data indicate that the social polarisation induced by the topic of Article 7 proceedings is likely to grow in the future. It is worth noting that 51% of people polled by CBOS in January 2018 feared that Poland might be covered with sanctions; 40% of respondents did not share this fear. Only 9% did not have an opinion on the topic. In 2016 the proportions were bit different: 45% of respondents feared sanctions, 34% did not share this feeling, 21% did not have an opinion (CBOS 2018). The decreasing number of “undecided” can be interpreted as a proof of rising polarisation: the more and more people have their own opinion on the rule of law (Article 7) established. And again, respondents’ views regarding the possibility of EU-imposed sanctions strictly correlate with their political preferences. 83% of *Nowoczesna* voters and 80% of Civic Platform voters feared the sanctions. So did 31% of Law and Justice supporters; 63% of them did not expect sanctions to be imposed.

## **Conclusions**

The political polarisation of Polish society has been growing over last years. Many factors fuelled this process – among the important ones were people’s attitudes

towards the European Union and, more generally, the course of European integration as such.

In all probability, the media coverage of the rule of law procedure against Polish government (triggering the Article 7 proceedings) played a significant role in strengthening the above described split in opinion and interpretations. No new cleavage has been created; the conflict run along the pre-existing lines. The supporters of the right-wing parties (in power) would manifest their disapproval of the European Commission decision to trigger the Article 7. On the other side of the political spectrum, backers of the liberal-centre and left-wing opposition parties would find the European Commission decisions justified and understandable.

The media coverage of the Article 7 proceedings was relatively intensive. Hundreds of related news and opinion items were published in the legacy media; dozens of thousands of mentions appeared in the social media. As the qualitative analysis of the content in the legacy media revealed, on many occasions, the tone and far-from-the-neutral language helped the political tension to rise. The blatant partisanship could be seen in both right-wing and liberal legacy media.

The same goes for the social media, the new channel for political communication, growing in its importance every passing year. However, the research showed that the anti-European views were disproportionately stronger and more often presented on the online social platforms than the pro-European ones.

Assuming that the tone of the legacy media coverage related to the Article 7 does not change and neither does the coverage in the social media, the split in public opinion (based on the pre-existing political preferences) will most probably further strengthen. In this respect, the Article 7 proceedings should be considered as the new factor that adds to the increasing political division within the Polish society.

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