

When norms clash

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Summary

When Norms Clash: How Polish Liberal Civil Society Contested Government Standards for the Rule of Law and Human Rights from 2015-2022

The European Union (EU) is said to be facing a 'crisis of values' in which its core norms like human rights and the rule of law, are internally contested by some of its own member states. This trend is especially evident in member states like Poland-where standards for democracy, the rule of law, and human rights have declined since the United Right Coalition came into power in 2015. This development has led to new research aimed at understanding and assessing interventions to what has been termed, backsliding, among other things. However, much of this research focuses on the role of institutional actors in addressing threats to EU norms (e.g. European Commission). This continues despite the fact that civil society has traditionally been theorised as a corrective to threats to liberal democratic values and as a force for limiting the use of arbitrary power. Additionally, nascent research already suggests that civil society organisations (CSOs) in Poland *are* reacting meaningfully to backsliding. Lastly, even the informal observer will have noticed the significant mobilisation of actors in Poland's civic space, for instance, in the form of mass protests which started as early as months after the ruling coalition came into power.

Despite these facts, very little extant research exists which examines the role of CSOs in contesting the actions of problematic governments like the United Right coalition. In addition, the research which does exist on this topic has several shortcomings such as the hyper-focus on large NGOs, extensive focus on one of a small number of issue areas (i.e. research which solely looks at attacks to the rule of law, free press, sexual and reproductive health rights, or the reactions of civil society to the government's 'anti-gender' policies), and tends to isolate one form of strategic interaction (e.g. protests) and/or limit the study of interactions of a particular type (i.e. research on CSOs' interactions in the realm of the rule of law tend to hyper-focus on legal interactions and on the efforts of CSOs to mobilise national and supranational courts). This research, therefore, seeks to concentrate on norms which have received the most attention from international institutions (IOs) like the EU as well as Poland's liberal civil society. These are, namely, the rule of law and human rights. The rights of focus for the CSOs examined regarding the rule of law

were: judicial independence, the right to a fair trial (also a human right), and the separation of powers. As it regards human rights, the rights of focus were reproductive rights (including access to contraception, in vitro fertilisation (IVF), and abortion) and LGBT+ rights (including the restriction of anti-LGBT+ discourse by political elites, freedom of assembly, and non-discrimination on the grounds of sexual orientation).

This list of rights reflects both the topics that were most pertinent to Polish CSOs and those which had received the most attention from the EU. They were developed following a careful process of monitoring the Polish civic space and following EU statements, appeals, declarations, condemnations, and other communications regarding issues in Poland (e.g. debates in the European Parliament). Additional care was taken to examine CSOs of various sizes (including those not registered) and to seek out CSOs outside of large cities. In investigating a wide variety of rights, norms, and organisations, it is hoped that this research will present a more authentic representation of Poland's civic landscape, the strategic interactions employed by CSOs to contest United Right's contestation of the rule of law and human rights, and reveal if and how CSOs work together across issue areas in various acts of strategic collaboration. This work not only unpacks the various strategic actions of the CSOs of focus but also the threats, alliances, and barriers they experienced in the course of their work. To do so, it asks the following research question: *How did civil society in Poland contest United Right's standards for the rule of law and human rights from 2015-2022?* It also pursues the secondary research question: *What challenges and opportunities did liberal CSOs experience when working to actualise their goals?*

It is informed by 18 semi-structured interviews with 21 Polish CSOs and the document analysis of 797 documents detailing the various forms of intervention CSOs engaged in during the same period. Together, these data revealed 21 strategic interactions common to the 206 CSOs selected for study. These interactions ranged from protests to legal mobilisation to direct appeals to the ruling coalition or compromised courts themselves. In addition, this research has revealed that these CSOs may tap into a wide, international network of allies such as other CSOs, academia, and political actors (e.g. members of the European Parliament) in their strategic interactions. These interactions were aimed at contesting, or expressing disagreement, with United Right's standards for the rule of law and human rights. This contestation included both reactive contestation (the outright violation of a

norm or the contestation of another actor's contestation of a norm) and proactive contestation (expressing disagreement about the meaning, reach, and/or content of a norm as a form of critical engagement and in efforts to co-shape a norm). CSOs focused on the rule of law engaged in reactive contestation by contesting United Right's standards for the rule of law, which they alleged violated EU and international laws and treaties.

Actors focused on human rights, however, proactively contested United Right's standards for this norm, in efforts to co-shape the norm in such a way that the reproductive and LGBT+ rights they championed would also be catalogued as matters of human rights. They did so by embedding their arguments in respected norms and treaties and by citing the official statements, recommendations, and condemnations, of (representatives from) IOs who discursively aligned their rights of focus with those of human rights. In this way, they attempted to use the language of rights in favour of advocating for their issue areas. Although the complex strategies employed by CSOs in these processes of contestation were impressive and diverse, CSOs also faced serious threats from a host of actors such as the Polish government, national courts, police, the media, and conservative CSOs. These threats, orchestrated by powerful actors, coupled with consistent EU inaction (or late action), have threatened the potential success of liberal CSOs in this space. It, therefore, remains questionable whether civil society will be able to effectively push back against policies, discourse, and other actions from the government which degrade the standards for the rule of law, minority rights, reproductive rights, and other related issues.

This work, therefore, also provides a list of recommendations in the final chapter for the various actors who may play a role here. For instance, the EU is advised to use existing, appropriate tools to accurately identify, correct, and address the violation of EU norms and to work together with civil society to co-create meaningful strategies for addressing their issues of concern and better understanding their lived realities. Academics are encouraged not to be silent on issues like this which bear significant societal implications and several suggestions are made as to how one might become involved both inside and outside of academia. Further suggestions are made to civil society actors and policymakers to help both translate their needs and concerns into a language that is appropriate for the other and to better collaborate in meaningful strategies towards shared goals. As a country which, according to the democracy index V-Dem is becoming autocratic faster than

any other country in the world and one in which CSOs have reacted considerably to various threats against liberal democracy, Poland provides an excellent case study. Through this case study, the thesis contributes to nascent research on the role of noninstitutional actors in addressing human rights and rule of law concerns.

It also contributes to research in international relations by offering a broad representation of the various ways that actors at the meso-level engage in contestation, reorienting focus away from states and IOs, which are traditionally the target of this field and research on contestation. In the societal realm, this research provides a blueprint and helpful overview both for CSOs looking to replicate the strategies of Poland's liberal civil society and for policymakers and other practitioners hoping to better understand both the Polish civic space and the strategies, barriers, and opportunities CSOs in this space experience. The results of this study suggest that, while backsliding has had a significant negative impact on liberal CSOs, it has also necessitated new ways of networking and mobilising which included networks between CSOs of significantly different focus and the engagement of strategic interactions beyond well-known forms such as protests and strategic litigation. The strategies of CSOs were aimed not only at remedying norm violations directly (such as representing an improperly disciplined judge in a strategic case to have them reinstated) but also at long-term societal change and knowledge creation (such as social campaigns aimed at changing public perception of LGBT+ persons or the creation of archives mapping challenges to the rule of law since 2015).

It is hoped that these findings provide greater, more sophisticated insight into the Polish civic space both for academics and practitioners. The advice offered in the last chapter, further, reflects important action items for a host of academic and social actors. Although these findings may strengthen the suggestion that some CSOs can be a corrective for backsliding such as that seen in Poland and Hungary, it also identifies several concerning trends that, if left unchecked could become existential threats to CSOs. These included the non-enforcement of supranational court rulings and the weaponisation of the law against activists. In this dissertation, one will find the theoretical framework guiding this research and an introduction to the fields of research from which this project draws (**Chapter 2: Theoretical Framework: When Civil Society Contests**). Next, the methodology of this research, case selection, limitations, and data collected as part of this study are presented (**Chapter 3: Methodology**), followed by a discussion of the development of Polish

civil society before the end of communism and leading up to EU accession (**Chapter 4: Polish Civil Society Between Communist Occupation and EU Membership**).

The following chapter will uncover the effect that EU membership had on civil society hoping to claim new rights (**Chapter 5: Polish Civil Society in the Context of EU Membership**) before the focus shifts to the study period in **Chapter 6 (PiS and Civil Society— 2005-2007 and 2015- 2022)**. Finally, the results of the research are laid out in **Chapter 7: Data and Results** before a discussion of the results and some final words about future research, recommendations, and the potential future of the Polish civic space are offered in **Chapter 8: Conclusions and Discussion**.