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UNDOING THE EU SECURITY ARCHITECTURE: HUMAN RIGHTS VIOLATIONS IN POLAND (2015-2021)

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INTRODUCTION

In 2015, Presidential and Parliamentary elections took place in Poland; both of them ended with the victory of the right-wing national-conservative party named Law and Justice. Since then, the ruling party has initiated a series of reforms aimed at undermining the independence of the Polish Judiciary; moreover, through the captured judicial institutions, several legal acts undermining the human rights of women and sexual minorities, as well as the freedom of expression, of assembly and of association of Polish human rights organizations were adopted. In addition to this, Polish public authorities' asylum policy within the Polish-Belarusian border also resulted in severe human rights breaches.

Given that Polish citizens are EU citizens and that human rights violations have been carried out at the EU external Eastern border, the necessity of analyzing the impact of the Law and Justice's actions at the EU level naturally arises.

This consideration is further supported by the fact that observance of the rule of law (of which judicial independence is the main component) and respect for human rights are enshrined in EU Treaties[1] and in the Charter of Fundamental Rights of the European Union as core values of the EU, with the latter being a condition for EU membership[2].

In particular, the research field to which this project refers is that of EU security, with the concept of security being addressed by using the human security approach.

The purpose of this research is to investigate whether the breaches in the rule of law and in human rights; that have been taking place in Poland from 2015 up to 2021, have been undermining EU security.

However, this inquiry requires, in the first place, clarification with regards to the theoritical framework in which it is carried out; indeed, the overriding aim of the first chapter is to investigate the nature of the relationship between fundamental rights and EU security.

This requires, in the first place, to analyze the part of the EU legal framework concerned with fundamental rights recognition and, in the second place, to identify which is the

1 Article 2 of TEU
2 Article 49 of TEU

security approach officially taken up by the EU; in doing so, deficiencies in both human rights recognition within EU legal framework and in the EU security approach have been underlined and the investigation of their correlation constitutes the object of paragraph 1.3.

Specifically, paragraph 1.1 will start with an overview of the Charter of Fundamental Rights' structure and underlying aim, and will proceed with an analysis of the main threats to its efficacy: firstly, those linked to CFR limits in content and their recognition in the work of EU institutions and, secondly, to the applicability of the Charter within EU Member States. Paragraph 1.2 presents the ascending approach of human security, by underlining how its flexibility, as applied to the securitization theory, eased its entry in the policy arena; the compliance of EU policy with the human security approach is also discussed within paragraph 1.2. To conclude, paragraph 1.3 applies the consequences of the threats to CFR efficacy to the human security approach, drawing the negative implications for EU security.

The focus of the second chapter is the rule of law and human rights violations that have taken place under Polish jurisdiction, in order to analyze the outcomes for EU security coming both from these breaches and from the line of action undertaken by the EU to counter them. The specific rights that will be addressed are: women's rights, LGBTQI+ rights, and refugee rights. What is more, reference will be made also to the protection of freedom of expression, assembly and association provided to human rights organizations, in particular to the ones whose action is oriented towards upholding gender equality.

Paragraph 2.1 is aimed at giving an overview on Law and Justice's capture of the Polish judicial branch, carried out through reforms addressing in the first place the Constitutional Tribunal and then other main judicial institutions: the Supreme Court, the National Council of the Judiciary, and Common Courts. In paragraph 2.2, women's access to sexual and reproductive health will be examined through a comprehensive approach, with a focus on the understanding of the interests that led to a near-total ban on abortion in 2020. Furthermore, attack on women's rights organizations carried out on the side of governmental institutions will be addressed. In paragraph 2.3 the focus is on

the discrimination against LGBTIQ+ people, with a specific reference to the consequences arising from the lack of legal protection with respect to hate crime and hate speech in Polish Criminal Code for both LGBTIQ+ people and organizations, as well as to the role of the Law and Justice party's rhethoric in the marginalization and stigmatization of LGBTIQ+ people within Polish society.

Paragraph 2.4 is concerned with outlining Poland's shared responsibility with Belarus for human rights violations at the Polish-Belarusian border.

Finally, the last paragraph is aimed at analyzing the complications arising for EU security with regards to the fundamental rights and rule of law violations.

Additionally, the EU approach adopted to counter these breaches will be evaluated with reference to the human security approach; to conclude, the results arising from this evaluation will be applied to the investigation on the securitization of EU institutions.

Chapter three encompasses two case studies aimed at analyzing the quality of EU institutions and their mechanisms as affected by non-compliance with EU core principles on the side of Poland. In particular, paragraph 3.1 is focused on the functioning of the mechanism of the European Arrest Warrant, and paragraph 3.2 on the quality of the decision making process within EU institutions.

In the end, an overview on EU security deficiencies as linked to the case of Poland will be sketched out, together with reccommendations aimed at a better securitization of both individual and EU institutions.

CHAPTER ONE

1.1 Human Rights in the EU Legal Framework: a CFR perspective Within the cases *van Gend en Loos v Nederlandse Administratieder Belastingen* and *Costa v ENEL*, the CJEU endorsed the principles of direct effect and primacy of Community Law Since then, a new concern has arisen for the European Communities: preventing possible breaches of fundamental rights, which originated within the Member States as a consequence of direct application of Community law.

The proclamation of the Charter of Fundamental Rights of the European Union (CFR) in 2000 can be traced back to the willingness to deal with the aforementioned exigency.

Indeed, the Charter is a legally binding instrument that reaffirms those fundamental rights and freedoms developed from :

> The constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights.[3]

The document is organically structured as a preamble and seven titles: the first six enshrine fifty articles encompassing fundamental rights and freedoms, whereas the final one is aimed at defining the field of application of CFR as well as the principles for its interpretation.

The grouping of rights within the titles proceeds as follows:

> Title I (‘Dignity’) upholds the rights to human dignity, life and integrity of the person, and reaffirms the prohibition against torture and slavery.
>
> Title II (‘Freedoms’) upholds the rights to liberty and respect for private and family life, the right to marry and to found a family, and the rights to freedom of thought,

3 (2000) *CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION*. C 364/8.

conscience and religion, expression and assembly. It also affirms the rights to education, work, property and asylum.

Title III (‘Equality’) reaffirms the principle of equality and non-discrimination as well as respect for cultural, religious and linguistic diversity. It also grants specific protection to the rights of children, the elderly and persons with disabilities.

Title IV (‘Solidarity’) ensures protection for the rights of workers, including the rights to collective bargaining and action and to fair and just working conditions. It also recognises additional rights and principles, such as the entitlement to social security, the right of access to health care and the principles of environmental and consumer protection.

Title V (‘Citizens’ Rights’) lists the rights of the citizens of the Union: the right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections, the right to good administration, and the rights to petition, to have access to documents, to diplomatic protection and to freedom of movement and of residence.

Title VI (‘Justice’) reaffirms the rights to an effective remedy and a fair trial, the right of defence, the principles of legality and proportionality of criminal offences, and the right to protection against double jeopardy.[4]

The CFR became legally binding in 2009 as part of the Treaty of Lisbon, as provided by Article 6(1) of TEU stating that the CFR <shall have the same legal value as the Treaties> and asserting: <The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties>.

Following the recognition of EU founding values[5], the affirmation of the Charter of Fundamental Rights as a primary source of EU law was a salient mark in the transition

4 European Parliament, (2017).*THE CHARTER OF FUNDAMENTAL RIGHTS*. Fact Sheets on the European Union. [online] Available at: <https://www.europarl.europa.eu/RegData/etudes/fiches_techniques/2013/010106/04A_FT(2013)010106_EN.pdf>.

5 Article 2 of TEU states: <The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.>

between diversified stages within the EU integration process: from one that was exclusively oriented towards economic benefits to another that embraces the political and social dimension.

Nonetheless, even if the CFR elevates the legitimacy of the status of the European Union as a community of values and a global political actor, there are still factors that prevent the Charter from ascending as an effective mechanism for the enhancement of human rights observance, protection and promotion.

The first issue concerns the aknowledgement of the limits of CFR content, as compared to international human rights law, on the side of CJEU.
The Charter further potentiates the process of codification of human rights in the Union, started within the recognition of general principles, extending it even beyond the scope of the European Convention on Human Rights (ECHR); yet, its content covers a range of rights that is both inferior to the one covered by UN human rights treaties and not congruent with ECHR. Indeed, under Article 53 of CFR:

> "Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions"

With regards to this fact, it is reasonable to recognize as partially inaccurate, or at least potentially inconsistent with International Human Rights Law, any examination of those rights encompassed by CFR made by CJEU without resorting also to other human rights instruments.
Instead, since the CFR has been recognized as a primary source of EU law, the CJEU has started to examine those rights in chiefly two ways:

> Firstly, where legislation contains a reference to the CFR and asserts that it is CFR-compliant, the CJEU has used this provision to interpret legislation in conformity with the CFR itself, without any discussion of the 'general principles'.Secondly, now that the Lisbon Treaty has endowed the CFR with legally binding effect, the CJEU has relied exclusively on the CFR when reviewing or interpreting legislation without making any reference to the 'general principles' or the European Convention, where previously it always did so.[6]

A further complication within the aforementioned tendency characterizing CJEU work, is its generalized nature. Indeed, even in interpreting and applying the general principles the CJEU has traditionally prioritized ECHR rather than UN human rights treaties, regardless of the more limited scope of ECHR and in open contrast with the work of the European Court of Human Rights (ECtHR), which has often resorted to UN instruments due to the predominant focus of ECHR on civil and political rights (de Jesús Butler, 2017).

Proof of this practice being rooted within CJEU work can be found in the case *Lisa Jacqueline Grant v South-West Trains Ltd*, within which it was concluded for discrimination on the basis of sex to not include sex orientation, although, under Article 28 of the International Convention on Civil and Political Rights it was affirmed that sexual orientation was to be encompassed by the word sex.

To conclude, taken into consideration that the Charter aim is to provide for respect and protection of fundamental rights also on the side of EU institutions, and in regard to the fact that CFR affirms under Article 53 that the interpretation of its content should not result in being restrictive towards the applicability of other mechanisms for human rights protection, CJEU work is clearly being inconsistent with CFR and is subsequently undermining the effectiveness of the latter.

6 de Jesús Butler, I., (2017). THE EUROPEAN UNION AND INTERNATIONAL HUMAN RIGHTS LAW. OHCHR REGIONAL OFFICE FOR EUROPE, p.13. Available at: <https://europe.ohchr.org/Documents/Publications/EU_and_International_Law.pdf>.

The second issue regards the field of applicability of the Charter, which, in the first place, according to Article 51(1) of CFR, binds the action of EU bodies and Member States only <when they are implementing EU law> and, secondly, the field of application variates between EU Member States.

A first concern, within the limit posed to the Charter's applicability by Article 51(1), interests positive duties. Member States of the EU are bound by international human rights treaties to the duty to respect[7] human rights but also to protect[8] and fulfil them; though, the content of CFR and of other primary sources of EU law is clearly not consistent with the obligation to fulfil[9] fundamental rights and, what is more, the duties to respect and protect in CFR are linked to the moment of EU law implementation.

The fact that these obligations are not recognized or can not be fully affirmed without breaching CFR field of applicability is extremely problematic: indeed, in those areas in which EU competence to act has replaced the one of Member States to act individually there are likely to be complications in carrying out these obligations towards people within their jurisdiction (de Jesús Butler, 2017).

Additionally, this limited recognition of positive duties within CFR and, more broadly within EU primary sources of law, is dangerous also in regards to the issue discussed in the previous paragraph: if CJEU, in its examination process, relies predominantly on CFR and other primary sources of EU law, then the results of its work is likely to reflect

7 <The obligation to respect requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right > (SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 2002)

8 <The obligation to protect requires State parties to prevent third parties from interfering in any way with the enjoyment of the right >(SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 2002)

9<The obligation to fulfil can be disaggregated into the obligations to facilitate, promote and provide. The obligation to facilitate requires the State to take positive measures to assist individuals and communities to enjoy the right. The obligation to promote obliges the State party to take steps to ensure that there is appropriate education [concerning the hygienic use of water, protection of water sources and methods to minimize water wastage]. States parties are also obliged to fulfil (provide) the right when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal.>(SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 2002)

an incomplete conception of positive duties. Therefore both Member States' and EU bodies' work is likely to be inconsistent with International Human Rights Law in this matter.

A further concern is related to the differences between EU Member States in regards to the field of application of the Charter. Indeed Poland reservations (as well as the ones of UK that still was a EU Member State) on the Charter becoming legally binding led to the adoption of Protocol 30. The Protocol officially reaffirms the limits in the application of CFR within Member States' jurisdiction, by underlining both the impossibility to extend EU areas of competence on the basis of the Charter, as well as the fact that CFR rights result as applicable only if they are recognized in the national laws of the aforementioned countries.

Whether is debatable if Protocol 30 actually constitutes an opt-out, surely it is a symbol of a difficulty for CFR rights in reaching universalism even within the EU region; in fact both Article 1(2) and Article 2 of the Protocol owe their existence to the fact that the foundamental rights of the Charter are not all completely recognized at the national level.

This becomes more obvious while looking at the political reasons for "opting-out": indeed, in Poland the main issue regarded the possible impact of CFR on sensitive issues such as the marriages of homosexuals, as well as sexual health and family planning .

It might yet be argued that universalism of fundamental rights is still highly preserved through the general principles of EU law and even through measures aimed at countering breaches in EU founding values, as defined in Article 7 of TEU; though, on the practical level, there are complications also on the side of "compliance verification" due to the deficiencies in the mandate of the EU Agency for Fundamental Rights (FRA). The complications are the following: firstly, FRA is not allowed to scrutinise Member States compliance on an individual basis with regard to those areas encompassed by EU competence, therefore FRA's reports are carried out by adopting a comparative

approach at the EU level; in the second place FRA's investigations are thematic-based, so that they do not offer a complete overview on human rights implementation in the EU; thirdly, the FRA is not empowered to act upon individual complaints, concerned with fundamental rights violations, delivered to it <and neither does its mandate provide for a role of assisting or intervening in cases, e.g., as an amicus curiae>; additionally, the FRA is not involved in <screening policy or legislative proposals or assisting the Commission in its Impact Assessments>.[10]

1.2 A EU security approach: in between the making and the narrative of human security Throughout the 1990's deep changes in the way of understanding and making security took place; this was chiefly due to the modified distribution of power in the international arena, characterized by the slow abandonment of bipolarity, and to the advent of globalization, with economical and political integration, and the subsequent rise of new threats no more confined to national boundaries (Poudin, 2015) .

These factors led to the withdrawal of the traditional conception of security, that considered the state as the exclusive referent object within the securitization process.

Indeed, the starting point of all non-traditional security approaches is the criticism towards the <orthodox neorealist conceptions of international security>; in particular, the approach called "Human Security" developed out of the idea that <there is an ethical responsibility to re-orient security around the individual in line with internationally recognised standards of human rights and governance> (Newman, 2010).

In the UN Human Development Report of 1994 is embedded a first definition of this chiefly normative security approach: human security <means, first, safety from such chronic threats as hunger, disease and repression. And second, it means protection from sudden and hurtful disruptions in the patterns of daily life – whether in homes, in jobs or in communities>. Additionally, the Report lists four characteristics of the concept:

10 de Jesús Butler, I., 2017. THE EUROPEAN UNION AND INTERNATIONAL HUMAN RIGHTS LAW. OHCHR REGIONAL OFFICE FOR EUROPE, p.18. Available at: <https://europe.ohchr.org/Documents/Publications/EU_and_International_Law.pdf>.

- Human security is a universal concern
- The components of human security are interdependent
- Human security is easier to ensure through early prevention than later intervention.
- Human security is people-centred (1994, pp. 22-23)

What is more, being securitized, within the Human Security approach, means being ensured with the enjoyment of freedom from fear, freedom from want and freedom from indignity: freedom from fear translates in protecting individuals from threats to their physical integrity as well as other forms of violence that can be perpetrated by various actors, such as states or other groups; freedom from want is primarily referred to the enjoyment of basic needs; freedom from indignity refers to the <promotion of an improved quality of life> that allows people to look for empowerment opportunities. [11]

In addition to this, the human security approach is characterized by the fact of being: people-centred, multi-sectoral, comprehensive, context-specific and prevention-oriented.[12]

The human security approach has been largely rejected as a paradigm by other schools of non-traditional studies mainly because of its poor conceptual development, risen from its predominantly normative and broad nature; though, it has found a fertile ground within the policy making process on different levels (Newman, 2010).

A reason why human security approach entered the policy arena, in contrast with different critical approaches to security, lies within the paradox at the basis of this concept: human security <apparently calls for a critique of the structures and norms that

11 https://www.iidh.ed.cr/multic/default_12.aspx?contenidoid=ea75e2b1-9265-4296-9d8c-3391de83fb42&Portal=IIDHSeguridadEN#:~:text=Freedom%20from%20indignity%20refers%20to,opportunites%20for%20that%20empower%20them.

12 https://www.iidh.ed.cr/multic/default_12.aspx?contenidoid=ea75e2b1-9265-4296-9d8c-3391de83fb42&Portal=IIDHSeguridadEN#:~:text=Freedom%20from%20indignity%20refers%20to,opportunites%20for%20that%20empower%20them.

produce human insecurity, yet the ontological starting point of most human security scholarship and its policy orientation reinforce these structures and norms> (Newman, 2010).

In fact it seems that, even if human security attacks the exclusive position previously occupied by the state as a referent object, nevertheless it aknowledges its relevant potential, mainly as a securitizer, and, therefore, becomes engaged with its policy making process with respect for the structure and norms of the latter.

However, another aspect might make this approach suitable for the policy arena: there seems not to be a stedfast occupation of the categories “referent object” and “securitizer”.

Indeed, in human security it is the exclusivity of the position of the state as a referent object to be critique-worthy, not its being considered as a referent object; moreover, affirming that this approach is people-centered shall not be confused with recognizing an exclusive property of the “referent object position” on the side of the individuals.

Human security recognizes, due to its broad nature, a strong flexibility for these securitization categories so that they can be adapted on the basis of the context. Of course, this applies if the context is linked to the final aim of providing security for individuals, which means upholding their dignity and the respect, protection and fulfilment of their fundamental rights.

It is important to understand that the fact that individuals’ security is to be understood as the ultimate aim of human security does not mean that individuals are the legitimate referent object in every situation regarding providing them with security; indeed, the definition of the referent object is determined by the nature of the situation by which its definition is required. Another way of expressing this concept is that, while individuals are to constitute the ultimate broad referent object, real threats to individuals’ security require specific solutions and, therefore, to overcome the pure normative and broad nature of the approach by narrowing the secutization categories as much as required by the situational context to address.

The case of humanitarian organization is particularly explanatory of what argued above, in fact <Humanitarian organizations overcome the questionable legitimacy of their primary referent object (the organization itself) by associating its survival with the survival of referent objects that possess a greater claim to legitimacy> (Vaughn, 2009); this means that on the basis of their role as securitizers of individuals, who are the ultimate referent object within human security, and due to the fact that insecurities that affect humanitarian organization subsequently prevent them from securitizing individuals, it is extremely necessary to securitize humanitarian organizations themselves: this means that humanitarian organizations are to be considered, within securitization, both as a referent object and as a securitizer.

In the new global context, also the European Union seems to have decided that is better to direct the security policy towards human security.

According to the human security approach:

> The concept of 'conditional sovereignty' has therefore taken on a renewed importance through human security: the international legitimacy of state sovereignty rests not only on control of territory, but also upon fulfilling certain standards of human rights and welfare for citizens. As a corollary, the sovereignty of states that are unwilling or unable to fulfil certain basic standards may be questionable.[13]

The concept of conditional sovreignty seems to apply also at the EU, indeed, as mentioned in the previous subchapter, concerned with the human rights legal framework of the Union, the EU has placed fundamental values and fundamental rights as a basis for its further integration and therefore for its affirmation as a political actor; in doing so, the EU has bound its legitimacy and credibility to the respect of these values and rights, both within the Union and with external actors.

13 NEWMAN, E. (2010) "Critical human security studies," *Review of International Studies*, Cambridge University Press, 36(1), pp. 77–94.

Moreover, the Union has built its human rights approach within policy making, by developing a human rights policy based on two axes : protection of human rights within EU borders and promotion of fundamental rights beyond EU borders. An example of this policy approach can be found in the EU Action Plan on Human Rights and Democracy for the period 2020-2024, which focus on mainly five objectives:

- Protecting and empowering individuals;
- Building resilient, inclusive and democratic societies;
- Promoting a global system for human rights and democracy;
- New technologies: harnessing opportunities and addressing challenges;
- Delivering by working together.[14]

Additionally, the willingness to develop a more direct, multilevel, integrated and efficient approach to rising human security threats led to the creation of the Area of Freedom Security and Justice (AFSJ) and of the Common Foreign and Security Policy (CFSP). Article 67 of the TFEU lists the objectives of the AFSJ as follows:

- The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States;
- It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Title, stateless persons shall be treated as third-country nationals;
- The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws;

14 Europarl.europa.eu. n.d. Human rights | Fact Sheets on the European Union |. [online] Available at: <https://www.europarl.europa.eu/factsheets/en/sheet/165/human-rights>.

- The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters'.[15]

The main goal of the Common Foreign and Security Policy is chiefly to uphold EU founding values, fundamental rights, interests, security, independence and integrity. This involves: preventing conflicts and peacekeeping, fostering sustainable development within developing countries in order to eliminate poverty, working towards the integration of all countries in the world economy, participating in draftings aimed at environmental protection and at the sustainable development of natural resources, being engaged in helping those populationand territories affected by disasters despite them being natural or man made, promoting multilateral cooperation and good governance internationally.[16]

1.3 Further considerations: applying EU fundamental rights to EU human security

It is clear that attempts were made, on the EU side, to conform to the principles of human security; in particular by establishing a legitimate political authority, by respecting human rights and through the relevance put on multilateralism, bottom up approach and regional focus.[17]

Though, there is a risk rising from the gap between actually making human security and using human security as an attractive narrative, with the aim of reiterating legitimacy without actually complying to all the standards required by it.

Indeed, if on the one side approaching security issues through human security is effective, both due to the wide range of security threats that is capable of addressing and due to its flexibility within securitization categories; on the other side, it has to be

15 TFEU, Article 67

16Internazionale, M., n.d. *Common Foreign and Security Policy – Ministero degli Affari Esteri e della Cooperazione Internazionale*. [online] Esteri.it. Available at: <https://www.esteri.it/en/politica-estera-e-cooperazione-allo-sviluppo/politica_europea/dimensione-esterna/sicurezza_comune/>.

17KALDOR, M., MARTIN, M. and SELCHOW, S., 2007. Human security: a new strategic narrative for Europe. *International Affairs*, 83(2), pp.273-288.

recognized that human security has been and is still being largely conceptualized within the policy arena (Newman, 2010) and, instead of bringing in "its own rules", it conforms to pre-existing standards and norms, with the possible consequence of loosing its potential in determining policies and becoming, instead, "policy-determined".

As previously discussed, the human security approach costantly refers to the concept of human rights; since the former originated within the UN framework, the human rights it refers to are mainly the one listed in the International Bill of Rights: in order to adopt a human security approach there is the need to comply with these rights. This brings complications to the EU case. As observable in subchapter 1.1, the problems within CFR efficacy are all issues that limit the very nature of human rights as derived from International Human Rights Law: from the inconsistency in the examinations of CJEU to the missed recognition of positive duties and to the lack of a coherent human rights protection within the EU region, caused by diversified levels of human rights prioritization within Member States and by weak mechanisms of compliance assessment. These issues prevent, indeed, human rights from being adopted with full respect to their basic characteristics, which is of being: universal, inalienable, interdependent, equal and non discriminatory, both rights and obligations.

Not complying to full respect of human rights characteristics translates in the EU mainly adopting the narrative offered by the human security approach and not in actually making human security.

Though adopting human security only as a narrative still has relevant implications: since the Union has adopted a human security narrative within its security policy and due to the existance of problems in applying human rights as defined by International Human Rights Law, then not only the EU citizens are to be considered insecure, but the EU itself; in fact, as previously stated, in its integration process the Union has bound its legitimacy to the respect of fundamental rights and, in adopting a human security narrative, it has bound up its security with its legitimacy as based on respect of human rights. To conclude, it results that the EU ultimately takes up a role that lies, within the

categories of securitization, between the one of securitizer and the one of referent object.

CHAPTER II

2.1 Rule of Law: Law and Justice capture of Polish Judiciary

> For the United Nations (UN) system, the rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.[18]

The principle of the rule of law is recognized also at the regional level, in the ECHR as well as in EU treaties: the rule of law is encompassed within the core values of the European Union referred to in Article 2 of the TEU, therefore, it constitutes the basis for the interpretation and application of the CFR, indeed <the substance of any fundamental right cannot be understood in violation of the values listed in Article 2 TEU>; additionally, this principle is a necessary condition for EU membership, as laid down in Article 49 of the TEU.[19] The rule of law is therefore a crucial condition both when it comes to fundamental rights protection throughout the Union and, more generally, to the implementation of EU law within EU countries. Indeed, the principle of mutual recognition, which allows for implementation, is based on the assumption that EU core values are shared by all EU institutions and member states.[20] If the rule of law is violated, not only are severe breaches of human rights likely to occur, but cooperation between EU countries and with EU institutions is also likely to be compromized; moreover, seeing as the rule of law is recognized as a principle of governance at the international level, breaches in it may lead to international political instability. Since Poland is an EU Member State, having ratified most of international human rights instruments (such as the ECHR), it is fully bound to the respect of the rule of law.

18 (2004) The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General (S/2004/616), p.4

19 http://www.dirittounioneeuropea.eu/Article/Archive/index_html?ida=145&idn=19&idi=-1&idu=-1

20 http://www.dirittounioneeuropea.eu/Article/Archive/index_html?ida=145&idn=19&idi=-1&idu=-1

However, since 2015, severe breaches in the rule of law have taken place, due to the capture of the judicial braench carried out by the ruling party Law and Justice. The capture began with the Constitutional Tribunal, for then encompassing the Supreme Court, the National Council of the Judiciary and the Common Courts.

The Constitutional Tribunal is, together with the State Tribunal, an independent body of the branch of the judiciary; it is composed of fifteen judges to be elected by the lower house of the parliament ("Sejm" in Polish) and then appointed by the President for a nine-year term (judges are not elected all at the same time). This body has primarily to ensure the constitutionality of normative acts as well as of international agreements; it investigates and rules on conflicts of competence between central constitutional bodies as well as on constitutional complaints; its activities also encompass reviewing the activity of political parties in order to verify their constitutionality; finally, the Constitutional Tribunal is also the body to refer to in case of violation of constitutional rights and freedoms and therefore it has an extremely relevant role in the protection of human rights within the country.

In 2015 five judges of the Constitutional Tribunal were expected to retire: three of them in November and the other two in December. The Parliament, whose term was to come to an end in November 2015, decided on 8 October on the five new judges to appoint even though only three judges were supposed to be elected. The retirement of the other two judges was to happen in December, which is one month after the end of the term of the Parliament. Therefore, according to the law in force, placing the election of the two judges was to be placed under the competence of the next term-Sejm. President Andrzey Duda refused to appoint all the five judges, comprised the three who were legally elected. President Duda stated as follows:

> It is a shame that honourable chief justices do not pay careful attention to the manner in which these new judges were chosen by the Sejm. Shortly before the elections, we had an abrupt change of the act; then we had the elections of Constitutional Tribunal judges

at the very last minute, by force, despite protests of the then opposition, protests which, in my view, were justified.[21]

Parliamentary elections were to be held in Poland on 25 October 2021. Two days before this event the party Law and Justice filed a motion with the Constitutional Tribunal to rule on the constitutionality of the five judges' election. After winning the majority in parliamentary elections, with 37.50 per cent of votes and 235 seats (from a total of 460) guaranteed in the Sejm, Law and Justice decided to withdraw the request, though it was reproposed to the Constitutional Tribunal by the opposition, Civic Platform. Meanwhile President Duda postponed the issue of the appointment of the five judges. On 25 November, the lower house of the parliament annulled the election of the five judges and, in the evening of 2 December, new judges were elected by the Law and Justice-led Sejm. The new judges were appointed by President Duda the night between 2 and 3 December. The election and appointment of judges went against the will of the Constitutional Tribunal. In fact, on 30 November, it had called for a suspension of any action in this regard until the communication of the ruling on the motion sent to the Tribunal by Civic Platform. The judgement of the Constitutional Tribunal arrived on 3 December:

In the case of the two judges of the Tribunal whose terms of office either ended on 2 December or will end on 8 December 2015, the legal basis of the significant stage of the judicial election process was challenged by the Tribunal as unconstitutional. […]. However, what does not raise constitutional doubts is the legal basis of the election of the three judges of the Tribunal who were to take office after the judges whose terms of office had ended on 6 November 2015 […]. Pursuant to the rule that a judge of the Tribunal is chosen by the Sejm during the parliamentary term in the course of which the vacancy occurs, the judicial election carried out on that basis was valid and there are no obstacles to complete the procedure by the oath of office taken, before the President of Poland, by the persons elected to the judicial offices in the Tribunal.[22]

21 Szuleka, M., Wolny, M. and Szwed, M., (2016). *THE CONSTITUTIONAL CRISIS IN POLAND 2015 - 2016*. [ebook] Warsaw: Helsinki Foundation for Human Rights, p.19. Available at: <https://www.hfhr.pl/wp-content/uploads/2016/09/HFHR_The-constitutional-crisis-in-Poland-2015-2016.pdf>.

22 http://trybunal.gov.pl/en/hearings/judgments/art/8748-ustawa-o-trybunale-konstytucyjnym/

Nevertheless the President, the Sejm and the government refused to take into consideration the ruling, labelling it as invalid for being issued only by five judges of the Constitutional Tribunal; on this basis the Chief of the Chancellery of the Prime Minister Beata Kempa, member of the Catholic-nationalist party United Poland (born out of a schism in the Law and Justice party), refused to publish the judgement for two weeks despite this being against her constitutional duties, due to the nature of the Tribunal's rulings that are final and binding.

In line with the ruling, the Chairman of the Constitutional Tribunal, Andrzej Rzepliński, allowed two of the five judges to join the Tribunal in order to fill the places of the two judges who retired in December.

Throughout 2015 new attempts were carried out by Law and Justice not only to overturn the decision taken by Andrzej Rzepliński but to undermine the independence of the Tribunal in favour of the party.

An amendment to the Constitutional Tribunal law has been made

> to increase the number of judges required to make rulings in the most important cases from nine to thirteen, thereby hoping to oblige Mr Rzepliński by including all of those appointed by the new parliament. The so-called 'repair law' also increased the threshold for tribunal rulings to a two-thirds majority, making the votes of these new appointees more significant.[23]

Other legislative enactments involved delaying the decisions of the Tribunal on consitutional cases by imposing a minimum time of three or six (in cases considered by the full bench) months after the notification of the parties; <introducing amendments with immediate effect (without a vacatio legis) to force the Constitutional Tribunal to operate according to a set of rules whose constitutionality they were simultaneously assessing>[24]; they also encompassed the conferral of the decision on the dismissal of a judge from office "in particularly serious cases" to the Sejm, in a resolution adopted from a motion of the General Assembly of Judges of the Constitutional Tribunal, and

23 https://constitution-unit.com/2017/01/19/is-polands-constitutional-tribunal-crisis-over/
24 https://ruleoflaw.pl/poland-from-paradigm-pariah-polish-constitutional-crisis-facts-and-interpretations/

the one on the initiation of Disciplinary proceedings against a Tribunal's judge to the Minister of Justice or the President of Poland.

Neither of the Tribunal's rulings condemning these laws were accepted or published by the government.

In between November and December 2016 three new laws were adopted: the Law on the status of judges was aimed at forcing in the Tribunal the other three judges elected by Law and Justice in December 2015 into the Tribunal[25] by imposing obligations on the Chairman of the Constitutional Tribunal to assign the cases of the Tribunal only to judges that had been appointed by the President; according to the Law on the organisation and the procedure before the Constitutional Tribunal the General Assembly is to be made of judges appointed by the President, therefore the purpose is to empower within the Tribunal those judges appointed by President Duda in 2015; the Law on introducing the Law on the status of the judges and on the organisation and procedure before the Tribunal"

> makes sure that the three "fake" judges will finally be allowed on the bench and prevents the Tribunal from adjudicating without their participation (as it did in March and August 2016). The new Law stipulates that it will enter into force without vacatio legis as soon as the President of the Republic signs it. Just in case however, should the General Assembly somehow manage to elect candidates for President and Vice-President before "fake" judges take their office, the new Law retroactively invalidates "all actions and acts performed before the new law has entered into force"[26].

In December 2016 the Chairman of the Constitutional Tribunal, Andrzej Rzepliński, retired; President Duda appointed a new Chairman of the Tribunal loyal to the Law and Justice party: Julia Przyłębska. The way in which the new Chairman was elected was highly questionable, indeed, even if according to article 194 of the Polish Constitution the President and Vice-President of the Constitutional Tribunal are appointed by the President of the Republic from among candidates presented by the General Assembly of

25 https://verfassungsblog.de/constitutional-capture-in-poland-2016-and-beyond-what-is-next/
26 https://verfassungsblog.de/constitutional-capture-in-poland-2016-and-beyond-what-is-next/

the Judges of the Constitutional Tribunal, <Out of the 11 judges participating in the Assembly, only the judges elected by the ruling coalition took part in the election of the new President of the Constitutional Court>[27]. The decisions taken by the new chairman were controversial; in this regard it is relevant to outline that the analysis of political legislation was predominantly reserved for judges linked to Law and Justice. According to a letter written by seven judges of the Constitutional Tribunal in December 2018, in nineteen cases Julia Przyłębska modified the composition of judicial panels and all the changes affected the judges appointed previously by other ruling coalitions than Law and Justice.

> Data compiled by judges of the Court show that in 2017-2018, judges appointed after 2015 were significantly more often assigned to cases designated with the symbol "K" (involving requests to determine the compatibility of laws or ratified international agreements with the Constitution) as compared to judges elected by the Sejm of previous terms. [28]

Proofs of the lack of independence characterizing the Tribunal were given also in December 2019 when three judges retired. Two of the appointed candidates were Stanisław Piotrowicz and Krystyna Pawłowicz, <In 2015-2019, both were members of Law and Justice sitting on the Sejm Committee for Justice and Human Rights, a body responsible for legislating almost all changes to the justice system>[29].

27 Wolny, M. and Szuleka, M.,(2021). *A TOOL OF THE GOVERNMENT THE FUNCTIONING OF THE POLISH CONSTITUTIONAL COURT IN 2016–2021*. [ebook] Warsaw: Helsinki Foundation for Human Rights, p.14. Available at: <https://www.hfhr.pl/wp-content/uploads/2021/09/TK-narzedzie-w-rekach-wladzy-EN-FIN14092021.pdf>.

28Wolny, M. and Szuleka, M., (2021). *A TOOL OF THE GOVERNMENT THE FUNCTIONING OF THE POLISH CONSTITUTIONAL COURT IN 2016–2021*. [ebook] Warsaw: Helsinki Foundation for Human Rights, p.23 . Available at: <https://www.hfhr.pl/wp-content/uploads/2021/09/TK-narzedzie-w-rekach-wladzy-EN-FIN14092021.pdf>.

29Wolny, M. and Szuleka, M.,(2021). *A TOOL OF THE GOVERNMENT THE FUNCTIONING OF THE POLISH CONSTITUTIONAL COURT IN 2016–2021*. [ebook] Warsaw: Helsinki Foundation for Human Rights,25. Available at: <https://www.hfhr.pl/wp-content/uploads/2021/09/TK-narzedzie-w-rekach-wladzy-EN-FIN14092021.pdf>.

As previously mentioned, further reforms took place within other bodies of the judiciary. The Supreme Court is the highest court of appeal within the republic of Poland and its jurisdiction applies to: both military and popular courts in the adjucation process, the investigation concerning the validity of parliamentary and presidential elections as well as of referenda, the approval of parties' reports on financing, rulings in regards to the interpretation of law and to disciplinary proceedings initiated against judges.

Changes in the Supreme Court took effect in 2018. The first major reform within this body concerned the retirement age of judges, which was lowered from seventy to sixty-five years and, subsequently, ended the term in office of the judges whose age was over sixty-five unless they were given the consent of the president to remain in service. Secondly, the Supreme Court's structure was modified by adding two new chambers: the Disciplinary Chamber and the Extraordinary Control and Public Affairs Chamber.

> The Disciplinary Chamber was given the ultimate power to decide on disciplinary charges against all judges in the country, including the Supreme Court judges. The Extraordinary Control and Public Affairs Chamber was empowered to control general elections as well as to repeal final decisions of courts in a newly created extraordinary appeal procedure[30].

Also the organization of Common Courts was affected, indeed the Minister of Justice, Zbigniew Ziobro from the Catholic-nationalist party United Poland, became entitled with the arbitrary power to appoint and dismiss courts' presidents who have powers of allocating individual cases[31].

These changes acquire even more relevance when considering the reforms that took place the same year within the National Council of the Judiciary.

30 Ziółkowski, M., (2020). *Two Faces of the Polish Supreme Court After "Reforms" of the Judiciary System in Poland: The Question of Judicial Independence and Appointments*. [ebook] European Papers, p.4. Available at: <https://www.europeanpapers.eu/it/system/files/pdf_version/EP_eJ_2020_1_24_SS4_Insights_I_022_Michal_Ziolkowski_00362.pdf>.

31 https://freedomhouse.org/report/analytical-brief/2018/hostile-takeover-how-law-and-justice-captured-polands-courts

The National Council of the Judiciary is responsible for preserving the independence of courts and judges. The body constitutes of representatives of the judiciary, the legislative and the executive. The judiciary is represented through fifteen members.

The Council presents the President with motions concerning the appointment of judges; it deals with judiciary's staff matters, and expresses its opinions on the professional ethic of judges. It may also make an application to the Constitutional Tribunal to adjudicate on the constitutional conformity of normative acts to the extent to which they concern the independence of courts and judges[32].

The reform dismissed all current judges, preventing their term from coming to an end, and changed the election procedure in favour of the Law and Justice dominated Sejm, which became entitled to elect on majority the fifteen members (previously elected within the judicial community).

Given the crucial role of the National Council of the Judiciary in the appointment of judges for both common courts and the Supreme court, there is evidence to suggest a total lack of independence of the judiciary, being completely subjected to the discretion of the Law and Justice party.

Moreover, captured institutions have been used by the ruling party to implement laws undermining fundamental right and freedoms of both EU and non-EU citizens, which have sparked numerous protests throughout the country. In particular, the Constitutional Tribunal ruling of 2020, resulted in a nearly total ban on abortion, leading to <the largest demonstrations in Poland since the fall of communism in 1989, tens of thousands of people marched to protest a high-court ruling in October that imposed a near-total ban on abortion>[33]. Dissent has been suppressed by curtailing freedom of expression as well as of assembly and association, with this affecting human rights organizations as well as media, as a matter of fact in autumn 2021:

32 https://www.sejm.gov.pl/english/prace/okno10.htm

33 https://www.nytimes.com/2020/10/27/world/europe/poland-abortion-ruling-protests.html

Poland's parliament voted unexpectedly on Friday in its final session of the year to overturn a Senate veto of a previously shelved and controversial media reform bill. The bill aims to limit foreign ownership of media companies, but critics charge the legislation is designed mainly to affect Discovery-owned TVN, which has been critical of the Polish government. The move to force the ouster of Discovery as the owner of TVN has caused tensions with the US.

Moreover, since 2015 there has been a take-over of the 20 out of 24 regional newspapers by the state-owned gas company (PKN Orlen), whereas a private company, named Agora, which is a government's opponent, has been prevented from buying one of the biggest radios in Poland (Radio Zet).

2.2 Women's Rights: from Catholic Church lobbying to the Black Protests Article 33 of the Polish Constitution holds that "men and women shall have equal rights (…) regarding education, employment and promotion, and shall have the right to equal compensation for work of similar value, to social security, to hold office, and to receive public honours and decorations"; additionally, protection of motherhood and assistance on the side of public institutions in regards to the latter are to be provided under Article 18 and Article 71.That said, since 2016 severe attempts to curtail women's rights have taken place. These were made both by organizations affiliated with the Polish Catholic Church and by governmental institutions under the leadership of the Law and Justice party. Attacks on women's rights were carried out: firstly, by undermining sexual and reproductive health rights, which preserve women's health and dignity by giving them <the possibility to make autonomous decisions about their own bodies and sexuality> and, therefore, are to be considered a crucial factor in upholding women's rights and achieving gender equality[34]; secondly, by disempowering women's rights organizations, which are to be considered the predominant securitizer of women within the country.

34 https://equineteurope.org/lets-talk-about-sexual-and-reproductive-health-and-rights/#:~:text=SRHR%20are%20not%20only%20a,women%20healthy%2C%20dignified%20and%20safe.

In 2016, a Polish conservative Catholic organization named Ordo Iuris Institute for Legal Culture wrote a bill proposal encompassing important modifications of the 1993 *Act on Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion.*

The 1993 Act already constituted a deviant case within the European Union for being overly restrictive. According to the Act, in direct contrast with the majority of EU Member States, pregnancy termination cannot be performed simply on the basis of the pregnant woman's will within twelve weeks from conception. Under article 4ª of the Act, abortion is permitted only in three cases: when the health of the woman is endangered by the nature of the pregnancy, in circumstances in which the life of the fetus is threatened by a serious and irreversible defect or illness and, finally, when the pregnancy results from an unlawful act. Article 4ª also specifies that in the first two cases the pregnancy can be terminated until the fetus reaches the state of being able to live autonomously outside of the woman's body, following the consent of a doctor different from the one performing the abortion (unless the pregnancy constitutes a direct threat to the pregnant woman's life); in the case in which the pregnancy is the outcome of an illegal act, termination is allowed within 12 weeks of conception, following an investigation made by a public prosecutor in order to verify the circumstances.

The bill was aimed at cutting down the range of possibilities allowing pregnancy termination by making abortion legal only in the circumstance of the pregnancy constituting a risk for the pregnant woman's life, by adjusting the maximum jail term for practitioners from two years to five and by introducing a prison sentence for abortion-seekers; 450,000 signatures were collected by the Ordo Iuris Institute for Legal Culture and affiliated organizations, so that the bill resulted as a popular initiative eligible for parliamentary consideration (which in Poland requires a minimum of 100,000 signatures). The proposed bill found a fertile ground within Polish governmental institutions, indeed the ruling party Law and Justice was highly supportive of the bill: BBC reported that Jaroslaw Kaczynski, leader of the ruling party Law and Justice, in an interview dated 12 October 2016 said <We will strive to ensure

that even in pregnancies which are very difficult, when a child is sure to die, strongly deformed, women end up giving birth so that the child can be baptised, buried, and have a name.>.

On 3 October 2016, later named “Black Monday” due to the black clothes wore by protesters as a sign of mourning, extensive pro-choice protests started taking place in Warsaw, Gdansk, Lodz, Wroclaw, Krakow as well as in smaller cities throughout the country. In October 2016 between 100,000 and 200,000 people took the streets in the “Czarny Protest” (which means “Black Protests”), and, according to CBOS, 17 per cent of women and 6 per cent of men wore black in public places to support protesters; additional support was given through digital activism, by spreading related hashtags and memes, and at the international level: demonstrations were held in many European cities, such as London, Paris, Berlin, Brussels, Belfast and Dusseldorf. Protests led to the Parliament rejecting the bill.

Following the rejection of a proposed bill which advocated for a liberalisation in Polish abortion law, in 2018 new attempts, highly baked by the Polish Catholic Church, were made to abolish the possibility to abort in the case of severe defects and illness of the fetus. According to Ipsos polls in January 2018 37 per cent of Poles were in favour of a liberalisation of the abortion law in force, 43 per cent supported the status quo and only the remaining 15 per cent advocated for a total ban; yet, the draf bill in January 2018 was pending in the parliament and this fact sparked new protests. Amnesty International reported that on 17 January 2018 ten of thousands of protesters took the streets in forty Polish cities.

The “Stop Abortion” bill was highly condemned by UN Special Rappourters on violence against women and on the right to health, by UN Working Group on Discrimination against Women in Law and Practice and by Nils Muižnieks, Council of Europe Commissioner for Human Rights. who stated:

> This step would be at variance with Poland’s obligations under international human rights law. In particular, it would endanger women’s right to freedom from ill-treatment and go against the principle of non-retrogression prohibiting any measures that diminish

> existing rights in the field of health. Preventing women from accessing safe and legal abortion care jeopardises their human rights. I therefore urge the Polish Parliament to reject this legislative proposal and any other legislative proposal that seeks to further limit women's access to their sexual and reproductive rights in Poland.

The PiS-captured Constitutional Tribunal was asked, by MPs belonging to conservatory groups, to rule on the legality of accessing abortion in the case of important defects and illness of the fetus that constitute a threat to the fetus' life itself. While no ruling was issued by the Constitutional Tribunal that year, new non-violent demonstrations were hold in March 2018 due to the approval of the "Stop Abortion" bill made by a parliamentary committee, and again in July 2018 in order to ensure a definite withdrawal from the bill.

On 22 October 2020 the Constitutional Tribunal ruled as unconstitutional the provision of the 1993 *Act on Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion* providing for a legal access to abortion in case of fetus' severe anomalies. Protests started on 22 October 2020, with activists demonstrating in town centers as well as in Catholic churches; in an article dated 28 October 2020 BBC reported:

> Crowds have protested in several cities for the seventh-day running against the decision that outlawed terminations on the grounds of severe health defects. An opinion poll conducted for Gazeta Wyborcza suggested that 59% of those surveyed disagreed with the change.The powerful ruling party leader said the decision could not be reversed. Jaroslaw Kaczynski, who is also the deputy prime minister and widely considered to be the country's real powerbroker, said the protests were an attempt to "destroy" Poland. He urged people to "defend" the nation as well as the Catholic Church.

On 28 October a nationwide protest took place, primarily under the call of the Strajk Kobiet movement (in English known as the All-Poland Women's Strike); activists were supported by universities and even by companies, indeed some universities and small-companies did not operate that day giving the opportunity to student, teachers and employees to take part in the strikes. On that day over 400,000 people protested in more

than 400 towns and around 100,000 people took the streets in Warsaw on 30 October 2020, where hundreds of people met the teargas and pepper spray used by the police of the capital.

Women strikes continued unabated also in November and December 2020 as well as throughout 2021. 2021 protests were fueled also by the death of a 30 year old woman, on 22 September 2021, due to sepsis in her 22 week of pregnancy. Indeed, according to a BBC article dated 8 November 2021, the family of the victim stated that the doctors did not perform an abortion because they feared braking the new abortion law. The Guardian in an article published on 6 November 2021 reported:

> "For now, because of the abortion law, I have to stay in bed and they can't do anything," Izabela – whose surname has not been made public– wrote in a text message to her mother after being admitted to a hospital in Pszczyna, south-western Poland. "Alternatively, they will wait for the baby to die or for something to start happening. If it doesn't, then great, I can expect sepsis." She died the next morning at 07:39am. The consultant responsible for Izabela told her husband the death was caused by a pulmonary embolism, adding that "sometimes it happens", the lawyer representing Izabela's family, Jolanta Budzowska, told the Guardian. However, the initial autopsy found that the woman died of septic shock.

With 98 per cent of pregnancy being carried out on the basis of severe anomalies of the fetus, the new abortion ban had jeopardizing consequences: according to The Guardian at least 34,000 women in Poland have sought abortions illegally or abroad within the first year from the Constitutional Tribunal ruling of 2020.

Another factor that brings additional negative outcomes is the difficult access to emergency contraception. Indeed, in 2017 a law posing limits to the availability of the "morning after pill" was signed by President Duda. While previous law allowed girls above the age of fifteen to buy the contraceptive in Polish pharmacies, 2017 changes oblige women to consult a doctor in order to purchase it. Further complications, especially when considering the limited range of time in which the contraceptive can be effective, are added by the "conscience clause":

> Poland's "conscience clause" under article 39 of the Doctor and Dentist Professions Act is a particular concern. Medical personnel may decline to perform abortion on the grounds that it conflicts with their personal values or beliefs. The law states that personnel must refer a woman to an alternate doctor or facility where she has a real possibility of obtaining services, but local women's groups report that such referrals are often not made.[35]

With 87 per cent of the population identifying as Roman Catholic this issues inevitably acquires relevance.

Indeed the story of women reproductive rights in Poland seems to have always been linked to the one of the legitimacy of the Catholic Church as a political actor within the country.

> In Poland, Catholicism is intertwined with nationalism, whereby religious and national boundaries coincide (Brubaker, 2012, p. 9). During the partitions of Poland between Russia, Prussia and Austro-Hungary (1795–1918), Catholicism emerged as a unifier of the nation in opposition to German Protestantism and the Russian Orthodox Church (Zubrzycki, 2006), leading to the 'ethnic-centred fusion of "the Pole" and "the Catholic" into a single Polish Catholic national identity' (Kozłowska et al., 2016, p. 831).[36]

The legitimacy towards the role of the Polish Catholic Church as a key player in writing the story of the nation was strengthened after World War II, with the Church opposing the consolidated power of the communist regime and taking up the role of mediator in the Roun Table talks between the communist regime and the Solidarity trade union (Zubrzycki, 2006, pp. 71–72)[37]. Since then, the Church has been a predominant actor within the policy making process of the country, with the latter lacking a finalized secularization process common to most EU Member States.

This authority is mirrored by Polish abortion law process since the so called "abortion compromise" of 1993, previously discussed. Indeed under the communist regime

35 https://www.hrw.org/news/2014/10/22/dispatches-abortion-and-conscience-clause-poland

36 https://journals.sagepub.com/doi/pdf/10.1177/0141778919894451

37 https://journals.sagepub.com/doi/pdf/10.1177/0141778919894451

abortion in Poland was allowed (since 1956) also in case of poor socio-economic conditions, situation that was deeply countered by pro-life groups affiliated to the Church; the collapse of communism put the Church in the condition of proposing a total abortion ban in 1989, this sparked numerous protests by women's organization with the clash leading to the abortion compromise of 1993. In addition to this, in 1992 the "conscience clause" was adopted, under the regulation of the Ministry of Health and the pressure posed by the Episcopate.

The linkage between the Polish government and the Catholic Church becomes even more marked when analyzing the attempts of the former to obstruct the activities of women rights organizations.

The Human Rights report "The Breath of the Government on my back", published in 2019, investigated the attacks to women rights on different levels.

Firstly, it is outlined how these organizations have been undermined in their funds since Law and Justice came to power and in particular after the establishment, initiated by the PiS-led government, of the National Institute of Freedom-Center for Civil Society made in 2017; powers to decide about distribution of civil society funds cumulated within this body with a subsequent centralization and a strengthened state-interference in this decision process (formerly led by local administrations and different ministries). Funds coming from different ministries were significantly reduced; as a matter of fact, the funds coming from the Ministy of Justice, which were originally aimed at supporting victims of crimes, as women who underwent violence, were distributed primarily to pro-government organization linked to the Polish Catholic Church while funds directed to independent Women Rights Organizations were cut down: according to the report in 2018 sixteen organizations received 37 per cent of the funds given by the Ministry of Justice, twelve of them were affiliated with the Polish Catholic Church and the other four were family-focused organizations.

According to Human Rights Watch, also funds from the Ministry of Education decreased since 2015. This fact is not surprising considering the support given by the Law and Justice government to numerous attempts made by organizations as Ordo Iuris to exclude NGOs from delivering comprehensive sexual education in school; proof is provided by the report "The Breath of the Government on my back":

> In February 2018, Ordo Iuris published a report naming and shaming organizations including Autonomia, a women's rights organization, and Ponton. They falsely accused Ponton of "trying to implement a program in schools that has led to an increase in abortion among minors" and "encouraging girls under 16 to lie to doctors, [saying] that they have their parents' consent to use hormonal contraception."

According to the report, not only the government has never made an effort to counter these actions but even made supportive declarations in this regard: Anna Zalewska, Minister of National Education from 2015 to 2019 delivered warnings in public about possible risks of letting workshops on comprehensive sexual health education being held in schools.

In the second place, as outlined by the Human Rights Watch report, since the beginning of protests, the government tried to intimidate human rights defenders in different ways. A first strategy was to command police raids in NGOs' offices related to Women Rights activism: <Police told them the raids stemmed from an investigation into alleged misconduct by former Ministry of Justice (MOJ) staff and that the groups' MOJ funding was grounds for the raids, including seizure of documents and computers.>[38].

Another method for intimidating women rights defenders was retaliation. Many cases of women that lost their jobs or whose hours of working activity were diminished due to their participation in protests have been reported: a woman, interviewed by Human Rights Watch for the report, declared that she lost her position within a municipal center due to her active role in the organization of the Black Protest movement; another

38 (2019). "*The Breath of the Government on My Back" Attacks on Women's Rights in Poland*. [ebook] Human Rights Watch, p.56. Available at: <https://www.hrw.org/sites/default/files/report_pdf/poland0219_web2_0.pdf>.

woman who took part in the Black protests as well as in their preparation, employed in a state school, found her working hours diminished once returned from maternity leave.

Up to 2021 attacks escalated, with Women Rights Organizations receiving bomb threats:

> At least six human rights organizations in Warsaw, including the women's rights groups Feminoteka, Women's Rights Centre and Women's Strike, received bomb threats via email on International Women's Day, March 8, 2021. The threats said they were "payback" for supporting the Women's Strike movement, which has been at the forefront of mass protests following increased restrictions on access to legal abortion. Some organizations received the threat at multiple email addresses.[39]

To conclude, actions undertaken by the Polish governmental institutions under the lead of the Law and Justice party constitute a severe violation of international legal acts and declarations, enclosing the right to sexual and reproductive health, that Poland has ratified: Article 16 of the CEDAW encompasses the right to family planning, by affirming that women and men are equally entitled to the right to <decide freely and responsibly on the number and spacing of their children>; in the CEDAW General Recommendation No. 21 is stated that women have to be provided with <information about contraceptive measures, sex education and family planning services>[40]; more in general, sexual and reproductive rights, as well as discrimination on the basis of the latter, fall, in UN traties, under the umbrella of other rights, such as the right to health, family planning and freedom from violence[41]; in the ECHR the right to sexual and reproductive health is encompassed within other rights, as <the right to private and

39 https://www.hrw.org/news/2021/03/31/poland-escalating-threats-women-activists

40ANEDDA, L., ARORA, L., FAVERO, L., MEURENS, N., MOREL, S. and SCHOFIELD, M., 2018. *Sexual and reproductive health rights and the implication of conscientious objection, p.19.* [ebook] Brussels: Policy Department for Citizens' Rights and Constitutional Affairs. Available at: <https://eurogender.eige.europa.eu/system/files/post-files/eige_icf_sexual-and-reproductive-health-rights.pdf>.

41 ANEDDA, L., ARORA, L., FAVERO, L., MEURENS, N., MOREL, S. and SCHOFIELD, M., 2018. *Sexual and reproductive health rights and the implication of conscientious objection, p.19.* [ebook] Brussels: Policy Department for Citizens' Rights and Constitutional Affairs. Available at: <https://eurogender.eige.europa.eu/system/files/post-files/eige_icf_sexual-and-reproductive-health-rights.pdf>.

family life (Article 8), the right to freedom from torture and ill-treatment (Article 3), the right to life (Article 2) and the prohibition of discrimination (Article 14)>[42], within its ruling ECtHR made attempts to enhance this framework but by leaving great discretion to States on matters as abortion[43]. Part of this international legal framework is also the Council of Europe Convention on Preventing and Combating Violence against Women, also known as Istanbul Convention, aimed at countering gender-based violence, though in 2021:

> In July, the Minister of Justice declared that Poland would withdraw from the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, claiming the Convention is "harmful" as it requires educators to teach children about gender[44]

Moreover, attempts were made, according to Human Rights Watch, to substitute the Istanbul Convention with a "Family Rights" Convention: < this would enshrine, for example, the protection of "the life of a conceived child" and the definition of marriage as being between a man and a woman.>[45]

At the EU level a clear framework in regards to sexual and reproductive rights is not provided, indeed there is a high level of discretion reserved to Member States by the Charter of Fundamental Rights on this matter and in Directive 2004/113/EC, which provides for equality between women and men in accessing goods and services, there is

42ANEDDA, L., ARORA, L., FAVERO, L., MEURENS, N., MOREL, S. and SCHOFIELD, M., 2018. *Sexual and reproductive health rights and the implication of conscientious objection, p.19.* [ebook] Brussels: Policy Department for Citizens' Rights and Constitutional Affairs. Available at: <https://eurogender.eige.europa.eu/system/files/post-files/eige_icf_sexual-and-reproductive-health-rights.pdf>.

43 ANEDDA, L., ARORA, L., FAVERO, L., MEURENS, N., MOREL, S. and SCHOFIELD, M., 2018. *Sexual and reproductive health rights and the implication of conscientious objection, p.19.* [ebook] Brussels: Policy Department for Citizens' Rights and Constitutional Affairs. Available at: <https://eurogender.eige.europa.eu/system/files/post-files/eige_icf_sexual-and-reproductive-health-rights.pdf>.

44 https://www.hrw.org/world-report/2021/country-chapters/poland

45 https://www.hrw.org/news/2021/03/31/poland-escalating-threats-women-activists

ambiguity in regards to the provision of goods and services related to sexual and reproductive health[46].

What is more, the attacks on women rights organizations are clearly aimed at undermining the freedom of expression, of assembly and of association of women rights activists: these rights are fundamental rights, as so proclaimed within the Universal Declaration of Human Rights in 1948. At the regional level, freedom of expression is enshrined in article 11 of the CFR, which corresponds to article 10 of ECHR; freedom of assembly and of association are enclosed within article 12 of the CFR, referring to article 11 of the ECHR.

2.3 LGBTIQ+ Rights: "gender ideology" and LGBT-free zones Article 32 of the Polish Constitution provides for a general prohibition of discrimination, though, the right of sexual minorities to not be discriminated against is not fully recognized. In the report published on 9 June 2015, the Emergency Care Research Institute (ECRI) advocated for encompassing gender identity and sexual orientation among protected characteristics when it comes to Polish legislation on both hate crime and hate speech. This would have required adding these two categories to Article 256 of the Criminal Code, which deals with incitement to hartred, with spreading totalitarian ideologies and with the creation and diffusion of racist material, and to Article 257 of the Criminal Code, that prohibits public insults. Since then not only Poland has failed in providing the LGBTIQ+ community with a legal framework for protection from hate crime and hate speech, but LGBTIQ+ people have been discriminated against also by public authorities.

The call made by ECRI in regards to legislation on hate crime and hate speech acquires relevance and urgency when taking into considerations data provided by the 2015-2016

46 ANEDDA, L., ARORA, L., FAVERO, L., MEURENS, N., MOREL, S. and SCHOFIELD, M., (2018). *Sexual and reproductive health rights and the implication of conscientious objection, p.19.* [ebook] Brussels: Policy Department for Citizens' Rights and Constitutional Affairs. Available at: <https://eurogender.eige.europa.eu/system/files/post-files/eige_icf_sexual-and-reproductive-health-rights.pdf>.

report on the “Situation of LGBTA Persons in Poland”, edited by Magdalena Świder and Mikołaj Winiewski, according to which 68,9 per cent of LGBTIQ+ people underwent at least one form of violence: 63,72 per cent experienced verbal abuse; 33,96 per cent were threatened; 27,27 per cent experienced vandalism and refusal; 14,11 per cent underwent sexual violence and 12,84 per cent physical violence.

Importance has to be given also to other data coming from the report written by Świder and Winiewski, which is that not even 4 per cent of people who underwent violence motivated by homophobia and/or transphobia reported it to the police; indeed, 57,7 per cent of respondents admitted their lack of trust in the police. In this regard, the 2015 ECRI report asked the Polish authorities to provide for specific training for both police officers and prosecutors on dealing comprehensively with hate crimes.

The ECRI report also condemned homophobic references made within governmental institutions:

> reference is made to homophobic views expressed in parliamentary proceedings concerning the draft legislation on civil partnerships; the statement by a former Government Plenipotentiary for Equal Treatment concerning the dismissal of a homosexual teacher; the statements by a former President of the Republic during a television broadcast about the presence of homosexuals in Parliament, and inappropriate comments about a transsexual MP made by another MP, which were repeated and supported on Radio Maryja, belonging to the Warsaw Congregation of the Most Holy Redeemer

Intolerant statements made by politicians in public are mirrored by high levels of distrust by LGBTIQ+ people in governmental institutions: the 2015-2016 report on the <Situation of LGBTA Persons in Poland> reported that 96,4 per cent of respondents distrust the government and 95,3 per cent of respondents declared lack of trust in the Parliament.

In the Joint Submission to the Universal Periodic Review submitted in 2017 by Lambda Warsaw, the Association for Legal Intervention and by the Diversity Workshop it has been pointed out that no attempt to amend the Criminal Code was finalized; what is

more, in 2015 the new Minister of Justice, member of the Law and Justice party, affirmed to not recognize the necessity to amend the Criminal Code. Proof of the contrary is encompassed in the 2016 report submitted by the International Lesbian and Gay association (ILGA): in the case of a 20 year-old gay man murdered in January 2014 homophobia was not even considered as a potential motive while sentencing the perpetrators; again, when a man was sentenced to six months of prison and to the payment of a fine amounting at 2,000 PLN for “assaulting a human rights actvist and using homophobic slurs in December 2014” the homophobic nature of the attack did not find a legal translation. The necessity to amend the Criminal Code is confirmed by the ILGA report of the following year, reporting violent homophobic attacks to two LGBTIQ+ NGOs : Lambda Warsaw and Campaign Against Homophobia; “A brick was thrown through the windows of Lambda Warszawa’s office during the night on 1-2 March. On 3 March, three men attempted to break into the Campaign against Homophobia (KPH) building while shouting homophobic insults.”.

Hate speech delivered in public by political figures continued to be a relevant issue in the following years. As claimed by ILGA, on 17 April 2018 Jarosław Kaczyński, leader of the Law and Justice party, stated in public that "no homosexual marriages will occur; we will wait peacefully for the European Union countries to sober up". Further hate speech by Kaczyński followed in March 2019, after Rafał Trzaskowski, the Warsaw major, signed a declaration of support of LGBTIQ+ community aimed at the empowerment of the latter in safety, education, workplace and administration, culture and sports; indeed, Kaczyński labelled the support given by the major as an attack on families.

According to ILPA on 23 June 2021 the Minister of Education, Przemysław Czarnek, declared that “someone who corrupts, promotes deviation does not have the same public rights as someone who doesn’t do it”. This is in line with the approach adopted by the previous Minister of Education Dariusz Piontkowski and Education Superintendent Barbara Nowak: as stated by 2020 ILPA report, in 2019 the Minister of Education received the request, by over 50 organizations, to remove Nowak from her position

since she has given a speech in which she put homosexuality and pedophilia in relation with each other.

The situation further degenerated in 2019 when some towns in Poland symbolically (with no direct legal consequences) declared themselves free from “LGBT ideology”; since 2019 the amount of the so called “LGBT-free zones” has grown in, indeed over 100 towns have labelled themselves as so by the end of 2021.

In 2019 the newspaper Gazeta Polska started distributing stickers supporting “LGBT-free zones within its weekly edition. On September 2020 the journalist Lucy Ash interviewed for BBC Tomasz Sakiewicz, the editor of the newspaper:

> Sakiewicz tells me people should be able to have sex with whoever they choose and boasts that in some respects, Poland is progressive. It decriminalised homosexuality in 1932, decades before most European countries. But he is against what he describes as "aggressive ideology promoting homosexuality". The struggle for gay rights is a foreign concept imported from the US and Western Europe, he adds, and it threatens the traditional heterosexual Polish family.

The editor of Gazeta Polska declared that around 70,000 stickers were given out.

The year after, a campaign initiated by the non-governmental organization Fundacja Pro, consisting in driving vans carrying intolerant statements directed against “LGBT ideology”, was defined as educational by the Wroclaw court.

This attitude towards the LGBTIQ+ community reflected in the result of 2020 presidential elections, which ended up with President Andrzej Duda being re-elected.

According to 2021 ILGA report, Andrzej Duda pubicly dehumanized LGBTIQ+ people in his campaign narrative by referring to them as “not people, but ideology”. Duda has also publicly signed the Family Charter, proposed by the far-right Catholic organization Ordo Iuris and signed by around 40 municipalities by the end of 2020. The Charter is

aimed at defending the institution of marriage as well as children from “LGBT ideology” and at countering the spreading of the latter within public institutions.

Support for LGBTIQ+ community arrived by the Council of Europe Commissioner for Human Right, Dunja Mijatović, who in December 2020 asked for Family Charters and resolutions stigmatizing the LGBTIQ+ community to be lifted. Additionally, she stated that <Public officials and opinion makers should stop promoting an atmosphere of hate and intolerance vis-à-vis LGBTI people and instead, improve respect for their human rights. Stigmatisation and hate speech carry a real risk of legitimising violence. LGBTI are people, not an ideology>[47]

On the other side, Poland’s Catholic episcopate adopted a position paper in which is stated that LGBTIQ+ people should not undergo any kind of violence, yet it encompasses a call for the creation of clinics for LGBTIQ+ people to regain their natural sexual orientation.

The fight against “LGBT ideology” did not remain confined to hate speech, in fact attempts to limit the freedom of assembly as well as of expression of LGBTIQ+ activists took place since 2018.

In the first place, efforts were made to ban Equality Marches throughout the country: on 8 October 2018 the mayor of Lublin decided to ban the Equality March, but the ban was lifted by the Court of Appeal in Lublin; the year after, a member of the party Law and Justice proposed a ban in regards to the Equality March in Rzeszów , which also failed; a new attempt took place in 2020, when the Life and Family Foundation started collecting signatures to reach the abolishment of Prides in the country and the proposal was submitted to the Parliament on 9 November 2020.

Secondly, acivists had to undergo physical attacks during numerous Equality Marches: on 20 July 2019 in Bialystok and on 28 September 2018 in Lublin attacks came from anti-LGBT protesters, in Lublin the police had to intervene even with pepper spray and,

47 https://www.coe.int/en/web/commissioner/-/poland-should-stop-the-stigmatisation-of-lgbti-people

according to ILGA, the far-right demonstrators later admitted to have brought explosives in that occasion; ILGA also reported that during the Independence Day of 2020 March a flat was set on fire by far-right groups' members due to the fact that a rainbow flag and the symbol of the women's march protestors were hanging from its balcony.

In addition to this, the Polish Commissioner for Human Rights condemned in its report the fact that 48 LGBTIQ+ activists underwent degrading treatment during arrest and detention, being beaten and prevented from eating or drinkin.

Arrests of LGBTIQ+ activists became frequent since 2019: on 6 May 2019 human rights activist Elżbieta Podleśna was arrested for offending religious beliefs for having posted pictures depicting Mary and Jesus with rainbow halos, according to Amnesty International <the police confiscated Elżbieta Podleśna's laptop, mobile phone and memory cards. She was also aware of police surveillance and learned the police requested a CCTV camera from the building where she resides.>; only in 2020 activist Margot Szustowicz was arrested three times for placing rainbows flag on monuments as well as for taking part in the destruction of vans with offensive slogans directed towards the LGBTIQ+ community; on 29 August 2020 some activists were arrested for painting the building of the Ministry of Education with the names of children belonging to the LGBTIQ+ community who committed suicide.

Even if Polish legislation in regards to protection from hate crimes and hate speech does not encompass the categories of gender identity and sexual orientation, Poland is still bound to the respect of the principles of equality and non-discrimination enshrined in EU Treaties and in CFR. Additionally, Poland is a signatory to both the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms which require States to ensure the enjoyment of human rights to all individuals without discrimination in regards to their sexual orientation; Poland is bound to the provisions of these instruments even if it has

not signed Protocol No. 12 of ECHR, providing for a general prohibition on discrimination.[48] In addition to this, as in the case of women rights organizations, freedom of expression, assembly and association have been overly violated.

2.4 Refugee Rights: human dignity blanked out at the Poland-Belarus Border On 23 May 2021 Ryanair flight FR4978, expected to land in the Lithuanian city of Vilnius, was forced to change rout towards Minsk under the command of Belarusian authorities; the reason beyond the order was the willing to arrest two passengers: the opposition activist Roman Protasevich and his girlfriend.

This event, as well as severe Human Rights violations within the country, led the European Union to impose sanctions on Belarus. As a reaction Belarus withdraw any effort in the control of illegal migration at EU borders, indeed <Since summer 2021, Belarusian authorities actively enabled migrants from the Middle East to travel to Belarus by facilitating tourist visas, and allowing them to travel to the border area with Poland, Lithuania, and Latvia>[49]. Refugees came from countries undergoing severe conflicts, such as Syria, Afghanistan and Yemen.

Since then, important Human Rights violations start taking place within the Polish-Belarus border, for which both countries are to be hold responsible.

The situation started escalating in September, with Poland accusing Belarus of being carrying out an “hybrid warfare” against Poland and with the construction of razor-wire fences on the border with Belarus[50]. That month Poland imposed a state of emergency on the border with Belarus, which means that towns encompassed within two miles

48 (2005). *Poland: LGBT rights under attack, p.2.* Amnesty International. Available at: <https://www.amnesty.org/es/wp-content/uploads/2021/08/eur370022005en.pdf>.

49 https://www.hrw.org/report/2021/11/24/die-here-or-go-poland/belarus-and-polands-shared-responsibility-border-abuses

50 https://www.hrw.org/report/2021/11/24/die-here-or-go-poland/belarus-and-polands-shared-responsibility-border-abuses

from the border became unavailable for civil society organizations, journalists and volunteers.

Throughout this period migrants that tried to enter the Polish territory endured forced and even violent pushbacks.

Information concerning forced pushback were hard to collect due to the state of emergency, though since August Amnesty International conducted a digital investigation and discovered 32 Afghan asylum-seekers, including also a 15-year-old girl, trapped in between Poland and Belarus since 18 August. These people were confined in the border lacking food, water and medical assistance.

> Using satellite imagery and photographs to measure the area and 3D reconstruction, Amnesty International has established the group's position on the border and found that in late August their position had shifted overnight from Poland to Belarus, in what appears an unlawful forced return.[51]

In Belarus migrants underwent degrading and inhuman treatment, indeed these people were prevented access to food or water, they were kept in the outside; additionally there were cases of violence, perpetrated by the Belarusian guards, and multiple forced pushbacks[52].

By November 2021 30,000 attempts to cross the border into Poland were made, though this data provided by Polish media has no counterproof, since, according to the report "Die Here or Go to Poland" edited by Human Rights Watch in November 2021, no data on pushbacks and detention of migrants and refugees was provided by Polish authorities. In the same month thirteen deaths were reported.

51 https://www.amnesty.org/en/latest/news/2021/09/poland-digital-investigation-proves-poland-violated-refugees-rights/

52https://www.hrw.org/report/2021/11/24/die-here-or-go-poland/belarus-and-polands-shared-responsibility-border-abuses

According to the above mentioned report edited by Human Rights Watch, when recognized as in need of medical treatment, refugees were taken to hospitals in Poland and, once released, they were registered and given documents allowing a six months-permit of stay. Though, often family members were divided:

> On October 29, a Kurdish woman from Syria arrived at a centre hosting migrants in Poland while Human Rights Watch was visiting, and said that her family, part of a larger group, had been captured by Polish border guards two days earlier. She explained that Polish border guards identified her as in need of medical attention but refused to allow her family members to stay with her, including her five-year-old son. She stated that her family and the rest of the group were put in cars and taken away. She had not had any contact with her family since border guards separated her from them[53]

Polish jurisdiction extends to people subjected to border checks, as provided by the case of MK and Others v Poland, and, as laidd down in Article 1 of ECHR, Poland is bound to secure to all individuals within its jurisdiction the enjoyment of fundamental rights and freedoms[54]. This fact is relevant when referring to the issue of pushbacks carried out by Polish border guards, indeed, given the degrading and inhumane treatment endured by refugees when pushed back to Belarus, Poland has violated the principle of non refoulement within its jurisdiction:

> The prohibition of refoulement under international human rights law applies to any form of removal or transfer of persons, regardless of their status, where there are substantial grounds for believing that the returnee would be at risk of irreparable harm upon return on account of torture, ill-treatment or other serious breaches of human rights obligations.[55]

53https://www.hrw.org/report/2021/11/24/die-here-or-go-poland/belarus-and-polands-shared-responsibility-border-abuses

54 https://www.ejiltalk.org/polands-power-play-at-its-borders-violates-fundamental-human-rights-law/

55 n.d. *The principle of non-refoulement under international human rights law*. [ebook] UN Human Rights Office of the High Commissioner, p.1. Available at: <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>.

In addition to this, pushbacks were not subsequent to an <individual examination of whether they face degrading and inhuman treatment if expelled from Poland>, with this constituting a violation of Article 4 Protocol No.4 to ECHR that prohibits collective expulsion[56], which means that a measure compelling a group of aliens to leave a country can be undertaken only when it results from an objective examination of the particular situation of each individual from the group in question[57].

2.5 EU reaction and the withdrawal from a human security approach In Chapter I it has been outlined that being securitized, within the Human Security approach, means being ensured with the enjoyment of freedom from fear, freedom from want and freedom from indignity.

Provided that both EU and non EU citizens' human rights and fundamental freedoms have been violated, as a result of the actions of Polish public authorities, far-right groups and organizations affiliated with the Polish Episcopate, it can be affirmed that individuals placed under the Polish jurisdiction are not to be considered secured. Indeed, given that no protection has been provided to women, LGBTIQ+ people and refugees against different forms of violence as well as from direct threats to their physical integrity, freedom from fear is clearly not guaranteed within Polish jurisdiction; in addition to this, given that refugees at the Polish-Belarusian border have been prevented from enjoying basic needs such as food, water and shelter, also freedom from want has not been warranted; finally, provided that, under international human rights law, the lack of discrimination on the basis of sexual orientation and a comprehensive access to sexual and reproductive healthcare are considered conditions for the empowerment of LGBTIQ+ people and women and for the achievement of gender equality and given that Poland has not been providing for protection in this regard, also freedom from indignity is to be recognized as endangered under the jurisdiction of Poland.

56 https://www.ejiltalk.org/polands-power-play-at-its-borders-violates-fundamental-human-rights-law/

57 2021. *Collective expulsions of aliens*. [ebook] European Court of Human Rights, p.1. Available at: <https://www.echr.coe.int/Documents/FS_Collective_expulsions_ENG.pdf>.

What is more, provided that also human rights organizations are entitled, within the human security approach to securitization, to be addressed both as securitizers of individuals and as referent objects, also their insecurity within the Polish jurisdiction has to be acknowledged. The severe attacks on both women rights and LGBTIQ+ organizations, as well as the exclusion of human rights organizations from the territory close to the Polish-Belarusian border due to the state of emergency, were all initiatives aimed at disempowering them as securitizers. Not only these organizations endured violent attacks, but they were deprived of governmental funds, which can be considered both a basic need in relation to the survival of these organizations, and therefore their freedom from fear and from want have also been jeopardized; to conclude, in regards to freedom from indignity, it has to be stated that the curtailment of their freedom to expression, to assembly and association, together with the lack of funds, clearly undermines the possibility to provide for security of individuals and, therefore, to empower the organization itself.

Moreover, provided that the concept of conditional sovereignty applies to the European Union, having the latter bound its legitimacy to its action as a securitizer of the core values of the EU and therefore its security to the security of individuals under its jurisdiction, also the EU is to be considered insecure; in line with this reasoning, acknowledging this lack of security requires the EU to act as an effective securitizer of individuals in order to securitize its own institutions.

In regards to the breaches in the rule of law, on December 20 2017 the Commission launched Article 7 procedure against Poland and recommended the country to amend the laws through which the reforms in the Supreme Court, in the National Council of the Judiciary and in Common Courts, discussed in Subchapter 2.1, were carried out; additionally, the Rule of Law Recommendation called for restoring the independence and legitimacy of the Constitutional Tribunal, < by ensuring that its judges, President and Vice-President are lawfully elected and by ensuring that all its judgements are

published and fully implemented >, and for refraining from < actions and public statements which could further undermine the legitimacy of the judiciary >.[58]

On April 3 2019 an infringement procedure was launched by the Commission, stating that Poland had < failed to fulfil its obligations under Article 19(1) of the Treaty on European Union read in connection with Article 47 of the Charter of Fundamental Rights of the European Union, which enshrine a right to an effective remedy before an independent and impartial court>[59] as well as obligations under Article 267 of the TEU which provides court with the right to request preliminary rulings from CJEU:

> the new disciplinary regime allows for judges to be subject to disciplinary proceedings for the content of their judicial decisions. This includes decisions to refer questions to the Court of Justice. [...]The functioning of the preliminary reference mechanism – which is the backbone of the Union's legal order – requires national courts to be free to refer to the European Court of Justice any question for a preliminary ruling that they consider necessary, at whatever stage of the proceedings. [60]

Following another infringement, launched on April 29 2020 due to further amendments of legislative acts governing the judiciary, the Commission asked the CJEU for interim measures; CJEU on July 14 2021, requested Poland to:

> Suspend the provisions by which the Disciplinary Chamber of the Supreme Court can decide on requests for the lifting of judicial immunity, as well as on matters of employment, social security and retirement of Supreme Court judges; Suspend the effects of decisions already taken by the Disciplinary Chamber on the lifting of judicial immunity; and Suspend the provisions preventing Polish judges from directly applying EU law protecting judicial independence, and from putting references for preliminary rulings on such questions to the Court of Justice. [61]

The day after, CJEU ruled that the Polish disciplinary regime for judges is not in respect of EU law. Additionally, due to the fact that Poland did not comply with the measures

58 https://ec.europa.eu/commission/presscorner/detail/en/IP_17_5367
59 https://ec.europa.eu/commission/presscorner/detail/es/IP_19_1957
60 https://ec.europa.eu/commission/presscorner/detail/es/IP_19_1957
61 https://ec.europa.eu/commission/presscorner/detail/en/ip_21_7070

requested, in October 2021 CJEU sanctioned Poland with a daily penalty payment of €1 million < for as long as the interim measures order of July 14 2021 has not been fully complied with >.[62] In response, on July14 2021the Polish Constitutional Tribunal had ruled that <Poland is not obliged to comply with interim measures of the CJEU if they relate to the shape and functioning of the judiciary. This would counter the Polish constitution.>[63] and on October 7 2021 ruled that Articles 1 and 19 of TEU are not compatible with Polish Constitution: this means that the Tribunal denies < the obligation to provide effective and independent legal protection in the area of Union law (a manifestation of the rule of law), but also the primacy of Union law over national constitutional law.>.[64]

Though, even if the EU institutions have reacted to the rule of law breaches that have been taking place within Polish judiciary, to which the near total ban on abortion is to be consider subsequent, no direct action was taken to protect women's right to sexual and reproductive health, nor women rights organizations.

> Without definitive action, the Commission is telling women across Europe that their rights to health, freedom from cruel and inhumane treatment, bodily autonomy, and privacy, are secondary. It also underscores the Commission's hesitancy to respond firmly when a member state repeatedly violates fundamental rights and EU values; this is a risky move when some European governments appear to view Poland as an example rather than a warning. [65]

For what concerns the protection of the LGBTIQ+ community, the European Commission finally blocked in September 2021 the access to REACT_EU funds to the voivodeships of Lubelskie, Łódzkie, Małopolskie, Podkarpackie and Świętokrzyskie due to the anti-LGBTIQ+ resolutions undertaken, that placed them in open contrast with the principle of non-discrimination. According to ILGA, following the funding blockade carried out by the European Commission, the voivodeships of Małopolskie

62 https://ec.europa.eu/commission/presscorner/detail/en/ip_21_7070
63 https://eucrim.eu/news/poland-rule-of-law-issues-july-mid-october-2021/
64 https://eucrim.eu/news/poland-rule-of-law-issues-july-mid-october-2021/
65 https://www.hrw.org/news/2021/02/25/demand-action-poland-tramples-womens-rights

and Lubelskie voted in favour of an abrogation of their anti-LGBT resolutions, cutting down the percentage of Polish territory corresponding to “LGBT free zones” to 16,5 per cent.

Finally, in regards to the human rights violations carried out at EU Eastern border, the Commission announced in December to be putting forward measures to assist Poland and other member states bordering Belarus.; these measures, that would have been adopted under Article 78(3) of TFEU[66], encompassed a simplified and quicker return procedure and <the possibility to extend the registration period for asylum applications to 4 weeks, instead of the current 3 to 10 days.>[67]. By the end of 2021 no sanction has been imposed on Poland with regards to its responsibility on human rights violations carried out at the border with Belarus.

As stated in Chapter I, securitization, within the human security approach, claims to be people-centred, multi-sectoral, comprehensive, context specific and prevention-oriented; though, even if the EU has been taking up a human security narrative, its response to Poland’s violations in regards to the rule of law and fundamental rights does not seem to mirror this approach.

In the first place, the action of the Union has been predominantly directed towards the state institutions instead of focusing on securitizing individuals; indeed, while sanctions have been imposed on both central and regional governmental institutions, no action has been undertaken to empower human rights organizations, even if they are the main securitizers of people belonging to vulnerable groups within the country. A first conclusion that can be drawn is that the EU, by taking up Polish governmental institutions as the exclusive referent object within its action, has clearly adopted a state-centric approach to security, instead of a people-centred one; moreover, the exclusion

66 < In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.> (Article 78(3) TFEU)

67 https://ec.europa.eu/commission/presscorner/detail/en/IP_21_6447

of human rights organizations from the process of securitization is inconsistent with a comprehensive approach to security, which is cooperative and multi-level in its nature.

An additional proof, in regards to the lack of a comprehensive approach to security on the side of the Union, is also the fact that EU actions directed towards Poland were exclusively carried out on the basis of EU law, without any reference to international human rights instruments.

What is more, the fact that no effort has been made in order to uphold women's right to sexual and reproductive health is to be considered a rejection of a multi-sectoral understanding of security. As mentioned in Chapter I, human security emphasizes interconnectedness within securitization both by understanding the domino effect that characterizes the relation between threats and by recognizing that threats within a country are likely to spread beyond its borders[68]. Provided that the right to sexual and reproductive health is a necessary condition for women's health and empowerment as well as for the achievement of gender equality, lack of action in this sense clearly paves the way for other violations in regards to women's rights; this tendency is already visible when taking into consideration the Polish government's willing to replace the Istanbul Convention with a "Family Convention". Moreover, as pointed out by Human Rights Watch, hesitancy of the EU in protecting fundamental rights' of women and LGBTIQ+ people can translate into other member states emulating Poland and not respecting EU core values.

In addition to this, EU action fails in being context-specific and prevention-oriented. Proof of this is offered mainly in regards to the securitization of refugees at the Polish-Belarusian border. The proposal made by the EU to put forward the same measures for the EU member states bordering Belarus, regardless of the specific actions that the public authorities of these states have already been carrying out in regards to refugees, is likely to result in deepening the issue of human rights violations within the Polish context; indeed, the simplified return procedure and the extension of the period for the

68 https://www.iidh.ed.cr/multic/default_12.aspx?contenidoid=ea75e2b1-9265-4296-9d8c-3391de83fb42&Portal=IIDHSeguridadEN#trece

registration of asylum applications, encompassed within these measures, are likely to be used by Polish authorities as a mean for justifying pushbacks.

To conclude, provided that the EU did not act as an effective securitizer of both EU citizens and non-EU citizens located at its external borders and given that the EU has connected its security to the one of these individuals, the EU is to be considered insecure.

CHAPTER III

3.1 Case Study: Recognition of European Arrests Warrants from Poland

> The European Arrest Warrant (EAW) is a simplified cross-border judicial surrender procedure which is applied in all Member States of the European Union. The EAW is issued by a judicial authority in a first Member State (issuing Member State) to a judicial authority in a second requested Member State (executing Member State) for the purposes of a criminal prosecution or the execution of a custodial sentence.[69]

What is relevant to take into account when it comes to the European Arrest Warrant (EAW) is that the issuing authority has to be a competent judicial authority from the issuing Member State and, being the procedure based on the principles of mutual recognition and trust between Member States' courts, the judicial authority is assumed to be complying with the rule of law and the respect of fundamental rights otherwise the cooperation between domestic courts and with CJEU would be jeopardized.

Following the take over of the Polish judicial branch, questions arised in regards to the validity of European Arrests Warrants issued by Poland.

Given that Polish nationals were in the Netherlands, the Dutch executing judicial authority on 7 February 2020 started submitting the cases to the Court of Justice of the European Union to better inquire whether the arrest warrants issued by a judicial authority lacking independence should be refused, due to the subsequent possibility for the Polish nationals of being denied a fair trial in their Country (in regards to legislation: Framework Decision 2002/584, Article 19 TEU, Article 47 of the Charter).

The Court of Justice of the European Union ruled that the deficiencies found in the cases presented by the Dutch court were not a sufficient reason to justify the refusal of

69 https://www.eurojust.europa.eu/judicial-cooperation/eurojust-role-facilitating-judicial-cooperation-instruments/european-arrest-warrant

an issued European Arrest Warrant, stating the predominant position of the principle of mutual recognition.

In this regard CJEU also stressed the relevance of analyzing every case in its singularity, by using the following method: before declining the EAW of the issuing country, the judicial authorities of the executing Member State have to carry out a two-steps test, aimed, in the first phase, at investigating whether there are systematic and generalized deficiencies within the issuing judicial authority and, in the second phase, whether these deficiencies translate into a great risk of preventing the individual subjected to the EAW from enjoying a fair trial. In the case in which both deficiencies and individual consequences related to the latter are found, a general invalidity of the EWA is declared.

One issue that deserves further consideration is the one regarding the connection between the European Arrest Warrant procedure and the respect for the rule of law and fundamental rights.

The employment of the European Arrest Warrant procedure would not have been possible without the enhancement of judicial cooperation between the member states of the European Union within the framework of the Area of Freedom, Security and Justice; indeed the EAW instrument arose within the process of boosting judicial cooperation in criminal matters.

The way towards judicial cooperation was made viable through the principle of mutual recognition.

This principle had already been introduced within the context of the internal market, in which it <guarantees that any good lawfully sold in one EU country can be sold in another>[70] for then being extended to judicial decisions and judgements; though, <whilst the principle of mutual recognition in the context of the internal market is enforced by national courts through the direct effect of the relevant Treaty provisions,

70 https://ec.europa.eu/growth/single-market/goods/free-movement-sectors/mutual-recognition-goods_en

the operation of the same principle in the AFSJ rests on legislative acts adopted at EU level.>[71]. In this difference lays the connection between the principle of mutual recognition and the observance of the rule of law and fundamental rights: EU legislative acts, on which the operation of the mutual recognition principle within AFSJ relies, are interpreted by the CJEU, which, in doing so, shapes this principle in compliance with the rule of law and fundamental rights[72]. The mutual recognition principle in the Area of Freedom, Security and Justice, and therefore the EAW, relies on the mutual trust that the judicial authorities from both issuing and executing member states act in accordance with the rule of law and fundamental rights.

The case of European Arrest Warrants from Poland shows that even in the situation in which mutual trust between the issuing and executing EU countries cannot persist due to severe breaches in regards to both rule of law and fundamental rights, the mutual recognition principle remains in force; indeed, according to CJEU, deficiencies were not sufficient to fulfil the two-steps test requirements and, therefore, for the mutual recognition principle to be suspended and the European Arrest Warrants to be rejected.

A principle whose essence is linked, within the AFSJ framework, to the rule of law and fundamental rights can still be in force even in the regards of a member state that presents severe and persistent breaches in this sense, with a subsequent fracture in the linkage between mutual trust and mutual recognition.

It is relevant, in this regard, to understand the circumstances that "justify" the adoption of a two-steps test that requires not only for systemic deficiencies in the judicial authority but for a concrete risk of violating an individual's right to a fair trial in order to suspend mutual recognition and the EAW enforcement.

There are relevant implications arising from the declaration of general invalidity of the European Arrest Warrent that may result as problematic, indeed the issuing judicial authority would be removed from this role, which would also translate in complications

71 http://www.dirittounioneeuropea.eu/principle-mutual-recognition-area-freedom-security-justice#_ftn14

72 http://www.dirittounioneeuropea.eu/principle-mutual-recognition-area-freedom-security-justice#_ftn14

in the judicial implementation of EU law within the issuing country; in case of general invalidity also the efficacy of the European Arrest Warrant itself might end up to be undermined, indeed perpetrators are likely to assume that executing states will not transfer them to the issuing country and this might lead to perpetrators fleeing from their country to other member states to evade justice, with the consequence of increasing the impunity for perpetrators. These consequences explain why the refusal of enforcement of EAW takes place rarely.

Taking into particular consideration the linkage between the mutual recognition principle and EU law implementation there are reasons to assume that a suspension of the first element would possibly pave the way for greater deficiencies within fundamental rights protection and, therefore, in the securitization of individuals.

Though, even if the affirmation on prioritization of the principle of mutual recognition made by CJEU in regards to the Polish case of EAW is not disputable, it is relevant to recognize that insecurities within Poland as analyzed in Chapter II translate in the case in question, even if necessarily, in interrupting the correlation between mutual recognition and mutual trust as shaped by CJEU within the framework of the AFSJ.

Nevertheless, this aspect constitutes a paradox: a principle, whose essence and legitimacy have been linked within AFSJ to the common observance of the rule of law and fundamental rights, has to work in this case as disconnected from this correlation in order to provide for securitization of EU citizens, with the latter being possible only with respect for the rule of law and fundamental rights as so defined by the human security approach formally taken up by the EU.

What is more, in line with the considerations made in Chapter I, given the two tier role of the EU as both a securitizer and a referent object of securitization and having the European Union rooted the legitimacy of its institutions, as well as of the instruments connected to the latter, in the respect of the rule of law and human rights, the EU is to be considered in this case as not secured.

In this case, the EU, as considered in its institutions, has on the one side strengthened its legitimacy as a securitizer of EU citizens by preventing possible further breaches in the rule of law and fundamental rights, but on the other side, given that the EAW instrument has been kept in force as detached from mutual trust and therefore emptied from a predominant factor that determines its legitimacy, the judicial crisis in Poland and the following ruling of the CJEU have resulted in partially undermining EU security.

3.2 Case Study: Poland's vetoes freezing up the EU policy arena In 2020-2021 persistent retreats from rule of law and fundamental rights took place within the EU decision making process.

In the autumn of 2020 both the Commission and the majority of member states expressed the willingness to bound the disposal of the European Recovery Fund, a fund aimed at countering the effects of the COVID-19 pandemic, to the observance of the rule of law principle within the EU countries. This decision was strongly opposed by Poland and Hungary (and initially also by Slovenia), indeed both member states had been undergoing the procedure outlined in article 7 of the Treaty on European Union in regards to severe breaches in the rule of law.

> During a meeting of EU ambassadors in Brussels, the Hungarian and Polish envoys withheld their consent from a written procedure to adopt the so-called Own Resources Decision, which sets out the income the bloc can raise and is a prerequisite to borrow money for the recovery fund[73]

With this action the two member states delayed the adoption of the €750 billion European Recovery Fund and of the bloc's 2021-2027 budget, to which the recovery fund is connected.

This delay in the budget had extremely pervasive effects, indeed diversified policy areas were negatively affected even if not directly connected to the European Recovery Fund: for example the economical resources requested by the commitment of the European

73 https://www.politico.eu/article/hungary-and-poland-block-progress-on-e1-8-trillion-package/

Union to the 2030 Climate Target Plan were encompassed within the bloc's 2021-2027 budget and this fact led to a paralysis in the adoption of the plan and, more in general, in the EU environmental policy.

In December a compromise was reached: in case of rule of law violations EU funds would be suspended, though the Commission declared that it would not initiate a sanction procedure against any member state before receiving the ruling of the Court of Justice of the European Union on the legality of the mechanism (Valero, 2020)[74]

In November 2020 the Gender Action Plan III, elaborated in the framework of EU foreign policy with the aim of upholding women's and LGBTIQ+ rights within and beyound the borders of the European Union, was presented.

One week after the veto on the European Recovery Fund, also the Gender Action Plan III faced resistance from Poland, Bulgaria and Hungary due to the use within the papers of the term "gender equality", asking to narrow down the latter to "equality between men and women"

The Council of the European Union could not reach the necessary consensus on draft conclusions that would have endorsed the plan. In response to this lack of unanimity, the German Presidency of the Council adopted Presidency Conclusions, which were supported by 24 EU Members. Bulgaria, Hungary and Poland did not support them. These Conclusions endorse the EU GAP III and its accompanying staff working document. They express concern about the backlash against women and girls' rights and highlight that the COVID-19 pandemic exacerbate existing gender inequalities.[75]

Poland and Hungary, whose ruling parties have been making constant use of an anti-LGBTIQ+ rhetoric within their campaigns and public statements, kept making efforts in blocking instruments that include references to "gender equality".Indeed, in October

74 Siddi, M., 2021. Coping With Turbulence: EU Negotiations on the 2030 and 2050 Climate Targets. [ebook] COGITATIO, p.7. Available at: <https://iris.unica.it/retrieve/handle/11584/319189/470608/PaG%209%283%29%20-%20Coping%20With%20Turbulence_%20EU%20Negotiations%20on%20the%202030%20and%202050%20Climate%20Targets%20%281%29.pdf>.

75 https://www.europarl.europa.eu/legislative-train/theme-a-stronger-europe-in-the-world/file-eu-action-plan-on-gender-equality

2021, the Ministries of Justice representing the above mentioned countries decided to veto the EU Children Strategy 2021-2024.

According to the Polish governmental website, the document has been rejected by the Minister of Justice, Zbigniew Ziobro, because legalisation of same-sex marriages and adoption by same-sex couples within the country and recognition of same-sex marriages as well as of legal partnerships between EU Member States would have been a possible subsequent consequence of approving the document.

In addition to this, it has been stressed that the veto represented an attempt to protect the traditional family, in line with Polish Constitution:

> The Ministry of Justice was ready to support this document if the solutions characterised by the ideology of LGBT communities and so-called "rainbow families," i.e. same-sex unions, were eliminated from it. In light of family law, these are inconsistent with the Polish Constitution, which explicitly states that a marriage is a union between a man and a woman.[76]

The Ordo Iuris Institute, to which reference has been made in Chapter II, has also sent recommendations to the European Union in regards to the EU Children Strategy 2021-2024. Stressed within Ordo Iuris comment were, firstly, the necessity for Member States to take more measures to provide pregnant women with better alternatives to abortion <which in many Member States is considered as the only way out of difficult situations such as rape, poverty, mental suffering of the mother or the genetic disease of the child>; secondly, according to the Institute efforts should be made within EU countries to outlaw any form of surrogacy and its recognition, due to its "hallmarks of human trafficking"; finally, parents' rights to choose the form of sex education that their children should be taught should be uphold.[77]

76 https://www.gov.pl/web/justice/veto-on-plans-to-legalise-adoption-by-same-sex-couples-and-same-sex-marriages2

77 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12454-Strategia-dellUE-sui-diritti-dei-minori-2021-2024-/F541159_it

While disagreements and conflicts of interests between Member States constitute a healthy and necessary factor in order to boost a pluralistic procedure in the EU decision making process, the vetoing cases presented above show a polarization in regards to the EU common fundamental values, with Poland and Hungary overtly rejecting both compliance with rule of law and the proposed comprehensive frameworks for upholding fundamental rights.

In this regard, complications within securitization are to be taken into account.

Indeed, Poland and Hungary retreats from the rule of law and from fundamental rights undermine the legitimacy of the EU as a community of values: the European Union has bound its essence and legitimacy to the values of <respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities>[78], which are assumed to be <common to the Member States>, as laidd down in Article 2 of the Consolidated version of the Treaty on European Union; though, the vetoing cases presented clearly outline that the EU has overestimated the degree to which these values are shared by the EU countries.

Also the credibility of EU role as a securitizer risks to be jeopardized: being values <those ultimate ends deemed worth pursuing> and <desirable for shaping action or political programmes> (Williams, 2009)[79], lack of coherence on values subsequently translates in a paralysis within the decision-making process, as happened with the adoption of the EU Recovery Fund as well as of the Gender Action Plan III and of the EU children strategy; interruption in policies adoption ultimately results in a failure in securing individuals, who are prevented from enjoying the results of EU policies aimed at their fundamental rights protection and at their empowerment.

78 Article 2 TEU

79 https://www.researchgate.net/publication/326735918_European_values_Challenges_and_opportunities_for_EU_governance

CONCLUSIONS

As stated in the introduction, the research purpose of this project was to investigate whether Poland's violations in regards to the rule of law principle and to fundamental rights were to affect the EU security.

Crucial, in this sense, was the acknowledgement of the hybrid role that the EU occupies within the process of securitization: in between the one of securitizer and of referent object. As affirmed in Chapter I, the European Union has adopted a human security narrative in its approach to security by binding its internal action to the respect of the EU core values, as listed in Article 2, Article 3 and Article 21 of the Consolidated Version of the Treaty on the European Union; and, in doing so, it has also bound its legitimacy to the respect and protection of these principles. This aspect translates into linking the security of its institutions to the securitization of individuals in their enjoyment of fundamental rights and freedoms; therefore, if the EU aims at securitizing its own institutions, it has to take action towards the securitization of individuals.

What is more, within its action the Union is supposed to be driven by the principles encompassed by the human security approach, since it has taken up its narrative. Though, as analyzed at the end of Chapter II, in dealing with Poland, the EU has adopted a state-centric approach to security, by implicitly recognizing Polish governmental institutions as the exclusive referent object within securitization; additionally, no cooperation with Polish civil society has been boosted, in open contrast with the comprehensive action that the human security approach aims to promote.

Since the EU approach to security has been overly inconsistent with the human security approach and provided that EU institutions failed in securitizing people belonging to the vulnerable groups attacked through the Polish institutions, the EU has clearly failed also in securitizing its own institutions in their legitimacy and in their credibility as securitizers. Moreover, the cases presented in Chapter III, showed that the incapability to provide for an effective action towards Poland inconsistencies with EU core values,

has resulted both in emptying EU institutions' instruments from the conditions ensuring their legitimacy and in a paralysis of the EU decision-making process.

There is a clear need for EU institutions to actually make human security and not to exclusively adopt it as a narrative, therefore they need to take up the human security approach principles in orienting their action towards Poland, in order to uphold the fundamental rights and freedoms of individuals and to provide for their own securitization as well.

The state-centric approach to the securitization of Poland has to be withdrawn and replaced by a people-centred one, indeed, focusing on individuals allows for a better comprehension of threats and for the discovery of tapped potential in regards to the involvement of diversified securitizers.

Moreover, securitization of human rights organizations has to be provided; indeed, not only cooperation with Polish civil society is a necessary condition for the adoption of a multi-level, comprehensive security strategy, but human rights organizations are essential in gathering contextual information and therefore for the implementation of a context-specific response to insecurities. A context-specific approach is particularly urged in regards to the Polish asylum policy, indeed, as stated at the end of Chapter II, the EU attempted to put forward measures that if applied to the case of Poland would have led to a worsening in the conditions of refugees at the Polish-Belarusian border.

To conclude, provided that fundamental rights as laid down in the Charter of Fundamental Rights should be interpreted by the CJEU by referring to other international and regional human rights instruments in order to comprehensively protect human rights, the Union should take up a specific strategy aimed at upholding women's access to sexual and reproductive health; indeed, even if at the EU level there is not a clear legal framework that directly addresses sexual and reproductive rights and great discretion is given to Member States in this matter, yet these rights should not be interpreted narrowly. Women's sexual and reproductive rights are a necessary condition for the enjoyment of other rights and for achieving gender equality, moreover,

international instruments such as the CEDAW provide for the right to family planning; women's overly restrictive access to abortion as well as to contraception within the Polish territory should be interpreted by referring to such instruments and be addressed in regards to the gravity and urgency it acquires within the international human rights framework.

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