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The Rule of Law Crisis and Political Economy. The Case of Poland

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Introduction

The term "rule of law crisis" has been used by many scholars in recent years, especially regarding the situation in Poland and Hungary. The main manifestations of the rule of law crisis can be divided into: 1) paralyzing and capturing the Constitutional Tribunal, 2) subjecting the previously autonomous National Council of the Judiciary to the legislature and the Minister of Justice, 3) attempts to remove Supreme Court judges from their positions, politically motivated dismissals and appointments of courts presidents and vice-presidents as well as installing the unlawful bodies aimed at political control over judges 4) attempts to undermine the primacy of the EU law over domestic law (Anders and Lorenz, 2021; Bohle et al., 2023; Matczak, 2020; Pech, Wachowiec and Mazur, 2021; Sadurski, 2018).

The numerous violations of the rule of law principle have led to legal and political disputes between Poland and European Union. The definition of the rule of law in EU's version includes following principles: "legality, implying a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibiting the arbitrary exercise of executive power; effective judicial protection by independent and impartial courts including access to justice; effective judicial review including respect for fundamental rights; separation of powers; and equality before the law" (European Commission, 2019; EU, Euratom, 2020). As the analysis conducted in this article show, virtually all of this rules have been violated in recent years in Poland in a systemic way.

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The legal-political dimension of the rule of law crisis cannot be separated from the socioeconomic realm. There has been vast literature regarding the legal and political aspects of the crisis (Ágh, 2018; Blokker, 2021; Matczak, 2020; Pech, 2022; Pech and Scheppele, 2017; Sadurski, 2019; Wiącek, 2021; Wyrzykowski, 2019). However, in the attempt to merge the rule of law crisis with the political economy aspects it is needed to search for different theoretical perspectives. One such perspective has been proposed by Sallai and Schnyder (2021), who claim that the rule of law violations breaking the public-private divide through systemic erosion of norms of equality before the law and the separation between state officials and interests of governing elite constitute a socioeconomic emanation of the rule of law crisis in the form of authoritarian capitalism (Sallai and Schnyder, 2021). Under such a system, interventions differ from those performed in other types of regimes with high involvement of public institutions, like in state capitalism, in terms of the way (compliant or non-compliant with the principle of the rule of law) and purpose (public good or elite interest) (Chen and Deakin, 2015; Sallai and Schnyder, 2021).

In a more general way, the rule of law as an institutional category has been analyzed by the representatives of New Institutional Economics (NIE). However, as is argued in this article, the role of rule of law as an engine of economic growth is just one way of looking at the problem while the political-economic dimension in reference to the concrete models of capitalism remains undertheorized. While NIE sees the rule of law as an engine of growth, applicable under various socio-political and cultural circumstances, CPE focuses on concrete objects like institutional comparative advantages which may differ under varieties of capitalism. Polish political economy type has been characterized as "dependent market economy" (Nölke and Vliegenthart 2009), "neoliberal variant of dependent capitalism" (Jasiecki, 2015), "embedded neoliberal" regime (Bohle and Greskovits, 2012), "developmental market economy" (Szabó, 2022) or "patchwork capitalism" (Rapacki et al., 2019). For the needs of this article, a dependent market economy (DME) term has been adopted. In such a regime, economic growth relies upon FDI inflows, allocated through decisions made by large foreign multinational corporations. The mass production of semi-standardized exports goods has been a pillar of the political economy regime in Poland and its V4 peers. Adoption of the DME perspective allows to scrutinize the problems for the FDI-led growth in Poland generated by the rule of law crisis.

Therefore, the aim of this paper is to present the interlinkages between the rule of law deterioration and the political economy landscape in Poland. The central question of this paper is "How the rule of law crisis has been interlinked with the evolution of the political economy regime type in Poland?" with the sub-question "Which elements of the rule of law, crucial in the socioeconomic context, have been violated or are in crisis?". The article has exploratory character. The analysis is mainly of a qualitative character with auxiliary role of quantitative data. Theoretically, the Comparative Political Economy (CPE) explanatory tools have been used with Comparative Capitalism (CC) approach in the first place. It is argued that the rule of law crisis together with a shift towards authoritarian capitalism have contributed to the preservation of the dependent market economy (DME) regime in the current form.

The article is structured as follows. To set the stage, in Section 2., the basic premises of the notion of the rule of law and its socioeconomic dimension as seen by the New Institutional Economics (NIE) and Comparative Political Economy (CPE) have been presented. In Section 3., the issues linked directly to the rule of law crisis have been elaborated with numerous examples of violations of this principle through introducing practices of authoritarian capitalism in Poland in recent years. Section 4. consists of the data review on changes within key aspects of socioeconomically understood rule of law: corruption, judicial independence and property rights in Poland in comparison to the countries of region in recent years. Finally, in Section 5. the discussion regarding the consequences of the rule of law crisis for the sustainability and perspectives of Polish FDI-led growth model of political economy regime has been conducted. Conclusions follow.

1. The socioeconomic dimension of the rule of law

Considerations regarding rule of law can be traced back at least to ancient Greece and Rome (Canevaro, 2017; Stein, 2009; Tamanaha, 2004; Wexler and Irvine, 2006). Voices supporting the separation of power, equality of laws and conviction that officials and judges should be servants of the law were popular among influential philosophers, just to mention Aristotle (Barnes, 2017) or Cicero (Alonso, 2012). In the Middle Ages, law included three basic features: rationality, relationality, and religiosity (Akinwale, 2020). The idea of limiting arbitrariness of power had been present, however in slightly different form as King or Caesar were bounded by divine and natural law while authority of positive law was limited (Tamanaha, 2004; Valcke, 2012). In modern understanding, the two main premises of the rule of law principle can be defined as: 1) protection against tyranny in pre-liberal version and 2) securing qualities of legality in liberal version (Tamanaha, 2002). The solution put forward as an example of near ideal-type of liberal rule of law has been devised and implemented by Founding Fathers who, troubled by the dilemma of how to reconcile elected governments with personal freedom including private property protection and inspired by the European classical liberalism, proposed three mechanisms: 1) representative democracy, 2) vertical and horizontal separation of powers, and 3) judicial control of legislation (Justyński, 1988; Tamanaha, 2004).

After World War II the dynamic evolution of the meaning of the rule of law in Europe occurred in parallel to political and socioeconomic developments like emergence of the welfare state or acceleration of globalization. These processes have contributed to the greater inclusion of socioeconomic categories like solidarity, equitable justice or dispute resolutions (Beatty, 2004; Fallon, 1997). These rules are central to a discussion on how rule of law might affect the socioeconomic realm and how the rule of law, from a purely legal notion, can become the institutional vehicle of growth and a principle deeply embedded within socioeconomic structures.

The inspiration for using the term "socioeconomic" in relation to the rule of law in this article is derived from the Polanyian (2010) approach, meaning that economic system with market and its institutions are all embedded in a social system and seen as "fully social institutions, reflecting a complex alchemy of politics, culture and ideology" (Krippner, 2001, p. 782). This theoretical statement will be exploited in this section to compare the institutional sense of the rule of law as seen through the lens of the New Institutional Economics (NIE) and Comparative Capitalism (CC) approaches.

The achievements of NIE have been built upon the conviction that institutions, understood as formal and informal rules serve as the mechanism of selection which type of social interaction is promoted and which one deterred (North, 1990). In this thread, factors influencing the long-term growth rate, such as capital accumulation, employment or productivity, largely depend on more fundamental factors, namely institutions (Balcerowicz and Rzońca, 2015). In general, inclusive political institutions are much better than extractive ones (Acemoglu and Robinson, 2012).

The strong link between income and the rule of law may suggest several interpretations (Gutmann and Voigt, 2018): 1) the rule of law is the driver of long-term economic development; this explanation is consistent with the thesis about the special role of inclusive political institutions (Acemoglu and Robinson, 2012), 2) long-term economic development is the factor driving the increase in the level of the rule of law, which is observed, for example, by a decrease in the level of corruption in public sector in the situation of growth and general increase of institutional quality (Arslan, 2010; Gundlach and Paldam, 2009); this view is consistent with the modernization hypothesis (Lipset, 1959), 3) income and the rule of law may have common determinants, including, for example, education that favors the improvement of the institutional environment and economic growth (Glaeser et al., 2004).

The main channels through which rule of law influences growth and investments are property rights and contract enforcement (Acemoglu and Johnson, 2005; Haggard et al., 2008). It is argued that the rule of law, next to the initial life expectancy, the investment rate, international openness and good trading conditions has a most significant positive impact on growth (Barro, 1996, 2016; Przeworski et al., 2000). At the same time, it should be noted that correlation between political and economic institutions' impact on economic outcomes is two-way, i.e., loose monetary policy can erode rule of law (Hartwell, 2018; Koyama and Johnson, 2015). The institutional character of the rule of law, popularized by NIE enables for creation of the list of main components of the socioeconomically understood rule of law, which are presented below.

Table 1. Components of the rule of law important for economic growth, investments and FDI inflows

Components	Examples in literature
Property rights; Security and enforceability of contracts; Low risk of expropriation	Acemoglu et al., (2001); Acemoglu and Johnson (2005); Ali et al. (2022); Anderson and Grewell (1999); Clague et al. (1999); Dam (2007); Djankov et al. (2003); Haggard and Tiede (2011); Haydaroglu (2015); Johnson et al. (2002); Knack and Keefer (1995); North (1990)
Law and order (i.e., personal security and low levels of crime and violence)	Barro (2013); Bodea and Elbadawi (2008); Buvinic and Morrison (1999); Diallo (2018); Glaeser et al. (2016); Haggard and Tiede (2011); Martin et al. (2008); Mueller (2013)
Separation of powers; Limits on arbitrariness of executive; Independent, predictable, accessible and effective judiciary	Acemoglu et al. (2005); Biglaiser and Staats (2010); Dam (2006); Fuchs and Herold (2011); Głowacki et al. (2021); Henisz (2000); Jensen (2008); Kapopoulos and Rizos (2023); Lorenzani and Lucidi (2014); Voigt, Gutmann and Feld (2015)
Legal certainty	Acemoglu et al. (2005); Ginting et al. (2017); Głowacki et al. (2021); Gwiazdowski (2023); Mętrak (2020); Portuese et al. (2017); Taduri (2021)
Absence of corruption, presence of anti-corruption regulations and prevention of state capture	Cieślik and Goczek (2018); d'Agostino et al. (2016); Gründler and Potrafke, (2019); Hellman et al. (2003); Hodge et al., (2011); Liu and Zhang, (2021); Mauro (1995)
Non-discrimination and equality before the law	Acemoglu et al. (2005); Acemoglu and Robinson (2012); Acemoglu and Wolitzky (2020); Coatsworth (2008); Jansen (2002); North et al. (2009)
Government effectiveness, stability, openness and accountability	Busse and Hefeker (2007); Eldomiaty et al. (2023); Jensen (2006); Liu and Zhang (2021); Naudé and Krugell (2007)

Source: own elaboration.

Despite the usefulness of the NIE proposals, they are not sufficient to present the full meaning of the rule of law in the socioeconomic realm, because factors mentioned above play a different role in different circumstances. For example, in developing countries and those undergoing economic transition, the "law and order" aspects of the rule of law, especially lack of violence and personal security are crucial (Haggard and Tiede, 2011; North et al., 2009). In those countries, property rights, limits of arbitrariness of executive power and corruption are not strongly correlated with the "law and order" features (Haggard and Tiede, 2011). On the other hand, in developed countries the relationship between corruption and property rights was much stronger while the risk of expropriation was correlated with the effectiveness of restrictions on executive power, the independence of judiciary and subjective indicators of corruption (Haggard et al., 2008). The heterogeneity of the rule of law catalogue invites to look at the problem also from a different theoretical angle. This will be done on the basis of achievements of Comparative Political Economy (CPE) as it offers tools for tracking more specific areas of analysis. Secondly, the abundance of CPE literature regarding the varieties of institutional settings of political economy in the countries of Central and Eastern Europe (CEE) allows to provide a more resilient approach to events happening there.

Early CPE literature was mostly concentrated around three broader topics: 1) national models of capitalism, 2) post-Fordist production regimes and 3) political economy of wage restraint and macroeconomic policy referred to as neo-corporatism (Baccaro and Pontusson, 2018; Clift, 2021; Menz, 2017; Shonfield, 1965). Contemporarily, three generations of Comparative Capitalism (CC), stemming from institutional and supply-side approach together with more macroeconomic-oriented and demand-side Growth Model (GM) constitute the most vivid streams of CPE (Nölke, 2023). As regards CC, the most influential approach has been Varieties of Capitalism (VoC) and among the most significant achievements within VoC has been work of Hall and Soskice (2001), who introduced the dichotomy of liberal market economies (LMEs) and coordinated market economies (CMEs). The vast literature of the VoC research program provided plentiful proposals looking beyond this binary approach but with the comparative institutional advantage remaining the basic analytical unit (Amable, 2003; Bohle and Greskovits; 2012; Coates, 2005; Drahokoupil and Myant, 2015).

Poland, alongside other states from Visegrad Group (V4) has been defined as "dependent market economy" (Nölke and Vliegenthart, 2009). The main comparative institutional advantage of the dependent market economies (DMEs) is that they are an assembly platforms for semi-standardized goods produced under control of multinational corporations (MNCs), on the contrary to LMEs and CMEs run by, respectively, radical and incremental innovation (Nölke and Vliegenthart, 2009, p. 679). Dependency is being experienced mainly within most crucial areas like finance, governance, labor market as well as innovation and education systems.

Classic VoC omitted rule of law and property rights protection, taking them for granted (Hall and Soskice, 2001). However, while applying this approach to ECE countries, Drahokoupil and Myant (2010) took it into account as corruption and "clientelistic networks" were still a common phenomenon in the region after economic transition. In their classification (Drahokoupil and Myant, 2015, pp. 155–171), Poland, together with Czechia and Slovakia has been placed in a category of "FDI-based (second-rank) market economies", characterized by democratic political systems, integration into the EU, stable business environment and "export structures increasingly built around [highly-processed] manufactured goods produced by foreign-owned MNCs". In general, Poland has been considered as a representative of the same variety of dependent capitalism as three remaining V4 countries (Nölke and Vliegenthart, 2009).

The strong rule of law has an impact on the type of investments which are attracted. In Polanyian sense, it can be stated that the type of FDIs located in a given country is a derivative of the level of embeddedness of the rule of law principle. Taking into account that the quality of inflows might be different, the more comprehensive rule of law environment might attract "better", meaning more advanced, FDI (Roth, 2022). For example, investment in intellectual property requires certain property rights guarantees and as empirical research shows, an increase in the strength of patent protection, trademark and copyright protections increases FDI (Brander et al., 2017). Similarly, investments in modern manufacturing require relatively wider scope of the rule of law and stability of business environment (Drahokoupil and Myant, 2010, 2015). Therefore, FDI-based countries with complex manufactured goods produced on export as a key source of growth ought to secure a stable business environment with high confidence of investors' rights. On the contrary, the rule of law crisis that has been happening in recent years in Poland constitutes a major threat to the country's economic model, especially if the ambition was to attract more advanced FDIs.

The main reason of why the rule of law crisis poses risk for the continuation of the FDI-based growth in Poland is that it is accompanied by the shift towards authoritarian capitalism. State intervention, to be considered authoritarian, has to break the public-private divide by violating norms of equality before the law (self-limitation) and the separation between state officials and interests of governing elite (state autonomy) (Sallai and Schnyder, 2021). Thus, interventions in authoritarian capitalism differs from those performed in other types of regimes with high involvement of public institutions, like in state capitalism, in terms of the way (compliant or non-compliant with the principle of the rule of law) and purpose (public good or elite interest) (Chen and Deakin, 2015; Sallai and Schnyder, 2021). Sallai and Schnyder (2021) identify four main mechanisms of transmission such violations from political to economic sphere: 1) creation of state dependence of economic actors, 2) attack on economic pluralism in order to tie economic elite's interest with the governing elite's interest, 3) use of state institutions and mechanisms for realizing the governing elite's interests and 4) authoritarian shareholding. In relation to the Hungarian and Polish situation, Szanyi (2016, 2019) stated that governments in these countries have been using state ownership to replace important systemic elements of the market economy with statist policies, impairing the rule of law, security of property rights and market competition.

To put it simply, the authoritarian capitalism is the hybrid of a capitalist economy with the absence or erosion of democracy, rule of law and civil liberties (Kinderman, 2021). Such a system does not necessarily constitute a hostile environment for business. However, it increases the risk of operations. Two intertwined and risk-elevating from the foreign business perspective issues has occurred in Poland: 1) disregard for the rule of law (Bugaric and Kuhelj, 2018; Sallai and Schnyder, 2021) and 2) desire to entrench political rule (Sallai et al., 2023). In the next sections, the examples of these two types of risks for FDI inflows together with empirical data regarding deterioration of situation within key, from the socioeconomic point of view, aspects of rule of law, have been presented.

2. Rule of law in crisis. What happened?

The term "rule of law crisis" has been used by many scholars in recent years with the most vivid examples of it seen in Poland and Hungary (Ágh, 2018; Bard and Kochenov, 2018; Blokker, 2021; Matczak, 2020; Pech, 2022; Pech and Scheppele, 2017; Sadurski, 2019; Wiącek, 2021; Wyrzykowski, 2019). The main manifestations of Polish rule of law crisis can be divided into: 1) paralyzing and capturing the CT, 2) subjecting the previously autonomous NCJ to the legislature and the Minister of Justice, 3) attempts to remove Supreme Court judges from their positions, politically motivated dismissals and appointments of court presidents and vice-presidents as well as installing the unlawful bodies aimed at political control over judges 4) attempts to undermine the primacy of the EU law over domestic law (Anders and Lorenz, 2021; Bohle et al., 2023; Matczak, 2020; Pech et al., 2021; Sadurski, 2018).

As presented above, the legal-political dimension of the rule of law crisis affecting constitutional and judicial realms has been visible and analyzed in a complex way by many scholars. However, it should be noted that the economic consequences of all this activities have not been negligible, just to mention the fact that due to lack of addressing the EC recommendations and ECJ rulings, Poland's part of the funds available via The Recovery and Resilience Facility (RRF), the pan-EU instrument aimed at combating the socioeconomic consequences of COVID-19 pandemic have been blocked which cost the country 1 percentage point of GDP per year (Gniazdowski et al., 2021).

In terms of changes introduced within political economy domain, reducing the field of real market economy, creating monopolies or oligopolies, presence of rent-seeking business elite gaining profits and entangled with political class, state capture and predatory nationalization are typical tools in authoritarian capitalism (Kinderman, 2021). All these measures, and many more, have been exploited in Poland including:

1) “repolonization” policy realized with deliberate reduction of private sector by nationalizations and quasi-nationalizations, including in strategic sectors like energy and banking in order to create “national champions” (Błaszczyk, 2016; Bałtowski and Kozarzewski, 2016; Toplišek, 2020), 2) the hybridization of the economy with unclear interdependencies between state-owned subsidiaries and authoritarian clientelism based on creation of quasi-oligarchical networks linking political and corporate power under ruling party patronage (Jasiecki, 2017, 2019; Markowski, 2019; Zgut, 2022), 3) the “grand corruption” resembling “crony capitalism” practices (when rule of law is dominated by political ties) like packing of SOEs, civil service and business institutions with political loyalists rather than experts; creating funds, agencies and foundations dependent on the state but outside of civil control over financial disbursement and activities of such entities; against the backdrop of undermining rule of law and political competition, the contradictory goals of rent-seeking and use SOEs for private gains has been common (Balcerowicz, 2016; Bałtowski and Kozarzewski, 2022; Kopińska, 2018; Makowski, 2020; Paczocha, 2018; Piątek, 2023), 4) weakening capital market and the role of minority shareholders; state unilaterally deciding on the dividend policy; introducing provisions favoring state owner in companies’ statutes like lifting caps on voting rights and exercising the dominant shareholder position (Bałtowski and Kozarzewski, 2022; Bohle et al., 2022), 5) reducing media independency and concentration of media market; i.e., by using state-controlled PKN Orlen, with CEO being close political ally of the leader of ruling party, to purchase the Polska Press media organisation from the German private owner resulting in controlling network of Polish regional newspapers, local magazines and online portals with an outreach of 17 million users (Banasiński and Rojszczak, 2022; Zgut, 2022); exploiting the momentum of social acceptance for bigger role of state during COVID-19 pandemic to undermine media independency, i.e., attempts to eliminate the biggest private television perceived as government-skeptical, owned by US Discovery Group by restricting foreign investors from outside the European Economic Area to hold no more than 49% ownership in Polish media companies (Bohle et al., 2022); calibrating the state advertisement spending to subsidize government-friendly media with ministerial and SOEs money without economic justification while omitting media unfavorable to the government (Kowalski, 2021), 6) attempts to weaken labor bargaining power during COVID-19 pandemic (Bohle et al., 2022), 7) chaos, lack of open and transparent procedures and ineffective management of public funds from the COVID-19 Response Fund which were used inappropriately to fund political aims of government (Supreme Audit Office, 2023), 8) socioeconomic populism with large-scale spending programmes, chaotic tax system changes and a freeze on energy tariffs led to the huge general government deficit which together with deterioration in transparency of public finances may mean that the actual deficit is higher than officially reported (Dąbrowski, 2023), 9) exploiting

the legislative package addressing the consequences of the COVID-19 to amend the 2015 Act on the Control of Certain Investments and introducing the new screening system with broader scope of transactions and activities subject to review (Zielińska-Eisen and Wiliński, 2023), 10) reducing of the role of local governments and vertical coordination of the economy and other areas of social life (i.e., social policy, housing, civil society, environmental protection) and putting them in the hands of central government (Jasiecki, 2019), 11) an attempt to use state-owned Polish Post, which is under the control of the Minister of State Assets, to unconstitutionally deprive the National Electoral Commission of the powers to conduct the presidential elections in 2020, combined with the replacement of the chief executive of state-owned Polish Post by the then deputy minister of national defense, sent to this section to more "effectively" manage the electoral process (Kowalska, 2023; Skwarka, 2021), 12) strong politicization of the National Bank of Poland (NBP), i.e., buying bonds from banks controlled by the State Treasury immediately after these banks bought debt securities from the Ministry of Finance to support the fiscal capacity of government (Michalski, 2022). Changes in economic management, anti-market expansion of the state and systemic undermines of the rule of law have been noted by business organizations in Poland which highlighted that such shift increases uncertainty and cost of doing business (Jasiecki, 2017).

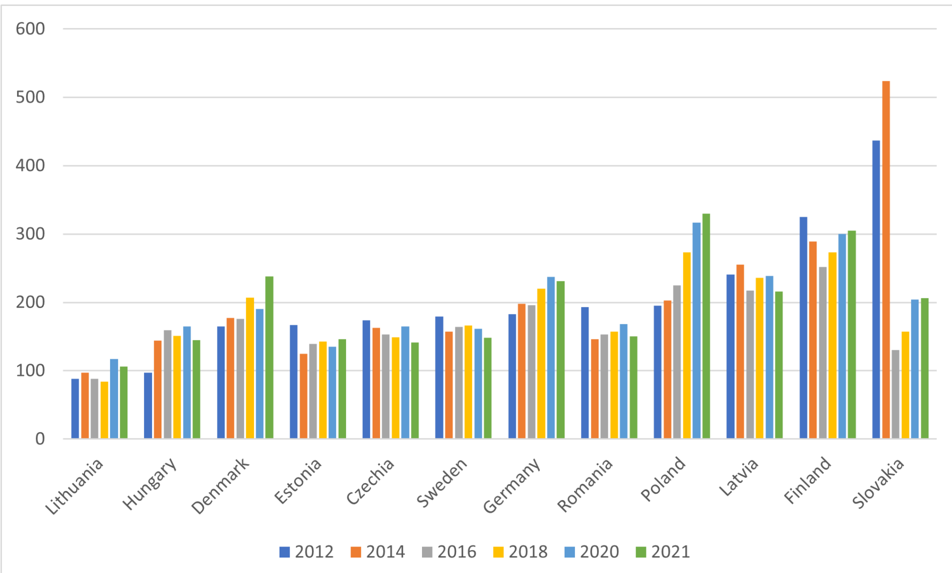
However, the atmosphere of political polarization and legal dualism contributes to the continuation of problems with compliance to the law even after Law and Justice handed power to the new "democratic" coalition. The political battles over the legal status of the main public broadcaster (TVP) show that political conflict and systemic erosion of the rule of law will take their tolls in many years to come (Reuters).

3. Rule of law in crisis. The selected data review

To supplement the examples from previous section with aggregated data, selected indices and indicators have been analyzed. As shown in previous sections, the rule of law is made up of various dimensions that are not necessarily highly correlated, so in order to show the state of the "rule of law de facto" it is useful to look at the aggregate indices, but also those which measure concrete components (Voigt, 2012). Following indices have been chosen: 1) EU Justice Scoreboard (EUJS) and Special Eurobarometer results to present the efficiency, independence of judiciary and public trust in it, 2) Transparency International's Perception of Corruption Index (CPI) to present data on corruption and 3) International Property Rights Index (IPRI) to present the data on property rights. Polish results have been compared to the Scandinavian EU members which are champions of the rule of law, Germany as the biggest EU economy and key economic partner of Poland and ECE countries.

The EUJS presents the data on the functioning of judicial systems in terms of 1) efficiency, 2) quality and 3) independence. Below, the selected data on "efficiency" and "independence" has been presented; in terms of "efficiency" it is the time needed to resolve litigious civil and commercial cases which concern disputes between parties, e.g., disputes about contracts and in terms of "judicial independence", judicial independence perceived by companies and effectiveness of investment protection have been chosen. As presented on the chart below, the biggest increase in the length of time needed to resolve litigious and commercial has taken place in Poland (69,2%), Hungary (49,5%) and Denmark (44,2%).

Chart 1. Time needed to resolve litigious and commercial cases in selected EU countries in 2012–2021 in first instance (in days)*

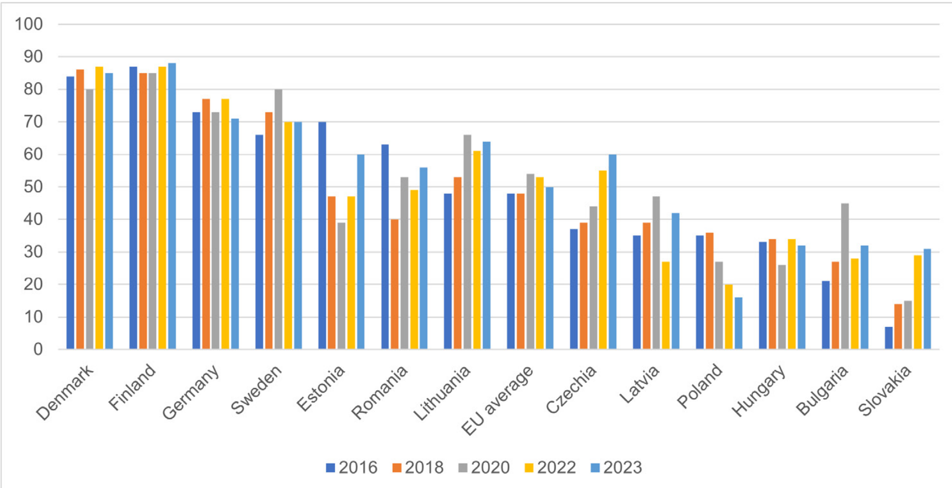


Source: own elaboration based on the EU Justice Scoreboard data: https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en#scoreboards (access: 20.11.2023).

* Pending cases include all instances in Czechia and, up to 2016, in Slovakia.

As regards Eurobarometer, consecutive editions of the survey have been conducted among businesses employing 1 or more persons in Manufacturing, Industry, Retail and Services. The data can be analyzed for the years 2016–2023 as earlier European Commission had been using the World Economic Forum data on perceived judicial independence (European Commission, 2016).

Chart 2. Trust in judicial independence among companies in selected in EU countries (sum of answers "very good" and "fairly good" to the question "From what you know, how would you rate the justice system in (THIS COUNTRY) in terms of the independence of courts and judges?")

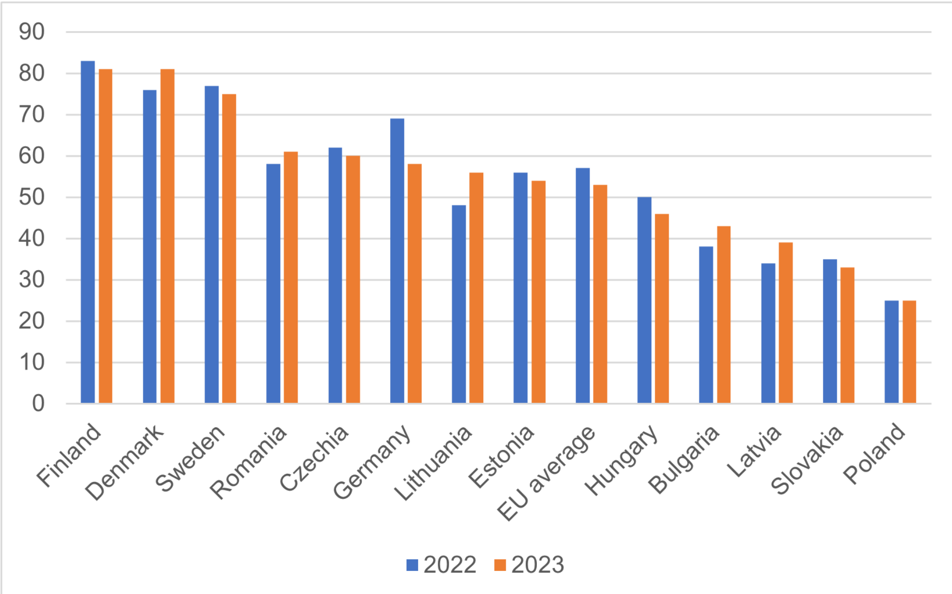


Source: own elaboration based on the data from Flash Eurobarometer (436, 462, 484, 504, 520): https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en#surveys (access: 18.11.2023).

Between the 2016 and 2023, the biggest decline in positive assessment of the independence of the judiciary, of a 19 percentage points has been noted in Poland with 10 p.p. drop in Estonia in the second place, while in Czechia and Slovakia there have been increase of a respectively 23 and 24 p.p. and a minimum decrease of a 1 p.p. occurred in Hungary. In 2023, conviction that judiciary is independent was shared by only 16% of surveyed companies in Poland, well below the EU average at the level of 50%.

Another striking results are provided by the answers to the question of whether investments are sufficiently protected by law and courts, an indicator which has been introduced from 2022 edition (European Commission, 2022). Only 25% of companies surveyed in Poland in 2023 confirmed such confidence while the EU average was 53% with 60% in Czechia, 46% in Hungary and 33% in Slovakia. As much as 53% of respondents in Poland stated that the problem was interference or pressure from government and politicians, 44% answered that the status and position of judges do not sufficiently guarantee their independence and 42% expressed the opinion that the problem was the interference or pressure from economic or other specific interests (European Commission, 2023).

Chart 3. Percentage of trust that investments are protected among companies as answers to the question "To what extent are you confident that your investments are protected by the law and courts in your country if something goes wrong?" (sum of answers "very confident" and "fairly confident")



Source: own elaboration based on the data from Flash Eurobarometer (504, 520): https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en#surveys (access: 18.11.2023).

To present the situation in terms of corruption, the Transparency International's Perception of Corruption Index (CPI) has been chosen. Although it has found its critics (Baumann, 2020; Budsaratragoon and Jitmaneeroj, 2020; De Maria, 2008), it has been widely and successfully used as the data has been comparable since 2012, enabling scholars to efficiently differentiate the level of corruption between countries (Alvarez-Diaz et al., 2018; Christos et al., 2018; Gründler and Potrafke, 2019; Ulman and Bujanca, 2014; Zouaoui, Al Quadah and Ben Arab, 2017).

Aspects covered by the CPI regard the corruption in public sector, i.e., bribery, diversion of public funds, prevalence of officials using public office for private gain without consequences or state capture (Transparency International, 2022). Between 2015 and 2022, the decline in Poland amounted to 8 points.

Table 2. Transparency International's Perception of Corruption Index (CPI)

Country/Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Denmark	90	91	92	91	90	88	88	87	88	88	90
Finland	90	89	89	90	89	85	85	86	85	88	87
Sweden	88	89	87	89	88	84	85	85	85	85	83
Germany	79	78	79	81	81	81	80	80	80	80	79
Estonia	64	68	69	70	70	71	73	74	75	74	74
Poland	58	60	61	63	62	60	60	56	56	56	55
Hungary	55	54	54	51	48	45	46	44	44	43	42
Lithuania	54	57	58	59	59	59	59	60	60	61	62
Czechia	49	48	51	56	55	57	59	56	54	54	56
Latvia	49	53	55	56	57	58	58	56	57	59	59
Slovakia	46	47	50	51	51	50	50	50	49	52	53
Romania	44	43	43	46	48	48	47	44	44	45	46
Bulgaria	41	41	43	41	41	43	42	43	44	42	43

Source: Transparency International's data: https://www.transparency.org/en/cpi/2022 (access: 20.11.2023).

The last tool is the International Property Rights Index (IPRI), to present the data on property rights. IPRI has been used by many scholars (Ali et al., 2022; Benli, 2022; Haydaroglu, 2015; Eberhart et al., 2022; Ridley and Nelson, 2022). Among main advantages of this measure are its comprehensive character and direct focus on property rights (Ouattara and Standaert, 2020). IPRI, prepared by the Property Rights Alliance (PRA) was first published in 2007 and consists of three most important pillars and 11 variables associated with them aimed at presenting both the de jure and de facto property rights: 1) Legal and Political Environment (LP) consists of "Judicial Independence", "Rule of Law", "Political Stability" and "Control of Corruption", 2) Physical Property Rights (PPR) consists of "Protection of Physical Property Rights", "Registering Process" and "Access to Financing" and 3) Intellectual Property Rights (IPR) consists of "Protection of Intellectual Property Rights", "Patent Protection", "Trademark Protection" and "Copyright Protection" (PRA, 2023). IPRI's 2023 sample set represents 125 countries covering 93% of the world population, and 98% of the world GDP (PRA, 2023).

Among 13 compared countries, between 2012 and 2023 four (Czechia, Lithuania, Latvia and Romania) improved their results while seven (Finland, Sweden, Denmark. Hungary, Slovakia, Poland and Bulgaria) experienced the decrease. The biggest drop has been noted in cases of Hungary, Sweden and Poland, respectively 1, 0.7 and 0.6 points.

Table 3. The results of selected countries in the International Property Rights Index (IPRI) for the period 2012–2023

Country/Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Finland	8,6	8,6	8,5	8,3	8,4	8,6	8,7	8,7	8,7	8,1	8,2	8,1
Sweden	8,5	8,4	8,3	8	8,1	8,6	8,4	8,3	8,2	7,8	7,6	7,8
Denmark	8,3	8	7,9	7,9	7,9	8,2	8,2	8,2	8,2	7,9	7,8	7,8
Germany	7,7	7,7	7,8	7,6	7,7	8	7,9	7,9	7,7	7,4	7,5	7,7
Estonia	6,7	6,7	no data	6,6	6,8	7,2	7,2	7,2	7,2	6,9	6,7	no data
Czechia	6,4	6,5	6,5	6,3	6,5	6,9	7	7	7	6,7	6,4	6,6
Hungary	6,4	6,3	6,1	5,8	5,7	6	6,1	6,2	6,3	6	5,4	5,4
Slovakia	6,3	6,3	6,2	5,9	6	6,3	6,3	6,4	6,4	6,1	5,7	5,9
Poland	6,1	6,2	6,1	5,9	5,9	6,4	6,1	6	5,7	5,5	5,4	5,5
Lithuania	6	6	6,1	5,9	6	5,9	6,4	6,5	6,5	6,4	6	6,4
Latvia	5,6	5,7	no data	5,5	5,7	5,3	5,7	5,9	6	6,3	5,9	6,2
Romania	5,4	5,3	5,3	5,3	5,5	5	5,8	6	5,9	6	5,5	5,8
Bulgaria	5,4	5,5	5,3	4,9	5	4,8	5,4	5,6	5,7	5,6	5	5,1

Source: own elaboration based on the Property Rights Alliance data: https://www.internationalpropertyrightsindex.org (access: 22.11.2023).

To look at the case of Poland in a more detailed way, out of 10 indicators (data for "trademark protection" have been available just from 2021), in 2023 in comparison to the 2012 there has been a decrease in 8; worse results have been noted in 3 out of 4 pillars of the "Legal and Political Environment" (LP) category: "Judicial independence", "Rule of Law" and "Political Stability" with slight increase in "Control of Corruption" (between 2015 and 2023 there has been no change in this area). As regards the "Physical Property Rights" (PPR) category, in two aspects, namely "Perception of Physical Property Protection" and "Registering Process" there has been a major decline and in the category of "Intellectual Protection Rights" the biggest decrease has been noted within "Patent Protection".

Table 4. Scores of Poland in categories of International Property Rights Index in 2012–2023

Category/Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Judicial Independence (LP)	6,2	6,1	5,8	5,2	5,3	4,6	3,7	3	2,8	2,8	2,7	4,5
Rule of Law (LP)	6,4	6,5	6,5	6,6	6,6	6,6	6,4	5,9	5,9	5,9	6,1	5,9
Political Stability (LP)	7	7,2	7,1	6,9	6,7	6,8	6,2	6,4	6,4	6,2	6,3	6,1
Control of Corruption (LP)	5,9	6	6,2	6,1	6,2	6,2	6,5	6,5	6,3	6,2	6,3	6,1
Perception of Physical Property Protection (PPR)	6,5	6,2	6,1	5,9	5,5	5,4	5,1	4,9	5,1	5,1	5,1	5,1
Registering Process (PPR)	6,9	8,2	8,4	8,9	8,9	8,9	8,9	8,9	5,7	5,7	4,9	5
Access to Financing (PPR)	3,9	3,6	3,6	2,7	2,7	5,6	5,4	5.4	5,5	4,9	4,9	4,9
Perception of IP Protection (IPR)	5,3	5,2	5,2	4,6	4,9	5,1	5,1	5	5,2	5,2	5,2	5,2
Patent Protection (IPR)	8,4	8,4	8,0	8,0	8,0	8,0	8,0	8,0	8,0	6,3	6,3	6,3
Copyright Protection (IPR)	4,6	4,7	4,7	4,9	4,9	5,2	5,2	5,4	5,4	5,4	6,4	4,5
Trademark Protection (IPR)	No data	No data	No data	No data	No data	No data	No data	No data	No data	6,9	6,9	6,9

Source: own elaboration based on the Property Rights Alliance data: https://www.internationalpropertyrightsindex.org (access: 22.11.2023).

The analysis conducted in this section provides an answer to the sub-question of the main research questions of this paper, namely "Which elements of the rule of law, crucial in the socioeconomic context, have been violated or are in crisis?". As shown above, Poland has suffered decline in regard to the most important from the socioeconomic perspective components: 1) efficiency and perceived independence of judiciary, 2) property rights and 3) corruption. Importantly, the results indicate that there has been not only deterioration in comparison with the situation in Poland from before 2015, but also in comparison with other countries, including those from ECE.

5. Discussion. The consequences of the rule of law crisis for the Polish political economy regime

DMEs countries are characterized by mutually reinforcing FDI and exports. The changes observed in the global economy in recent years strengthen the traditional advantages of Poland such as a favorable geographical location, a large internal market, a qualified workforce and diversification (EY, 2023; PKO BP, 2023). However, there are reasons to think that the rule of law crisis poses risks for the sustainability of FDI-led growth in Poland in its known form. As Szanyi (2019) claims, the exhaustion of FDI-led growth models has paved way for the emergence of illiberal patronage states in Hungary and Poland. But what this could mean? The negative assessment of the situation within the rule of law in Poland is visible in surveys among representatives of foreign businesses, including those originating in the most important trade and economic partner of Poland. More than half (53,2%) of companies surveyed by the Polish-German Chamber of Industry and Commerce (AHK, 2023) stated that "framework conditions of economic policy" is the threat to the company's economic development in the next 12 months, almost half (45%) indicated "legal certainty" in this regard while more than one fifth (21,8%) pointed out the "preferences for the national companies".

The hostile investment environment is disturbing in the context of "middle-income trap" which has been discussed as one of main challenges facing Poland (Heller and Warżała, 2018). Since Poland has significantly surpassed the threshold of the income per capita characterizing countries caught in a middle-income trap, the case here is rather based on a presumption that relatively low innovativeness of the economy poses risks for further convergence by diminishing perspectives of dynamic economic growth. The main factor contributing to the state's falling into the middle-income trap is the outdated structure of the economy, where sectors based on knowledge and new technologies play a relatively small role, in contrast to low-productivity sectors (Eichengreen et al., 2012; Garrett, 2004; Kharas and Kohli, 2011). In Poland it was perceived as a combination of institutional failure and prevalence of negative features of FDI-led growth like low-wage and low- or middle-tech standardized manufacturing, with limited capacity to shift from low-cost labour and resource-driven to productivity-driven growth. For example, in 2018, the share of advanced technology goods in

Polish exports was only 8.4%, with the average of EU countries at the level of 17.9%, and in the case of leading European economies about 20% (Raszka and Smyk, 2020). The middle-income trap has been addressed (2017) in the "Strategy for Responsible Development until 2020 (with a perspective until 2030)", the document defining directions of economic development priorities for Poland.

Continuation of growth based on export boosted by undervaluation of national currency is reaching its limits, the next step in the convergence process should be based on increasing efficiency and competitiveness through investments in innovations and new technologies (Dingemans, 2016). However, Poland is still characterized by comparative advantages in rather low or medium-low technical goods, relatively low share of high-tech products in export, low expenditures on R&D and, therefore, preservation of its position as a centre of European final manufacturing process rather than innovation hub (Heller and Warżała, 2018). Certain weaknesses of the business environment, including corruption, weak legislation or poor property rights discourage innovation-based growth (Demeubayeva, 2023).

As the data in Table 5. shows, against the background of the EU, Poland is still far behind in terms of labour productivity and cost as well as spending on research and development and patents applications. Moreover, even among the V4 countries, Poland is not a leader.

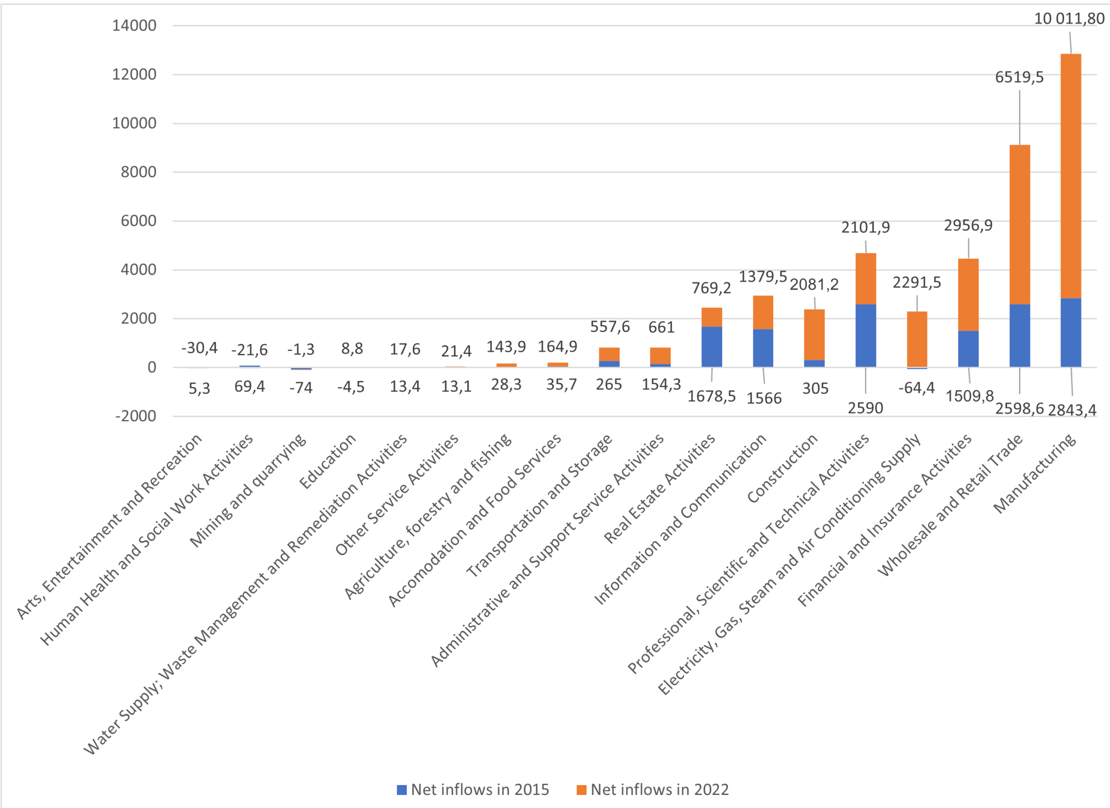
Table 5. Labour productivity and cost, R&D spending, Global Innovation Index positions and patents applications in Poland, V4 and EU

Unit	Labour productivity per hour worked (2022)	Labour cost per hour in euro (2022)	R&D spending as percentage of GDP (2022)	Global Innovation Index position (out of 132 classified countries in 2023)	Patents applications per million inhabitants (2022)
EU-27	100	30,5	2,23	-	151
Poland	67,1	12,5	1,46	41	16
Czechia	76,7	16,4	1,96	31	21
Hungary	69,5	10,7	1,39	35	11
Slovakia	75,9	15,6	0,98	45	9

Sources: data on productivity derived from Eurostat: https://ec.europa.eu/eurostat/databrowser/view/tesem160/default/bar?lang=en (access: 28.12.2023); data on labour cost derived from Eurostat: https://ec.europa.eu/eurostat/databrowser/view/lc_lci_lev__custom_9143685/default/table?lang=en (access: 28.12.2023); data on R&D spending derived from Eurostat: https://ec.europa.eu/eurostat/databrowser/view/rd_e_gerdtot__custom_9143517/default/table?lang=enaccess: 28.12.2023); data on patents derived from European Patent Office: https://report-archive.epo.org/about-us/annual-reports-statistics/statistics/2022.html (access: 28.12.2023).

In terms of sectoral FDI inflows to Poland, between 2015 and 2022 nominal volumes of inflows in the categories of "Information and Communication", "Financial and Insurance activities" and "Professional, Scientific and Technical activities" have declined. Moreover, while in 2015 these categories were responsible for, respectively, 11,4%, 11% and 18,8% of all FDI inflows, in 2022 it was just 4,6%, 9,9% and 7%.

Chart 4. Comparison of FDI net inflows by sector in Poland in 2015 and 2022 (in EUR million)



Source: own elaboration based on the National Bank of Poland data: https://nbp.pl/en/publications/cyclical-materials/foreign-direct-investment-in-poland/ (access: 27.12.2023).

As Kosztowniak (2022) recently shown, the results of the empirical analysis of Polish case in the 2004–2020 indicate that the highest growth potential is located in the fields of information and communication and telecommunications. At the EU level, average hourly labour cost in "Financial and insurance activities" is three times higher than in "Accommodation and food service activities". In case of Poland the differences are smaller, however the hourly labour cost in "Information and communication" or "Financial and insurance activities" are two times higher than in "Accommodation and food service activities" or "Construction" (Eurostat).

Unfortunately, the structure of industries remained virtually the same through the 2004–2020 period with the average share of FDI in innovative industries amounting to 32% and 12% of GDP as compared to 68% and over 26% of GDP in other industries (Kosztowniak, 2022). Problems with the rule of law contribute to difficulties in moving on from raw material-intensive sectors to the knowledge economy based on technologically-intensive sectors. What is more, escaping the middle-income trap with weak rule of law would be even harder in the light of what Roth (2022) has established, as he has shown that there is a strong coefficient for the relationship between rule of law and investment in intangible capital and labour productivity growth, which are crucial for the shift towards a knowledge economy (Piekkola, 2011). Among EU companies' investment in intangible assets constitute around 40% of all investments while in Poland, Hungary and Slovakia they amount to approximately 20% of all investments. Companies that invest more in intangibles grow revenues 6.7 times faster (McKinsey, 2022). Therefore, countries with lower levels of rule of law will be exposed to the risk of disturbance in further convergence.

Conclusions

Rule of law crisis in Poland has had tremendous impact on legal-political sphere of the country's functioning.

The legal-political dimension of the rule of law crisis, however crucial, is not the only area in which this phenomenon should be analyzed. Equally important is the socioeconomic sphere. In Polanyian (2010) understanding of the embeddedness, the rule of law is guiding principle for all actors in the socioeconomic arena. Comparing the New Institutional Economics (NIE) and Comparative Political Economy (CPE) approaches it is possible to derive two different meanings of the institutional character of the rule of law. While NIE sees it as an engine of growth, applicable under various socio-political and cultural circumstances, CPE focuses on concrete objects like institutional comparative advantages which may differ under varieties of capitalism. In the latter sense post-communist capitalist democracies like Poland may adopt political economy strategies that are not compatible with postulates of NIE. Poland has been classified as dependent market economy (Nölke and Vliegenthart, 2009) led by FDI allocated through decisions made by large foreign multinational corporations. The mass production of semi-standardized exports goods has been a pillar of the political economy regime in Poland and its V4 peers.

However, this model has been accompanied by low-wages and moderate technological progress which contributed to preservation of the semi-peripheral status of Poland. The next step in the convergence process should be based on increasing efficiency and competitiveness through investments in innovations and new technologies. There is a strong relationship between rule of law and investment in intangible capital and labour productivity growth, which are crucial for the shift towards a knowledge economy (Roth, 2022). The rule of law crisis has deepened the investments collapse in Poland and effectively limited the previous government ambitions to escape the "middle-income trap". A shift towards authoritarian capitalism, reflected in breaking the public-private divide and violations of equality before the law and the separation between state officials and interests of governing elite (Sallai and Schnyder, 2021) constitutes an emanation of the rule of law crisis in the socioeconomic sphere.

The empirical data on judicial independence, property rights and corruption confirm that Poland has suffered major negative consequences of the rule of law crisis not only within the legal-political domain, but also in the socioeconomic dimension. Therefore, to become an attractive destination for more technologically advanced FDI inflows, Poland should strengthen the institutional environment of the rule of law, rebuild trust among the EU partners and introduce changes in priorities of economic policy.

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The Rule of Law Crisis and Political Economy. The Case of Poland

Abstract

In recent years, the phenomenon of the rule of law crisis has been widely discussed. This issue was raised especially by researchers representing legal and political sciences. However, the rule of law also has an important socioeconomic dimension. The socioeconomic context of the rule of law can be considered on the one hand in the context of institutional economics, and on the other hand in the realm of political economy. In the empirical part, in relation to the crisis of the rule of law, an approach based on the achievements of comparative political economy was used, which made it possible to examine how the crisis of the rule of law has contributed to the perpetuation of the current model of a "dependent market economy" based on foreign direct investments carried out mainly outside the most innovative sectors.

Keywords: rule of law crisis, authoritarian capitalism, political economy, dependent market economy, Poland

JEL-codes: F5, P16, O52

Kryzys praworządności a ekonomia polityczna – przypadek Polski

Streszczenie

W ostatnich latach w literaturze naukowej szeroko omawiano zjawisko kryzysu praworządności. Ta kwestia była podnosza szczególnie przez badaczy reprezentujących nauki prawne oraz polityczne. Jednak praworządność ma również istotny wymiar socjoekonomiczny. Socjoekonomiczny kontekst praworządności można rozpatrywać z jednej strony na gruncie ekonomii instytucjonalnej, z drugiej – na ekonomii politycznej. W części empirycznej, w odniesieniu do kryzysu praworządności zastosowano podejście ugruntowane na dorobku porównawczej ekonomii politycznej. Dzięki temu możliwe było zbadanie, w jaki sposób kryzys praworządności przyczynia się do utrwalenia obecnego modelu „zależnej gospodarki rynkowej", opartego na bezpośrednich inwestycjach zagranicznych realizowanych w głównej mierze poza sektorami najbardziej innowacyjnymi.

Słowa kluczowe: kryzys praworządności, kapitalizm autorytarny, ekonomia polityczna, zależna gospodarka rynkowa

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