

THE CURIOUS CASE OF ROSPUDA VALLEY: COMPREHENDING DEMOCRACY AND LEGITIMACY IN THE EUROPEAN UNION

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Abstract:

European integration could easily be construed as an asymmetrical process, with the Union's *acquis communautaire* affecting some accession states more profoundly than others. This assumption, if it's indeed true, should apply most acutely to post-communist states, i.e. Poland and the Czech Republic etc., which tend to be lacking both mediating institutions and a robust third sector, for example. Drawing on a discrete episode of contentious politics, this essay will ultimately determine if the EU is: (a) *actually* practicing subsidiarity and governance, opposed to just recommending it; (b) *ensuring* that democratic standards are adhered to, opposed to just requesting that they are, and (c) *taking* steps to improve input legitimacy, opposed to just assuming tacit compliance.

Introduction

Hard to imagine, but a small resort town located in north-east Poland near the Lithuanian and Belarusian borders, Augustów, was at the centre a protracted, at times heated, political jousting match between Polish officials and the European Union (EU). The two parties were in disagreement over an infrastructural project, a bridge, which the Polish government was planning to build over an ecologically sensitive (and relatively pristine) part of the Rospuda valley. EU commissioner for environment, Stavros Dimas, convinced the project contravened at least three European directives, used all necessary means to block the project – including a European Court of Justice (ECJ) injunction. This was high-stakes politics at its best (though some might say worst). Polish authorities were clear in their motivation: they were trying to improve Poland's dilapidated road network, which is one of the most dangerous in Europe. Also at stake was the principles of direct democracy and subsidiarity, as the people of Augustów overwhelmingly supported the Polish government's proposal. The disagreement stemmed from the EU's belief "it" could overrule Poland (and any member-state, for that matter) in areas it has jurisdiction, namely the environment, and the Polish government's opinion such directives were/are subject to reasonable interpretation/limitation when public safety is at stake.

Although the Czech Republic is mentioned from time to time, this essay focuses almost exclusively on one particular episode of contentious politics, a proposed bypass/ring-road around Augustów, Poland, that would have meant the construction of a bridge over (but ultimately through) the Rospuda valley wetlands. Other than making Poland's roads safer, it was thought such a project would accelerate economic development, in Podlaskie voivode and eastern Poland, by connecting Poland to the Via Baltica (a transport corridor linking Prague to Helsinki). And most critically for the argument here, Augustów mayor Leszek Cieslik, Prime Minister Kaczyński, and a host of local campaigners, were intent on re-routing Highway E67 around Augustów for the safety and well-being of the townspeople. As it was reported at the time, "Many locals say they can no longer stand the noise, pollution and risk of fatal accidents caused by the 4,500 heavy goods vehicles which rumble through every day" (Krakow Post, 2 Aug 2007). So when the Commission initiated infringement proceedings in February 2007, intent to overrule the Polish government with respect to their 'planned route' through Rospuda valley, the stage was set for an epic political battle.

What this paper argues below is that the Rospuda valley dispute (which ended in 2009) offers a unique glimpse into the real world of EU decision-making, democracy, and governance. It points to a temporary yet potentially enduring cleavage between local government(s) and Brussels, with the member-state, in this case Poland, acting as a conduit, defending direct democracy, local sovereignty, and subsidiarity. This paper examines said contentious episode, looking specifically at how nongovernmental organizations (NGOs), the Commission, and Polish authorities, organised and strategized with respect to Rospuda valley. I will also argue that the Rospuda case clearly shows the Commission's inability (or at least unwillingness) to handle political disagreements in a politically sensitive, measured way, opting instead to act publicly and coercively. Stavros Dimas decided to initiate infringement proceedings against Poland, utilizing the ECJ and other EU institutions, such as the EP, to pressurise Poland. This political fight, so the narrative goes, pitted the townspeople of Augustów (David) against the EU Commission (Goliath). However in this rendition of the Old Testament fable, Goliath wins.

This paper hopes to identify a few idiosyncrasies common to post-communist EU member-states, like Poland. It is precisely the purpose of this paper to consider how notions of democracy and legitimacy apply, and are understood, during episodes of jurisdictional disagreement and uncertainty, when contentious politics (and contentious collective action) is initiated by a stakeholder in the hope of influencing decision-making and/or infringement proceedings. The reality is, and again the Rospuda valley case speaks to this, post-communist states are particularly susceptible to pressure from outside actors (i.e. non-domestic) and institutions, including the EU. International and/or European NGOs, as the case study seems to support, are able to influence decision-makers (and the decision-making process) in rather obvious ways.

Contentious politics

Table 1.1 is illustrative of just how unpredictable an episode of contentious politics can be, with a variety of (initially) unaffiliated groups working together to affect change at the state and/or local political level. NGOs from near and far descended on Augustów, physically and electronically, to protest the proposed bridge. Demonstrations were staged in town, in Brussels, and in cyberspace, as a way to draw in other interested actors and people. As E-Polis (21/11/2008) reported on their website:

The fact that protected areas of Rospuda Valley and Augustów Forests have been saved so far, is the result of mobilising various movements at the same time, including the enormous activism of the Polish environmental movement; making coordinated action between all advocates of the threatened natural sites on different policy levels.¹

The scope and character of a given state's civil society seems to matter less in a system populated by transnational (and transient) NGOs unconstrained by political boundaries, logistical realities, or jurisdictional technicalities. Such groups, while perhaps necessary in a pluralistic sense, in that they permit political contestation, do little to solve the problem of weak and fragmented voluntary sectors. Such good intentions may actually be undermining/complicating the development of democratic political culture in Central Europe by impeding the establishment of 'home-grown' and culturally rooted networks of reciprocity (see Diamond 1998; Putnam 1995) and trust.

¹ E-Polis: <http://www.e-polis.info/drupal6/node/61>

1.1 Actors, Issues and Sectors Table²

<i>Rospuda Valley</i>	
International	Birdlife International, IMCG
European	EC, CEE Bankwatch, ECJ, EA, RSPB
State and Local	Greenpeace, WWF Poland, OTOP, Augustów Township, PGN

EC	European Commission
ECJ	European Court of Justice
EEA	European Environmental Agency
EP	European Parliament
IMCG	International Mire Conservation Group
OTOP	Polish Society for the Protection of Birds
PGN	Polish Green Network
RSPB	British Royal Society for the Protection of Birds

A highly stratified polity means not only can international and European actors influence the decision-making process in Brussels or Strasbourg, but also the policy-making process in member-states. They can do this top-down, from the Commission to the member-state, or from the bottom-up, from local government to the European Parliament or Ombudsperson. This works because very few policy sectors fall under the exclusive competency or jurisdiction of a single institution and/or actor. The political power, i.e. ability to influence policy formulation or existing public policy, available to any one stakeholder is significantly constrained in an interconnected policy environment where issues tend to cross borders and NGOs seemingly float from controversy to controversy (or issue to issue) raising public awareness and pressurizing policy makers. But this means, as well, that member-state governments are in some respects beholden to networks and communities they have no direct control over. The impact of European level institutions is felt in several prominent policy areas, and as the Temelín nuclear power

² The actors, a combination of NGOs, IGOs and specialized institutions and other civil society organizations, were identified through and added to this matrix as a result of their citation or mention in various newspapers and newswires. This list is by no means exhaustive but it is reflective of the complex web of actors taking position around the identified ‘issue’ areas.

station (Temelín NPP) example illustrates, EU institutions exercise power even when the matter, in this case nuclear energy, technically falls outside their jurisdiction³.

This is not to say state-level or local groups are entirely ineffectual or politically impotent, just that a polycentric system like the EU invites, even demands, transnational contentious collective action. Even groups that continue to operate exclusively within their 'home' state in many circumstances learn the tricks of the trade through affiliate NGOs and pan European actors. There is an international dimension to many environmental groups in Poland and the Czech Republic, which produces a highly professional yet thinly populated third sector. A one-dimensional view of interest group politics or opportunity framing must now be replaced with a two or even three-dimensional model that takes into account the blurring of traditional political boundaries, supranationalism, and transnational activism. Issues of import to the EU, pollution and conservation being two of the more acute and recognizable, are coincidentally the most contentious and problematic for Poland and the Czech Republic. The subjects which resonate most with international and continental actors, like environmental protection and nuclear energy, will draw together a myriad of national and international actors and activists. The European Parliament, Commission and its atomic energy watchdog, EURATOM⁴, along with Czech, Austrian and European NGOs and affiliated networks, plus Austria and Germany, all became politically involved in the Temelín NPP affair. Issue salience then, not jurisdiction or competency, becomes the determinant of whom or what attempts to exert influence over policymakers and policy formulation.

Another equally important determinant besides the salience of the policy issue is political opportunity. Proponents of 'political opportunity structure' (POS) believe political institutions have both a constraining and enabling effect on social movements and public interest groups (Oberschall 1999; Tarrow 1999; Giugni et al 1999; Tarrow and Tilly 2007). Tarrow and Tilly (2007) define POS: "features of regimes and institutions (e.g. splits in the ruling class) that

³ With reference to the Temelin NPP, the European Union does not have competency over the energy policy of member-states. As Prime Minister Zeman said, "there existed no European rules for the safety of nuclear power plants. There only exist international norms and the Temelin plant fulfills them" (CTK, 23 June 1999)

⁴ EURATOM: European Atomic Energy Community

facilitates or inhibits a political actor's collective action" (p.203). This would seem to imply that a phase of contentious collective action should follow regime or institutional change. This model places contentious politics firmly in the political realm. Appreciating the monumental changes that have occurred in ECE since 1989, the Dynamic Statist variant of POS has specific application in the study of European-level contentious politics. This model assumes "entire political systems undergo changes which modify the environment of social actors sufficiently to influence the initiation, forms, and outcomes of collective action" (Tarrow 1999: 44). The Dynamic Statist model best approximates the theory employed by this essay to investigate NGO activity in Poland. New avenues of contention have emerged for Polish NGOs (and other interest groups) over the past decade, both as a result of the European Union and the internationalization of environmental protection and human rights. In the first instance, individuals are able to take (or can threaten to take) their grievance(s) to the European Ombudsman, the General Court, the Commission, or indeed European Court of Justice (ECJ). Or approach all three for remedy. Needless to say, Europeans (and/or political activists/lobbyists) have a variety of options when it comes to accessing EU institutions.

With respect to Rospuda valley, it was the International Mire Conservation Group (IMCG), an organization concerned with the study and protection of mires worldwide, which played a decisive role in delaying the construction of the Via Baltica through Poland's Rospuda valley. The Secretary General of IMCG, Dr. Hans Joosten, sent a letter directly to EU Environment Commissioner Stavros Dimas summarizing the results of the IMCG's environmental assessment,⁵ which cast doubt on the veracity of Poland's initial assessment of the area.

The above example is indicative of the ad hoc way contentious politics occurs in Central Europe and how actors can converge with great effect on issues they would have once considered (perhaps for purely logistical reasons) outside their sphere of activity. No longer are national groups alone attempting to exert influence on 'their' government. And significantly domestic institutions are by no means the only recourse available to national groups. Comparing contentious politics in Europe with traditional collective action models, Imig and Tarrow write: "the reality today is far more complex, with conflict and reconciliation occurring at a number of

⁵ An electronic version of the letter can be found on the IMCG website, www.imcg.net

levels and between them” (Imig and Tarrow 2001: 16). Interest groups and NGOs from far flung regions are prepared to assist (sometimes even usurp) local campaigners, thus giving discrete local episodes an international dimension and character. In Poland, politics occur and political mobilization happens in a system experiencing internationalization, Europeanization, democratization, and liberalization, simultaneously. While it has been twenty years since the collapse of communism in Central Europe, there is much evidence the transition from authoritarianism continues despite democratic consolidation and European Union membership. In this way decision-making is complicated, by new and emerging actors/institutions, and uncertain, inasmuch as the political elite are time and again confronted with unusual scenarios, odd problems and unique situations. It is certainly not politics as usual.

Democracy, deficit and decision-making

David Held suggests (2006) democracy “entails a political community in which there is some form of *political equality* among the people” (p.1). This may be true, however as his 300 page book makes abundantly clear, political equality is very difficult to achieve in a single sovereign state, let alone in a multi-level, multi-national polity (or intergovernmental organization) like the EU, which comprises twenty-seven sovereign states at different stages of democratic development. Not twenty-two years ago, for example, Poland was authoritarian, without a robust civil society, and beginning what would later be identified as a monumental socio-political transition. It’s history now, but Poland’s democratic transition was a remarkable event that signalled the end of state-socialism in Central Europe and the beginning of a less ideologically fragmented (and polarised) Europe. Nevertheless, one should not forget that Poland, like other post-communist states that joined the EU in 2004 or 2007 (i.e. the Czech Republic/Slovakia, Hungary and Romania, etc.) are *still* (emphasis added) working toward a more equitable and participatory form of democracy. They are, in many respects, *still* democratizing.

In Poland, rates of associational affiliation and volunteerism remain low, and by European standards, voter turnout is also low. The 2007 parliamentary election, for example, drew 53.88% of registered voters to the polls, while the 2009 European parliamentary election, with an average of 43% amongst Europe Union states, saw just 24.53% of registered voters exercise their

democratic right.⁶ But as Marc Morjé Howard (2003) argues, such apathy and/or reticence to participate in electoral politics or civil society should not come as a complete surprise. He suggests the following:

The consistently low levels of participation in civil society organizations in contemporary postcommunist Europe can best be understood by taking into account the common elements of the communist experience, as well as the events of the last decade. In particular, three important factors are common to the wide array of societies in postcommunist Europe: 1) the legacy of mistrust of communist organizations; 2) the persistence of friendship networks; and 3) postcommunist disappointment. Taken together, these three factors help to explain the lasting weakness of civil society in the region (Howard 2002, 161)

This paper endorses a similar view. Poland lacks what Almond and Verba (1989[1963]) call a ‘participant political culture,’⁷ as do other post-communist states, though since 1989 civil society has been supplemented by outside actors, agencies and NGOs. The problem with this, among other things, is that during episodes of contentious collective action, the Commission (and other EU organs/institutions) could easily mistake ‘outside or foreign’ political opposition originating within Poland. It is difficult, therefore, to accurately measure political opposition and gain a sense of issue salience. So, despite the fact Augustóvians overwhelmingly backed plan ‘A’ (the construction of a bridge through Rospuda valley), many observers, including the Commission, convinced themselves that most Poles, including those living in the vicinity of Rospuda valley, were against the project. This simply was not the case. However, as many pointed out, Poland signed the *acquis* voluntarily. In joining the EU, they agreed to all existing and negotiated laws, directives and dispute-settlement mechanisms, and were surely aware of their legal rights and responsibilities vis-à-vis environmental law, and subsidiarity.

EU states are bound together by a complex web of European law, conventions, and norms, which thus far have worked to keep integration and expansion on track. By virtue of their ability to establish accession criteria, existing and/or older members have more power than newer or

⁶ International Institute for Democracy and Electoral Assistance:
http://www.idea.int/vt/country_view.cfm?CountryCode=PL

⁷ In *The Civic Culture* (1989[1963]), Almond and Verba contend “the participant political culture, is one in which the members of the society tend to be explicitly oriented to the system as a whole and to both the political and administrative structures and processes: in other words, to both the input and output aspects of the political system.” (p.18)

accession countries, as the latter (and this was the case leading up to the 2004 and 2007 enlargements) have no real choice in determining to what standards they are judged.

Much of what the EU has done since Maastricht (c.1992), in terms of institutional development, political integration, and public relations, has been in response the EU's supposed Achilles' heel, democratic legitimacy. The democratic deficit, what it means, precisely, and how it should be understood, has over the past decade come to dominate EU studies. The EU's democratic deficit, like other democratic deficits, is the result of a "gap between aspirations and satisfaction" (Norris 2011: 5). Such a condition is suggestive of a polity (or political organization) without an established and viable connection, either cultural or institutional, to the population it serves. Pippa Norris goes on to write, "the core decision-making institutions of the EU have been regarded by some commentators as falling well short of the standards of democratic accountability and transparency that exist at the national level within each of the member states" (p.5). The Rospuda valley case serves to only reinforce this belief, as the unelected Dimas, serving in his capacity as environment Commissioner, virtually ignored the people of Augustów when formulating his position.

Legitimacy and subsidiarity

What gives the EU the right, as it were, to influence policy formulation in member-state countries and pressurise lawmakers to adhere to community law, is a rather vast corpus of rules, directives and agreements that were achieved through intergovernmental bargaining. For instance, the most recent agreement, the Lisbon treaty (December 2009), was subject to a referendum in only one member-state, Ireland, in June 2008 and October 2009. The Irish rejected it in 2008, but overwhelmingly supported it in 2009. In all other member-states, it was government (and the legislature) that approved the Lisbon treaty, not the citizenry as such. Dealing with international treaties this way is normal enough, so long as the treaty in question is not subject to popular approval (as in the Irish case). However, given that EU law can, and often does, change parameters and repertoires of contention, it would seem quite reasonable for the EU to defer to sub-state institutions on issues of local import. This would be a way to inject legitimacy into the process without having to depend exclusively on referenda, which really only helps with input legitimacy.

Hague and Harrop (2004) describe legitimacy as, “a political question [that] refers to whether people accept the validity either of a specific law or, more generally, of the entire political system” (p.15). They go on to quote Lipset, who suggests “legitimacy involves the capacity of the political system to engender and maintain the belief that the existing political systems are the most appropriate ones for the society” (ibid). These textbook definitions of legitimacy (literally!) do well to place political legitimacy in the realm of political authority, consent and ultimately, democracy. However, they point to something that may well be lacking in the EU, and to something that deserves special attention. That is, the EU – and this is largely based on the case study that follows – seems unable to accommodate different understandings of democracy, namely direct democracy at the local level, and to entertain a more nuanced understanding of subsidiarity.

Reading EU documents, especially the 2001 white paper on European Governance and the Treaty of Amsterdam, one could easily get the impression subsidiarity (introduced in the Maastricht Treaty) is a way to protect sub-state (i.e. local or regional) governments from EU encroachment. And this was likely the intent. A Declaration attached to the Treaty of Amsterdam reads:

For the German, Austrian and Belgian governments it remains understood that the actions of the European Community on the basis of the principle of subsidiarity concern not only the Member States, but also their bodies, to the extent that these bodies possess their own legislative powers, conferred on them by national constitutional law (Eurofound⁸).

The above interpretation of subsidiarity, if it had been extended to Poland when it joined the EU, would have given local authorities, in this case Augustów town council and the mayor, a legal basis to challenge the infringement action initiated by commissioner Dimas. The EU Parliament’s own fact sheet contends “the general aim of the principle of subsidiarity is to guarantee a degree of independence for a lower authority in relation to a higher body or for a local authority in respect of a central authority. It therefore involves the sharing of powers between several levels of authority, a principle which forms the institutional basis for federal

⁸Eurofound: <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/subsidiarity.htm>

States” (EP Factsheet⁹). Though not a federation, Poland does have voivodeships¹⁰, which are marginally autonomous administrative units, with capacity to initiate essentially local infrastructural projects and developments. While environmental protection is important, along with EU directives aimed at conserving ecologically sensitive areas throughout the Union, the autonomy of sub-state political units is also important. This is especially true of post-communist states, which are trying to modernize and democratize as quickly as possible.

The Rospuda valley

As mentioned, it is difficult to find a better example of interest group convergence in post accession Poland than the one being presented here. Linking Prague, Czech Republic to Helsinki, Finland, the ‘Via Baltica’, would have cut directly through an environmentally sensitive area of north-east Poland, the Rospuda valley. To give some sense of how seriously environmentalists and pro-wetlands activists were taking this, one need only read the letter EU Commissioner of the Environment, Stavros Dimas, received from the Secretary-General of the International Mire Conservation Group (IMCG). He wrote: “the plans to build a road across Rospuda valley has aroused alarm among mire specialists worldwide” (Joosten, 7 Feb. 2007). As other non-state and nongovernmental actors became involved, sending letters to Polish and EU officials, holding demonstrations, and publicising the proposed project on the World Wide Web, the EU seemed to have little choice but to back the conservationists and environmentalists.

The EU found itself in public opposition to the Polish government and residents of Augustów, as the latter two regarded the motorway as an important infrastructural project. In 2006 the IMCG and representatives of several environmental NGOs raised concern over the Polish government’s refusal to adhere to EU directives. A wide array of INGOs, NGOs and institutions, from Europe

⁹ http://www.europarl.europa.eu/factsheets/1_2_2_en.htm

¹⁰ In Poland there exists delineation of power similar to the Czech Republic. In 1999 Poland adopted a new system of local government whereby sixteen administrative districts, voivodeships, would replace the previous forty-nine. Chapter VII of the Polish Constitution (Articles 163 – 172) determines the structure and function of these voivodeships and entrusts to each regional assembly competency over matters not directly handled by either the Council of Ministers or President. For a discussion of how these changes came about and their perceived affect see Andrew H. Dawson (1999) “The Transformation of Polish Local Government.” *Public Administration*, Vol. 77, No. 4: Pp 897-902.

and elsewhere, have become entangled in the debate¹¹. This matter garnered international attention when the EC and EP instructed Poland to stop the motorway project until a proper environmental assessment could be carried out. Furthermore, the EC made a formal request to the ECJ on 5 April 2007 asking they issue an injunction to the construction of the Augustów bypass. This case clearly shows that political power in Europe is much more diffuse and segmented than traditionally thought (cf. Moravcsik 2003). Transnational advocacy networks and international actors are able under certain circumstances to influence domestic policy through EU institutions and courts.

This case study relies on information gleaned from newspaper reports, Polish government and EEA press releases, and NGO WebPages. A cursory search of the internet reveals this issue has caught the attention of both Polish based environmental NGOs and international NGOs, with few of the latter having any direct ties to either Augustów town, the region (Voivodeship) of Podlaskie, or Poland. The international press has reported on the matter and several INGOs have established a 'Via Baltica' link on their home pages (see Greenpeace.org). A dedicated website also exists¹².

The political and legal wrangling lasted approximately two years and passed through five discernable phases. First, in January 2006 several NGOs, WWF Poland, Polish Society for the Protection of Birds (OTOP) and ECE Bankwatch, filed a formal complaint with the EC over the proposed route (Birdlife International, 2006: 1). Under EU law individuals and NGOs are able to petition and/or file a complaint with the European Union Ombudsman, the European Commission or the European Court of Justice (ECJ) if it is believed EU law has been inappropriately applied or ignored by a member-state. By planning to construct the Augustów and Wasilków by-passes through a Special Protection Area (SPA) the complainants believed

¹¹ I identified the following actors as being directly involved in the Rospuda debate: European Parliament (EP); European Environmental Agency (EEA); European Court of Justice (ECJ); Polish Society for the Protection of Birds (OTOP); British Royal Society for the Protection of Birds (RSPB); East central European Bankwatch Network (ECE Bankwatch); International Mire Conservation Group (IMCG); Birdlife International; Greenpeace; WWF Poland; Polish Green Network (PGN); and, Augustów Township.

¹² The website, www.viabalticainfo.org, provides information about the highway project and its potential impact on the Rospuda valley. It also serves as a forum for monitoring and disseminating news about the motorway project. This site is sponsored by ECE Bankwatch, WWF Poland and Birdlife International.

Poland was in contravention of two specific EU directives relating to the protection of birds and animal habitat (the Bird Directive 79/409/EEC and the Habitats Directive 92/43/EEC) and also the Natura 2000 programme. The European Union programme, Natura 2000, was established “to safeguard the 27-nation bloc’s most important wildlife areas and species” (BBC 28 February). On 12 December 2006 the EC notified Poland in writing they were in breach of EU law (IP/06/1775)¹³. The EC was now formally involved in this matter through the ‘infringement procedure’ mechanism.

The second phase began 21 March 2007. Poland seemed intent on proceeding with the project despite several direct warnings. Dimas said to gathered press, “I urge the Polish Government to once more consider ways of building these bypasses without causing such serious environmental damage” (BBC 28 February 2007). The infringement procedure was at that point being ignored by Poland and work was set to commence at the earliest opportunity, 1 August 2007. The EC recognizing Poland was unwilling to suspend construction asked the ECJ to issue an order halting construction of the Augustów and Wasilków bypasses until the ECJ has rendered a final decision (Europa 21 March 2007). Important to this development was the NGO community, which remained engaged in the process and kept public pressure on the Polish government. Groups like Greenpeace, WWF Poland and OTOP managed to organize public demonstrations in Warsaw and Augustów, and also initiate a petition campaign. Below is a plea for help that was posted on the IMCG website:

As the measures to protect the Rospuda valley, which could be undertaken on the national level, seem to be exhausted, we ("Save Wetlands" Association, Poland) appeal to the international authorities to take action to help us to preserve this very valuable unique mire complex. In this case the international pressure on the Polish government and involvement of international organisations seems to be the last hope for the valley (<http://www.imcg.net/threat/01.htm>).

With the involvement of INGOs and the EU, specifically the ECJ, the EC with the EP, the Via Baltica matter was transformed from essentially a local issue to one with international scope and appeal. Despite the protests and warning from the EC, the Polish government believed their actions were not in contravention to any EU directive. Referring to the EC’s warnings, Prime

¹³ The press release indicates “Article 226 of the Treaty gives the Commission power to take legal action against a Member State that is not respecting its obligations” (12 December 2006 IP/06/1775).

Minister Kaczynski said: “if we allow restrictions and obstacles by every group to block such a major investment, the Poland’s great opportunity will be lost” (Reuters, 13 May 2007). The way this matter has unfolded – Poland pitting itself against the EC, EP and ECJ - is symptomatic of a more acute tension that exists between post communist states and European institutions, or more precisely between post materialist and materialist societies. As suggested by Grajewski (30 July 2007), “some analysts see the Rospuda dispute as a prelude to more conflicts between the EU and its new members from central and eastern Europe over the environment as they seek to upgrade some of their outmoded road and railways”

On 5 April 2007 the Commission of the European Communities (referred to above and below as the European Commission - EC) officially brought an action against Poland to the ECJ. The EC requested the ECJ order Poland to suspend all work on the motorway until the ECJ has appropriately dealt with their initial complaint and delivered a judgment (Case C – 193/07). The EC’s initial warnings did not seem to resonate with the Polish government. The legal action, though downplayed by Polish authorities, changed the complexion of this dispute and gave NGOs a small victory in their battle with Poland.

The third phase of the dispute began summer 2007. The Polish government delayed the beginning of construction until 1 August 2007, as not to disturb bird nesting. As of July, the Polish government seemed intent on going forward with the original plan, which would have seen the construction of a ring-road around the towns of Augustów and Wasilków and the building of a bridge over the Rospuda valley. Perhaps believing the EC’s actions amount to meddling in Poland’s domestic affairs and a clear cut challenge to a member state’s sovereignty, both Slovakia and Lithuania publicly announce their intentions to back Poland in this dispute, insisting also the EU not punish Poland too severely. Not satisfied with Poland’s response to numerous warning over the Rospuda project the EC sought help from the ECJ. The EC “asked the European Court of Justice to take interim measures to ensure Poland does not go ahead with the construction” (Europa 30 July 2007). Convinced that the Natura 2000 network and protection of ‘European’ wetlands and bird habitat is more important to Europe as a whole than the Via Baltica project, or at least the proposed route, the EC took the unusual step of asking the ECJ to issue an injunction, as a way to override Polish domestic policy. This was the culmination of

years of protest and sophisticated lobbying on the part of a diverse group of INGOs and NGOs. In the days before Poland was set to resume construction, the European Parliament's Committee of Petitions voted to support the EC. It was the committee's view that the route proposed by the Polish government was ill conceived and should be changed. This phase clearly illustrates the multi level character of EU governance and how disparate actors can be pulled together for sake of a discrete, for the most local, issue.

The fourth phase of this dispute started the last day of July 2007. Twenty-four hours after the EC appealed to the ECJ for an injunction, Poland decided to stop all construction indefinitely or at least until the ECJ had reached a final judgment on the matter. The possibility of incurring fines seemed to bring an abrupt end to Poland's impertinence. However several hundred protestors took to the streets in Augustów to protest the government's inability to get the project done. The townspeople too were unhappy with the whole ordeal. For them, a discrete constituency in their own right, the issues were (and are today) first and foremost the safety and economic vitality of their town. The highway running through both Augustów and Wasilków, for which the bypass was sought, is particularly busy. One report estimates 4,500 heavy goods vehicles pass through the small town of Augustów, population 29,951 every day (BBC 2 Feb. 2007). One website refers to this motorway as 'Poland's highway to hell'.

The fifth phase started October 2007 when Civic Platform (PO - Platforma Obywatelska) won the parliamentary election, then deciding almost immediately to undo all the plans concerning the Via Baltica route through Rospuda valley. PO decided to hold public consultations on the rerouting of the by-passes. The construction of the motorway will not proceed until all stakeholders, including environmental NGOs and Augustów town council, have had a chance to comment on all proposed routes (there are at least four). The new Environmental Minister, Professor Maciej Nowicki, intends to work collaboratively with all parties concerned and has vowed not to make any unilateral decisions on this matter.

Via Baltica managed to galvanize the Polish ecological sector as well as European level policymakers. Consensus was (and is) the proposed route would irreparably harm the region's ecosystem and wildlife. This short case study will analyze how this convergence, more precisely

an opposition movement against the motorway, has impacted the Polish government's decision calculus. The immediate solution to the problem, rerouting the motorway around the ecologically fragile wetlands in the Rospuda valley, was not entirely the most popular or easiest one to implement. The town most directly affected by this stretch of the Via Baltica, Augustów, was calling on government to continue with the highway project (Reuters 31 July 2007). The townspeople were (and are) in favour of the project because it supported the building of a ring road (bypass) around Augustów, thus alleviating traffic congestion. Hence this example of contentious politics is both a complex and multilayered affair.

It is difficult to imagine an issue similar to Via Baltica receiving such public exposure even a decade ago. Unlike Temelin NPP in the Czech Republic, which has immediate and direct impact on neighbouring states (i.e. Austria) and the South Bohemia region, Rospuda valley could easily be viewed as a local matter. But now that Poland is a member of the EU and entangled in a web of directives and laws, a local issue can quickly become a European and/or international matter. If anything this case study shows the impact of horizontal and vertical networks and community norms (and law) on the framing of contentious politics. The Rospuda valley debate can be summarized in three points.

First, European competency extends to environmentally protected areas, like the Rospuda valley, by virtue of the Natura 2000 programme¹⁴. The intention of this EU sponsored and subsidized project is to protect "seriously threatened natural areas" (Transitions Online, 10 August 2007). The EC is therefore acting in accordance with treaty law, which Poland acceded to, when they threaten to impose sanctions for failure to reroute Via Baltica. The 1992 Habitat and 1979 Birds Directives constitute the community law underpinning the Natura 2000 programme. The EC believes Natura 2000 is the "centerpiece of the EU nature and biodiversity policy" (EC website). The environment and specifically environmental protection is fast becoming, if it has not already become, a European issue.

¹⁴ Information on the scope and design of the Natura 2000 programme can be found at EC website: www.ec.europa.eu/environment/nature/natura2000/index_en.html

Second, through infrastructure improvement and modernization schemes Poland is trying to bring their antiquated transport system (especially in the northeast) up to existing EU standards. In some instances this desire to ‘westernize’ brings the Polish government into collision with Polish and European environmentalists, who place conservation and protection ahead of large-scale projects, like Via Baltica. Referring to a proposed local referendum on the matter, Prime Minister Jaroslaw Kaczynski “we are fighting today for Poland’s right to rapid development” (Reuters 13 May 2007).

Third, NGOs from inside and outside Poland have been fighting against the proposed motorway route since early 2006. Though origins of the plan date back to 1996 (BBC 1 February 1996) the specific route of the Polish segment was not known until fairly recently. NGOs have worked collaboratively to publicize the issue and lobby EU representatives. This plan was more out of necessity than design because both the townspeople and Prime Minister Kaczynski were intent on implementing the original plan, which would have rerouted a 17 kilometre section of the Via Baltica around Augustów and over the valley (Zoeller 2007). Environmental group and the EC were (and are) against this plan. The Rospuda affair brought together a mélange of political actors with divergent and convergent interest. All of the participant NGOs were primarily concerned with environmental and wildlife protection in the region. The Polish government and inhabitants of Augustów, guided by more immediate and tangible concerns, wanted the project completed in a timely fashion. For the Polish government, the proposed bypasses and bridge were of symbolic as well as economic importance; a chance to bring Poland into 21st century with a comprehensive road network, stretching from Prague to Helsinki, that would facilitate commercial trade. The townspeople were ultimately unhappy with the traffic congestion, which is acutely a post accession problem. This short case study shows that transnational advocacy in Europe is both a political reality and a highly contentious development. A system that provides INGOs and transnational advocates a political opportunity, through EU institutions, to affect domestic legislation and challenge national law, is one that shares little resemblance to any other existing polity or political community.

An analysis of civil society in post-communist Europe must take into consideration the impact of international advocacy networks and actors. The examples presented above indicate that home-

grown interest groups are not the only stakeholders involved in lobbying ECE governments and European institutions. In fact both Poland and the Czech Republic have recently been the scene of transnational activism and a brand of contentious politics that involved several levels of government, a myriad of activists and actors, and pays little regard for established patterns of policy contestation. What is affecting modes of contention in ECE more than the scope and character of domestic political culture and civil society is issue salience and European institutions, name the ECJ and Commission. The example presented above, Rospuda valley (Poland) support his position. Once maligned domestic interest groups are gaining political advantage through the mechanisms of multi-level governance and transnational advocacy networks, and are thus utilizing new political opportunities to pressurize state-level lawmakers.

Modes of interest articulation are shaped in large part by state institutions and policy networks, as pressure groups are most likely to seek a path of least resistance when lobbying. Government policy, which is developed *ad hoc* during periods of state-building, often constrains volunteerism and philanthropy rather than empower groups or prospective donors. It is during this period of uncertainty that the state, by virtue of entrenched patterns and institutional practices, gains power and influence over most, if not all, policy sectors. The state is particularly potent in areas where they alone have a monopoly on information, statistics and programme development. As the Euro-Czech Forum (2003) reported in 2003, “As yet there has been no success in creating partnership relations between public administration, non-governmental ecological organizations and economic spheres [and] in many cases, lack of confidence and ‘unfriendliness’ persist” (p.46). On the surface of it, environmental policy development and implementation in both Poland and the Czech Republic appears routine and well orchestrated. The official line in Poland, as articulated by former Minister of Environmental Protection, Natural Resources and Forestry, Jan Szyszko (1998), “the Ministry (...) recognizes ecological non-governmental organizations (NGOs) as its natural allies and partner in activities for environmental protection according to principle of sustainable development, irrespective of their opinions on both general and detailed matters”. But below the surface, the development of an already fragmented and somewhat inexperienced ecological sector is being further complicated by a state with little regard for NGOs or the principle of pluralism. As Krzeminski (2003) argues, at around the same time the above statement was made by Minister Szyszko, the working relationship between third sector

organization and the Polish state were already strained. She argues “it is worth noting that in the second part of the 1990s central government and parliament declared war against foundations and, more generally, their sector organizations” (p.51).

Much of what transpires at the policy development phase is contingent on the structure and function of the state and governmental agencies. This, as argued, is even more pronounced during periods of regime change and flux, when political institutions are being remodeled (or created from scratch) and uncertainly exists around the appropriateness of political custom and convention – i.e. the style of lobbying and its venue¹⁵. With a more autonomous state stifling third sector group development, by virtue of its power vis-à-vis the media and other channels of communication, civil society development becomes less about normative postulations and more about policy networking and concrete forms of interest articulation. In the case of environmental policy it was argued above that many NGOs have developed institutional competency and professionalism, which is indication of how far many of these groups have come since 1990, when they were not much more than amateur, loosely configured, grassroots associations. The fluidity of environmental policy during the late 1990s and early 2000s, which stemmed from rapid development of environmental legislation in all areas, as per international agreements and EU harmonization (i.e. *acquis communautaire*), must be seen as a critically important variable.

Civil society cannot develop in isolation; its scope and character is shaped by interactions which occur between NGOs, government and policy makers. In the area of environmental advocacy and policy making, it is most revealing that representatives of two of the largest, most publicly visible environmental pressure groups believe the government to be disingenuous when dealing with NGOs. What is even more remarkable, especially to those that subscribe to the transition paradigm or other linear theories of democratic development, is that many of the problems of the early transition period have not been entirely solved or even addressed. Andrzej Kassenburg of the Polish Ecology Club argued in the early 1990s “cooperation between the Ministry of the

¹⁵ It is important to remember that much of what transpires in the west, in terms of lobbying and informal policy networks was established not through laws and legislation, but through custom and norms developed over hundreds of years – stemming from interactions between parliamentarians (and members of Congress) and lobbyists at Westminster and later in and around Congress. The same logic applies to post-communist lobbying. Many of the laws pertaining to lobbying and interest group financing came into effect at the end of the 1990s, thus permitting a decade of informal pressure politics.

Environment and the numerous environmental organizations had ceased” (Waller and Millard, 1992: 172). Sixteen years later, even though Polish NGOs are gaining institutional competency and showing signs of professionalism (Carmin and Hicks, 2002: 317) there is still a belief amongst activists that the state has little time for NGOs (which survey data seemed to suggest) and will continue to take decisions that further their immediate policy preferences: economic and industrial growth. However, some of the examples point to a system that is not controlled exclusively by states. European governance and the transnationalization of interest politics can put government at a disadvantage, especially if it is trying to introduce policy without appropriately consulting all major stakeholders. Most recently contentious politics has been less about national politics, in a strict sense, and more about European norms and integration.

Conclusion

To gain a better understanding of how the EU deals with political disputes originating at the sub-state level, this paper examined the Rospuda valley affair, an illuminating case of contentious politics that involved both Poland and the EU, and lasted approximately two and a half years from 2007 to 2009. This case was chosen because, frankly, the position taken by the Commission could not have been any further away than the position taken by Poland and Augustówians. The EU was against the project, while the inhabitants of Augustów overwhelmingly (81%) supported the initial bridge project.¹⁶ Rospuda valley is certainly not the only example of political disagreement between the EU and a member-state; however it is an especially useful one. The Rospuda valley case illuminates a potentially enduring cleavage between post-communist states and the Commission. While the Commission is keen to protect the environment (which is certainly admirable), new member-states, specifically post-communist states, seem more concerned with improving infrastructure and industrial capacity. The case presented above, concerning Rospuda valley and the Via Baltica, suggests something troubling about how the EU processes political disagreements, and how contentious politics is likely to unfold in new member-states (at least in Poland). The EU seems inflexible when it comes to environmental directives, and does not seem willing, or able, to revisit them once established. The two directives at the centre of the dispute between Poland and the EU Commission, the Birds and

¹⁶ Polskie Radio: http://www.thenews.pl/culture/artykul67278_poles-against--augustovians-for-bypass.html

Habitats directive, date back to 1979 and 1992 respectively. Countries like Poland, keen to develop transportation infrastructure and a more nuanced industrial sector, are now, post-accession, faced with a potential obstruction: the EU Commission.