RED SPINEL

DISSENSUS OVER LIBERAL DEMOCRACY IN EUROPE

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I. UNDERSTANDING DISSENSUS OVER LIBERAL DEMOCRACY: A CONCEPTUAL FRAMEWORK

Recently, the European Union has witnessed a growing conflict over the meaning of liberal democracy both in the Member States and at the European level.[1] This dissensus is no longer limited to extremist movements but increasingly involves mainstream political, social and institutional actors. Understanding this concerning phenomenon is crucial for legal practitioners and policymakers because it affects both the core values of the EU enshrined in the Treaty on European Union (TEU) and the Charter of Fundamental Rights (Charter). The everyday functioning of domestic and EU law institutions and legal mechanisms is also affected. For example, the erosion of judicial independence endangers the primacy and the uniform application of EU law as well as cooperation between domestic courts in civil and criminal matters. The restriction of media freedom and pluralism can compromise the fairness of elections, including European Parliament elections, and thus influence their outcome. Racism and discrimination against migrants and asylum seekers can lead to political and social polarization and conflicts or even physical confrontations between different ethnic groups, causing insecurity. Non-implementation of international obligations and refusal to comply with court decisions in the field of climate change can potentially undermine the authority and thus the effectiveness of the judiciary and the international legal order. By grasping the implications of such and similar conflicts resulting from the growing dissensus over liberal democracy, legal practitioners and policymakers can better identify emerging systemic problems and find more adequate answers to them.

I.1. Defining Dissensus Over Liberal Democracy

Dissensus over liberal democracy arises when various social, political and legal actors conflict over the meaning of liberal democracy, disagreeing about its principles or practices while having differing aims to preserve, restructure or replace them. Two dimensions can help clarify this concept:

Focus of conflict: Dissensus can target either the fundamental values and principles of liberal democracy (such as constitutional structures, rule of law, separation of powers, fundamental rights) or its concrete policies and practices (e.g., welfare provisions, climate policies, migration management).

Actors' goals: Some actors aim to preserve the principles and practices of liberal democracy, while others demand reforms; some may even wish to replace democracy with a non-democratic model of governance. Their actions may target liberal democracy at the domestic or the EU level.

1 Ramona Coman, "Conceptualizing Dissensus over Liberal Democracy," in *Palgrave Handbook of Dissensus over Liberal Democracy*, eds. Romano Coman et al. (Palgrave, 2025) 417–437; Ramona Coman and Nathalie Brack "Dissensus Over Liberal Democracy: Concept-Building and Typology," *European Political Science*, Volume 24 (2025)

These dimensions intersect and generate conflicts that differ in intensity, scope and implications. Recognizing the nature of dissensus helps legal professionals and policymakers anticipate the legal and institutional consequences of political change.

I. 2. Typology of Dissensus

The RED-SPINEL project proposes a four-tiered typology for analyzing dissensus:

Mild dissensus involves disagreement over specific policies or practices, typically within a shared commitment to liberal democratic norms. Examples might include debates over privacy rights in digital regulation or disagreements about environmental standards.

Severe dissensus entails more profound disagreements, often with actors pursuing divergent goals regarding policy reforms or institutional practices, but still operating within a liberal democratic framework. Examples include protests against neoliberal austerity or calls for deeper participatory democracy.

Disruptive dissensus focuses on core principles of liberal democracy. It emerges when new or existing actors question foundational norms, such as judicial independence or electoral integrity. In this case, the polity itself becomes contested.

Destructive dissensus reflects irreconcilable conflicts where some actors seek to replace liberal democratic governance with non-democratic alternatives entirely. Such actors often reject pluralism, the rule of law and the protection of fundamental rights.

This typology allows practitioners to assess not just the content of legal disputes but the broader political dynamics that may influence legal and political processes and compliance with fundamental rights.

II. CASE STUDIES: NATIONAL MANIFESTATIONS OF DISSENSUS IN THE EU

This section examines how dissensus over liberal democracy in certain areas manifests in four Member States: Hungary, Poland, Belgium and the Netherlands. Each case illustrates systemic tensions and legal challenges that not only threaten the fundamental values enshrined in Article 2 of TEU and the Charter but also cause problems in the application and enforcement of EU law as well as the operation of EU legal institutions and mechanisms. Each Member State also illustrates how dissensus may manifest itself in specific areas: Hungary constitutes an example of destructive dissensus, while Poland moved from disruptive to destructive dissensus under the PiS government. On the other hand, Belgium and the Netherlands constitute examples of mild dissensus, with disagreements on precise issues. No case study reflects a situation of severe dissensus.

II.1. The Hungarian Rule of Law Crisis

Since 2010, Hungary has experienced a continuous and drastic decline in the rule of law. As a result, in recent years the country has, in international rule of law indices, such as the World Justice Project and V-Dem, ranked as the lowest performer in the EU. The legal and political measures put in place by the Fidesz-KDNP governing coalition in the past 15 years have been exhaustively documented in scholarly publications,[2] the reports of civil society organisations (CSOs) and European rule of law monitoring bodies.[3] The following pages will focus on the most recent developments and their implications for EU law.

II.1.1. Judicial Independence Undermined

Judicial independence – a fundamental value of the rule of law protected by Articles 2 and 19 TEU and a precondition for fair legal proceedings under Article 47 of the Charter – has been consistently weakened in Hungary. Although the Hungarian government adopted judicial reform in 2023 as a response to the partial freezing of EU funds, several systemic problems continue to pose a threat to the autonomy and integrity of the justice system.[4]

The lack of transparency in the case allocation system in lower-instance courts remains a problem. This is so despite repeated recommendations by the European Commission in its annual Rule of Law Reports to improve the system, taking into account European standards.

The Hungarian Ministry of Justice has pressured the National Judicial Council (NJC) to sign an agreement linking judges' salary increases to compliance with reforms that may threaten judicial independence, such as raising the eligibility age for judges and facilitating the transfer of district court judges. After public backlash from judicial groups, the NJC's president resigned. The new president voiced worries that the agreement could further erode judicial independence and noted growing discontent among judges.

András Kovács, a head of panel judge at the Supreme Court (the Kúria), was temporarily suspended from his role by the Chief Justice for planning to publish a study on the court's case allocation process. A recent court ruling deemed this suspension unlawful.

2 See for example A. Jakab and E. Bodnár, "The Rule of Law, democracy, and human rights in Hungary: Tendencies from 1989 until 2019," in *Rule of Law, Common Values, and Illiberal Constitutionalism*, eds. Tímea Drinóczi and Agnieszka Bień-Kacała (Routledge, 2020) 105-118; or N. Chronowski and M. Varju, "Two Eras of Hungarian constitutionalism: from the rule of law to rule by law," Hague Journal on the Rule of Law, 8(2) (2016): 271-289.

3 See for instance the numerous Opinions published by the Venice Commission, available here: https://www.venice.coe.int/webforms/documents/?country=17&year=all. The European Commission for Democracy through Law - better known as the Venice Commission - is the Council of Europe's advisory body on constitutional matters.

4 Such a weakening has notably been addressed by the CJEU in its judgment of 23 November 2021, in the case IS (Illégalité de l'ordonnance de renvoi), Case C-564/19, ECLI:EU:C:2021:949, notably discussed in Ágoston Mohay and István Szijártó, "Criminal Procedures, Preliminary References and Judicial Independence: A Balancing Act? Case C-564/19 IS.," *Maastricht Journal of European and Comparative Law 29,* no. 5 (2022): 629–40.

This summer, the former Prosecutor General, a long-time ally of the ruling Fidesz party, was elected to the Constitutional Court, raising further concerns about judicial impartiality.

These developments not only compromise the impartiality of the judiciary but also reduce public trust in the legal system and pose significant challenges for the domestic enforcement of EU law. The politicisation of the judiciary by a government that wages open war with the institutions of the European Union can lead to very practical problems, such as the non-respect of the primacy of EU law and disruptions in judicial cooperation across EU Member States, particularly in the execution of European arrest warrants.

II.1.2. Permanent States of Emergency and Executive Overreach

Hungary has been under a "state of danger" on various bases since 2020, originally invoked for the COVID-19 pandemic and then extended concerning war in Ukraine. This framework allows the government to bypass Parliament and govern by decree. Additionally, Hungary maintains a parallel emergency regime related to migration, which has been in place since 2016 despite no objective justification. These overlapping regimes enable rapid, unchecked legislation without public consultation, regulation of essential sectors (education, health, public procurement) via decree and the circumvention of normal legislative oversight.

Such practices represent a direct threat to democratic governance, violating the principles of legality and the separation of powers. The EU's legal order, which depends on national legal systems acting in good faith, is weakened when a Member State governs indefinitely under emergency powers.

II.1.3. Shrinking Civic Space and Targeting of Civil Society

A defining feature of dissensus over liberal democracy in Hungary is the government's sustained attack on civil society. Independent civil society groups are labeled as "foreign agents" or "mercenaries" and are publicly discredited, which is coupled with hostile legislative steps.

The first in the series of legislative measures aimed at restricting civic space was the Act on the Transparency of Organisations Supported from Abroad, adopted in 2017, which stigmatised certain CSOs as "foreign-funded organisations". In 2020 the Court of Justice of the European Union declared that the Act violated EU law.[5]

In 2023 the Sovereignty Protection Act established the Sovereignty Protection Office (SPO), a body with sweeping powers to investigate organisations allegedly undermining national sovereignty. In practice, this has meant targeting human rights organisations, independent media outlets and pro-democracy activists. The SPO's reports are not subject to judicial review and procedural safeguards are lacking. The law undermines the right to freedom of association and expression (Articles 11 and 12 of the Charter), among others.

5 *Commission v Hungary* (C-78/18) [2020], ECLI:EU:C:2020:476.CJEU

In October 2024 the European Commission decided to refer Hungary to the Court of Justice because it considered its Sovereignty Protection Act to be in breach of EU law. However, this has not stopped the Hungarian government from tabling another bill in the spring of 2025 that would make the regulation much stricter and could effectively force CSOs and independent media outlets to stop operating.

The climate of intimidation has led to self-censorship and disengagement, particularly among local and regional civil society groups. This erosion of civic space further diminishes the government's democratic and legal accountability at both the domestic and EU levels. Without independent CSOs and media outlets, EU institutions will not be able to collect reliable information from the ground, which will severely impact their ability to monitor EU law infringements and enforce EU law.

II.1.4. Corruption and Abuse of EU Funds

Notably, in 2022 the EU suspended €6.3 billion in funds due to rule of law concerns linked to procurement and anti-fraud mechanisms.

Despite the subsequent nominal anti-corruption reforms implemented in response to the partial freezing of EU funds, Hungary continues to display a structurally weak and politicized enforcement regime. Key concerns include the fragmentation of the anti-corruption framework across multiple, overlapping bodies, the lack of effective investigations into high-level corruption cases and the politically loyal leadership in critical institutions, such as the Prosecutor General's Office.

Public procurement processes are heavily concentrated among government-affiliated actors. Long-term concessions and opaque framework agreements restrict competition and entrench clientelism.

The most immediate effects of corruption at the national level are the misappropriation or inefficient use of EU funds, which puts the EU budget at risk and diminishes public trust in EU financial governance. What is more, corruption distorts competition and the functioning of the internal market in the form of unfair public procurement practices and market concentration that can lead to the loss of investors' confidence.

II.2. The Erosion of Media Freedom and Pluralism in Poland

Poland is another EU Member State that experienced a radical decline in the rule of law. This happened when an illiberal government headed by the Law and Justice Party (Prawo i Sprawiedliwość, or PiS) assumed power in 2015. Poland's legal and institutional landscape has changed profoundly as part of this process.[6] This dissensus in Poland targets both the practice

6 See for instance M. Wyrzykowski, "Experiencing the Unimaginable: the Collapse of the Rule of Law in Poland," *Hague Journal on the Rule of Law*, 11(2), (2019): 417-422.

and the principle of media freedom as an essential component of liberal democracy.[7] Despite the change of government in 2023 and the entry into office of a new governing force that pledged to commit to restoring the rule of law, some systemic issues persist.[8]

II.2.1. Politicisation of Public Broadcasting

One of the most striking developments in Poland has been the transformation of the public broadcaster, Telewizja Polska (TVP), into a partisan outlet. Once nominally independent, TVP was turned into a tool of the Law and Justice Party. TVP routinely presented government critics as enemies of the state, distorted facts to fit nationalist narratives and promoted disinformation. For instance, during the 2020 presidential elections TVP ran aggressive disinformation campaigns against opposition candidate Rafał Trzaskowski, portraying him as anti-national, foreign-controlled and a promoter of "LGBTQI+ ideology". This kind of politicised reporting systematically marginalized dissenting voices and eroded the principle of balanced political coverage, especially during election periods.

In December 2023 the Minister of Culture declared public broadcasting companies insolvent, initiating bankruptcy proceedings and appointing receivers to manage them. These appointments provide minimal safeguards for independence, as receivers can be dismissed by the Minister at any time. Although this measure was reportedly intended to mitigate legal controversies surrounding the changes in public media, it has, in practice, placed these institutions in a legal framework with even fewer formal guarantees of independence than before.

II.2.2. Regulatory Capture of Media Oversight Bodies

One significant challenge in Poland's media landscape is the regulatory capture of oversight bodies like the National Broadcasting Council. This organisation has been known to impose fines and sanctions in a selective manner, often targeting critical or foreign-owned media outlets. A notable example is TVN24, which is owned by U.S.-based Warner Bros. Discovery. The network faced repeated licensing challenges, culminating in the proposed "Lex TVN" legislation in 2021, intended to force the company to divest its ownership. Although this legislation was ultimately vetoed due to international pressure, the situation highlighted the precarious state of media pluralism in Poland.

The current government aims to reform Poland's media landscape as well, particularly focusing on public media regulation. A legislative draft outlines some major changes, including restructuring the National Broadcasting Council. However, public consultations suggest the reforms may not effectively address critical issues, especially the Council's lack of political independence, it

7 D. Guzek and A. Grzesiok-Horosz, "Political will and media law: A Poland case analysis," *East European Politics and Societies* 36(4) (2022): 1245-1262.

8 For an overview of media freedom in Poland, see for instance Reporters Without Borders Index (RSF), https://rsf.org/en/country/poland

being influenced by the previous governing party. The proposal only suggests limited changes to members' terms and eligibility. Many CSOs and the Commissioner for Human Rights advocate for more systematic changes to ensure political pluralism and gender balance. Concerns persist about the Council's authority to fine broadcasters for unlawful content, yet the Ministry of Culture has shown no intention to amend these provisions.

II.2.3. Strategic Lawsuits and Legal Harassment

Journalists who attempt to challenge official narratives increasingly face legal intimidation. Strategic Lawsuits Against Public Participation (SLAPPs) are frequently employed against critical outlets, most notably Gazeta Wyborcza, which has faced over 60 lawsuits since 2015. These lawsuits are not necessarily designed to win in court but to exhaust the financial and emotional resources of journalists, thereby discouraging investigative reporting.

This tactic stifles public interest journalism, narrows the space for critical inquiry and chills freedom of expression. Legal professionals should note that these SLAPPs exploit ambiguities in defamation law and the politicisation of public prosecutors.

II.2.4. Disinformation and External Influence

The Polish media environment is also marked by rising disinformation, both domestically generated and externally fueled, particularly by Russian information operations. False narratives about migrants, LGBTQI+ communities and Ukraine have circulated widely on social media and fringe platforms. For instance, during the 2022 refugee crisis false claims were spread accusing Ukrainian refugees of receiving better healthcare and benefits than Polish citizens. These were designed to stoke resentment and social division. In some cases they found their way into state-influenced discourse.

The lack of a resilient, independent media sector leaves Poland vulnerable to such manipulation. Legal practitioners must be aware that disinformation undermines not just freedom of expression but also the democratic order itself.

II.3. Systemic Discrimination against Migrants and Asylum Seekers in Belgium

Belgium's commitment to equality is ambiguous. While progressive legal frameworks and practices exist in areas like LGBTQI+ rights and gender recognition, systemic inequalities persist, particularly affecting migrants, ethnic minorities and asylum seekers. The Belgian case illustrates how dissensus over the principle of equality and the prohibition of non-discrimination can undermine EU law and the Charter of Fundamental Rights. This summary highlights three areas of concern where legal practitioners and policymakers must remain particularly vigilant: hate crime and hate speech, policing and racial profiling and the treatment of asylum seekers.

II.3.1. Hate Crime and Hate Speech

Despite legislative reforms, hate-motivated crime remains a persistent problem in Belgium. National human rights institutions and civil society organisations continue to report high levels of racially and religiously motivated hate speech, particularly against Muslims, Black people and Asians. The COVID-19 pandemic intensified xenophobic rhetoric, often fuelled by political figures.

In response to an infringement procedure by the European Commission, Belgium amended its Criminal Code in 2022 to strengthen hate crime provisions. However, enforcement remains inconsistent. According to Belgium's national equality body (UNIA), in 2023 there were 484 investigated cases of alleged hate crimes, with 311 racially motivated.[9] A further 321 hate speech cases were recorded, with 241 racial in nature.

Notable prosecutions have occurred. For example, the leader of the extremist group Schild en Vrienden was convicted in 2024 of incitement to hatred, antisemitism and racism, receiving a one-year prison sentence and a 10-year suspension of civil rights. Nevertheless, the political normalization of hate speech by mainstream and far-right parties (e.g., Vlaams Belang, N-VA) continues to foster division and undermine democratic discourse.

II.3.2. Police Ill-Treatment and Racial Profiling

Institutional racism and discriminatory policing are systemic concerns in Belgium. Complaints about police conduct have consistently involved racial profiling, especially during identity checks and public protests. From 2019 to 2023 UNIA recorded nearly 600 complaints involving police discrimination, most of which were racially motivated.[10]

International bodies such as the UN Committee on the Elimination of Racial Discrimination and the UN Committee Against Torture have condemned Belgium's failure to address police misconduct. Issues include a lack of convictions for racially motivated police violence, inadequate oversight mechanisms, the absence of disaggregated data on police identity checks and limited legal safeguards against arbitrary police actions.

Belgium has introduced some guidelines to prevent ethnic profiling and improve complaint mechanisms. However, concerns persist about the use of emerging technologies in policing. AI-based surveillance, facial recognition and predictive policing (e.g., the "i-Police" program) risk entrenching discrimination by relying on biased historical data. The Ligue des droits humains warns that these systems disproportionately target migrants and marginalized groups, exacerbating existing inequalities in law enforcement.

9 Unia, Centre interfédéral pour l'égalité des chances, "Analyse Des Chiffres Des Signalements et Dossiers" (2024), 112–113. https://www.unia.be/files/Rapport_chiffres_2023_FR_-_finale_versie_1.pdf.

10 Unia, Centre interfédéral pour l'égalité des chances, 63.

II.3.3. Reception of Asylum Seekers: Legal Failures and Human Rights Risks

Belgium faces a longstanding crisis in the reception of asylum seekers. Since 2021 thousands of individuals have been denied shelter and basic services, despite legal obligations under the Reception Conditions Directive (2013/33/EU) and repeated court rulings ordering the state to provide accommodation.

Asylum seekers applying at the border are systematically detained, a practice deemed incompatible with EU law and condemned by both the European Court of Human Rights (ECtHR) in Thimothawes v. Belgium (Appl. no. 39061/11) and the UN Committee against Torture. Detention should only be used when necessary, based on individual assessments and not applied automatically. In 2023 the European Commission opened an infringement procedure against Belgium for failing to transpose the Reception Conditions Directive and the Qualification Directive (Directive 2011/95/EU) into national law. This infringement procedure is still open.

Overcrowding, lack of shelter and insufficient services have led to degrading treatment of asylum seekers. The ECtHR has issued multiple interim measures requiring Belgium to provide housing, notably in the Camara (Appl. no. 49255/22) and Al-Shujaa (Appl. no. 52208/22 and 142 others) cases. However, the state continues to ignore both domestic and European court rulings, drawing sharp criticism from Belgian courts and human rights bodies.

As of 2025 the state has ignored over 8,500 labor court rulings related to asylum reception. Authorities refuse to pay penalties imposed for non-compliance, prompting a federal investigation into the systematic failure to implement judicial decisions. In 2024 Belgium's top courts issued a joint memorandum emphasizing that final judicial decisions must be respected: this was an implicit rebuke of the government's failure to implement court-ordered accommodations.[11]

Belgium has been found to be in violation of the Convention on the Rights of the Child for detaining migrant children and for failing to provide proper accommodation. While legal reforms now prohibit detaining children in closed centers, "return houses", in which freedoms are limited, remain problematic. Further, unaccompanied minors are still at risk.

The UN Committee against Torture expressed concerns about Belgium's application of the non-refoulement principle, highlighting vague criteria for "safe" third countries, the burden of proof on asylum applicants and the lack of suspensive appeal options for deportation decisions. In September 2022 the European Commission initiated an infringement procedure against Belgium for failing to comply with the Return Directive. Additionally, new legislation allowing armed Frontex agents in Belgium raised alarms for human rights organisations, due to poorly defined powers and the risk of arbitrary actions without proper oversight.

11 Mémorandum commun de la Cour constitutionnelle, de la Cour de cassation et du Conseil d'État, July 2024, https://www.const-court.be/public/pbcp/f/pbcp-2024-002f.pdf

Recent developments reveal troubling practices around denying or revoking nationality and refugee status. The Foreigners' Office has instructed communes to revoke Belgian nationality from children of Palestinian descent, despite lacking legal competence. Stateless children born in Belgium have been denied nationality on the presumption that they could acquire another nationality abroad, contrary to Belgium's own Nationality Code and possibly to EU law (e.g., Rottman, C-135/08). These practices highlight how the state may use administrative discretion to exclude certain individuals from legal protections.

Migrants with irregular status face systemic discrimination that prevents them from accessing basic rights, including risk of deportation when reporting crimes, accessing healthcare, sending children to school, fines for attempting to recover unpaid wages and legal barriers to lodging complaints without authorized representation. These conditions contravene the EU Victims' Directive (2012/29/EU) and further marginalize vulnerable populations. Pending legislation may expand the capacity of CSOs to represent these individuals, but practical enforcement remains uncertain.

II.4. Challenges of Climate Litigation in the Netherlands

The Netherlands has become a hotspot of climate litigation, particularly through civil law-based public interest litigation cases driven by civil society organisations. General emission reduction cases started with the landmark judgment in Urgenda, where the Dutch State was ordered to reduce its greenhouse gas emissions by 25% by 2020 compared to its 1990 levels.[12] Urgenda was a groundbreaking decision that set a global precedent for holding governments legally accountable for their climate obligations. Despite these pioneering efforts, critical challenges remain in effectively addressing climate-related risks through litigation. In this section, challenges relating to enforcement, implementation and access to justice will be discussed.

II.4.1. Enforcement Challenges

In the Netherlands the enforcement of judgments in climate-related legal cases has emerged as a significant obstacle to effective climate change mitigation. A case in point is the second landmark case of Milieudefensie v. Shell. The Shell case set a precedent for the legal obligations of companies. Initially, in the first instance, the District Court of The Hague ordered Shell to reduce its global carbon emissions by 45% by 2030, relative to 2019 levels, marking a bold step toward holding corporations accountable for their climate impact.[13] However, this emission reduction target was overturned by the Court of Appeal in November 2024. The Court of Appeal reasoned that no clear societal standard or legal duty of care exists that compels fossil fuel companies

12 *Stichting Urgenda v Government of the Netherlands* (Ministry of Infrastructure and the Environment), ECLI:NL:RBDHA:2015:7145, Rechtbank Den Haag, C/09/456689/HA ZA 13-1396, para 4.35.

13 *Milieudefensie v. Royal Dutch Shell* (ECLI:NL: RBDHA:2021:5339) [2021]. https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:5339 .

like Shell to meet specific emission reduction targets.[14] This legal ambiguity undermines the enforceability of judicial decisions by eliminating a clear baseline, thereby limiting their practical impact. The case is now pending before the Dutch Supreme Court in the last instance.

Despite the Court of Appeal ruling, the CSO Milieudefensie maintains that Shell is breaching its legal duty of care under Dutch law by failing to significantly reduce investments in fossil fuels and lacking a robust climate strategy for the coming decades.[15] This situation exemplifies the core enforcement challenge: courts struggle to translate broad climate goals into precise, binding emission reduction targets that companies must follow. As a result, corporations may technically comply with legal requirements without making meaningful changes to their business practices. The absence of clearer legal standards for enforcing effective climate action undermines the transformative potential of climate litigation to drive substantive change.

II.4.2. Implementation Gaps

Another persistent challenge in climate-related litigation pertains to the genuine implementation of judicially mandated climate obligations. The Urgenda case, while groundbreaking in its legal recognition of the Dutch State's responsibility to reduce greenhouse gas emissions, illustrates this issue clearly. Although the target was technically met, evidence shows that the reduction was largely due to extraneous factors such as economic downturns and shifts in international emissions, rather than effective government policies or enforcement of the court's decision.

Accordingly, while judicial decisions contribute to formulating a body of legal obligations that inform state action and public debates, meaningful climate action requires effective, well-designed policies and enforcement mechanisms. The former leads to a legal climate where it is easier to adopt the latter; yet, political pushback flares up when courts demand that states act in line with their international climate commitments. Much is lost in misrepresentation by politicians who shy away from articulating that deep socioeconomic changes are the only way to address the climate crisis. To achieve long-term emission reductions, climate litigation must be translated into a political debate that allows for systemic changes that support genuine mitigation efforts.

II.4.3. Access to Justice: The Legal Aid Lens

In terms of practicalities and feasibility, initiating climate-related litigation in the Netherlands raises concerns about access to justice and legal aid. While landmark cases like Urgenda and Milieudefensie v. Shell demonstrate the potential of public interest litigation to drive climate action, many citizens and vulnerable groups face significant barriers in pursuing their own claims.

14 *Milieudefensie et al v Royal Dutch Shell plc* (ECLI:NL:GHDHA:2024:2100) [2024].

15 Isabella Kaminski, "Dutch NGO hits Shell with fresh legal challenge - and the impact could be enormous" EuroNews, 13 May, 2025. https://www.euronews.com/green/2025/05/13/dutch-ngo-hits-shell-with-fresh-legal-challenge-and-the-impact-could-be-enormous Accessed 14 May 2025.

Climate litigation often requires extensive legal expertise, scientific evidence and financial resources – factors typically beyond the reach of individual plaintiffs or marginalized communities.[16] Although the Dutch legal system allows for collective actions and provides some forms of legal aid, these mechanisms are complex, particularly when it comes to injunctions or claims for damages. In the case of damages, the process can be especially restrictive, limiting the ability of affected parties to hold governments or corporations accountable for climate-related harms. This may exclude individuals who are indirectly affected or those to whom damages have not yet fully been paid.

The complexity of climate change and the procedural hurdles involved mean that much of the burden for climate accountability falls on well-resourced CSOs and activist groups, potentially limiting the democratic inclusiveness of climate justice efforts. Enhancing access to justice and broadening legal standing in environmental cases remain essential steps toward empowering a wider range of actors to participate meaningfully in climate governance.

III. CONCLUSION

The case studies from Hungary, Poland, Belgium, and the Netherlands illustrate how dissensus over liberal democracy manifests in different national contexts, ranging from destructive challenges to milder disputes over specific policies. While the forms and intensity of dissensus vary, they all highlight the fragility of liberal democratic principles when confronted with political, institutional pressures. More broadly, these examples underscore the need for robust mechanisms to anticipate and respond to such challenges. Strengthening early warning tools and strategic litigation can help legal practitioners and civil society organisations play a proactive role in safeguarding democratic values and the rule of law across the European Union.

At the same time, dissensus should not be understood solely as a threat, but also as an opportunity to clarify, defend, and renew the core commitments of liberal democracy. This can be achieved by recognizing emerging tensions early and addressing them through legal, institutional and civic channels. This requires sustained cooperation between policymakers, legal practitioners, academic experts and civil society actors to ensure that the principles of the rule of law and fundamental rights remain living guarantees rather than merely abstract declarations.

16 Riccardo Luporini, "Strategic Litigation at the Domestic and International Levels as a Tool to Advance Climate Change Adaptation?" *Yearbook of International Disaster Law Online 203* (2023): 219.