

BACK TO THE PAST: BACKSLIDING IN POLAND AND HUNGARY AND THE FUTURE PROSPECTS OF THE EUROPEAN UNION

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Abstract

Hungary and Poland started out as success stories in 1989, however today both project significant backsliding in liberal democratic values. Euroscepticism, ethno-nationalism and populism is rising; Orbán and Kaczyński lead their countries against the European wind. The paper shows that traditions of the past could not be so easily overridden. Ultimately for both countries the accession to the European Union was rushed and liberal democratic values could not be properly entrenched in the mainstream, in countries which were under foreign rule for a significant amount of time and still figuring out their own identity. The thesis outlines various domestic and external issues that have led to the election of first Fidesz, and Viktor Orbán, and then, PiS and with it, the person who leads from behind the curtains, Jarosław Kaczyński. The Hungarian ‘example’ was followed in Poland and caused both to go against almost every founding principle of the European Union. By this its very essence came into question, which should categorize the rise of illiberal democracies as the foremost issue to be solved.

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Introduction

In recent years we can experience some wear and tear on the concept of democracy as a whole; and liberal democracy more specifically. As neo-functionalists argued integration would generate a process by which common problems would encourage integration in various fields thus fuelling self-supporting integration dynamic which ultimately can lead to political federalisation.¹ This process made possible the pooling of powers to various supranational institutions while maintaining the illusion that states are still fully sovereign entities. However, since the 1990s the flaws of neo-functionalism emerged, and European integration is in a downward spiral. Pfaff² argued about nationalism as the force that upset the EU project and resists further expansion as well as further concentration of executive power beyond the state. Growing Euroscepticism can signal a larger identity challenge than merely new threats on the horizon. These attitudes today carve the way for the search for “more traditional notions of nation, religion and gender, coupled with nostalgia for a time of greater ethnic homogeneity”³. As Roger Cohen⁴ put it: “the forces of disintegration are on the march” and “the foundations of the post-war world ... are trembling.” Europe's inability to defend its values in Hungary set off a disturbing process that, since autumn 2015, has also been underway in Poland hence it should

¹ Reho, Federico Ottavio (2017) ‘A New Europeanism Before It is Too Late’, *European View*, 16 (1), (June 2017), 85-91

² Pfaff, William “What’s Left of the Union?” *The New York Review of Books*, July 2005, Available: <http://www.nybooks.com/articles/18117>, Accessed: 04.04.2018

³ Kimmage, Michael “What happened to the European Union?” *The New Republic*, January 2018, Available: <https://newrepublic.com/article/146524/happened-european-union> Accessed: 2018. 04. 11

⁴ Cohen, Roger “Opinion: Europe and the Unthinkable” *The New York Times*, June 2016, Available: <https://www.nytimes.com/2016/06/11/opinion/europe-and-the-unthinkable.html?smid=fb-nytopinion&smtyp=cur>, Accessed: 01.04.2018

be the paramount interest of Europe to prevent further escalation of the problem. However, it is not something which came out of the blue. The historical trajectory from the transition to democracy until today can explain why liberal democracy has virtually failed in these two countries, while neighbours are catching up to the core of the European Union. This is the first question this thesis aims to answer.

The rule of law has been replaced by the rule of men through law, hence we are unable to talk about liberal democracies regarding the above-mentioned regimes.⁵ As Merkel argued these leading political figures do not feel obliged to apply constitutional norms but rather the norm and political aim they established themselves⁶. However, it is important to settle that we cannot put Hungary and Poland in the category of autocracies just yet. While the line is thin between the current regimes and autocracies, they still uphold the principle of democratic elections.⁷ With this in mind, it is interesting to look at statistical data conducted by the Pew Research Centre in 2017.⁸ This revealed that large numbers in many nations would not be opposed to

⁵ Merkel, Wolfgang/ Puhle, Hans-Jürgen/ Croissant, Aurel/ Eicher, Claudia/ Thiery, Peter

(2003): Defekte Demokratie. Band 1: Theorie. Opladen: Leske und Budrich Verlag. in Grünewald, Aline “As in Hungary now in Poland? Accessing the states of democracy in Hungary and Poland as ‘lands in-between’ democracy and autocracy” Universität Bremen, 2017, 1-77, 47

⁶ *ibid.*

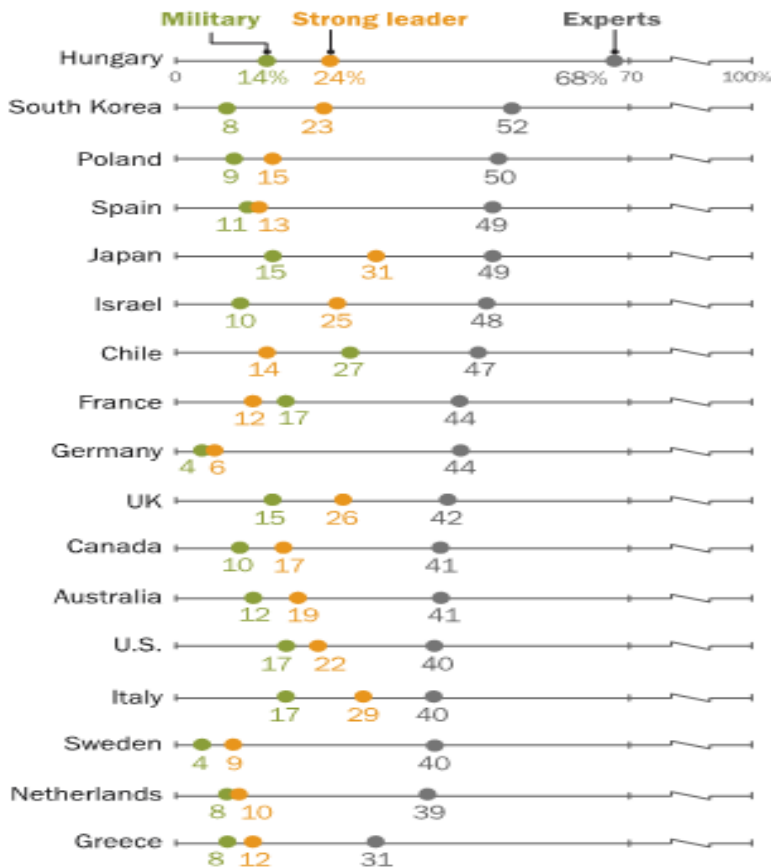
⁷ Merkel, Wolfgang „Systemtransformation. Eine Einführung in die Theorie und Empirie der Transformationsforschung” 2., überarbeitete und erweiterte Auflage. Wiesbaden: Verlag für Sozialwissenschaften, 2010, 23 in Grünewald, Aline “As in Hungary now in Poland? Accessing the states of democracy in Hungary and Poland as ‘lands in-between’ democracy and autocracy” Universität Bremen, 2017, 1-77

⁸ Wike, Richard; Simmons, Katie; Stokes, Bruce and Fetterolf, Janell “Globally, Broad Support for Representative and Direct Democracy: But many also endorse nondemocratic alternatives” Pew Research Center, October 2017, Available:<http://www.pewglobal.org/2017/10/16/globally-broad-support-for-representative-and-direct-democracy/>, Accessed: 15.05.2018

political systems that are inconsistent with liberal democracy. In Hungary 24% prefers a strong leader and a striking 68% would choose experts and not elected representatives to make key

In high-income countries, many would consider nondemocratic alternatives

Rule by ___ would be a good way to govern our country



Note: Full question wordings for political systems: Rule by experts, "Experts, not elected officials, make decisions according to what they think is best for the country"; Rule by a strong leader, "A system in which a strong leader can make decisions without interference from parliament or the courts"; Rule by the military, "The military rules the country."
Source: Spring 2017 Global Attitudes Survey. Q29c-e.

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decisions based on what they think is best for the country. With this result, Hungary is the least committed to values advocated by the European Union among the North American and European countries included in the survey. In Poland the picture is similar. Unsurprisingly, a similar 23% prefers a strong leader on the top of the country, and 52% would trust experts to run their lives. (Figure 1)

Figure 1 Global attitudes Survey, Preferred Political Systems

These results support the historical fact that existential instability in Eastern and Central European countries means that prosperity, a strong economy and strong leaders are considered more important than democracy or democratic government.⁹

Furthermore, the commitment to representative democracy is low in Hungary and somewhat average in Poland.¹⁰ (Figure 2) Hungary is for instance closer to Russia in this respect than to the EU core.

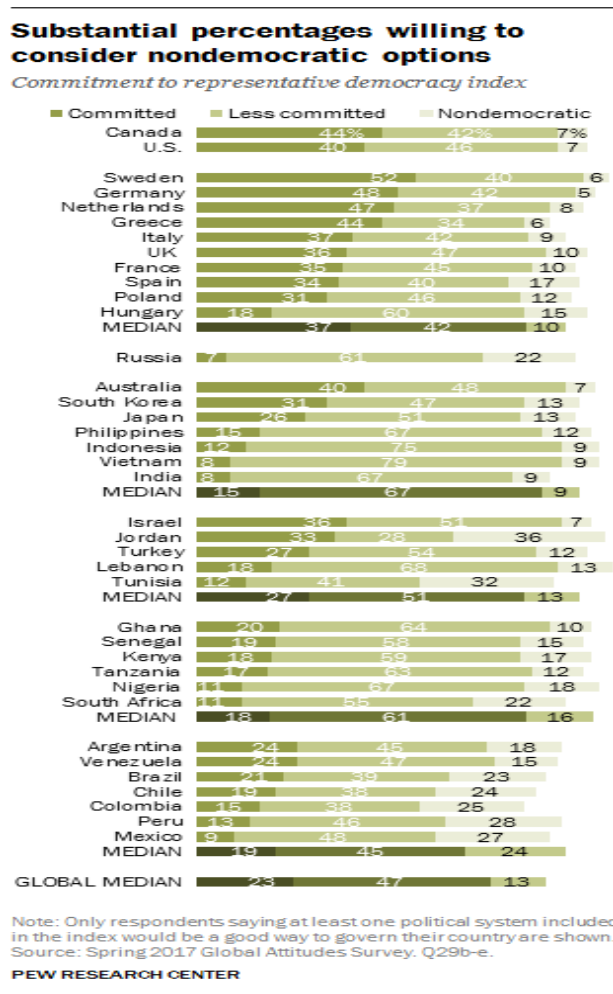


Figure 2 Preferred way to Govern their country, Global Attitudes Survey

⁹ Halmai, Gábor “The decline of liberal democracy in Europe’s midst” Eurozine, 2016, Available: <https://www.eurozine.com/the-decline-of-liberal-democracy-in-europes-midst/>, Accessed: 20.03.2018

¹⁰ Wike, Richard, et al. “Globally, Broad Support for Representative and Direct Democracy: But many also endorse nondemocratic alternatives”

On the other hand, we have to note that the European Union also failed these countries. Arguably, the pressures for macroeconomic convergence from the European Union, contributed to political imbalances in many countries of the region. “Polycrisis in the EU under the New-World Order has led to an increasing core-periphery divide, which threatens to marginalise the Central Eastern European (CEE) region further and portends future conflicts between Central Eastern Europe and central EU institutions.”¹¹ Western fallacy had its victim again, the “carbon copy”¹² of the Western type liberal democracy could not be replicated in these societies. Western civil society was the product of much longer and substantial historical developments. Thus, to understand current issues investigating the historical trajectory is paramount. Trust in the EU is fragile to say the least. According to the survey of the Eurobarometer¹³ in 2017 half of all respondents tend to trust the European Union (47%), while almost as many (46%) tend not to trust it. This is a rather ambivalent result, and times like this one should view it with caution. Nevertheless, we can still argue that the advantages coming from the European Union still outweigh any democratic losses. The EU has been an important factor in bringing about social and economic development, of which the CEE countries are some of the greatest beneficiaries.¹⁴ However, if the rules and regulations are not implemented and obeyed the EU ceases to exist.¹⁵ That is why one of the biggest threats to the

¹¹ Ágh, Attila „The Deconsolidation of Democracy in East-Central Europe: The New World Order and the EU’s Geopolitical Crisis” *Politics in Central Europe*, 12 (3) (February 2017), 7-36, 8

¹² *ibid.* 12

¹³ European Commission “Special Eurobarometer 461: Designing Europe’s future: Trust in institutions, Globalisation, Support for the euro, opinions about free trade and solidarity” April 2017, 1-70

¹⁴ *ibid.*

¹⁵ Toshkov, Dimiter (2012) ‘Compliance with EU Law in Central and Eastern Europe: The Disaster that Didn’t Happen (Yet)’ *L’Europe en Formation*, 2 (364), 2012, 91-109

European project is arguably the worrisome trends in CEE countries, particularly Hungary and Poland. The illiberal trends in these countries threaten the very core of the EU, their defiance of the rule of law, democracy or liberalism attack the foundations of the union and turning into a political crisis. However, the best solution for the current problems is still debated among European elites. While unity is the uppermost interest, if the disease of illiberalism spreads the EU's future could be the price. Hence, in its last chapter this thesis tries to provide a possible solution.

As mentioned in this Introduction, the aim of this research is twofold, first, to answer how PiS and Fidesz was able to lead their countries to the current paths by investigating the processes from the transition period, through accession to the European Union. This will provide us information about the political and cultural shortcomings in Hungary and Poland were which later prevented liberal democracy to be entrenched in the society and the political elite alike. With these developments in mind the thesis will outline the specific steps of the PiS and Fidesz governments, led by Viktor Orbán and Jaroslaw Kaczyński by engaging with the theory of executive aggrandizement as its theoretical basis. The reason for choosing this framework is because both in Hungary and in Poland we can see that the executive is abolishing the division of power and with it, checks and balances Furthermore in both, a charismatic leader is pursuing its own agenda based on ideological sentiments. Even though it is only one (out of various) variety of backsliding of democracy, this theory can give us a frame to outline the developments in the two countries. In its last part the thesis will elaborate on the missteps and measures of the European Union regarding these two countries and speculate about the future of the European project.

Chapter 1

Literature Review

Democratic consolidation is the process which holds that once a country develops democratic institutions, a robust civil society and a certain level of wealth, that system is secure.¹⁶ However, as we can see from the backsliding of some post-communist regimes of CEE this process can be easily turned on its head. On the other hand, one has to consider whether the current trends are only temporary, another challenge the EU merely needs to tackle and then move on.

Before we discuss the literature theorising the backsliding of Hungary and Poland, it is important to view a more holistic picture. Political scientists are not unified on the idea that there is democratic recession on a global level. Some experts argue that problems of democratic recession are solely country specific, and it would be unwise to suggest that it is a universal trend.¹⁷ They argue that scientists studying the 1990s and 2000s were too optimistic and simply overexaggerated the positive aspects which now leads to an overexaggerated pessimism. “Perceptions of a democratic recession [...] are rooted in a flawed understanding of the events of the early 1990s.”¹⁸ They further insist that “despite increasingly unfavourable global conditions in recent years, new democracies remain strikingly robust.”¹⁹ Supporting the

¹⁶ Traub, James “First, They Came for the Experts”, *Foreign Policy*, July 2016 Available: <http://foreignpolicy.com/2016/07/07/liberalism-isnt-working-but-illiberal-democracy-is-coming-to-america-trump-erdogan-orban/> Accessed: 2018. 04. 09

¹⁷ Levitsky, Steven and Way, Lucan “The myth of democratic recession”, *Journal of Democracy*, 25 (1) (January 2015), 45-58

¹⁸ *ibid.* 45

¹⁹ *ibid.* 46

temporary struggle side of the debate, the ‘failing forward’ concept highlights that Europe is always in a painful cycle where a crisis is followed by incremental reform that leads to deeper integration.²⁰ However, what if the core of the European values is under siege from national elites? Can that be only temporary? Miller upright argues that the EU now has reached its apex. “The integration endeavour appears destined to stall out, if not regress.”²¹ Although such characteristics have also been observed in older EU member states, these “symptoms’ strength and their simultaneous occurrence in the new member states signal deeper troubles for the democracies of the CEE region.”²² The question arises whether we have strong grounds for self-confidence in democracy. Even so, if one considers the concept to be much more than merely multi-party elections. Full-fledged support for democracy should also encompass a commitment to liberal values such as the protection of key rights and civil liberties and citizens should feel and incentive to participate in politics.²³ But on the contrary, people are feeling distant from decision making. Greskovits termed the process as the hollowing out of democracy. According to this concept, hollowing-out is caused by the fact that “citizens exit from the democratic arena and political parties exit from bonds with their constituencies...”²⁴

²⁰ Jones, Erik; Kelemen, Daniel R.; and Meunier, Sophie “Is Europe failing, or is it ‘failing forward’?” *The Washington Post*, July 2017, URL: https://www.washingtonpost.com/news/monkey-cage/wp/2016/07/05/is-europe-failing-or-is-it-failing-forward/?utm_term=.418228d4fd35 Accessed: 2018. 04. 10

²¹ Miller, Bowman H. “Tomorrow's Europe: A Never Closer Union”, *Journal of European Integration*, 39 (4) (April 2017), 421-433, 426

²² Greskovits, Béla “Economic Woes and Political Disaffection” *Journal of Democracy*, 18 (4) (October 2007), Published by Johns Hopkins University press, 40-46, 40

²³ Foa, Roberto Stefan and Mounk Yascha “The Danger of Deconsolidation: The Democratic Disconnect”, *Journal of Democracy*, 27 (2) (July 2016), 7-15

²⁴ Greskovits, Béla and Anheier, Helmut K. “The Hollowing and Backsliding of Democracy in East Central Europe”, *Global Policy*, 6(S1), (June 2015), 28-37, 3

In other words, voter turn-outs decline at elections, citizens become more resilient towards parties and party identification, the volatility of voter preferences grow hence we can see more undecided voters who are disappointed in politics.²⁵ These anti-establishment sentiments come useful for populist candidates, who use simple black and white slogans to lure supporters. Topics usually identified with liberal thinking - such as condition of the Roma or LGBT rights, or substantive, informed debate on the political power of economic elites- are out of public discussion. These silences and gaps set de facto limits on the scope of liberal democracy.²⁶ The above-mentioned ideas also give the founding principles of the European Union. Hence, the importance of studying their neglect. Overall, this thesis rejects the idea that this struggle is only temporary. The issues are becoming significantly entrenched on the grassroots as well as on the elite level.

As this paper investigates backsliding in two EU member states the following paragraphs will explore liberal democracy in Europe. European liberal democracy dates to the 19th century, and its modern form, with its particular kinds of political and administrative institutions forms part of our common European heritage of philosophy and practice.²⁷ While initially European integration was about economic cooperation, today it is much more than that. Common laws and values should sail us towards a strong, united cooperation. However, the backsliding of democracy and the failure of liberal democracy in Hungary and Poland detoured this trajectory.

²⁵ *ibid.*

²⁶ Hanley, Seán and Dawson, James “East Central Europe: The Fading Mirage of the ‘Liberal Consensus’” *Journal of Democracy*, 27 (1) (January 2016), 20-34

²⁷ Prof. Loughlin John, Prof. Aja Eliseo, Dr Bullmann Udo, Dr Handriks Frank, Dr Lidström Anders, Prof. Seiler Daniel “Regional and local democracy in the European Union” *European Communities*, 1999, 1-196 Available: <http://cor.europa.eu/en/documentation/studies/Documents/Regional-and-local-democracy-in-Europe/RL-DEMOCRACY-EN.pdf>, Accessed: 13.05.2018

The consolidation of democracy was the core for successful cooperation and prosperity for the European states. The process started with the Maastricht Treaty in 1992 where Article F defined the core ideas:

*The Union shall respect the national identities of its Member States, whose systems of government are founded on the principles of democracy*²⁸

Followed, by the Copenhagen criteria of 1993, the EU altered its policies for the newly democratic post-communist states. It highlighted that states must respect democratic values and promote them as well.

*The EU's founding values are 'human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities'*²⁹

Candidate states are to this day required to possess the characteristics of a regime which is based on the above outlined principles. However, consolidated democracies that emerged in Western Europe after World War II had solid foundations of socio-economic development after three decades of rapid economic growth, moreover, their civil society had even longer term historical developments.³⁰ Making a carbon copy of this in CEE was a risky idea. Historically, there is a recurring tension which has defined and shaped Europe since the starting point of liberalism:

²⁸ Evolution of fundamental rights provisions in the EU Treaties, Available: <https://www.wpia.uni.lodz.pl/files/profiles/295/Prot%20of%20Fund%20Rights/Evolution%20of%20fundamental%20rights%20provisions%20in%20the%20EU%20Treaties.pdf> Accessed: 17.05.2018

²⁹ *ibid.*

³⁰ Ágh, Attila „The Deconsolidation of Democracy in East-Central Europe: The New World Order and the EU's Geopolitical Crisis” 7-36

“between enlightenment and reactionary, counter-enlightenment forces”.³¹ Moreover, post-communist countries often blame liberalism to be the cause of the major problems after the transition period. They argue that liberalism was the reason corruption, greed and mass privatization could flow into their newly established, vulnerable democracies. Others argue that it has weakened the state and its public institutions, thus allowing politicians and economic oligarchs to exploit the state and to absorb funds that could have been used to support social welfare and education.³² Today we can see, that despite the significant economic and social benefits flowing into CEE countries, and general public support from the masses³³ right-wing, populist leaders were able to blame the “imaginary bureaucrats in Brussels, who promote gay rights, impose refugee quotas on member states and try to deprive Central European states of their sovereignty.”³⁴ As Viktor Orbán put it in his speech at Tusnádfürdő in 2014, citing an unnamed analyst: liberal values today “embody corruption, sex, and violence.”³⁵ Although illiberal tendencies of CEE nationalists have been present since at least the fall of communism, the refugee crisis has mobilised the far right and shown that radical groups are more numerous on this side of Europe. Today we can definitely see a struggle between those who promote liberal values, such as individual freedom, protection and universal human rights and more

³¹ Ábrahám, Samuel “No alternative to liberal democracy?” New Eastern Europe, April 2017, Available: http://neweasterneurope.eu/old_site/articles-and-commentary/2341-no-alternative-to-liberal-democracy Accessed: 15.03.2018

³² *ibid.*

³³ Hungary (52%) and Poland (57%) are among the countries where respondents tend to trust the EU. (Special Eurobarometer 461, 2017)

³⁴ Ábrahám, Samuel “No alternative to liberal democracy?”

³⁵ Prime Minister Viktor Orbán’s Speech at the 25th Bálványos Summer Free University and Student Camp, 26th July 2014, <http://www.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/prime-minister-viktor-orban-s-speech-at-the-25th-balvanyos-summer-free-university-and-student-camp>

conservative politicians who advocate for more traditional values such as community, religion, tradition and ethnic homogeneity.³⁶ Unease about democracy became the dominant mood in the region with a populist turn and growing Euroscepticism.³⁷ Politicians recognize that Western liberal democracy has failed to deliver and there might be demand for “an ‘Eastern’ approach based on a strong state, a weak opposition, and emaciated checks and balances.”³⁸ The historical trajectory of deconsolidation was already visible to some extent in the first decade after the transition, however was swept away by EU-euphoria and over-optimism that EU accession brought about.³⁹ Nevertheless, the global financial crisis of 2008 hit Central Eastern European countries hard and shed light to the weak development of semi-periphery. Still, the scale of interference with basic, liberal principles of the rule of law shown by Hungary and Poland is unprecedented in the history of the European Union.

But what is democratic backsliding after all? This is also a highly debated concept. Different authors define backsliding in various ways. Greskovits⁴⁰ for instance, highlights the radicalization of sizeable groups within the remaining active citizenry. While, Lust and Waldner⁴¹ argues that the process of democratic backsliding describes policies that change political institutions and political practices. It degrades citizens’ rights, and therefore also their engagement with the state. The accountability of the government declines, and the citizens lose

³⁶ Ábrahám, Samuel “No alternative to liberal democracy?”

³⁷ *ibid.*

³⁸ <https://freedomhouse.org/report/modern-authoritarianism-illiberal-democracies>

³⁹ Ágh, Attila „The Deconsolidation of Democracy in East-Central Europe” 7-36

⁴⁰ Greskovits, Béla and Anheier, Helmut K. “The Hollowing and Backsliding of Democracy in East Central Europe” 28-37

⁴¹ Lust, Waldner and Ellen, David “Theories of Democratic Change” USAID, 2015, 1-129, 3

their power to influence policy. As we can see the idea of hollowing out is an integral part of democratic backsliding. In Larry Diamond's view democratic breakdown predominantly occurs through subtle but incremental degradations of rights and procedures.⁴² While Nancy Bermeo⁴³ argued that democratic backsliding is the "state-led debilitation or elimination of any of the political institutions that sustain an existing democracy." She explains that the concept consists of multiple processes and actors, since the structures upholding democracy are manifold. An important notion about the theory is that democratic backsliding can occur without leading to a democratic breakdown, so the theory is not deterministic.⁴⁴ This can link back to our argument that while these governments seriously stripped down liberal democratic rules we still cannot categorise them as authoritarian regimes. This ambiguous zone between democracy and autocracy is still a challenge to scientists. We can find several theories which try to encompass these regimes. For one, Larry Diamond argued that democracies should be categorised as either liberal, semi-liberal or illiberal depending on the scores measuring civil rights. Based on the 1-7⁴⁵ scale of Freedom House, according to Diamond those with a score above three are semi-liberal and regimes with four or above are declared illiberal democracies.⁴⁶ However, we can suggest that this idea might be too simplistic to categorise these regimes. First because these governments often mix liberal and illiberal elements and also because the measurement of

⁴² Diamond, Larry „Facing Up to the Democratic Recession”, *Journal of Democracy*, 26(1), 2015, 141-155

⁴³ Bermeo, Nancy “On Democratic Backsliding” *Journal of Democracy* 27 (1) (January 2016) 5–19, 5

⁴⁴ *ibid.*

⁴⁵ where the higher score indicates less protection and promotion of civil rights by the state

⁴⁶ Diamond, Larry „Is Pakistan the (Reverse) Wave of the Future?” *Journal of Democracy*, 11 (4), 2000, 81-107, 95

Freedom House is highly contested even among experts.⁴⁷ On the other hand, for instance Merkel presents an extended definition of liberal democracy, called embedded democracy based on which sub-types of defective democracies can be distinguished.⁴⁸ Hence, democracies which fall short on one or more aspects of embedded democracies are not automatically autocracies, but rather ‘defective’ subtypes of democracies. In his view there are five partial regimes which create an embedded, liberal democracy. These dimensions only work as a set, in consistency. For our discussion about the Hungarian and Polish regimes, the description of ‘illiberal democracy’ will be used as coined by Fareed Zakaria.⁴⁹ There are three main signs if a regime should be considered for the illiberal democracy label. First, the lack of enforcement of civil and political rights and freedoms. Secondly, the functionality of the judiciary is restricted and there is systematic corruption within politics and administration. Thirdly, we can experience a strong political influence of the judiciary. All the three could be ticked out if we consider Hungary and Poland.

⁴⁷ Several scholars have criticized the Freedom House democracy ratings as being politically biased. Supposedly countries with stronger ties to the US get better ratings. in Steiner Nils D. “Comparing Freedom House Democracy Scores to Alternative Indices and Testing for Political Bias: Are US Allies Rated as More Democratic by Freedom House?” *Journal of Comparative Policy Analysis: Research and Practice*, 18 (4) (2016) Available: <https://www.tandfonline.com/doi/abs/10.1080/13876988.2013.877676?src=recsys&journalCode=fcpa20>, Accessed: 17.05.2018

⁴⁸ Merkel, Wolfgang „Embedded and Defective Democracies” In Croissant Aurel and Merkel Wolfgang (eds.): *Special Issue of Democratization: Consolidated or Defective Democracy? Problems of Regime Change*, 11(5), 2004, 33-58

⁴⁹ Zakaria, Fareed „The Rise of Illiberal Democracy” *Foreign Affairs*, 76 (6) (November 1997), 22-46

The reason why this study starts with the outline of the transition legacy is because the past could be a reliable guide to the future, as argued by Foa and Mounk.⁵⁰ Before the fall of the Soviet Union nobody would seriously consider that it would collapse anytime soon. It was a collective failure from social scientists and policy makers alike. Based on this, we should not leave the current trends unnoticed. Statistical data shows that among the countries that were liberal in 2006 the main trend has been the weakening of the liberal-democratic character.⁵¹ Populist strongmen have “begun to put pressure on critical media, to violate minority rights, and to undermine key institutions such as independent courts.”⁵² The new democracies of the CEE region could not implement the changes deep enough to reach the desired level of liberal democratic system. We can observe the same elites, and forces of national and social conservatives now as in the transition period, hence these trends remained entrenched in the mainstream. The process of European integration was based on the idea that interdependence among liberal-democratic states brings peace and prosperity. The conditions for this were reinforced with the Copenhagen criteria in June 1993, which called for aspiring post-communist member states to establish stable institutions which would guarantee democracy, the rule of law, human rights and the protection of minority.⁵³ However, learning from the current

⁵⁰ Foa, Roberto Stefan and Mounk Yascha “The Danger of Deconsolidation: The Democratic Disconnect”, 7-15

⁵¹ Lührmann, Anna; Wilson, Matthew and Mechkova, Valeriya “Is democracy on the decline? Not as much as some pundits want you to believe.” The Washington Post, June 2017, URL: https://www.washingtonpost.com/news/monkey-cage/wp/2017/06/26/is-democracy-on-the-decline-not-as-much-as-some-pundits-want-you-to-believe/?utm_term=.675e2f037731 Accessed: 15.03. 2018

⁵² Foa, Roberto Stefan and Mounk Yascha “The Danger of Deconsolidation: The Democratic Disconnect” Journal of Democracy, 27 (3) (July 2016), 5-17, 16

⁵³ Lucarelli, Sonia “Peace and Democracy: The Rediscovered Link: The EU, NATO and the European System of Liberal-Democratic Security Communities” NATO Euro-Atlantic Partnership Council Individual Research Fellowships, 2002, 1-72

tendencies, we have to recognize that successful liberal societies require more than the formal institutions of democracy. They also depend on a broad and deep commitment to the underlying values of a liberal society. We can argue that if the society does not genuinely embrace the liberal order, merely ‘free and fair’ elections will not change the system for good. CEE countries adopted a formal institutional framework of Western democratic market economies very rapidly. This brings us the question to what extent, or even whether at all, could people think and behave according to Western formal rules. This sort of cultural and normative commitment cannot be developed overnight or injected from outside.⁵⁴

After careful study of the existing literature this thesis treats Poland and Hungary as illiberal democracies and to explain the processes the thesis uses Nancy Bermeo’s idea about executive aggrandizement. She argues in her theory that executive aggrandizement is the process through which the checks on executive is gradually weakened. She states that “elected executives weaken checks on executive power one by one, undertaking a series of institutional changes that hamper the power of opposition forces to challenge executive preferences [...] Such changes are usually framed as having resulted from democratic mandate.”⁵⁵ Furthermore, the power of opposition forces is weakened but it is done through legal methods. This process requires majority control. Both in Hungary and Poland a nationalist party holds the parliamentary majority, in both countries the government made changes in the constitutional law and centralized power into their own hands. And in both countries the composition of the Parliament, including the leading parties, furthermore the government were chosen through

⁵⁴ Walt, Stephen M. “The Collapse of the Liberal World Order” *Foreign Policy*, June 2016, Available: <http://foreignpolicy.com/2016/06/26/the-collapse-of-the-liberal-world-order-european-union-brex-it-donald-trump/> Accessed: 13.03.2018

⁵⁵ Bermeo, Nancy “On Democratic Backsliding” *Journal of Democracy* 27 (1) (January 2016) 5–19, 10

democratic election. The primary targets of this strategy are the restriction of media freedoms as well as the judiciary's independence and autonomy.⁵⁶ Since both party's *de facto* control, the respective parliaments, the judiciary is the only branch of government that holds significant control over the executive. In order to pass controversial and possibly unconstitutional legislation that will favour the leading party's interests, the judiciary, and especially the Constitutional Court, must be subordinated to the executive. Such aggrandizement is usually pursued through the country's constitution, either by implementing a new one, as happened in Hungary, or by issuing a referendum, as it has been announced in Poland.⁵⁷ We have to note that although, in Bermeo's initial idea the process is gradual, the thesis will outline in a later chapter, why Poland also fits in this category.

To sum up, based on the processed literature this thesis will treat Hungary and Poland as illiberal democracies and through the theory of executive aggrandizement, assess how backsliding is ongoing in these countries which signals a deeper crisis within the EU than one might think for the first glance.

Methodology

As Yin⁵⁸ argues case studies are the preferred methods when 'how' and 'why' questions are asked. Furthermore, when the researcher has little control over events, when the focus is on a contemporary phenomenon with some real-life context. Adding to the value of the research

⁵⁶ Bermeo, Nancy "On Democratic Backsliding" 11

⁵⁷ *ibid.*

⁵⁸ Yin, Robert K. "Case Study Research: Design and Methods", Sage Publications, Second eds., Applied Social Research Methods Series, Vol. 5, 2003, 1-15

some process tracing⁵⁹ is also included in order to gain a better understanding of causal dynamics between the period of consolidation and now. It is important to investigate historical trajectory of the two countries through the transition to the accession and after 2004 until the respective elections as this bears significant importance to the possibilities Orbán and Kaczyński were able to achieve. For our narrative the independent variables are the two countries whilst the dependent variables are the systems Fidesz and PiS produced as an outcome. Furthermore, if we would like to use this research to generalize on the EU's role and future regarding these regimes a comparative method would be the most appropriate. The reason why the case study method is the most suitable for this research is that small n-studies give us the chance to pinpoint the similar areas in the processes. Concerning our research, we can find several areas of similarity between the two regimes. Both countries exited foreign rule in 1989 and started their democratic consolidation at the same time as success stories. Both acceded to the European Union on May 1st, 2004 as part of the Eastern enlargement with similar converging freedom scores. Moreover, both belong to the same regional cooperation, the Visegrád Group and the ideological, normative and practical elements of the Fidesz and PiS governments show extensive similarities. Furthermore, the strongman personality is present for both Viktor Orbán and Jaroslaw Kaczyński. For this reason, the Most Similar Systems Design (MSSD) is the most useful for our research.

⁵⁹ Beach, Derek. "Process-Tracing Methods in Social Science." *Oxford Research Encyclopedia of Politics*, January 2017, Available: <http://politics.oxfordre.com/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-176> Accessed: 19.05.2018

Chapter 2

Democratic consolidation

In the following chapters the historical trajectory of the two regimes will be discussed in parallel to each other. For a better understand we will start with the time of democratic consolidation in the two countries, which means from 1989 until the accession to the European Union (2004). After that the political climate of the regimes will be outlined between 2004 to the respective elections of Orbán and Kaczyński. As mentioned before it is important to study the history of these countries as democratic regimes because this can indicate various challenges which could have contributed to the current situation.

The experiences of the regime change

Hungary

Between 1990 and 2010 Hungary has been a functioning liberal democracy⁶⁰ however, by 2011 democratic political order fell into a crisis. The Fidesz government succeeded in deconstructing the components of a consensus-based liberal democracy in the name of a majoritarian democracy.⁶¹ However, the era of transition has already signalled that liberal democracy is not something that comes naturally to the Hungarian state, and political elite. The entrenched national and social conservatism never actually went away, it was only hidden under the EU-

⁶⁰ judged against the ideas of modern, Western type democracies

⁶¹ Bozóki, András “Façade Pluralism in Semi-democracies: The Case of Hungary” Paper presented at the panel: “Is Pluralism Still Relevant in the Contemporary World? Assessing Alternative Paradigm”. IPSA World Congress, Montréal, Canada, July 24. 2014, 1-26, 1

phoria of the 2000s. This challenge was specifically the one experts warned us about at the time of the accession to the EU as well.

The country had only very short periods of actual democracy in its history. There were brief attempts, such as the liberal democratic government of Count Mihály Károlyi in 1918, or the semi-democratic coalition government between 1945-47 or lastly before the transition, the 12 days democratic governance during the 1956 revolution.⁶² Furthermore, Hungary as a former agrarian society naturally emphasizes religion, national pride, obedience and respect for authority.⁶³ On top of this, the transition to democracy was rushed. At the time of the transition in Hungary it was believed that the three pillars – political, social and economic - would encourage one another and make each element stronger. However, it soon became clear that the triple transition leads to a triple crisis and contrary to the original idea it has prevented the various individual components to be adequately implemented.⁶⁴ The Hungarian institutional system could not handle establishing an independent nation-state, a civil society, a private economy and democratic structure⁶⁵ all at once between 1989-90. Weak civil society, unions and the lack of any social dialogue characterized the country as part of the ‘partocratic’ system that developed. Liberal democratic values did not have the time to be embedded in a society which does not naturally possess them. Having been near the West, Hungarian people always

⁶² Bozóki, András and Simon Eszter “Hungary since 1989” in Ramet, Sabrina P. (ed.) “Central and Southeast European Politics since 1989” Cambridge: Cambridge University Press, 2010, 204-232.

⁶³ Halmai, Gábor “Second-grade Constitutionalism? Hungary and Poland: How the EU Can and Should Cope With Illiberal Member States” Eleven International Publishing, CSF-SSSUP Working Paper Series, 1, 2017, 1-50, 18

⁶⁴ Ágh, Attila „The Deconsolidation of Democracy in East-Central Europe” 7-36, 12

⁶⁵ Halmai, Gábor “From the ‘Rule of Law Revolution’ to the Constitutional Counter-Revolution in Hungary” European Yearbook of Human Rights, 2012, 367-381

envied the living standards of their Austrian or German peers. However, state modernization was badly designed, implemented without real substance. This became an example of what Matt Andrews, Lant Pritchett, and Michael Woolcock⁶⁶ describe as “isomorphic mimicry”. In this context that is, reforms copying the forms of Western institutions but without their substance. Due to these failures, the gap between the winners and losers of the transition was widening throughout the 1990s. The rapid social stratification hurt many and only privileged a few.⁶⁷ As Claus Offe⁶⁸ has warned the economic transformation would bring a decline in living standards and this could have a potential to undermine the legitimacy of the democratic institutions and push back the process of democratization. This prediction proved to be true in the case of Hungary. After the fall of communism only those in a privileged position could take advantage of the transition to market economy, besides them foreign investors had the chance to access credit, which meant that the economic transformation was a ‘foreign led’ process, people became alienated from the liberal, capitalist economic system. This “dissatisfaction among the ‘losers’ encouraged nationalism, anti-Semitism, anti-secularism and Euroscepticism.”⁶⁹ As we will later see, this FDI dependency has been in the centre of Viktor

⁶⁶ Andrews Matt, Pritchett Lant and Woolcock Michael “Escaping Capability Traps through Problem-Driven Iterative Adaptation (PDIA)” Faculty Research Working Paper Series, Harvard university, August 2012, 1-31

⁶⁷ Krastev, Ivan „The Strange Death of the Liberal Consensus” *Journal of Democracy*, 18 (4), 2007, 56-63, 60

⁶⁸ Offe, Claus “Varieties of Transition: The East European and East German Experience” New York: MIT Press, 1997 in Halmai, Gábor “The Rise and fall of constitutionalism in Hungary” January 2018, 224, Available: https://www.researchgate.net/publication/322655581_0_The_rise_and_fall_of_constitutionalism_in_Hungary_Not_for_distribution Access: 03.05.2018

⁶⁹ Halmai, Gábor “The decline of liberal democracy in Europe’s midst” Eurozine, 2016, Available: <https://www.eurozine.com/the-decline-of-liberal-democracy-in-europes-midst/>, Accessed: 20.03.2018

Orbán's policies since the beginning. He used the nationalization to counter this and to create monopolies in certain sectors.

Another important problem of the transition was its top-down attitude.⁷⁰ 1989-90 could be characterised by elite-driven negotiations and the active avoidance of violence, because of the events that took place in 1956.⁷¹ Shortly, the negotiated transition meant that negotiations took place between elites and politics was not allowed to fall into the streets. The conservative elite in the transition period did not have to face strong liberal opposition, only weak or ambiguous liberal traditions and legacies of opposition to communist rule⁷² which by this reason explains the growth of illiberal power in CEE politics and society nowadays.

The negotiated revolution meant an important way out of state socialism but did not necessarily mean a way out of pre-learned practices of informality⁷³. The historical practices that governed everyday life under foreign rule remained and became part of the mainstream. People have learned to pretend and create a system of informal rules governing society and culture below the surface.⁷⁴ Furthermore, the Hungarian transition was characterized by weak opposition forces who were ready to compromise with the ruling party.

By the end of the 1990s it became evident that party politics superseded almost all other aspects. Political negotiations were out of sight and confrontation between the opposition and the

⁷⁰ Bozóki András. and Simon Eszter "Hungary since 1989", 204-232

⁷¹ *ibid.*

⁷² Hanley, Seán and Dawson, James "East Central Europe: The Fading Mirage of the 'Liberal Consensus'" 20-34

⁷³ Bozóki András. and Simon Eszter "Hungary since 1989", 204-232

⁷⁴ Bozóki, András "Broken Democracy, Predatory State and Nationalist Populism" in: Krasztev, Péter and Van Til, Jon (eds). "The Hungarian Patient: Social Opposition to an Illiberal Democracy" Budapest – New York: Central European University Press, 2015, Chapter 1, 3-36

incumbent government became more intense than ever before. Fidesz initiated confrontation after 1998 as a means to strengthen its power, and public discourse was based on party allegiance.⁷⁵ The problem lied in the fact that in a strong democracy party pluralism operates within the legal framework, parallelly checks and balances are exercised. This would ensure that competition between parties cannot transform into the dominance of the parties. On the contrary to this, in Hungary ‘partocracy’ allowed that the once party-state was replaced by the state of democratic parties.⁷⁶ The welfare of the public becomes secondary to the interests of the parties. Furthermore, the level of partocracy and the temptation for corruption are in strong correlation. As the proportion of the first increases so does the second. It is thus no coincidence that Hungary has “no fair party finance law to this day, nor there are any strict rules against the conflict of interests within the decision-making bodies controlled by political parties.”⁷⁷ The fact that corruption is such an integral part of the system also comes from the historical tradition of clientelism and under the surface operation. During the 2000s the intellectuals became the guardians of the status quo and not only did the memory of the transition became unpopular, the political class has lost its credibility.⁷⁸ Hollowing out has started and the consolidation of democracy turned into merely a chasing of illusions.

⁷⁵ Bozóki, András “The Transition from Liberal Democracy: The Political Crisis in Hungary ” Mediations 26.1 (Summer 2012) 1-23, 5, Available: www.mediationsjournal.org/articles/the-transition-from-liberal-democracy Accessed: 14.02.2018

⁷⁶ *ibid.*

⁷⁷ *ibid.*

⁷⁸ Bozóki, András “Broken Democracy, Predatory State and Nationalist Populism” 3-36

Poland

The scale of the backsliding in Poland could be surprising given the fact that under Donald Tusk – the current president of the European Council – the nation was heading towards an improved position in the EU and despite the economic crisis Poland had a steady economy. However, the weaknesses of the democratic consolidation lured back and the right-wing PiS lead by Kaczyński turned Poland back from its track.

In the post-1989 years the Polish society has been the most wracked out of all the post-soviet countries in the region. This was caused by disputes revolving around the interpretation of its communist past. Poland was struggling to define its identity. As seen with Hungary the years under foreign rule strongly marked the consciousness of the nation. Between 1945 and 1989 there was a huge vacuum in the history of the country.⁷⁹ While Poland existed it had no say in its development. On the other, it was hard to move away from the communist past, as despite the country's subordination, in those 40 years Poland maintained an agricultural sector with a much greater size and role in the economy than in the other countries in the area, which meant nearly four times the size of the average agricultural sector in western Europe.⁸⁰ Furthermore, uniquely in the Soviet Union, consisting of private agriculture. Overall, people were still unsatisfied which created the avalanche for regime change.

A big difference between the Polish and Hungarian transitions is that the former came from the streets. There was a great deal of open people's opposition movement supporting Solidarity and

⁷⁹ Fundación para las Relaciones Internacionales y el Diálogo Exterior (FRIDE) “Seminar on Democratic Transition and Consolidation 2001-2002: The Transition to Democracy in Poland” 2002, 1-33

⁸⁰ *ibid.*

opposing the socialist system. While the change of regime happened, Solidarity turned out to be unfit to govern. Ideologically it blended pro-democratic or liberal elements, however it never considered bringing market reforms in the 1980s. When it got to power it soon became evident that the party was not prepared for it. After getting the power we could see that the inner circles split between different political lines. Above all, this split was caused by the question of economic policy. While there was a general understanding in the movement about the ‘return to Europe’, it simply lacked a political program which could have steered the transformation process.⁸¹ All in all, Solidarity was a movement born to be in the opposition but not in government.⁸²

Furthermore, another idiosyncrasy of the country has been the failure to consolidate a party system.⁸³ In other countries of the area a certain amount of party loyalty was able to develop, as the parties who contest in an election are much likely to be the same to run four years later. However, in Poland an odd system developed. A period of extreme fragmentation followed the transition period, which only crystallized by the mid-1990s. On the other hand, after that we could experience an extreme left-right divide. The two groupings clustered around two axes. The post-Solidarity centre-right AWS (Solidarity Electoral Action, Akcja Wyborcza Solidarność) and the centre-left SLD (Democratic Left Alliance, Sojusz Lewicy Demokratycznej) based on the heirs of their erstwhile communist opponents. While PSL and

⁸¹ Prohnitchi, Elena “Comparative Analysis of the Modes of Transition in Hungary and Poland and Their Impact on Electoral Systems of These States” CEU Political Science Journal, Graduate Student Review, 1 (3) (April-May 2006), 5-11

⁸² *ibid.*

⁸³ Fundación para las Relaciones Internacionales y el Diálogo Exterior (FRIDE) “Seminar on Democratic Transition and Consolidation 2001-2002: The Transition to Democracy in Poland” 1-33

post-Solidarity UW could be regarded as ‘centrist’ in the Polish sense, still their rhetoric clearly put them in a left-right axis as well.⁸⁴

On a grassroots level, similarly to Hungary, the losers of the transition were too many, greedy capitalism and rapid cultural shifts overwhelmed them.⁸⁵ Liberal elites failed to grasp how conservative Poland really is below the surface when it comes to values. These sentiments could be easily awakened by Kaczyński as following chapters will show. On the other hand, we can argue that this could have been grasped by the influence of the Catholic Church on the transition and people in general.

Liberal democracy could not take roots in this country either. The institutional system was weak, the society could not handle the rapid change. The unique influence of the Catholic Church on society, as well as on the elites only made the situation more problematic.

Overall, people could never develop a trustworthy relationship with the bureaucrats. A general hollow core developed in the region because of the superficial transition efforts which still, to this day define politics in the CEE region. Not to mention, it would have taken a “great deal of principled and philosophically-consistent political leadership and civic activism to make meaningful identification with core liberal democratic norms even possible.”⁸⁶ Ralf

⁸⁴ Szczerbiak, Aleks “The Political Context of EU Accession in Poland” *Royal Institute for International Affairs* (November 2002) 1-12

⁸⁵ Hosa, Joanna “Poland: What went wrong?” European Council On Foreign Relations Available: https://www.ecfr.eu/article/commentary_poland_what_went_wrong Accessed: 02.03.2018

⁸⁶ Dawson, James and Hanley, Seán (2016) East Central Europe: The Fading Mirage of the ‘Liberal Consensus’, *Journal of Democracy*, Vol 27, No. 1, pp. 1-22, 5

Dahrendorf explained that political-legal transformation requires about six months while economic transformation takes six years and social transformation 60 years.⁸⁷

Accession to the European Union

At the time of regime change both Hungary and Poland set the plan to ‘re-join’ Europe. Towards the accession the Visegrád countries were seen converging with the Western European countries over the long-term. Hungary and Poland have reached a stable 1.96 and 1.75 by 2004⁸⁸ on Freedom House’s democracy scale. However, after a few good years, the world-wide financial and economic crisis undermined regional development. In recent years we could experience that the very core of the European project came into jeopardy because of the anti-democratic, and illiberal sentiments. These governments attack the cornerstone of liberal democracy, the rule of law. The desired entry into the EU has provided a milieu for ‘national specifics’⁸⁹ However, after the completion of the accession process and strict conditionality the EU is unable to uphold its laws and rules, hence giving way to traditional domestic political culture, risking that it might contradict the broader European project. Currently we can observe that people care more about national identities, historic enmities, traditional values than the

⁸⁷ Dahrendorf, Ralf (1990) *Reflections on the Revolutions in Europe*, Transaction Books, 178 in Ágh, Attila „The Deconsolidation of Democracy in East-Central Europe: The New World Order and the EU’s Geopolitical Crisis” *Politics in Central Europe*, 12 (3) (February 2017), 7-36, 12

⁸⁸ Freedom House „Freedom of the World: Hungary” <https://freedomhouse.org/report/freedom-world/2004/hungary> and Freedom House „Freedom of the World: Poland” <https://freedomhouse.org/report/freedom-world/2004/poland>

⁸⁹ Bútor, Martin “Nightmares from the Past, Dreams of the Future.” *Journal of Democracy*, 18 (4), (October 2007) 47-55

‘freedom’ liberal democracy would provide.⁹⁰ National governments show no sign of disappearing but are, on the contrary, still the most powerful actors in the system of EU governance.⁹¹ Populist leaders promise to defend ‘traditional’ values and national sovereignty. The impact of the EU accession on the consolidation of post-communist countries was more problematic than we would first guess. Arguably, the European Union and the external constraints - such as central banks and constitutional courts - reduce the public space for rational democratic politics and free the field for populists.⁹² The impact of accession of these countries is ambiguous. Countries like Poland and Hungary became ‘democracies without choices’ whose only focus towards the accession was to tick all the boxes in the *acquis communautaire*, however this oppressed feeling has supposedly brought about the current backlash against consensual politics.

Hungary

Despite the weaknesses of the transition, the 1990s up to 2004 was the time of true democratization in the country. Hungary applied for the membership to the European Union as the first CEE country. Signed the Europe Agreement in December 1991, which came into force in February 1994, covering trade-relation issues, opening political dialogue and helping legal approximation on the fields of industry, environment, transport and customs.⁹³ The Partnership

⁹⁰ Walt, Stephen M. “The Collapse of the Liberal World Order”

⁹¹ Prof. Loughlin, John et al. “Regional and local democracy in the European Union” European Communities, 1-196 Available: <http://cor.europa.eu/en/documentation/studies/Documents/Regional-and-local-democracy-in-Europe/RL-DEMOCRACY-EN.pdf>, Accessed: 13.05.2018

⁹² Bútorá, Martin "Nightmares from the Past, Dreams of the Future." 47-55

⁹³ Verheugen, Günther “Enlargement of the European Union: An historic opportunity: A general overview of the enlargement process and the pre-accession strategy of the European Union” 2001, 1-26 Available: <https://ec.europa.eu/neighbourhood->

for Peace agreement was signed in February 1994 and the country joined to NATO in 1999.⁹⁴ The formal accession process was launched to all ten Central and Eastern European countries in March 1998 with the EU and after extensive monitoring by the Union and a domestic referendum in 2003⁹⁵ Hungary joined on the 1st of May, 2004. Furthermore, the country held the EU presidency for six months in 2011.⁹⁶

Naturally since the beginning, Hungarian parties had differing opinions about the commitment to EU membership. For instance, the Hungarian Left regarded “Europeanization” as a process – a project of political and economic modernization. The Right, on the other hand, argued that the major common cultural heritage of Europe is Christianity, which was shared by these countries.⁹⁷ Consequently, ‘Europe’ for them was not a program but a status that these countries regained automatically after the collapse of Communism. What is more interesting for our future discussion, is the shift of Fidesz by the time of the accession. While in 1994 Fidesz-MPP unequivocally stated in its 1994 manifesto that Hungary’s fastest possible integration into Europe was its primary foreign policy objective, a centrepiece of its programme for the 1998

enlargement/sites/near/files/archives/pdf/press_corner/publications/corpus_en.pdf Access: 01.02.2018

⁹⁴ NATO Available: <https://www.sto.nato.int/Pages/partnership-for-peace.aspx> Access: 11.03.2018

⁹⁵ Nohlen, Dieter and Stöver, Philip (eds.) “Elections in Europe: A data handbook” Nomos, 899

⁹⁶ as part of the rotating presidency of the EU Council with Belgium and Spain in Ministry of Foreign Affairs, Available: http://www.mfa.gov.hu/kum2005/Templates/alapsablon.aspx?NRMODE=Published&NRORIGINALURL=%2Fkum%2Fen%2Fbal%2F european union%2F eu_pres_2011&NRNODEGUID=%7B2879032F-BB24-400C-9437-55E111C38094%7D&NRCACHEHINT=NoModifyGuest&printable=true Accessed: 20.02.2018

⁹⁷ Batory, Agnes “The Political Context of EU Accession in Hungary” *Royal Institute for International Affairs* (November 2002) 1-10

elections was standing up for the national interest. Hard bargaining with ‘Brussels’ also became a pronounced part of the party’s rhetoric in government from 1998.⁹⁸

Poland

As numbers show Poland, similarly to Hungary was converging towards the EU leading up to the accession. However, these years were full of political turmoil, which could be interpreted as subtle signs that the country might not had been ‘strong’ enough for the accession just yet.

Along with other post-communist states, Poland signed an association pact with the EU, known as the Europe Agreement, in 1991. The Democratic Left Alliance-Polish People’s Party (Sojusz Lewicy Demokratycznej-Polskie Stronnictwo Ludowe/ SLD–PSL) government, at the time led by PSL premier Waldemar Pawlak, submitted an application for full EU membership in 1994 and, following the decisions of the 1997 EU Luxembourg summit, the AWS-led (Solidarity Electoral Action, Akcja Wyborcza Solidarność) Buzek government⁹⁹ formally began accession negotiations in March 1998 as part of the same negotiations round as Hungary. Over the years, Polish politicians have been very engaged in EU politics to make Poland a relevant player on the EU scene. In 2009, Jerzy Buzek was elected president of the European Parliament, Poland’s first presidency of the European Council from July 2011 to December 2011 was considered very successful, and in 2014 Prime Minister Donald Tusk was elected president of the European Council.

However, before these days the EU accession proved to be a much more prolonged process, inevitably so given the complexity of the *acquis communautaire* and the wide structural

⁹⁸ *ibid.*

⁹⁹ Szczerbiak, Aleks “The Political Context of EU Accession in Poland”, 1-12

disparities between Poland and existing EU member states. It became increasingly problematic for the Polish parliament to transpose the *acquis communautaire* into Polish law, and a large legislative backlog developed. While the issue was eventually solved, it highlighted other general anxieties, namely that Poland lacked the broader administrative capacity to ensure the proper implementation of EU law.¹⁰⁰

Similarly, to the Hungarian case, there wasn't everything calm inside the government either. While in Hungary the discrepancy towards the EU accession came from different parties, in Poland tensions came from within the governing party. The Buzek government being a coalition of several formations struggled. The Solidarity Electoral Action (AWS) itself was a broad and rather amorphous ideological and organizational construct. In addition to the trade unionists that provided its organizational core, it included liberal-conservatives, Christian democrats and, a significant Catholic-nationalist faction clustered around the Christian National Union (ZChN).¹⁰¹ The ZChN was a Eurosceptic party¹⁰² that posited a whole series of conditions and reservations about EU membership and the Union's future trajectory. In order to accommodate the ZChN's misgivings, the Buzek government had to portray itself as adopting a 'tough' negotiating strategy that led to the emergence of tensions between the Polish government and the EU negotiators.¹⁰³ On the other hand, AWS remained committed to the objective of securing Polish EU membership.

¹⁰⁰ *ibid.* 4

¹⁰¹ they were needed for the Parliamentary majority

¹⁰² although its explicitly anti-EU faction broke away to form the Polish Agreement [PP] grouping in 1999

¹⁰³ *ibid.*

While SLD sped up the process of accession, the 2001 elections produced an asymmetrical and, on the centre-right, at least, unstable party configuration.¹⁰⁴ SLD failed to receive overall majority in parliament and was forced to govern in coalition with the PSL. This has constrained the government's rule for manoeuvre significantly. AWS and UW (Freedom Union, Unia Wolności) dropped out of Parliament and instead two new centre-right formations, the Civic Platform (PO) and Law and Justice (PiS) parties entered. Furthermore, the entry into parliament of two radical-populist groupings surprised everybody: the agrarian Self-Defence party, which emerged as the new 'third force' in Polish politics, and the Catholic-nationalist League of Polish Families (LPR).

Given this turmoil, during the accession process, parties paid hardly any attention to the future trajectory and the kind of EU they want to belong.¹⁰⁵ Parties saw accession through the prism of domestic politics and focused on what rhetoric about the EU can gain them votes. This is very telling if we look at the current situation.

All in all, we could see that institutional as well as political parties gave the difficulties at the time of EU accession. While both Hungary and Poland converged in terms of democracy scores towards the EU core and could complete the requirements for accession, it soon became evident that parties either use the accession for their own political advancement or simply change their attitudes by the time of the accession about what 'Europe' means.

¹⁰⁴ Szczerbiak, Aleks "The Political Context of EU Accession in Poland" 1-12

¹⁰⁵ *ibid.* 6

Chapter 3

And then backsliding happened...

The events and changes in the last two decades have shown that these countries are unable to function according to the new rules of the game. Without entrenched liberal democracy it is simply impossible. We can also state that democratic incentives disappear after the accession. Experts, at the time already warned that CEE elites had not internalized liberal-democratic values and would violate or at least stretch constitutional norms when able to do so. The democratic consolidation experienced at the time of the transition was based on political motivation rather than identification and this proved to be true shortly after. Today's Poland and Hungary reflect a combination of restrictive nationalist right-wing, strongly majoritarian institutions and economic recession with the cohabitation of liberal and illiberal norms where the latter gradually overcomes the former. Throughout the region, publics mistrust politicians and political parties. The political class is viewed as corrupt and self-interested. Dissatisfaction with democracy is growing. According to the global survey Voice of the People 2006¹⁰⁶, Central Europe, contrary to all expectations, is the region of the world where citizens are most sceptical about the merits of democracy.

Hungary

The strategic vision that had existed in Hungary during the time of the transition has disappeared and reforms could not succeed. The political elite did not realize that it should not

¹⁰⁶ Leger Marketing, Voice of the People 2006: What the World Thinks on Today's Global Issues (Montreal: Transcontinental, 2006) in Krastev, Ivan „The Strange Death of the Liberal Consensus” 56-63,57

have taken decisions in a coup-like manner but hold a dialogue among those whose livelihoods it would affect.¹⁰⁷ They were unable to explain and convince the public about the anticipated long-term benefits of their policies. The prime ministers who had exchanged hands often wanted to both implement reforms and please those who opposed them. Between 2002 and 2010 the ruling Socialist-Liberal parties tested the patience of hundreds of thousands of people who were falling into poverty.¹⁰⁸ One particular feature of the process of privatization in Hungary is that following an initial “spontaneous”¹⁰⁹ period, foreign capital had the greatest ownership over the economy. Furthermore, the 2008 crisis hit Hungary at a time when the government was increasingly unpopular. The result was a nose-dive of the Hungarian economy which was only saved by an agreement with IMF. Under these circumstances, the unconditional acceptance of the system, the discourse of ‘there is no alternative’ suggested that its followers -left-wing liberals- were on the side of foreign capital and not the local Hungarian population.¹¹⁰

By 2010 the Socialist-Liberal coalition exhausted all its reserves, the government became weak and people had no confidence at all in bureaucracy. Given the historical unease towards reforms, complemented by the overall dissatisfaction of the public with political elites, they were unable to push through any reforms.¹¹¹ The released speech of then-Prime Minister Ferenc Gyurcsány and their inability to react to the financial crisis adequately lost them the election. As a consequence, the time for emerging autocrats has come. The election of the Fidesz

¹⁰⁷ Bozóki, András “Broken Democracy, Predatory State and Nationalist Populism” 3-36

¹⁰⁸ *ibid.*

¹⁰⁹ Kiss, Éva “Major changes in Hungarian industry during the period of transition” *Geografický časopis*, 55, 2003, 193-207, 197

¹¹⁰ Bozóki, András “Broken Democracy, Predatory State and Nationalist Populism” 3-36

¹¹¹ *ibid.*

government was a direct response both to the hectic reforms implemented by previous governments between 2006 and 2010, and the corruption and economic crisis of the time. The promise of a ‘strong state’ let anti-democratic endeavour to gain popular support. Viktor Orbán stripped away formal checks and balances to concentrate power in his own hands and seeks support based on exclusivist nationalism underlined by his unabashed declaration to build and illiberal, old-fashioned catholic nation state.¹¹² His behaviour is the ideal type of executive aggrandizement.

In a famous speech in 2014, he made clear that his aim was to “reorganize the Hungarian state to create a work-based society that [...] undertakes the odium of stating that it is not liberal in character.” That meant “breaking with the dogmas and ideologies of the West.” He added, “What we are constructing in Hungary is an illiberal state.” The goal, he explained, was to make the society “internationally competitive,” adding that “the stars today are Singapore, China, India, Russia, and Turkey.”¹¹³

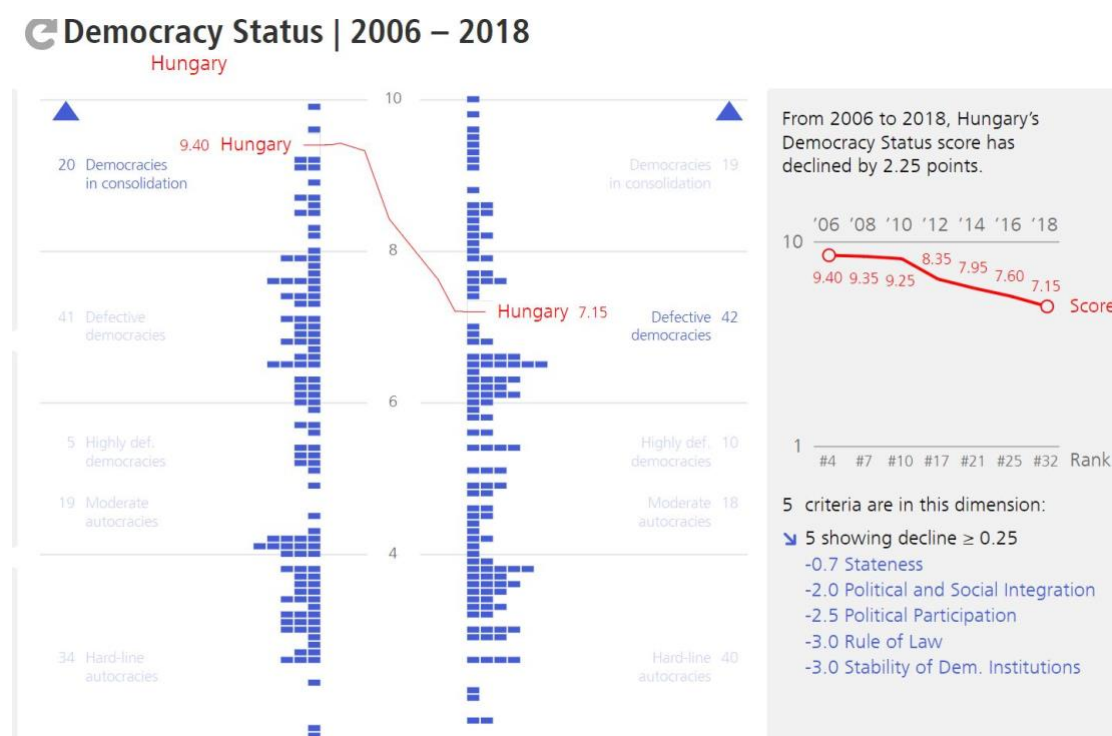
Viewed in the context of decade of quantified data we can observe a major backsliding in all aspects of democracy. BTI’s¹¹⁴ latest research shows the huge dive the Hungarian democracy

¹¹² Hanley, Seán and Dawson, James “East Central Europe: The Fading Mirage of the ‘Liberal Consensus” *Journal of Democracy*, 27, (1), 2016, 1-22

¹¹³ Tóth, Csaba „Full text of Viktor Orbán”s speech at Băile Tuşnad (Tusnádfürdő) of 26 July 2014” The Budapest Beacon, July 2014 Available: <https://budapestbeacon.com/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/>, Accessed: 22.02.2018

¹¹⁴ Bertelsmann Stiftung’s Transformations Index (BTI) „Hungary” Country Report, 2018 Available at :<https://www.bti-project.org/en/reports/country-reports/detail/itc/hun/ity/2018/itr/ecse/> , Accessed: 04.20.2018

suffered since Orbán took office. Since 2006 the country's democracy status declined 2.25, and is now at 7.15, which puts Hungary in the category of Defective democracies. (Figure 3)



Furthermore, both the performance of democratic institutions and commitment to them grew worse, showing a 3.0-point decline. A causality of this, is the decline of the Rule of Law. Every aspect of this criterion showed a setback by which Hungary only shows a 'Fair' performance. (Figure 4 and 5)

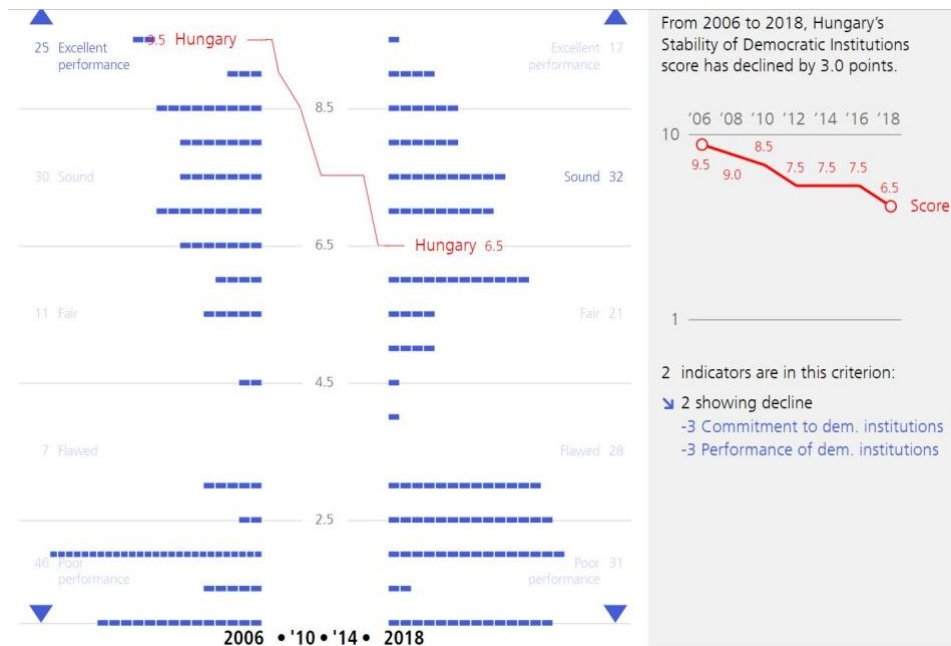


Figure 4 Score of Hungary's stability of Democratic Institutions

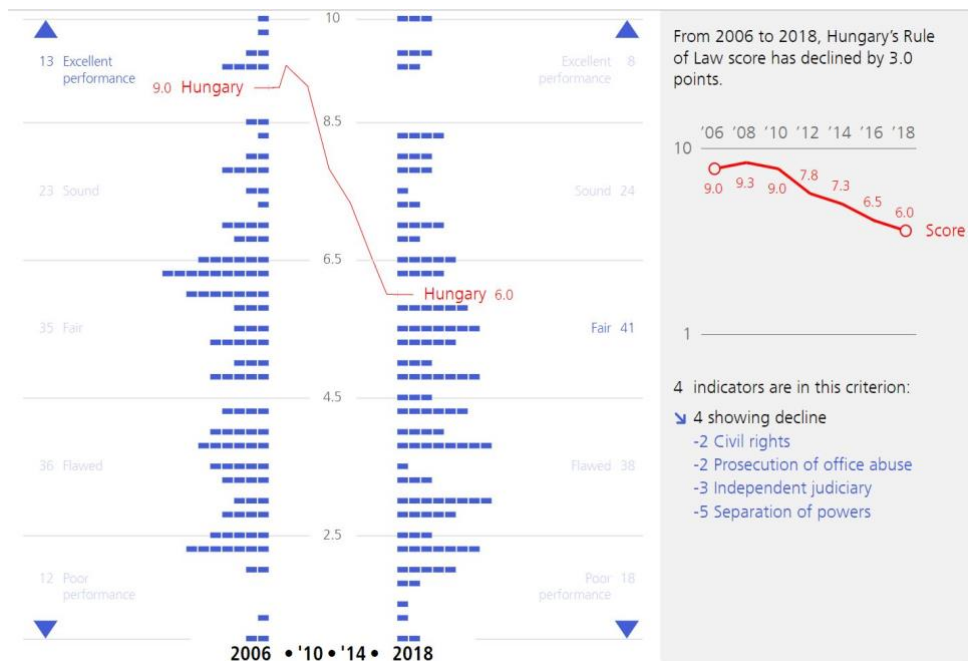


Figure 5 Hungary's Rule of Law score

Freedom House's¹¹⁵ assessment of Hungary has also progressively become worse since Orbán took office. It now stands at 3.75 and while it still considered a 'free' country, we can see a steady decline at every aspect of a liberal democratic order. (Table 1)

Nations in Transit Ratings and Averaged Scores

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
National Democratic Governance	2.50	2.50	3.00	3.50	3.50	3.75	3.75	4.00	4.25	4.50
Electoral Process	1.75	1.75	1.75	2.25	2.25	2.25	2.75	2.75	3.00	3.25
Civil Society	1.75	1.75	2.00	2.00	2.25	2.25	2.50	2.50	2.75	3.00
Independent Media	2.50	2.75	3.25	3.50	3.50	3.50	3.75	3.75	4.25	4.50
Local Democratic Governance	2.50	2.50	2.50	2.50	2.75	2.75	3.00	3.00	3.00	3.00
Judicial Framework and Independence	1.75	2.00	2.25	2.75	2.50	2.50	2.75	3.00	3.00	3.00
Corruption	3.25	3.50	3.50	3.50	3.50	3.75	3.75	4.00	4.50	4.75
Democracy Score	2.29	2.39	2.61	2.86	2.89	2.96	3.18	3.29	3.54	3.71

Table 1 Hungary's Freedom House Ratings

If that would not be enough, Heritage Foundation¹¹⁶ in its annual index of economic freedom notes that “judicial independence remains under threat” and that “cronyism and corruption are serious concerns, as illustrated by the difficulties experienced by business owners who have fallen out of favour with the

¹¹⁵ Hegedűs, Dániel „Hungary” Nations in Transit, Freedom House 2018, 1-18 Available: https://freedomhouse.org/sites/default/files/NIT2017_Hungary.pdf, Accessed: 05.05.2018

¹¹⁶ Heritage Foundation „Hungary” 2018 Index of Economic Freedom, Available: <https://www.heritage.org/index/country/hungary> Accessed: 15.02.2018

government.” And last year the European Parliament, adopted a resolution warning about “a serious deterioration of the rule of law, democracy and fundamental rights” in Hungary.¹¹⁷

The following paragraphs will show how the government gradually broke down the power of every other institution and put the sole lead in the hand of the executive.

While Fidesz was at the forefront of system change during 1989, Orbán’s populism is now directed against elites, including and especially those who designed the transition procedures. He declared that 1989 should not be considered the real transition of the Hungarian state, but 2010. Orbán claims that there had been no real transition, and that the previous nomenklatura only converted its lost political power into economic influence.¹¹⁸ In order to, wipe out the traces of the time, Fidesz used its 2/3 majority to create a new Basic Law, which puts an end to debates over values and establishes the ‘norms’ of the party. Clientelism and partocracy are apparent on a hardly ever before seen scale. These practices determine who becomes editor of a newspaper, a school principal, economic leader etc or even who gets the most favourable conditions for public procurement (‘közbeszerzés’).

Orbán’s rule rests of five main pillars¹¹⁹:

“central arena of power” (*centrális erőter*)

This has been created to eliminate the idea of competition endorsed during the transition and base the governance on personal networks. In his view this central arena should be filled by the politically homogenized culture of the national community, largely defined on the basis of

¹¹⁷ Muravchik, Joshua “Liberal Democracy vs Illiberalism, in Orbán’s Hungary and Elsewhere”, National Review, May 2018, Available: <https://www.nationalreview.com/2018/02/liberal-democracy-vs-illiberalism-viktor-orban-hungary-elsewhere/> Access: 01.03.2018

¹¹⁸ Bozóki, András “Broken Democracy, Predatory State and Nationalist Populism” 3-36

¹¹⁹idib., 13

ethnicity. However, we should be warned that if, from the three main components of liberal democracy – participation, competition, civil liberties – competition is weakened or even removed, furthermore, the institutions which would safeguard this are destroyed, hardly anything left of democracy. This is evidently seen in with the gerrymandering of electoral districts or the uneven advertising possibilities for parties.

2. rhetoric of “national unification,” which confines the rhetoric of selective nationalism by distinguishing between ‘good’ and ‘bad’ Hungarians¹²⁰ , moreover the System of National Cooperation (Nemzeti együttműködés rendszere – NER) refers to a set of unorthodox policies combining statism, economic nationalism (all Hungarian), crony protectionalism and neoliberalism. This system has emerged as an alternative to liberal democracy in Hungary under Orbán. In his mind this does not mean the poor, Roma or other minorities but uniting the nation based on work, home, order and security and family – but only in its traditional sense consisting of a woman and a man as written in the Basic law by Fidesz.

3. change of the elites, - as mentioned Orbán views 2010 as the real changing point for the country, instead of 1989. He proves this by replacing the elites tied to the experience of previous decades. This is what greatly exemplifies the huge shift of Fidesz over the years. The first Orbán government of 1998-2002 saw cultural pluralism as an asset, however the second one saw it as a source of unnecessary cost and potential criticism – and it wanted to eliminate both. For this, it changed the administrative elite as extensively as possible to avoid any of the above. This endeavour to solidify clientelism was supposed to send the message that life outside NER is unthinkable.

¹²⁰ ‘good’ Hungarians are (who deserve full state service) and who are the not-so-good ones who do not deserve the same procedural treatment are those who migrated to the West for economic reasons

4. the practice of power politics, and

5. the belief in “revolutionary circumstances.”

History again comes back with these ones, as Orbán has wide support among the poorest even though his policies only superficially help them.¹²¹ The mentioned agricultural mindset about the respect for authority and national values still stands. Orbán uses this extensively and pictures

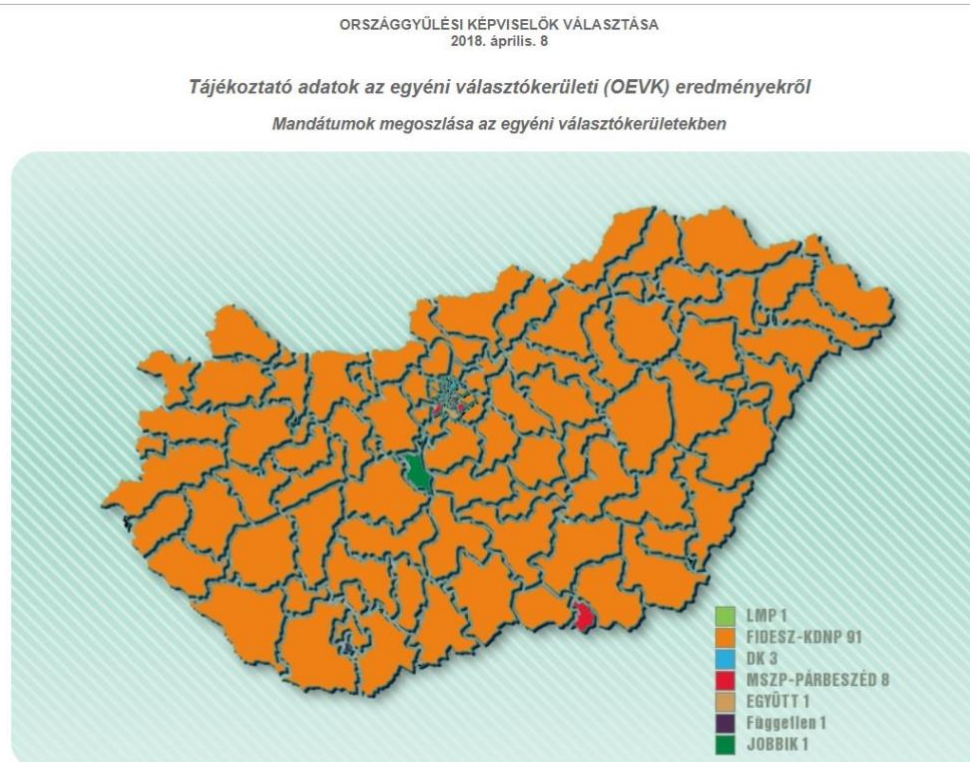


Figure 6 Results of Individual Voting districts at the 2018 Hungarian Parliamentary elections

¹²¹ The communal works program (közmunka) will not lift people out of extreme poverty. It is convenient for the government, but will not provide long-term employment possibilities for those participating in it. <http://www.szociologia.eu/ferge-kozmunkaval-nem-lehet-kitornimelyszegegysegbol>

himself as the embodiment of the traditional, patriarchal values appealing to thousands of rural Hungarians. This was perfectly seen at the recent elections where Fidesz took over the rural areas.

Orbán also skilfully used the post-2008 anger in people, where anything foreign was seen as an enemy and a government who supported foreign has sold its soul. On this line, Orbán attacked the banks (most of them being in foreign hands), the multinational corporations, the foreign media and EU officials on the grounds of economic nationalism and sovereign democracy. In terms of his economic policies: he introduced a flat tax, restricted the rights of employees, the unemployed and the homeless, divided trade union, nationalized local school and eliminated the autonomy of the universities.¹²²

As mentioned backsliding of democracy means that the rule of law is distorted to the rule of man through law. After its victory in 2010 Fidesz created among a many constitutional changes, a category of ‘cardinal laws’ that could not be overturned without a 2/3 majority in parliament. According to Küpper, the Hungarian constitution is one of the most ideologically charged constitutions in Europe.¹²³ Overall, the constitution declares the Christian-nationalistic worldview¹²⁴ as the basic principle to the Hungarian nation and determines a specific, ethno-nationalistic, conservative way of live and demonizes everything else. It is clear that Orbán is

¹²² Bozóki, András “Façade Pluralism in Semi-democracies: The Case of Hungary” Paper presented at the panel: “Is Pluralism Still Relevant in the Contemporary World? Assessing Alternative Paradigm”. IPSA World Congress, Montréal, Canada, July 24 2014, 1-26

¹²³ Küpper, Herbert „Mit Mängeln. Ungarns neues Grundgesetz” *Osteuropa*, 61 (12) 2011, 138 in Grünwald, Aline “As in Hungary now in Poland? Accessing the states of democracy in Hungary and Poland as ‘lands in-between’ democracy and autocracy” Universität Bremen, 2017, 1-77

¹²⁴ Köztársaság Elnöki Hivatal http://www.keh.hu/magyarorszag_alaptorvenye/1515-Magyarorszag_Alaptorvenye&pnr=1

planning for the long run. These laws are immune to any changes from future governments winning only a simple majority. That is why we can suggest that this crisis is not only a temporary struggle for the EU, these leaders are solidifying themselves and with them illiberalism stays.

More specific changes included the lengthening of the terms of the public prosecutor and of the head of judicial office, as were those of the head of the media board and the audit office, with a provision that, even when their terms expire, their successors must receive the support of a two-thirds majority in parliament. While members of the Constitutional Court used to be nominated by a committee on which all parties were represented. Now they are nominated solely by representatives of Fidesz, which has filled the court with its own partisans. Something similar has been done with government offices that have power over media. State media now are widely accused of slanting in favour of the government, and large parts of private media have been bought by investors who are reportedly close to Orbán. The largest opposition daily, *Népszabadság*, closed abruptly in late 2016 after exposing of government corruption in its articles. Its parent company soon sold it to another company, linked to the former mayor of Orbán's hometown, a man regarded as a crony of his, Lőrinc Mészáros. The second company announced that it would not restart the paper. The democratic state was taken over by a small, coherent group of political entrepreneurs who use the state largely for their own advantage.¹²⁵

In order to keep its power, the Fidesz government meticulously targets specific rhetoric towards the different segments of society.¹²⁶ The government dismisses the era of ideologies hence its policies are not based on any single ideology, on the contrary, symbolic politics is used for vote

¹²⁵ Muravchik, Joshua "Liberal Democracy vs Illiberalism, in Orbán's Hungary and Elsewhere"

¹²⁶ Bozóki, András "Façade Pluralism in Semi-democracies: The Case of Hungary" 1-26

maximalization. Orbán uses neoliberal economic policies for the upper classes while an ethno-nationalist, populist discourse to rally the poor. Bozóki argued that this type of governance is a form of crony capitalism¹²⁷ and is the typical picture of an illiberal state.

It is also important to discuss the personality of Orbán. As it is paramount to consider besides the structural changes. Orbán is a typical strongman and not merely a conservative politician. He is the ideal type of a nationalist and populist leader who concentrates on keeping his power and prefers confrontation instead of compromise. In line with these personality traits, in his view competition is always a zero-sum game¹²⁸ and thus goes to the very end in order to maximize his power. The various billboard campaigns testify about this. If we look at the messages of the Fidesz government we can see that a ‘war’ is declared on someone most of the time, whether it is the refugees, Soros or Brussels. As a populist leader he is presenting his policies not merely as good but as necessary, not merely as desirable but as rational.¹²⁹

Poland

After eight years in office the Civic Platform (PO) was defeated by its biggest competitor, the populist right-wing Law and Justice party (PiS) in 2015. Although in Hungary, it was the failure of the left which has led to the victory of Fidesz in 2010, in the case of Poland we can already

¹²⁷ *ibid.*

¹²⁸ *ibid.*

¹²⁹ Dempsey, Judy “Letter from Europe: A new conservatism rises in Eastern Europe” The New York Times, October 2007, Available: <https://www.nytimes.com/2007/10/04/world/europe/04iht-letter.1.7748106.html> Access: 30.01.2018

talk about the growing tendencies of populism and anti-EU sentiment as the causes of the Law and Justice's victory.

Before going in to more details, let us look at how the Polish Parliament looks like, as it is a little bit different to the Hungarian. It consists of the national assembly (Sejm) as the lower house and the Senate as the upper. In 2015 the populist Law and Justice (Prawo i Sprawiedliwość, PiS) party winning both. While PiS controlled the executive and the legislative, unlike Fidesz, it lacked the qualified majority to change the constitution.¹³⁰ Nevertheless, the presidency and an absolute majority in both the lower and upper houses was a precedential case in democratic Poland and Kaczyński was able to pass numerous bills undermining liberal democracy. While formally he is only one of the 460 members of the Polish parliament it is actually him who makes the calls.¹³¹ The personality traits of a strongman can fit him similarly to his 'idol', Orbán.

In contrast to the theory of executive aggrandizement the Polish changes were relatively rapid. While Bermeo does not define an exact time span, her previous cases have taken place in a time of 5-10 years¹³², on the other hand we can argue that the process could be exacerbated if a neighbouring country – with strong ties to yours, similar historical patterns and belonging to the same regional group as you – implement the same processes. Similarly, to Orbán's regime Kaczyński has the final word in all important decisions, whether it is the continuation of the

¹³⁰ Grünewald, Aline "As in Hungary now in Poland? Assessing the states of democracy in Hungary and Poland as 'lands in-between' democracy and autocracy" Universität Bremen, 2017, 1-77

¹³¹ Politico "Jaroslaw Kaczynski: The Backbench Driver", n.d, Available: <https://www.politico.eu/list/politico-28-class-of-2017-ranking/jaroslaw-kaczynski/> Accessed: 18.05.2018

¹³² Turkey and Ecuador

mandate of ex-Prime Minister Beata Szydło or supporting Donald Tusk in his second term at the European Council.¹³³ He is an informal Head of State who is not controlled by the division of power yet influences both the legislative and executive as a ‘power behind the throne’. Furthermore, he is perceived as the de facto leader of Polish politics by the masses as well: 65% of Poles view him as Poland’s effective ruler whereas only 14% view Duda and 18% viewed Szydło as such.¹³⁴ This not only coincides with our suggestion that besides being a rapid and not gradual backsliding, Poland fits in the executive aggrandizement criteria, but also supports the fact that it became popular among the public to trust a non-elected official to rule the country if he knows best. As seen through the data provided in the Introduction.

Kaczyński also considers his moves as a push back against what he sees as a quarter century of corruption, runaway liberalism and dissipating national identity and control.¹³⁵ Just like his Hungarian ‘friend’ Kaczyński sails Poland towards autocracy with a nationalist, Eurosceptic sentiment. The Commission criticized his party’s moves regarding the overhaul of the Constitutional Court, which he conveniently ignored and states that the nation state “is the only institution able to guarantee democracy and freedom”.¹³⁶

But let us see in detail what the Kaczyński power meant for Poland in the last three years. It is very telling that already in 2011 Kaczyński said: “Viktor Orbán gave us an example of how we can win [...] The day will come when we will succeed, and we will have Budapest in

¹³³ *ibid.*

¹³⁴ Arak, Piotr and Bobiński, Andrzej „Poland” Nations in Transit, Freedom House, 4
Available: <http://carnegieeurope.eu/strategiceurope/62635> Accessed: 17.05.2018

¹³⁵ Politico “Jaroslaw Kaczynski: The Backbench Driver”

¹³⁶ *ibid.*

Warsaw.”¹³⁷ After Law and Justice’s victory in 2015 Kaczyński started to act on his promises. It is evident that the three branches of government can no longer be regarded as equal and independent in Poland. The executive has significantly enhanced its power over the other two. The division of power and checks and balances are no longer intact. The mandate of the Minister of Justice was quickly inflated after the election which demolished the independence of the judiciary. Furthermore, majority of parliament passed a bill which de facto paralysed the Constitutional Court¹³⁸, which were necessary according to PiS because they viewed the judiciary as the pinnacle of disempowered communists and a new beginning ought to happen.¹³⁹ Through this move the ruling party was able to initiate several reforms which would otherwise be stopped. Given the opportunity in the same year December the Sejm passed the ‘Act of 30 December 2015 amending the Broadcasting Act’ which deprived the constitutionally embedded National Broadcasting Council’s (Krajowa Rada Radiofonii I Telewizji, KRRiT) power and gave it to the Minister of Treasury. A harsher version of this media law package was to be followed, however the implementation of this has been postponed in 2016 as the Polish Culture Minister Krzysztof Czapanski said that extensive changes require not only the notification of

¹³⁷ Buckley, Neil and Foy, Henry “Poland’s new government finds a model in Orban’s Hungary” Financial Times, January 2016, Available: <https://www.ft.com/content/0a3c7d44-b48e-11e5-8358-9a82b43f6b2f> Access: 05.02.2018

¹³⁸ Bucholc, Marta “The Polish Constitutional Crisis 2015-16: A Figurational Perspective” Social Character, Historical Processes, 5 (2), July 2016, Available: <https://quod.lib.umich.edu/h/humfig/11217607.0005.210/--polish-constitutional-crisis-201516-a-figurational?rgn=main;view=fulltext> Accessed: 18.05.2018

¹³⁹ Bucholc, Marta and Komornik, Maciej (2016): Die PiS und das Recht. Verfassungskrise und polnische Rechtskultur. Translated from Polish by Peter Oliver Loew. In: *Osteuropa*, 66 (1-2), 79-94 and Vetter, Reinhold (2017a): Kaczyński’s PiS und die „Dekommunisierung”. Entprofessionalisierung durch Personalwechsel in Justiz, Diplomatie und Streitkräften. In: *Polen-Analysen: PiS, die Dekommunisierung und Entprofessionalisierung*. Nr. 200, 2-5. Available: <http://www.laender-analysen.de/polen/pdf/PolenAnalysen200.pdf> in Grünewald, Aline “As in Hungary now in Poland? Accessing the states of democracy in Hungary and Poland as ‘lands in-between’ democracy and autocracy” Universität Bremen, 2017, 1-77, 42

the EU but the remarks of the Council of European Union. Nevertheless, in 2017 PiS politician Jacek Kurski was appointed as the new head of the Polish TV, hence news programmes have been filled with propagandistic sentiments, praising the governing power.¹⁴⁰ This move echoes Orbán's in recent years and shows a worrying trend towards illiberalism and populism in the region. Furthermore, although Poland still has a pluralistic private media, however as political pressures add up to their economic struggles, it is questionable how long they will survive.¹⁴¹

The right to assembly could not remain intact under Kaczyński either. In November 2016 the government adopted a bill legalising counter-demonstrations and favouring assemblies organised by state or church over demonstration organised by civil society. At first, President Duda did not sign this bill but rather referred it to the Constitutional Court.¹⁴² However, in March 2017, the Constitutional Court – full of PiS loyalists - approved this draft to be constitutional and it came into force on April 2nd¹⁴³. This is especially a great hit on the Polish society as we have seen grassroots and people's movements are a big part of the culture.

The 'Orbán method' is again summoned regarding Non-Governmental Organisations (NGO) and civil society groups. They have been facing numerous smear campaigns under the PiS government. For instance, the public broadcaster TVP-1 accused several NGOs of maintaining close links with the opposition parties and further claims that a large share of NGO budgets is

¹⁴⁰ Grünewald, Aline "As in Hungary now in Poland? Accessing the states of democracy in Hungary and Poland as 'lands in-between' democracy and autocracy" 1-77

¹⁴¹ Chapman, Annabelle „Pluralism Under Attack: The Assault on Press Freedom in Poland” Freedom House, June 2017 1-16, 2

¹⁴² Arak, Piotr and Bobiński, Andrzej „Poland”, 6

¹⁴³ Grünewald, Aline "As in Hungary now in Poland? Accessing the states of democracy in Hungary and Poland as 'lands in-between' democracy and autocracy" 1-77

handed out to board members' salaries.¹⁴⁴ And while Poland is the largest beneficiary of the Norwegian Fund, the government insists that the money should be channelled through a governmental body. Reacting to this the Norwegian Prime Minister, Erna Solberg stated that Norway "cannot allow Poland and Hungary to control the money to civil society. We must have independent organisations that assign them".¹⁴⁵

On an ideological level, just like in Hungary, we can talk about the increase of traditionalist, nationalist and catholic values. The ethno-nationalistic sentiments promoted by the government enhances hatred towards minorities and the state is not able to fully guarantee individual liberties from violations by private and public agents.¹⁴⁶ In November 2016 the International Covenant on Civil and Political Rights also concluded that there is an increasing level of hate speech, discrimination based on race, nationality, ethnicity, religion and sexual orientation in Poland, especially in light of insufficient response by the authorities.¹⁴⁷ As also seen from the transition period, Catholicism and the Catholic Church occupies a significant role in the Polish society. Nowadays they have a crucial role in promoting the above-mentioned sentiments and by this assisting the governing party in their aim to spread the ideology of a new Poland.¹⁴⁸ The

¹⁴⁴ Arak, Piotr and Bobiński, Andrzej „Poland”, 8

¹⁴⁵ Eriksson, Aleksandra “Norway defends NGOs in Hungary and Poland” Euobserver, May 2017, Available: <https://euobserver.com/social/137818> Access: 11.01.2018

¹⁴⁶ Grünwald, Aline “As in Hungary now in Poland? Accessing the states of democracy in Hungary and Poland as ‘lands in-between’ democracy and autocracy” 1-77

¹⁴⁷ International Covenant on Civil and Political Rights 2016, 1-9, Available: https://www.rpo.gov.pl/sites/default/files/CCPR_C_POL_CO_7_25815_E.pdf Accessed: 15.03.2018

¹⁴⁸ Guerra, Simona „The Polish Catholic Church Has Become Intertwined With Euroscepticism And The Promotion Of Conservative 'National Values'”, Green European Journal.eu, n.d, Available: <https://www.greeneuropeanjournal.eu/the-polish-catholic-church-has-become->

prosperity and the wellbeing of the Polish nation is viewed as the greatest good and the reputation of Poland must be protected. The demand for traditional family values, conservative, nationalistic sentiments, faith and the respect of Polish traditions and culture all contribute to a shared cultural and historic memory which becomes a shared identity.¹⁴⁹ Similarly, to Orbán's view of 'good Hungarians', these characteristics define the 'ideal type' of a Polish citizen.

From the above examples we have already seen that, similarly to Hungary, clientelism and corruption flourishes in Poland as well. The Polish government faced several accusations regarding corruption and nepotism in state-owned enterprises (SOE).¹⁵⁰ Kaczyński has clear motives when he initiates these changes. This is well exemplified by the fact that because of the abuse of judicial overview cases like bribery, money laundering facilitation payments or 'gifts' are not prosecuted, and officials engage in corruption with impunity.¹⁵¹

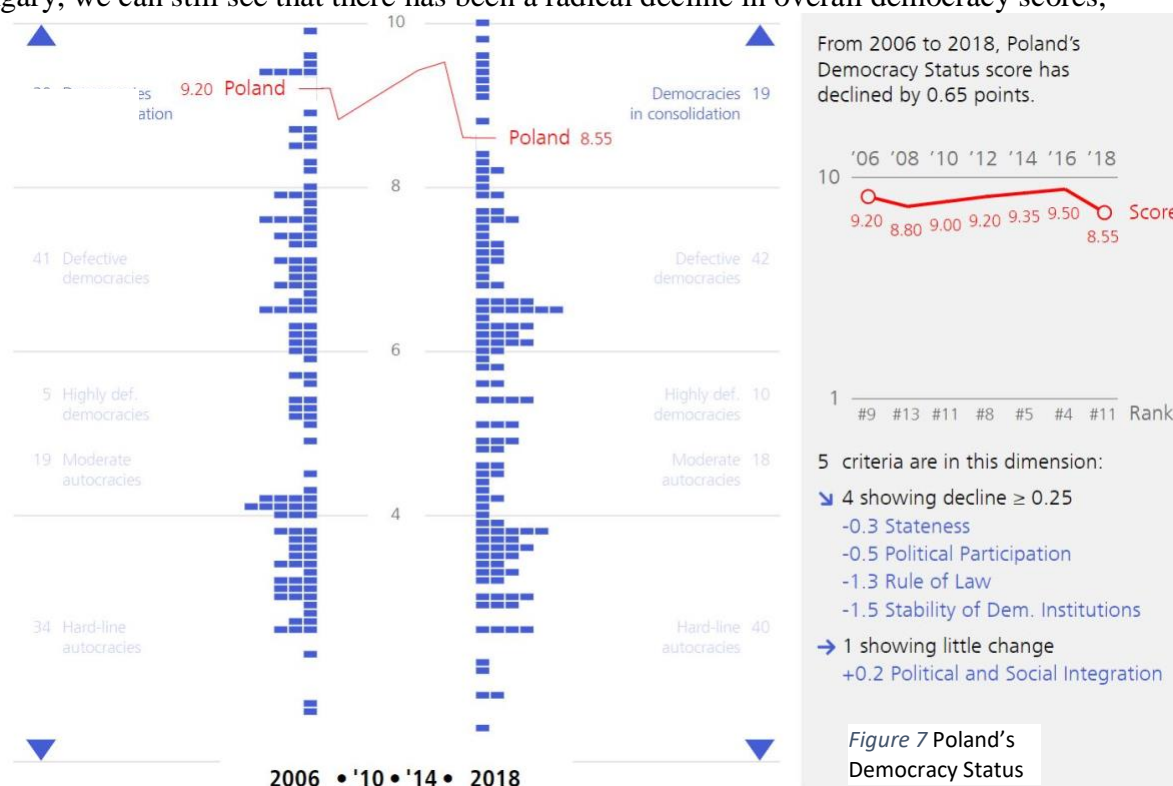
intertwined-with-euroscepticism-and-the-promotion-of-conservative-national-values/
 Accessed: 11.03.2018

¹⁴⁹ Grünewald, Aline "As in Hungary now in Poland? Assessing the states of democracy in Hungary and Poland as 'lands in-between' democracy and autocracy" 1-77

¹⁵⁰ *ibid.*

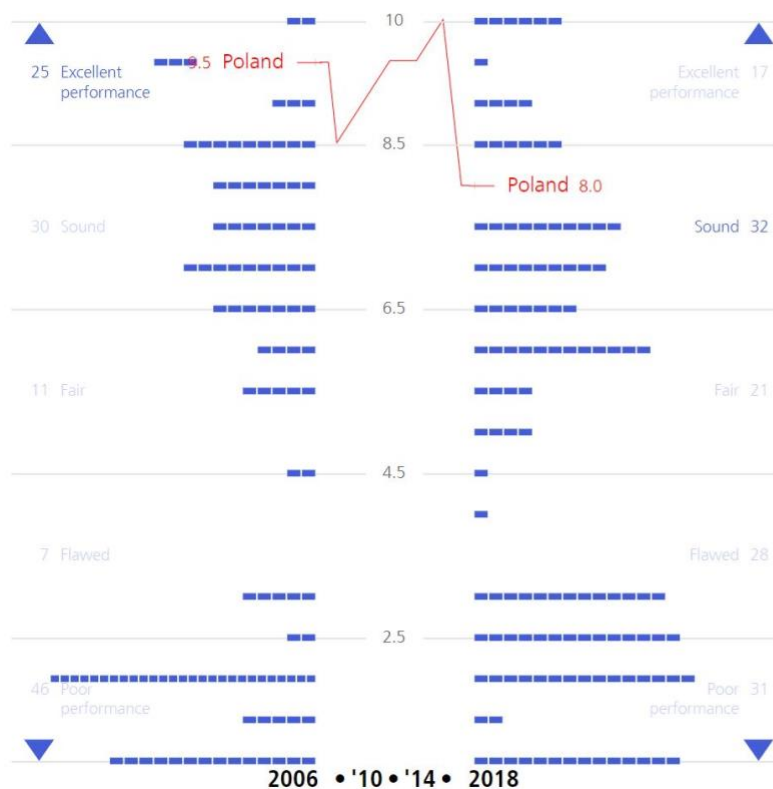
¹⁵¹ Business Anti-Corruption Portal „Poland Corruption Report: Snapshot”, n.d, Available: <https://www.business-anti-corruption.com/country-profiles/poland/> Accessed: 18.05.2018

Even though PiS rules Poland for only three years, the outlined changes manifested in the democracy scores of the country as well.¹⁵² While the changes are not so striking as for Hungary, we can still see that there has been a radical decline in overall democracy scores,



which now stand at 8.55, however major indicators showed a fall from previous scores. (Figure 7) The tyrannical changes to the Constitutional Courts project from Figures 8 and 9 which indicate that both the rule of law dimensions and the status of democratic institutions suffered the PiS government.

¹⁵² Bertelsmann Stiftung's Transformations Index (BTI) „Poland” Country Report, 2018 Available at: <https://www.bti-project.org/en/reports/country-reports/detail/itc/pol/ity/2018/itr/ecse/>, 04.20.2018

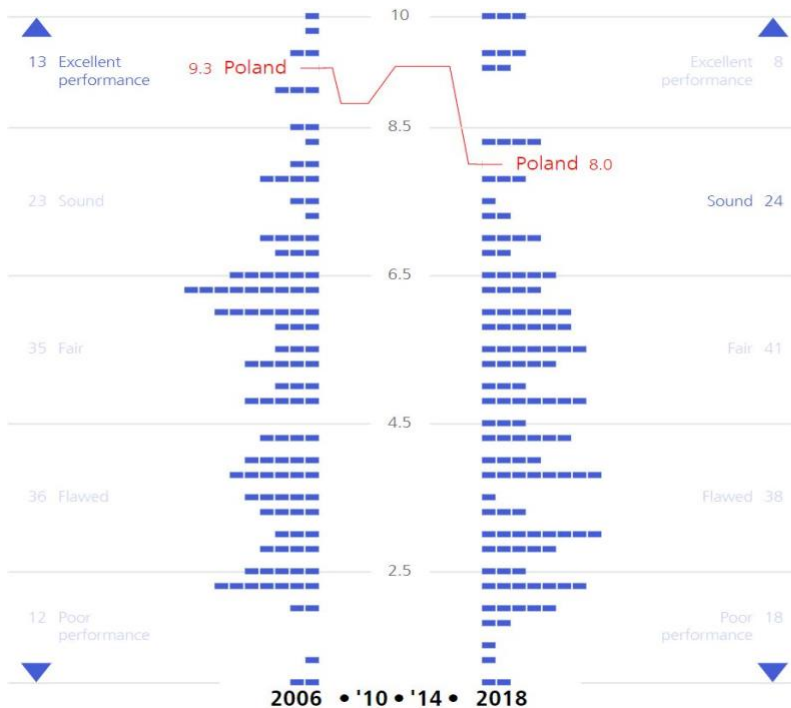


From 2006 to 2018, Poland's Stability of Democratic Institutions score has declined by 1.5 points.



- 1 indicators are in this criterion:
- 2 showing decline
 - 1 Performance of dem. institutions
 - 2 Commitment to dem. institutions

Figure 8 Stability of Democratic Institutions in Poland



From 2006 to 2018, Poland's Rule of Law score has declined by 1.3 points.



- 4 indicators are in this criterion:
- 3 showing decline
 - 1 Civil rights
 - 2 Independent judiciary
 - 2 Separation of powers
 - 1 showing no change
 - 0 Prosecution of office abuse

Figure 9 Poland's Rule of Law Score

Freedom House's¹⁵³ data about Poland through the last ten years we can see that, similarly to Hungary the elements of liberal democracy show a steady decline since PiS took office. (Table 2

Nations in Transit Ratings and Averaged Scores										
NIT Edition	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
National Democratic Governance	3.25	3.25	2.75	2.50	2.50	2.50	2.50	2.75	3.25	4.00
Electoral Process	2.00	1.75	1.50	1.25	1.25	1.25	1.50	1.50	1.50	1.50
Civil Society	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.75	2.00
Independent Media	2.00	2.25	2.25	2.25	2.50	2.50	2.50	2.75	3.00	3.00
Local Democratic Governance	2.00	1.75	1.75	1.75	1.75	1.50	1.50	1.50	1.75	2.00
Judicial Framework and Independence	2.25	2.50	2.50	2.50	2.50	2.50	2.50	2.75	3.25	4.25
Corruption	2.75	3.25	3.25	3.25	3.25	3.50	3.50	3.50	3.50	3.50
Democracy Score	2.25	2.32	2.21	2.14	2.18	2.18	2.21	2.32	2.57	2.89

Table 2 Poland's
Freedom House
Nations in Transit

To sum up, the previous chapters proved that it is easier to organise free and fair elections than creating lasting liberal democracy.¹⁵⁴ Both aforementioned states have failed to entrench the rule of law and effective state institutions which – together with democratic accountability – would form a modern liberal democracy. Strongman like Kaczyński and Orbán are unable to compromise and their policies are in line with the process of democratic aggrandizement in order to strengthen the executive and strip away the power of everything else. These politicians

¹⁵³ Wójcik, Anna "Poland" Nations in Transit, Freedom House 2018, 1-20 Available: https://freedomhouse.org/sites/default/files/NiT2018_Poland_0.pdf, Accessed: 05.05.2018

¹⁵⁴ Bugarcic, Bojan "The Rule of Law Derailed: Lessons from the Post-Communist World", *Hague Journal of Rule of Law*, 7 (2), (November 2015) 175-197

are led by their own rules and ideas and form their countries around themselves according to their desire. Charismatic leaders, both Hungary's Orbán and Poland's Kaczynski, have replied to the forgotten and unsatisfied people's cry for a change.¹⁵⁵ They act in accordance with the feeling that their party has received a mandate from the electorate which represents the whole nation. This empowers them to use a non-compromising and rigorous approach towards governing. However, to this rule the checks and balances, complemented by the division of power constitute as mere obstacles towards the prosperity of the nation and hence should be subordinated to the executive.

For them the nation is defined in its strictest sense: by common catholic faith, common traditional and conservative values, common history and culture. The rule of law crisis in Central and Eastern Europe largely coincides with a worldwide trend of democratic recession and fatigue¹⁵⁶ and with the biggest crisis the EU has faced since its start. Hence it is paramount to figure out a solution, which will be the partial task of the following chapter.

¹⁵⁵ Salmi, Senni "Democratic backsliding in Hungary and Poland" Johns Hopkins University, 1-15, 10

¹⁵⁶ Diamond, Larry „Why democracies survive” *Journal of Democracy*, 22 (1), (January 2011) 17-30

Chapter 4

The European Union

Before we start to outline the responses of the European Union and its future possible prospects let us reiterate that the EU had a fair share of impact in the unfolding of the current situation.

Evidently from the previous chapters, we can suggest that both for Poland, and especially for Hungary accession to the EU was too rushed. Their democratic systems were too fragile to accommodate the basic principles on a long-lasting scale and the failures of the enlargement policy are now coming to light.¹⁵⁷ The pushing of the Washington Consensus and the persistence that a single set of most appropriate institute – rule of law being one – is required for a successful development strangled these regimes. The EU argued that only one model of the rule of law is appropriate for all countries. As a result, the reformers in the region too often neglected the importance of the ‘homegrown development’ and neglect history overall.¹⁵⁸ The tradition of rule law was nearly completely absent from CEE countries. Ivan Berend argues, that these countries never fully modernized their legal and political institutions and remained on the periphery of the advanced Western world: „Both the states and the governments were traditionally autocratic and remained authoritarian, with an autocratic interpretation and

¹⁵⁷ Global Europe Anticipation Bulletin “The failure of Eastern European integration: Angry nations, democratic challenges and global system crisis” Sott.net, June 2016, Available: <https://www.sott.net/article/320616-The-failure-of-Eastern-European-integration-Angry-nations-democratic-challenges-and-global-systemic-crisis> Accessed: 10.01.2018

¹⁵⁸ Bugarcic, Bojan ‘The Rule of Law Derailed: Lessons from the Post-Communist World’ 175-197

practice of law and civil rights.”¹⁵⁹ Furthermore, while the EU is very keen to put the threshold high before the accession, enforcement when a country is already a member is weak. Additionally, European leaders so far were reluctant to take concrete actions against Hungary’s Fidesz and Poland’s Law and Justice (PiS) governments and only regarded them as unpleasant domestic illiberalism.¹⁶⁰ Collegiality between leaders is a key reason for this. The European Union’s day to day work rests on cooperation, thus members prefer to overlook problematic behaviour by individual governments, hoping that these partners will self-correct and come back to the social rules that allow the EU to work.¹⁶¹ There is too much pressure on the Union to balance between unity and diversity¹⁶² which ties the hands of decision makers in cases like this. While of course, there had been several right wing radical parties, politicians and associations over the years in various countries, however Orbán and Kaczyński rebuilt their overall political system to bring it in line with their ideological convictions. The developments outlined in the previous chapters call for precise and effective intervention measures by the European Union.

¹⁵⁹ Berend, Ivan T. “History derailed: central and eastern Europe in the long nineteenth century” Los Angeles, London, University of California Press, Berkeley, 2003, 235 in Bugaric, Bojan ‘The Rule of Law Derailed: Lessons from the Post-Communist World’ 175-197, 187

¹⁶⁰ Grabbe, Heather and Lehne, Stefan “Defending EU Values in Poland and Hungary” Carnegie Europe, September 2017, Available: <http://carnegieeurope.eu/2017/09/04/defending-eu-values-in-poland-and-hungary-pub-72988> Accessed: 10.04.2018

¹⁶¹ *ibid.*

¹⁶² Korzun, Peter “Goodbye Old EU, Hello New Multi-Speed Europe” Strategic Culture Foundation, March 2017 Available: <https://www.strategic-culture.org/news/2017/03/14/goodbye-old-eu-hello-new-multi-speed-europe.html> Access: 10.02.2018

Reacting to Hungary and Poland

As a step towards this the ‘Rule of Law Framework’ was developed in 2014 as a new tool to tackle democratic backsliding. It works through a dialogue with the state that violated EU law in order to prevent further escalation¹⁶³ of the ongoing tendencies. Furthermore, it supposed to resolve the situation before the EU has to rely on Article 7 of the TEU. However, so far, the EU has shown different attitudes towards the two countries.

In the case of Hungary, the Rule of Law Framework was not implemented. The EU has relied on gradual, less harsh measures such as infringement procedures and social pressure¹⁶⁴ in its attempts to counterbalance Orbán’s policies.

Let us look at the measures in a chronological order. First, the EU started legal proceedings against Hungary on the 17th January of 2012 because of the forced retirements of judges and public prosecutors.¹⁶⁵ The government was forced to bring the law in line with EU standards based on the law on equal treatment of employment. Parallel to this, the EU also started to act for the independence of the Hungarian Central Bank (Magyar Nemzeti Bank), however this proceeding was closed as the government promised to change legislation to resolve the issue.¹⁶⁶

¹⁶³ European Parliament homepage “European Parliament resolution on the situation in Hungary” 2017 Available: <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B8-2017-0295&language=EN> Accessed: 12.04.2018

¹⁶⁴ Salmi, Senni “Democratic backsliding in Hungary and Poland” Johns Hopkins University, April 2017, 1-15

¹⁶⁵ European Commission Press Release 2013c “European Commission Closes Infringement Procedure on Forced Retirement of Hungarian Judges.”

¹⁶⁶ European Commission Press Release 2013b. “Hungary - Infringements: European Commission Satisfied with Changes to Central Bank Statute but Refers Hungary to the Court

Another case was concerned with the independence of the Data Protection Authority and the abolishment of the Data Protection Commissioner's office which had existed since 1995¹⁶⁷ and the premature termination of Jóri András Commissioner's mandate.¹⁶⁸ Later in 2015, infringement proceedings started regarding asylum procedures which seemed to be in conflict with the right to fair trial.¹⁶⁹ In 2017 two other serious infringement proceedings were initiated and later on referred to the Court of Justice: the discriminatory law against foreign funded NGO-s and Lex CEU.¹⁷⁰ So far Fidesz remains reluctant to resolve any of them.

Why the Rule of Law Framework was ignored in the case of Hungary? According to Daniel Kelemen it can be explained by party membership in the European Parliament.¹⁷¹ Hungary belongs to EPP, the biggest party in the European Parliament. Kelemen argued that EPP decided to prioritize to maintain their majority rather than to intervene. Hence, as long as EPP remains

of Justice on the Independence of the Data Protection Authority and Measures Affecting the Judiciary”

¹⁶⁷ Budapest Business Journal “EC decides further steps in Hungary infringement procedures” March 2012, Available: https://bbj.hu/politics/ec-decides-on-further-steps-in-hungary-infringement-procedures_62838 Accessed: 15.05.2018

¹⁶⁸ Adatvédelem <https://www.xn--adatvdelem-f7a.hu/2014/07/bocsanatkeres-a-korabbi-adatvedelmi-biztostol/>

¹⁶⁹ European Commission Press Release, „Commission open infringement procedure against Hungary concerning its asylum law” December 2015 Available: http://europa.eu/rapid/press-release_IP-15-6228_en.htm Accessed: 19.02.2018

¹⁷⁰ Pivarnyik, Balázs “European Commission sues Hungary over ‘NGO law’” Budapest Beacon, February 2018, Available: <https://budapestbeacon.com/european-commission-sues-hungary-over-ngo-law/>, and Novak, Benjamin “EC infringement procedures against Hungary move ahead for NGO law and Lex CEU” Budapest Beacon, July 2017, Available: <https://budapestbeacon.com/ec-infringement-procedures-hungary-move-ahead-ngo-law-lex-ceu/> Accessed: 20.02.2018

¹⁷¹ Kelemen, Daniel R. “Europe’s Other Democratic Deficit: National Authoritarianism in Europe’s Democratic Union” *Government and Opposition* 52 (2) (April 2017) 211–238

reluctant to fire Hungary, it will be almost impossible to implement any actually efficient proceeding against the country.

As mentioned before, besides infringement proceedings the EU relies on social pressure to put Hungary back to the required direction. This 'method' consists of publicly criticizing and shaming the targeted government and its actions.¹⁷² This is well exemplified by the statements and speeches given by high representatives of the EU or leading politicians of EU great powers. The president of the commission, Barroso, and Secretary General of the Council of Europe, Jagland expressed their concern over the democratic backsliding in Hungary in a joint statement on the 11th of March 2013. Jagland stated regarding the planned changes to the Constitutional Court that this step "might endanger the fundamental principle of checks and balances in a democracy".¹⁷³ In 2015 at a Summit in Riga Juncker, jokingly, greeting Orbán with a subtle „Hello Dictator”.¹⁷⁴ Well, this might only have been a funny one liner from the head of European Commission, it still tells a lot about the attitude of the European elite. One of the biggest critiques of the Hungarian Prime Minister, Guy Verhofstadt was more outspoken about the issue in 2017 at a plenary session of the European Parliament where he called out Orbán on his acts. "You signed up to the values of the Union. You have violated every single one of them. And yet you want Hungary to remain a member of the European Union You want to keep the

¹⁷² Sedelmeier, Ulrich "Anchoring Democracy from Above? The European Union and Democratic Backsliding in Hungary and Romania after Accession", *Journal of Common Market Studies*, 52 (1) December 2013, 105-121

¹⁷³ Viviane Reding "Hungary and the Rule of Law – Statement of the European Commission in the Plenary Debate of the European Parliament" European Commission, 2013, Available: http://europa.eu/rapid/press-release_SPEECH-13-324_en.htm Accessed: 16.05.2018

¹⁷⁴ Walker Shaun "‘Hello dictator’: Hungarian prime minister faces barbs at EU summit" May 2015, Available: <https://www.theguardian.com/world/2015/may/22/hello-dictator-hungarian-prime-minister-faces-barbs-at-eu-summit> Accessed: 10.12.2018

EU funds, but you don't want our values.”¹⁷⁵ Nevertheless, all these attempts from the EU proved to be unsuccessful on the long run and change has not yet come to the aid of Hungarian democracy.

Contrary to the actions against Hungary, the European Union matched its measures to the speed of the backsliding in Poland. Less than two months after PiS got to power the European Commission gathered to analyse the situation and decided to launch a dialogue with the Polish government on the 13th of January in 2016.¹⁷⁶ However, mere words brought no solution in Poland either, hence the EU followed up by written warnings from the Commission: an opinion on the Rule of Law in Poland, then the Commission's Recommendation on the 27th of July in 2016, followed by a complementary Rule of Law Recommendation on the 21st of December 2016. However, these brought no positive change either. „The Commission has issued a rule of law opinion and three rule of law recommendations, it has exchanged more than 25 letters with the Polish authorities on this matter; numerous meetings and contact between the Commission and Polish authorities have taken place” said Frans Timmermans the first Vice President of the European Commission. In 2017 the EU took an unprecedented step and made the first steps towards implementing Article 7 point 1 of the EU treaty against Poland.¹⁷⁷ Nevertheless,

¹⁷⁵ ALDE <https://alde.eu/en/news/901-orban-wants-the-european-money-but-not-our-values/>

¹⁷⁶ European Commission - Fact Sheet 2016 Available: [http://europa.eu/rapid/press-release MEMO-16-62_en.htm](http://europa.eu/rapid/press-release_MEMO-16-62_en.htm) Accessed: 17.05.2018

¹⁷⁷ Stone, Jon “EU takes unprecedented first step towards sanctions against Poland to stop drift towards authoritarianism” Independent, December 2017, Available: <https://www.independent.co.uk/news/uk/politics/poland-rule-of-law-article-7-authoritarianism-independence-of-judiciary-a8120196.html> Accessed: 21.12.2017

Hungary stated that it will never vote against Poland¹⁷⁸ so moving on to Article 7 (2) – depriving Poland from its voting rights – is impossible.

There are several other practical and theoretical causes which put point 2 in the category of a nuclear option for the EU. First of all, there is no guarantee that the government which is committing serious and persistent breaches of EU values would not just ignore the censure of its peers, especially if the survival of the ruling elite is at stake. Secondly, the projection of a united Europe would be threatened.¹⁷⁹ Especially, Hungary's strong ties to Russia might explain the reluctance for harsher measures from the EU. After Brexit the EU cannot afford to let the world think its cohesion is doomed and 'push' its member states in the arms of Putin by harsher reactions. Furthermore, masses can rally behind the punished states, condemning outside interference which can further intensify Eurosceptic sentiments.¹⁸⁰

Still, we could see that the EU dared to take a harsher step against Poland. Kelemen's partisan politics explanation could be used here as well. PiS has an unfavourable setting in the EPP as a member of the Eurosceptic group ECR (European Conservatives and Reformists). Being a small grouping, when the Rule of Law in Poland was taken in front of the European Parliament ECR was overruled by the majority. Hence, Rule of Law Framework could be applied, contrary to the Hungarian case.

¹⁷⁸ DW.com Available: <http://www.dw.com/en/hungary-will-block-punitive-eu-action-on-poland/a-41903647> Accessed: 22.03.2018

¹⁷⁹ Grabbe, Heather and Lehne, Stefan "Defending EU Values in Poland and Hungary"

¹⁸⁰ Politico "What is Article 7?" Available: <https://www.politico.eu/article/hungary-eu-news-article-7-vote-poland-rule-of-law/> Access: 10.02.2018

Future prospects

Nevertheless, the EU ought to consider new strategies to successfully address the issues this thesis aimed to outline to prevent the rise of autocracies in this cooperation of states.¹⁸¹ The election of Macron, and with it the Macron-Merkel axis, and Brexit the talks about a multi-speed Europe or ‘differentiated integration’ came to the fore of EU studies and policy making. While the concept is far from perfect it could be a start. “We must have the courage to accept that some countries can move forward a little more quickly than others”, she further added: “Europe of different speeds is necessary, otherwise we will probably get stuck. If Europe gets stuck and doesn't develop further, then this work of peace may run into danger faster than one might think”¹⁸². Differentiation may be defined as the process that allows some member states of the EU to co-operate closer at an earlier point in time while others follow suit later.¹⁸³ History clearly shows that differentiated integration—both inside and outside the EU treaties—is an established practice. Schengen and the eurozone are examples of this.¹⁸⁴ Theoretically, differentiation can be the only process to “guarantee an optimal distribution of competences between the different levels of government while going beyond the status quo associated with

¹⁸¹ Vetter, Reinhold Nationalismus im Osten Europas. Was Kaczyński und Orbán mit Le Pen und Wilders verbindet. Berlin: Christoph Links Verlag, 2017b in Grünewald, Aline “As in Hungary now in Poland? Assessing the states of democracy in Hungary and Poland as ‘lands in-between’ democracy and autocracy” 1-77,

¹⁸² Korzun, Peter “Goodbye Old EU, Hello New Multi-Speed Europe”

¹⁸³ Holzinger, Katrina and Schimmelfennig, Frank “Differentiated integration in the European Union: Many Concepts, Sparse Theory, Few Data” *Journal of European Public Policy*, 19 (2) (January 2012), 292-305

¹⁸⁴ Chopin, Thierry and Lequesne, Christian “Differentiation as a double-edged sword: member states’ practices and Brexit”, *International Affairs*, 92 (3), 2016, 531-545

a unanimous vote.”¹⁸⁵ Furthermore, differentiation enables states that are prepared to take a risk and go further and give the opportunity for others to look at the results and join later. As Macron put it after his election: “We should imagine a Europe of several formats: going further with those who want to advance, while not being held back by states which want... to progress slower or not as far.”¹⁸⁶ As argued before, European leaders were reluctant so far to significantly act against the abuse of values from Budapest and Warsaw, however, differentiation is also a great political tool to put pressure on some member states who are unwilling to cooperate. “Differentiation has always been a means to put pressure on other member states. It has been used as an element to make others agree or allow others to progress if you’re ready. It is not a coincidence that Merkel was talking about multispeed Europe and then a week later she was in Warsaw.”¹⁸⁷

However, the process is not perfect. There is a risk of an ‘outsiders’ dilemma.’ This means that countries are torn between becoming entrapped in the EU by surrendering substantial political authority on the one side and being abandoned by the integration system, on the other.¹⁸⁸ Moreover, a multi-speed Europe can further entrench the West versus East divide and those ‘slower’ member states can feel left-out, which can not only lead to extreme fragmentation of

¹⁸⁵ *ibid.* 533

¹⁸⁶ EURACTIV “Merkel backs Macron’s call for multi-speed EU, ‘small’ eurozone budget” August 2017 Available: <https://www.euractiv.com/section/future-eu/news/merkel-backs-macrons-call-for-multi-speed-eu-small-eurozone-budget/> Accessed: 10.12.2017

¹⁸⁷ Barker, Alex, McClean, Paul and Wagstyl, Stefan “Will EU core states leave partners behind after Brexit?” Available: <https://www.ft.com/content/634d4934-0291-11e7-aa5b-6bb07f5c8e12> Accessed: 2018. 04. 10

¹⁸⁸ Petersen, Nikolaj “National strategies in the integration dilemma: An adaptation approach”, *Journal of Common Market Studies*, 36 (1) (February 1998) 33-54, 35

EU polity but can further push these states to other great powers such as Russia or China. Orbán has already spoken about this, stating that “in case the European Union cannot grant us financial assistance, then we will turn to China for it.”¹⁸⁹ Due to the reasons mentioned at the beginning of this paragraph differentiation can be easily used by populist elites to their own advantage, hence “differentiated integration has to be an open process, and conditions for participation in particular projects must be legitimate and transparent.”¹⁹⁰ Guy Verhofstadt questions whether a fragmented Europe where different states participate on different forms of integration can work properly. He states that by these citizens could feel even more disengaged and this process could be incomprehensible to them. He pitches the solution of a Union with a strong distinction between full EU member states and those with a kind of associate status.¹⁹¹ This is something we have to properly consider. As for now, this thesis suggests the idea of a multi-speed Europe.

The “differentiation within” approach¹⁹² would enable the Union to go beyond the current economic and monetary union and Schengen, which would reinforce cooperation. Furthermore, under this scheme legitimacy and accountability would be at the centre of policymaking that could counter the possible populist rhetoric in the CEE countries as well. Moreover, even on

¹⁸⁹ Rényi, Pál Dániel “Orbán: Ha az EU nem ad pénzt, majd kérünk Kínától Available: <https://444.hu/2018/01/10/orban-ha-az-eu-nem-ad-penzt-majd-kerunk-kinatol> Accessed: 10.01.2018

¹⁹⁰ Chopin, Thierry and Lequesne, Christian “Differentiation as a double-edged sword: member states’ practices and Brexit”, 531-545, 532

¹⁹¹ Müller, Jan-Werner „Constitutional Fantasy” London Review of Books, 39 (11) (June 2017)

¹⁹² Morillas, Pol “The EU should abandon ‘ever closer union’ in favour of ‘flexible differentiation’ after Brexit” London School of Economics, 2017, Available: <http://blogs.lse.ac.uk/brexit/2017/02/02/the-eu-should-abandon-ever-closer-union-in-favour-of-flexible-differentiation-after-brexit/>, Accessed: 2018. 04. 10

the regional level – such as in the Visegrád group – there are different levels of ambition and capacity among member states, hence differentiation seems to be the way forward. We have to admit that most future projects for deeper integration will require some flexibility. While member states already transfer a variety of sovereign competencies to the EU, we can observe a multitude of differentiation processes through which they choose to disengage. One example for this can be in the form of opt-outs from parts of the treaties. This measure is still seen as an expression of national sovereignty and hence democracy, as Neil Walker argued, an “ideological assumption of ultimate authority over the internal operation of the polity”¹⁹³ Adler-Nissen argued that even the opt-out states function within the Union’s constitutional discourse. “Indeed, the paradoxical and perhaps most perplexing discovery is that the management of opt-outs contributes to the upholding of the doxa of ‘an ever-closer Union.’”¹⁹⁴ Hence, we can see that this tool only leads to a differentiated integration process and does not stall the project of an ever-closer union. It might appear that it undermines solidarity and cohesiveness but instead it contributes to securing the ‘doxa’ of the EU.¹⁹⁵

Overall, the EU has huge stakes – both functional and normative - at figuring out this crisis and defending its values. What is for sure that leaders of the European Union must find a way to act and stop the backsliding of these democracies because the normative power of the EU rests of

¹⁹³ Walker, Neil “Late Sovereignty in the European Union”, in Neil Walker (ed.), *Sovereignty in Transition*. Portland: Hart Publishing, 2003, 3-32 26

¹⁹⁴ Adler-Nissen, Rebecca „Opting out of an ever closer union: The integration doxa and the management of sovereignty” *West European Politics*, 34 (5), 2011, 1092-1113, 1108

¹⁹⁵ *ibid.*

shared values without which trust and cooperation is impossible. Furthermore, the deterioration of the rule of law allows governments to be less disciplined to adhere to EU law.¹⁹⁶

Conclusion

After presenting the evidence we can conclude that there is significant backsliding of liberal democracy in Hungary and Poland. While there are debates among scientists, how these countries should be labelled and categorized, we have to recognize that it should be the paramount interest of the European Union to tackle the issues. In the first chapter the thesis outlined the most important theoretical debates around the extent of democratic recession, after which we have applied a targeted focus on Hungary and Poland. By investigating the transition to democracy and the political atmosphere leading up to the accession to the European Union we concluded that in both countries the most important elements of liberal democracy were only superficially embedded. The following chapter outlined that in both countries the transition period left its mark and soon after the accession, political turbulences shifted the once success stories of these countries. By using Nancy Bermeo's theory of executive aggrandizement we aimed to show how the executive branch in both countries takes up the leading role, by making it impossible for the other branches to act as checks and balances. Firstly, we have showed how the landslide victory of Viktor Orbán in 2010 brought illiberal democracy to Hungary. But if you see your fellow member getting away with almost everything contrary to the founding principles of the EU - corrupting constitutional courts, impairing the possibilities of civil society organisations or free media - then your motivation to comply

¹⁹⁶ Both governments are refusing to take in any asylum-seekers from Greece or Italy under the relocation scheme adopted in 2015. The PiS government has also ignored a ruling by the EU Court of Justice that it should stop logging in Poland's ancient Białowieża forest (ibid)

weakens as well. As it was evident in Poland the persona of Jaroslaw Kaczyński. As outlined in the respective chapters, we could experience almost the same illiberal and anti-democratic acts from the PiS government as from Fidesz. In the last chapter the thesis laid out both the shortcomings of the EU towards these countries at the time of the accession and also how the Union reacted or not-reacted to the violations of its principles. Lastly, we provided a possible solution how the European Union could go forward, namely differentiated integration. This would ensure that those countries who are willing and capable can move faster and more efficiently and those who cannot or do not want to can join later. However, it is important to note that respect for core principles must be enforced by the EU, not only for the sake of its internal power but also to be able to keep up a strong external clout, it's role of a liberal democratic model which should be followed. Overall, it is the most important issue for European leaders to figure out a solution to lead these countries back to the path of convergence, while keeping in mind diversity within the European Union.

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