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Tilting the Playing Field in Hungary and Poland through Informal Power

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Summary

Hungary and Poland have become the most prominent cases of democratic backsliding and rule-of-law deterioration among the member states of the European Union. Both countries have undergone a systemic change since the Fidesz and Law and Justice (PiS) parties came to power and started their illiberal remodeling in 2010 and 2015 respectively. The EU has not been able to force either government to comply with its core values, despite introducing various instruments to that end. Furthermore, the EU's procedures for monitoring the institutional and legal systems in member states do not address the informal exercise of power that Fidesz and PiS have used to undermine Hungarian and Polish democracy.

This paper provides a nuanced picture of democratic backsliding in Hungary and Poland by analyzing the uncodified, informally enforced interactions of the Fidesz and PiS governments that create an uneven playing field to their benefit. This can take various forms of clientelist exchange that create a twofold system of dependence—between the electorate and the government, and within circles closely allied with the regime.

Decisions being made outside of the formal structures of the state amid a troubling lack of accountability and transparency suggests a highly corruptogenic setting in the two countries, although to differing extents. In Hungary, Prime Minister Viktor Orbán's regime has successfully captured the most important sectors of the economy and his family members are among the primary beneficiaries of this system. In Poland, the PiS regime has built a clientelistic network through which the party's leader, Jarosław Kaczyński, has consolidated his control over the United Right governing alliance. While political state capture is almost entirely absent in Poland, the coercive element of clientelism has become more present in recent years.

The Fidesz and PiS regimes also wield power informally through media capture and by using powerful individuals and companies to silence or turn over

media outlets independent of the government. In recent months, once again Hungary's government was able to silence a dissident voice (Klubrádió) due to the EU's inaction, and developments concerning the press in Poland show that PiS is following in the footsteps of Fidesz. Both regimes have also learned to develop new ways to make elections unfair in an informal way that is more difficult for international observers to identify than outright fraud.

It is crucial for the EU to pay greater attention to these problems of informal power in member states like Hungary and Poland because its existing procedures for dealing with democratic and rule-of-law backsliding mainly monitor the institutional and legal systems and are ill-suited to address informal mechanisms used by governments. So far, the Orbán and the Kaczynski regimes have benefited from the deeply legalized EU approach in which drawn-out procedures are based on transparency and accountability, while cautiously avoiding sanctioning member states.

The EU's procedures for monitoring the institutional and legal systems in member states do not address the informal exercise of power that Fidesz and PiS have used to undermine Hungarian and Polish democracy.

For external actors like the EU to address these issues more efficiently, they need to take the informal exercise of power seriously. It is important to increase the pressure on member states that are systematically undermining democracy by using various tools within the EU Council. The European Commission should bring more infringement actions against the governments of Hungary and Poland related to the Article 7 procedure, including over the undermining of press freedom and media pluralism that are among the major concerns listed under its scope. This must be done with applica-

tions for interim measures to avoid further democratic deterioration in member states. Should the EU's new rule-of-law conditionality mechanism prove difficult to enforce, its structural funds rulebook should be suitable to foster a stronger linkage between the rule of law and the financial integrity of the EU.

The OSCE's Office for Democratic Institutions and Human Rights should reconsider its approach when it comes to election monitoring. Longer-term missions are needed along with using focus-group method-

ology to better identify the problems posed by electoral clientelism, especially in rural areas.

More engagement is needed from the United States, which should under the Biden administration resume an active role in promoting tougher approaches to push back against autocratization in Central and Eastern Europe, including with more support for civil society and non-government media, and educational programs to support freedom and political pluralism.

Introduction

In recent years Hungary and Poland have experienced the sharpest democratic erosion in the European Union. According to global democracy indexes, the former no longer constitutes a consolidated democracy while the latter is rapidly moving in the same direction. Whereas the latest Varieties of Democracy report claimed that Hungary had become the EU's first electoral authoritarian regime and Poland declined the most during the last decade, this year Freedom House downgraded them to the status of a "transitional or hybrid regime" and "semi-consolidated democracy" respectively.¹

In both countries, Viktor Orbán and Jarosław Kaczyński and their Fidesz and Law and Justice (PiS) parties respectively have tilted the playing field to their advantage and employed various informal tools to cement their power by undermining their opponents in a way that is difficult to detect by foreign observers. This has worsened during the coronavirus pandemic, which they have used as a pretext to make their political systems even more authoritarian.

While most studies of democratic backsliding in Hungary and Poland focus on the analysis of institutional and legal frameworks, and on well-documented formal violations of the law and the deterioration of checks and balances, the essence of informal power in both countries has remained mostly under the radar. This paper analyzes the informal interactions of the Fidesz and PiS governments to provide a more nuanced picture. First, it presents a conceptual summary of the nature of the kind of informal power driving democratic backsliding in the two countries. It then looks at the three main ways through which the regimes have informally tilted the political playing field, based on interviews with experts in Hungary and Poland, as well as on desk research.

Despite introducing various institutional innovations and mechanisms to address the situation in Hungary and Poland, the EU has not been able to

make either government comply with its core values. This is because these autocratizing regimes have operated mostly by formally complying with EU law while substantially undermining democracy through informal power tools that are harder to detect through the EU mechanisms. Therefore, the paper concludes by reflecting briefly on the factors constraining the role of EU institutions, and it offers recommendations on how the EU could to efficiently and meaningfully prevent democratic backsliding in such regimes.

Informal Power in Hungary and Poland

Fidesz and PiS started their autocratic remodeling of Hungary and Poland when they took office in 2010 and 2015 respectively. Both have hollowed out democracy by capturing the main formal state institutions that are meant to constrain government behavior and turning them into their own tools. Although the two countries' constitutional courts had previously been the strongest check on incumbents, they have adjusted their operations to align with the government-dominated political system. Their offices of the prosecutor general are under government influence and in a position to block any investigation into cases related to the governing elite.

Informal aspects of politics do not necessarily lead to negative consequences for democracy, but undemocratic types of informality have a strong systemic impact. Research shows that clientelism, abuse of administrative resources, manipulation of the media, illegal party financing, and sponsoring of lobbyists by large companies to influence election outcomes all damage the quality of democracy.²

Here the informal exercise of power refers to the uncodified, informally enforced interactions of the government that create an uneven playing field to its benefit. This can take various forms of clientelist exchange that create a twofold system of dependence—between the electorate and the government, and within circles closely allied with the regime. Polit-

1 Varieties of Democracy, [Autocratization turns viral. Democracy report](#), 2021; Freedom House, [Nations in Transit](#), 2021.

2 See Gerd Meyer (ed.), [Formal institutions and informal politics in Central and Eastern Europe](#), Barbara Budrich Publishers, 2008.

ical clientelism has traditionally been defined as the distribution of selective benefits to individuals or groups in exchange for political support—importantly, this form of informal power is also often being used by the government in a coercive way to consolidate its control over the state and the society. The point is that decision-making is often removed from the legally formalized institutional frameworks, which creates a highly corruptogenic environment in both countries.

There are three ways in which Fidesz and PiS, led by Orbán and Kaczyński, develop and use informal power to achieve their goals.

The first is systemic clientelism revolving around the two leaders. An informal clientelist system has various practical advantages and is a consequence of personalist structures of decision-making. It is also instrumental in terms of structuring intra-elite competition because it allows leaders to pit members of the political elite against each other, thus securing the leader's own position as the sole patron of the elite.

The second is media capture through actors loyal to the government. Fidesz and PiS use powerful individuals and companies aligned with them to silence or take over media outlets critical of their governments.

The third is electoral clientelism. Although full-fledged electoral fraud has not been undertaken in Hungary or Poland, both governing parties abuse their powers to hinder the election of opposition candidates. In Hungary, the institutional environment does not provide equal opportunities for the opposition, and almost all components of the electoral system benefit the incumbent.³ While Kaczynski has openly claimed that he aims to install in Poland a “Budapest on the Vistula,”⁴ Fidesz has employed a more robust system-transforming strategy in Hungary due to having a parliamentary majority that enables it to change the constitution.

The Hungarian and Polish governments tilt the playing field to their benefit in various informal ways. Among other things, PiS uses state resources directly to undermine dissidents while Fidesz puts indirect pressure on business actors to distort the media market. In Hungary, low-intensity coercion is imposed on dissidents, journalists, opposition ballot-counting officers, and others outside of government circles. This takes various forms, such as the use of tax authorities or other state agencies to investigate and prosecute journalists and opposition politicians, which is presented to the world as enforcement of the rule of law. While PiS has built a clientelistic network through which Kaczynski has consolidated his control, his system has also been getting more coercive. Though the approach is different, the impact is the same on the systemic level: further deterioration of the quality of governance in both countries.

Systemic Clientelism

Hungary: Orbán-centered Cronyism

In Hungary, over the last decade power has become concentrated mainly in the hands of Viktor Orbán, in what the economist János Kornai described as “central-vertical coordination based on a hierarchical command system.”⁵ Formal structures have been used alongside informal one, with the government allocating state resources to individuals and groups closely related to the prime minister. Although successive governments have developed their own network of wealthy businessmen linked to political parties since the democratic transition in 1989, Orbán's second government has changed this dynamic in many aspects.

A single patronage network has been built in which controlled state institutions and individuals close to Orbán are able to accumulate more wealth than any other networks could before 2010 when Fidesz

3 Melani Barlai and Zsófia Banuta, [Irregularities in the 2018 European Parliamentary and local elections in Hungary](#), Unhack Democracy, 2020.

4 TVN24, “[Przyjdzie dzień, że w Warszawie będzie Budapeszt](#)”, October 9, 2011.

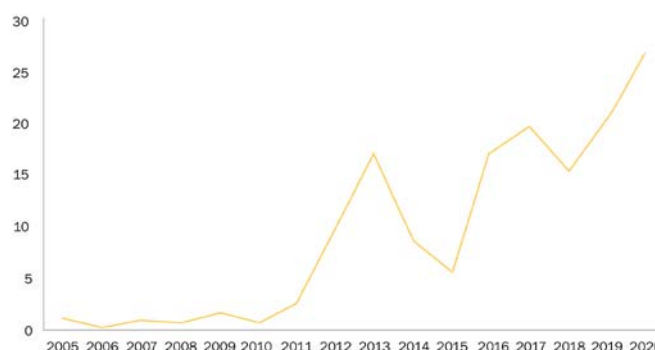
5 János Kornai, *Látélet—Tanulmányok a magyar állapotokról*, HVG Könyvek, 2017.

returned to power.⁶ This is a unique model within the EU—a top-down system of reverse or political state capture⁷ in which the government is cooperating with “grey eminences” and oligarchs around executive power. In contrast to other countries where strong interest groups gain hold of weak public institutions, a very strong government is working with informal business circles to establish a complex, impenetrable, centralized, and legalized corruption ecosystem.⁸

While the prominent conservative thinker András Láncki claims that Fidesz’s main goal has been to create, at any price, a new national middle class, in fact what the critics of the regime call corruption in practical terms is the most important policy goal of Fidesz. According to Transparency International, Hungary has become one of the most corrupt EU member states.⁹ Due to the distorted check and balances, there is a lack of investigation of corruption, which has had a profound negative implication on the quality of democracy in Hungary.¹⁰

The Fidesz government has been building up an exclusionary business-state-party alliance that allows access to public procurement—including EU-funded projects—for a very limited number of actors.¹¹ According to the Corruption Research Center Budapest, the corruption risk in public procurement grew considerably after the change of government in 2010 and last year reached its highest level since 2005.¹² As

Figure 1. Share of Public Procurement Contracts Won by Crony Companies without a Framework Contract in Hungary, January 2005–April 2020



Source: Corruption Research Center Budapest, [New Trends in Corruption Risk and Intensity of Competition in the Hungarian Public Procurement from January 2005 to April 2020](#).

of April 2020, the share of public contracts awarded without competition was 41 percent.¹³ (See Figure 1.)

One of the key figures in Hungary’s crony clientelist system that revolves around the prime minister is Lőrinc Mészáros, a gas fitter and close childhood friend of Orbán’s, who became the country’s wealthiest person in just a few years after Fidesz came to power. In 2017, he lost a court case before the Budapest–Capital Regional Court of Appeals against the opposition party Együtt, which had claimed that he only nominally owned his wealth and was a proxy of the prime minister.¹⁴ His rise is indicative of the system’s informality. Mészáros’s companies have won an unprecedented number of public contracts since 2010, 83 percent of which have been financed by EU-funded public procurement projects.¹⁵

6 Bálint Magyar and Bálint Madlovics, *The anatomy of Post-Communist Regimes*, Central European University Press, 2020.

7 Péter Martin József, “Continuity or disruption?” *Corvinus Journal of Sociology and Social Policy*, 2017.

8 Corruption Research Center Budapest, [New Trends in Corruption Risk and Intensity of Competition in the Hungarian Public Procurement from January 2005 to April 2020](#), 2020.

9 Transparency International, [Corruption Perception Index](#), 2021.

10 Interview with András Bozóki, professor at the Department of Political Science at the Central European University, November 27, 2020, in Budapest.

11 Interview with László Bruszt, co-director of the CEU Democracy Institute and professor of sociology at the Central European University, November 7, 2020, Budapest.

12 Interview with János István Tóth, director of the Corruption Research Center Budapest, October 28, 2020, Budapest.

13 Corruption Research Center Budapest, [New Trends](#).

14 Tamás Németh, “Mészáros másodfokon is veszített a strómanos perben,” *Index*, March 27, 2017.

15 Katalin Erdélyi, “Túlnyomó részt uniós forrásokból gazdagodtak Mészáros Lőrinc családi cégei az elmúlt hét évben,” *Átlátszó*, January 15, 2018.

Several government measures have resulted in the effective takeover of private property either by the state or by pro-government private actors. Although the constitution states that “Property may be expropriated only exceptionally and in the public interest, in cases and in the manner prescribed by law, with full, unconditional and immediate compensation,” the regime has successfully captured the most important sectors of the economy. In the most notorious case, the economic empire of László Simicska, a former ally of Orbán, which was worth approximately HUF 60–80 billion, ended up in the hands of Mészáros in 2019. Blurring the boundaries between the state and private sphere is the key in this matter.¹⁶

The prime minister’s family members are among the primary beneficiary of this system.¹⁷ For example, the prime minister’s son-in-law, István Tiborcz was involved in the fraudulent use of €40 million from EU funds between 2011 and 2015.¹⁸ His company group also reportedly received billions of forints from a Central Bank scheme for smaller businesses affected by the coronavirus pandemic, despite being listed by Hungarian Forbes as the 60th most-valuable Hungarian-owned company.¹⁹

In addition, it was revealed in 2020 that the mining company of Orbán’s father, Dolomit Kft., offers its products at a significantly higher price—sometimes 60 to 70 percent higher—than its main competitors when it is a supplier for state investment projects.²⁰ While Orbán’s closest family have remained subcontractors in public procurement over the last 10 years, at the end of last year Gamma Amalcont, of which his younger brother is a minority owner, won a HUF 268 million

public-procurement contract to provide remote monitoring service of gas networks worth.²¹

Last year, under the pretext of the coronavirus pandemic, Fidesz amended the constitution for the ninth time to narrow the definition of public funds to “the income, expenditure, and claims of the state.” The amendment also enacts a law on creating public trust funds that deems money the government gives to any Hungarian foundation as no longer being public funds. This will enable the government to channel public funds through such foundations to its cronies by relabeling as them as private funds.

Orbán and Fidesz appear to be cementing their clientelist network for the long run and working to retain economic power in case of a defeat in next year’s elections. A new government could only undo their constitutional changes with a two-thirds majority in parliament.

Poland: Kaczyński’s Informal Role

Jarosław Kaczyński has always believed that the real power and efficiency of the state depends predominantly on personal and informal relationships.²² Accordingly, since PiS came to power for the second time in 2015, Poland has become a textbook case of informal distribution of decision-making and executive power. The formal organizations and procedures of the state often do not determine how political decisions are made; instead, real decision-making authority is wielded through the informal practices of Kaczyński.

While PiS supports a centralized mode of governance to concentrate political power in the core executive at the national level, Kaczyński has been the real unquestioned center of power for years even though he did not have a government position until last October, when he took that of deputy prime minister. Now he is also the chairman of the Committee of the Council of

16 Interview with József Péter Martin, director of Transparency International Hungary, October 29, 2020, Budapest.

17 Interview with Bálint Magyar, research fellow at CEU’s Democracy Institute, November 6, 2020, Budapest.

18 Tibor Racz, “[EU Investigation Shows How Hungary Rigged Public Tenders](#),” Organized Crime and Corruption Reporting Project, 2018.

19 András Szabó, “[Orbán’s son-in-law and his associates among beneficiaries of favorable state covid loans](#),” Direkt36, April 14, 2021.

20 Blanka Zöldi, “[Orbán’s father offers building materials for a much higher price than the competition](#),” Direkt36, December 16, 2020.

21 Dániel Szóke, “[Until now, Orbán’s family stayed away from public procurements. Now the company of his brother won a lucrative one](#),” Direkt36, 2021.

22 Research interview, December 19, 2020, Warsaw.

Ministers for National Security and Defense Affairs, a position that did not previously exist.²³ In it, his main task is the coordination of decision-making in these areas and to submit proposals to the Council of Ministers or the prime minister.²⁴ This allows him to wield considerable informal power.

Last November it was revealed that, infuriated by abortion protests in front of his house, he had demanded from the head of the Ministry of Internal Affairs and Administration to order more decisive action from the police.²⁵ Furthermore, informal mechanisms for coordination have an important role despite Kaczyński no longer being a backbencher.²⁶ He independently makes important decisions, and the members of the government are strongly dependent upon their relationships with him. Policymaking under the PiS government is still guided by the leader of PiS.

After PiS returned to power in 2015, it focused on exerting political control over the judiciary and other institutions critical of the government, rather than preventing corruption, as it promised.²⁷ Since it came back to office, PiS has become a quasi-oligarchical network linking political and corporate power.²⁸

One of the most symbolic figures is Daniel Obajtek, the former mayor of the commune of Pcim, who converted his political capital into economic capital, rising rapidly to become the executive chairman of state energy company PKN Orlen. After he was mentioned as a potential successor of Prime Minister Mateusz Morawiecki earlier this year, revelations of corruption scandals have appeared almost daily

in the press. Obajtek has been accused of managing a company illegally from the backseat when he was mayor and of lying about it in court a couple of years ago. Investigative journalists have also revealed misuse of funds and clandestine transactions on his part as the head of PKN Orlen.²⁹

A large-scale turnover has taken place in the public sector and state-owned enterprises under the guise of PiS's policy of "decommunization."

A large-scale turnover has taken place in the public sector and state-owned enterprises under the guise of PiS's policy of "decommunization." The party has used this process to distribute a large number of jobs to loyalists, many without professional experience, by lowering the requirements to fill certain posts. While this was an approach also taken by previous governments, it shifted into a new gear under PiS. The clientelistic exchange was centered around the distribution of state-political and state-commercial positions within the ruling party to cement loyalty to it and its power. The most concerning aspect of this is the lack of transparency when it comes to recruitment since most documents are classified. As a result, an increasing number of close relatives and friends have taken high-level positions in state companies since 2015, regardless of their competences, in an untransparent way.³⁰

The government has recently also instrumentalized the Civil Service Act to potentially legalize corruption. In the past year, under the pretext of the coronavirus pandemic, open-competition provisions were dropped for the highest posts in the civil service, easing more political nominations. This is contrary

23 Dziennik Urzędowy Rzeczypospolitej Polskiej, [Report](#), 2020.

24 Interview with Małgorzata Szuleka, head of advocacy at the Helsinki Foundation for Human Rights, December 18, 2020, Warsaw.

25 Wojciech Czuchnowski, "[Kaczyński was behind the use of police brutality against women's protest last Wednesday](#)," *Gazeta Wyborcza*, November 27, 2020.

26 Interview with Grzegorz Makowski, assistant professor at the Warsaw School of Economics, November 23, 2020, Budapest.

27 Bertelsmann Transformation Index, [Country report on Poland](#), 2020.

28 Edit Zgut et al., [Illiberalism in the V4: pressure points and bright dots](#), Political Capital and Friedrich Naumann Stiftung, 2018.

29 Bianka Mikołajewska, "[15 properties of Daniel Obajtek and his mum. We reveal new, unknown \[PHOTOS, MAPS\]](#)" OKO.press, March 13, 2021.

30 Anna Dąbrowska, "[Rodzina PiS na swoim – czyli dojenie państwowych spółek](#)," *Polityka*, March 31, 2021.

to the constitution, which clearly mandates the civil service's impartiality and neutrality.³¹

PiS uses appointments to different positions not only as a source of incentive but also of coercion. Political allies and opponents have also been pressured by clientelism. This was reflected during the parliamentary vote on animal rights last autumn. Jan Maria Jackowski, a PiS senator, revealed that one of his colleagues was explicitly threatened that if he did not vote in line with the government, his wife might lose her job.³² Recently leaked recordings have shed further light on the coercive tactics of PiS, revealing how a "dissident" party member was threatened with losing his job unless he withdrew a petition that would have challenged the deputy mayor of the city of Wałbrzych.³³

An increasing number of special funds and agencies that are heavily financially dependent on the state operate outside of the official structures of public administration.

An increasing number of special funds and agencies that are heavily financially dependent on the state operate outside of the official structures of public administration. Allocated large amounts of money to spend and with no public restrictions or financial controls, they are potential hotbeds of misuse of public funds. One of the most prominent has been the Polish National Foundation (PNF), which has become a transmission belt for the main narratives of the PiS government. Established in 2016 and heavily subsidized by state enterprises such as PKN Orlen, it is a unique platform with a troubling lack of transparency. Its formal aim is to promote Poland abroad;

however, in 2017 it organized a controversial billboard campaign in the country to promote the government judicial reform.³⁴ The PNF is a typical example of a half formal, half informal tool: it has a legal basis but many of its actions have been designated as unlawful by courts, though without consequences.³⁵

Public decisions being made outside of the formal structures amid a troubling lack of accountability and transparency suggests a highly corruptogenic setting. Although systemic political corruption is not a key feature of the regime, a 2019 scandal shed light on the concentration of political, business, and family ties around the PiS leader. According to tapes that became public in 2019, while political parties are forbidden from conducting business activity, Kaczyński had personally coordinated a large-scale investment in Warsaw.³⁶ After the outbreak of the coronavirus pandemic, the government selectively distributed ten times more local investment funds to PiS-controlled local governments than to other ones.³⁷

Another feature of the system is the lack of investigation of high-level cases of corruption. It stems from the partisanship of the Public Prosecutor's Office and from the fact that the secret services and law-enforcement authorities remain passive.³⁸

Finally, unlike Orbán in Hungary, Kaczyński has to deal with competing networks, which limit his effectiveness in the long run. Polish politics has been dominated since 2015 by a power struggle between competing flanks in the United Right alliance between PiS and its smaller allies, United Poland and Agreement. Kaczyński joined the government last year in order to keep in check the minister of justice and chief

31 Jerzy Siekiera, "Służba cywilna a podsekretarze stanu i korpusy równoległe," Rzeczpospolita, April 14, 2020.

32 Kamil Dziubka, "Brutalne metody w PiS? Oskarżenia o zastraszanie i groźby wyrzucenia z klubu," Onet, October 16, 2020.

33 Onet, "'Nie prowokuj, bo cię zniszcza'. Nagrano rozmowę dolnośląskich działaczy PiS," January 12, 2021.

34 Michał Wojtczuk, "Polska Fundacja Narodowa złamała swój statut, promując partię, a nie Polskę," Gazeta Wzborcza, July 8, 2019.

35 Grzegorz Makowski, "Laying the groundwork for 'grand corruption': the Polish government's (anti-)corruption activities in 2015–2019," Batory Foundation, 2020.

36 Miłosz, Hodun, "Two towers and Kaczyński tapes," 4Liberty, 2019.

37 Krzysztof Katka, "A committee packed with PiS loyalists distributed PLN 6 billion in aid for local governments along party lines," Gazeta Wyborcza, February 23, 2021.

38 Interview with Grzegorz Makowski.

prosecutor, United Poland leader Zbigniew Ziobro, and to manage conflicts within the alliance. There is an increasing possibility that the governing coalition might collapse in the long-run due to its cleavages, and Kaczyński seems to have more difficulties to maintain control over it. In the most recent development, at the time of writing Ziobro was threatening to vote against ratifying the EU recovery fund in parliament and suggesting that this dispute could have serious consequences for the United Right alliance.³⁹

Media Capture

Hungary: Informal Market Distortion

In 2020 Hungary fell to the 89th position, its lowest ever, in the World Press Freedom Index.⁴⁰ The country provides a classic example of media capture, meaning that the majority of media workers are not able to provide fact-based information to hold the government to account because of direct political pressure or of the conflicts of interests of media owners.

Although Hungary's public media has traditionally been biased toward the government of the day, it is now a clear political propaganda instrument for Fidesz with a twofold aim: to undermine the opposition and to cement its electorate. News about government-related political scandals or systemic corruption is not permitted to appear in the public media, or any stories that would shed a negative light on the Orbán regime. One recent example was the scandal involving the Fidesz MEP József Szájer in Brussels that was portrayed as a conspiracy plotted by foreign secret services against him.⁴¹ Opposition-related news stories are only published after the Fidesz communications team has had an opportunity to respond and it has been repackaged into more government-friendly content.

The public media is dominated by the populist narrative that the “corrupt billionaire” George Soros together with Brussels and the opposition try to undermine the “will of the Hungarian people.”⁴² Soros is usually depicted as the puppet master standing behind a corrupt EU elite that is attacking the Hungarian government not because it violates the rule of law but because it is against immigration.

Orbán claimed in 2016 that the majority ownership in four key sectors of the economy should be in Hungarian hands, including the media.⁴³ After transforming the public media in cooperation with its cronies, Fidesz then turned the many independent media outlets into propaganda machines. The independent media space shrunk further last year with the hostile takeover of the biggest independent news website, Index.hu, and with one of the last remaining independent radio stations, Klubrádió, losing its license. Excluding smaller outlets, only the Central Media Group and the foreign-owned RTL Hungary remain independent of the government.

Hungary's media market has been heavily distorted in favor of a pro-government narrative. Before capturing the national media, the Fidesz government introduced a “pilot” mechanism at the local level.⁴⁴ Local outlets are more popular than large national papers or the online media, and the priority for Orbán was to gain as much influence as possible over them. To do so, the government employed a threefold approach.

First, the government orchestrated of independent regional newspapers. The Competition Authority made the merger of the Hungarian branches of the Swiss group Ringier and the German group Axel Springer conditional on some their newspapers sold to prevent the formation of a monopoly. In 2014 Heinrich Pecina—an Austrian businessman known for controversial business deals linked to politicians in Central and Eastern Europe, and reportedly a proxy

39 Notes from Poland, “PM ‘agreed to diktat of Brussels and Berlin’ over EU budget, says Polish justice minister,” April 12, 2021.

40 Reporters without borders, *2020 World Press Freedom Index*, 2020.

41 Hírado.hu, “Titkosszolgálati akció állhat a Szájer-ügy hátterében,” February 12, 2020.

42 Peter Plenta, “Conspiracy theories as a political instrument: utilization of anti-Soros narratives in Central Europe,” *Contemporary Politics*, 2020.

43 Bence Stubnya, “Már rég teljesült Orbán álma,” *Index*, October 10, 2016.

44 Interview with Ernő Klecska, former editor of Fejér County Newspaper, October 27, 2020, Budapest.

for Orbán⁴⁵—founded the company Mediaworks to buy these newspapers—along with the biggest national daily *Népszabadság*. In 2016 Mediaworks also bought a handful of regional papers from a company owned by the German Funke Mediengruppe. After closing *Népszabadság* in 2016, Pecina sold Mediaworks to Lőrinc Mészáros's Opimus Press.

Oligarchs use the revenue generated in their government-supported businesses for the acquisition and operation of media outlets.

Second, the new owners dismissed editorial staff and replaced management with loyalists who were willing to transform news outlets into non-critical mouthpieces. For example, the daily *Fejér County Newspaper* in Székesfehérvár was overtaken by Mészáros. Professional trade unions were emptied out and local non-professional citizens were employed to provide local news. The result was mainly local tabloid content with a massive amount of character assassination of the opposition. The government also created Municipal Communication Centers to function as local news agencies. Led by Fidesz appointees, these echo the same central messages while avoiding news about local problems, government-related corruption, and critical opinions.

Third, in 2018 media ownership was further concentrated with the creation of the Central European Press and Media Foundation (KESMA). More than 470 pro-government outlets agreed to merge into this non-profit body in an unprecedented centralization of the media. Although it made no financial sense, they subsumed their highly valuable assets into a newly formed, centralized foundation, allegedly at the informal request of the prime minister.⁴⁶ The

government declared the merger to be of strategic importance, making it exempt from scrutiny by the competition authority. KESMA is one of the prime examples of how the government exerts pressure on individual actors to act in its favor.

Mészáros immediately transferred the ownership of Mediaworks to KESMA, which by 2019 had organized many of its media outlets under the company, making it one of the biggest media conglomerates in the EU with 408 print media and one-fifth of the country's advertising market. Today, all in all around 500 government-controlled outlets ensure that Fidesz dominates political discourse. Moreover, KESMA also serves to keep media workers in check and in uncertainty about their jobs.⁴⁷

A clientelistic network of media ownership plays a significant role in Hungary. Oligarchs use the revenue generated in their government-supported businesses for the acquisition and operation of media outlets. Most of the independent media are being suffocated as the government uses state advertising to support friendly media and sideline others.⁴⁸ For instance, in the first half of 2017, the ten most pro-governmental media outlets received HUF 36.4 billion in state advertisement, with TV2 the largest recipient with HUF 7.9 billion (TV2 was owned by the late Andy Vajna, a Hungarian-American film producer who replaced Simicska as a leading pro-Fidesz media baron.)⁴⁹ This has been one of the keys to increasing pressure on independent media in an environment where only a small number of outlets could be financially viable based directly on the market.⁵⁰ The creation of KESMA has

45 Zoltán Simon, "Orbán faces call for probe over bombshell Austrian political leak," Bloomberg, May 20, 2019.

46 Interview with András Nagy Bíró, director of Policy Solution, October 22, 2020, Budapest.

47 Interview with Péter Bajomi-Lázár, professor of mass communication at the Budapest Business School University of Applied Sciences and a founder of Médiakutató Institute, November 17, 2020, Budapest.

48 Interview with Attila Bátorfy, assistant professor of journalism and media studies at the Media Department of Eötvös Loránd Science University, November 5, 2020, Budapest.

49 Zoltán, Jandó, "Majdnem negyvenmilliárdot hirdetett el az állam az év első felében," G7, October 19, 2017.

50 Attila Bátorfy and Ágnes Urbán, "State advertising as an instrument of transformation of the media market in Hungary," East European Politics, 2019.

made it even harder for the few remaining independent media companies to operate now that they face a single, giant competitor.

As a result, independent media outlets are facing multiple challenges on the market. For example, one of the most affected is the conservative weekly newspaper Magyar Hang, which was established by the former editors of Magyar Nemzet after it was overtaken by the government in 2018. It is printed in Slovakia as no company would take the risk to print it in Hungary. Magyar Hang has been the target of pressure; for example, it has been excluded from selling at summer cultural festivals and businesses related to its staff's families have been under regular investigation by tax authorities.⁵¹ It has been unable to sell advertising space to various multinational companies operating in Hungary. A representative of the biggest German automotive company has said that, although the readership of the newspaper is its target audience, it would not risk business privileges received from the government.⁵² Similarly, before it was taken over Index.hu tried to sell advertising space to large telecommunication and retail companies but was rebuffed because they were concerned about their relationship with the government. It is unclear whether this behavior by companies is due to direct pressure or to fear of economic or tax-related retaliation by the government.⁵³ Nonetheless, it is indicative of the informal power Orbán exerts on business actors.

Poland: Following in Hungary's Footsteps

In Poland, PiS has emulated Fidesz when it comes to media capture in many ways. In the World Press Freedom Index the country has fallen from its highest position of 18th in 2015 to its lowest position of 62nd in 2020.⁵⁴ Kaczyński has claimed for years that the majority of the press is under the influence of foreign (mainly German) actors, and he demands

the “re-polonization” of the media. Like Orbán, he perceives foreign ownership as a threat to national sovereignty. Although he had hoped that legislation reducing foreign ownership would be passed during the fall 2020 parliamentary session, an internal power struggle within the United Right alliance and the tension raised by the government's controversial abortion law prevented this.

Instead of pushing one single legislative package for “re-polonization,” the government has taken separate steps. One of its latest proposals was the controversial advertisement tax that triggered mass demonstrations earlier this year. While the government claims that, as a “solidarity fee,” the tax will “create better conditions for the development of free media,” Polish publishers perceive it as threatening the potential weakening or even liquidation of some media operating in the country.⁵⁵

PiS has started to use state-controlled companies and powerful individuals aligned with the government to control media outlets independent of the executive branch. Last October, Culture Minister Piotr Gliński stated: “Wherever it is possible, state-owned companies should buy media.”⁵⁶ Earlier this year PKN Orlen purchased the Polska Press media organization from its German owner, media group Verlagsgruppe Passau. As a result, PKN Orlen's Obajtek—who is a close ally of Kaczyński—now controls 20 of Poland's 24 regional newspapers, more than 120 local magazines, and 500 online portals reaching 17 million users.⁵⁷ While PKN Orlen described the acquisition as “a strictly business investment”⁵⁸ and claims the deal was to strengthen its retail and non-fuel sales, the political takeover has been already reflected by recent

51 Research interview, November 20, 2020, Budapest.

52 Research interview, November 16, 2020, Budapest.

53 Research interview, November 19, 2020, Budapest.

54 Reporters without borders, [2020 World Press Freedom Index](#), 2020.

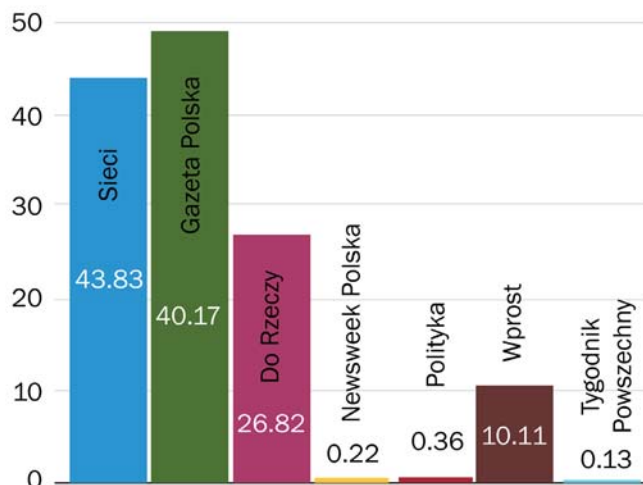
55 Sebastian Klauzinski, “[Media in Poland protest against the planned ‘advertising tax’. This means bankruptcy for many media and limits to pluralism](#),” Rule of Law Poland, February 11, 2021.

56 Notes from Poland, “[State-owned firms should buy media outlets ‘wherever possible’, says Polish minister](#),” October 13, 2021.

57 Rafal Wojcik, “[Kaczyński: foreign-owned media should constitute a very rare exception in Poland](#),” Gazeta Wyborcza, February 4, 2021.

58 Jan Cienski and Paola Tamma, “[Poland's state-run refiner becomes a media baron](#),” Politico, December 7, 2021.

Figure 2. Share of Polish Major Weeklies' Income from State-owned Companies, 2019 (%)

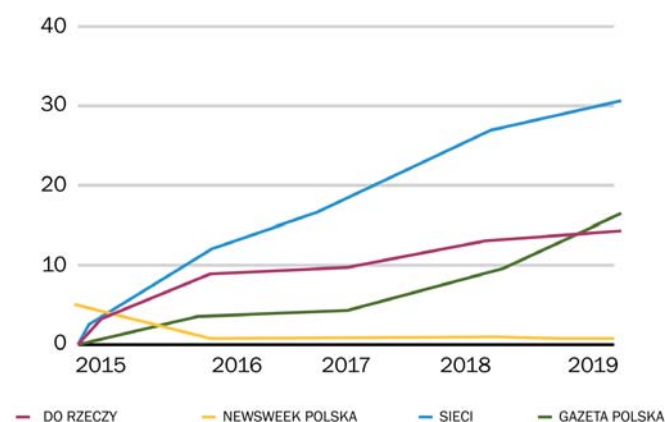


Source: *Visegrad Insight*, based on Tadeusz Kowalski, [Advertising expenses' analysis of state-owned companies in the years 2015-2019](#).

development. Not only has the tone of these outlets become more government-friendly, after the Court of Competition and Consumer Protection earlier this month suspended the right of PKN Orlen to exercise its ownership rights, following an appeal by Human Rights Ombudsman Adam Bodnar, Obajtek said he would disregard the verdict and changed the entire management board of Polska Press.⁵⁹ With PiS defending the transaction against the court decision, the government is indirectly admitting the political nature of the transaction throughout which it can consolidate informal power over the local media.

As in Hungary, the public broadcaster has been transformed into a political tool. During last year's presidential election, the public television TVP—often labelled as “TVPiS” in opposition circles—waged a defamation campaign against the opposition's candidate, Warsaw Mayor Rafał Trzaskowski, portraying him as a professionally incompetent candidate who was against the will of the Polish people and controlled

Figure 3. Advertising Spend by State-owned Companies in Selected Polish Weeklies, 2015-2019 (PLN 1,000s)



by the “Jewish deep state.”⁶⁰ Media independent of PiS face various forms of harassment by authorities. Despite President Andrzej Duda's reelection campaign receiving valuable support from the White House, he accused the U.S.-owned TVN Group of “political gangsterism.”⁶¹ When the tabloid magazine Fakt, owned by the German group Axel Springer, reported details about the presidential pardon of a pedophile, PiS accused Germany of electoral interference.

The government also uses state advertisement to fund friendly media and starve other outlets. State-owned companies have increased advertising inflows for PiS-friendly outlets while, for example, they no longer place advertisements in media outlets owned by the Axel Springer group, such as Newsweek Polska, along with a range of other media outlets in Poland. (See Figure 2.) According to one study, state advertisement spending in the main liberal daily *Gazeta*

59 Agnieszka Kublik, “Państwo PiS broni Obajtkę i podważa decyzję sądu. A Orlen nie respektuje decyzji sądu,” *Gazeta Wyborcza*, April 14, 2021.

60 *Gazeta Wyborcza*, “US Senators express their concern over the rise of anti-Semitic discourse in Poland,” September 18, 2020.

61 OKO.press, “Duda w Polsce, słowo w słowo. „To takie gangsterstwo polityczne” – o zaproszeniu na debatę w TVN,” July 3, 2020.

Wyborcza fell by 97 percent over three years after PiS came to power.⁶²

Gazeta Polska has been heavily subsidized in this way over the last five years. Its advertising revenue from this source rose from PLN 91,000 in 2015 to PLN 16.5 million in 2019.⁶³ (See Figure 3.) Gazeta Polska “clubs” have also served as an important discussion platform for PiS: since 1994 it has collaborated with PiS in the organization of demonstrations as well as in monthly commemorations of the 2010 Smoleńsk air crash in which President Lech Kaczyński died.⁶⁴ Gazeta Polska also disseminated “LGBT-free” stickers with one of its editions in 2019. The media empire of the influential priest Tadeusz Rydzyk is another strategic platform for PiS, disseminating a “national-Catholic” ideology and backing the government.⁶⁵ Since 2015, he has accumulated companies, foundations, and a journalism school in Toruń. His companies, including the popular Radio Maryja and Telewizja Trwam television channel have received PLN 214 million in state support from various governmental sources since PiS came to power including the Prime Minister’s Office and ministerial departments.⁶⁶

Electoral Clientelism

Hungary: Informal Coercion

The government successfully uses state resources as a coercive tool during elections to increase the support for Fidesz.⁶⁷ Intimidation and threats to withdraw social benefits were common practice in the

last elections, impacting the most vulnerable citizens and particularly the Roma. According to the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR), low-intensity political coercion was employed by the authorities in Hungary in the last parliamentary elections in 2018.⁶⁸ For example, the State Audit Office discriminated against opposition parties by levying fines against them, while Fidesz was not fined during the campaign. While election observation missions have called the electoral process in Hungary free but unfair,⁶⁹ neither the OSCE nor the EU have addressed the forms of informal power that undermine the fairness of elections.

One of them is the increased pressure on opposition ballot-counting officers, who are part of the committees in electoral districts that conduct voting to make sure that the elections are lawfully implemented. They are often threatened and stigmatized by the representatives of the government.⁷⁰ Based on research by Unhack Democracy, they are often not allowed to actively take part in the committee’s responsibilities; for instance, handling the electoral rolls or accompanying mobile ballot boxes to pensioners’ homes.⁷¹ The government also uses coercive, semi-informal techniques against opposition ballot-counting officers. As well as being depicted as amateurs, it appears to be difficult for them to raise irregularities as the representatives of Fidesz refer to “traditional customs” over the legal regulations and verbally attack them.

Vote-buying is one of the many forms of political clientelism in Hungary.⁷² The government often provides public benefits, such as one-off payments for

62 Mariusz Dragomir, [Media capture in Central Europe, Media Development Investment Fund](#), 2018.

63 Tadeusz Kowalski, [Advertising expenditures of state-owned companies. Poland 2015-2020](#), 2020.

64 Interview with Marcin Ślarzyński, researcher at IFIS PAN, January 19, 2021, Warsaw.

65 Interview with Jan Kubik, professor of political science at Rutgers University in Budapest, November 19, 2020.

66 Bianka Mikołajewska, “214.158.441 złotych z publicznych pieniędzy na „dzieła” o Rydzyka,” OKO.press, July 28, 2019.

67 Isabela Mares and Lauren E. Young, “[The Core Voter’s Curse: Clientelistic Threats and Promises in Hungarian Elections](#),” *Comparative Political Studies*, 2019.

68 OSCE Office for Democratic Institutions and Human Rights, [Report on the Hungarian Parliamentary elections](#), 2020.

69 OSCE Office for Democratic Institutions and Human Rights, [Limited Election Observation Mission Final Report](#), 2018.

70 Interview with Zsófia Banuta from Unhack Democracy, October 20, 2020, Budapest.

71 Melani Barlai and Zsófia Banuta, [Unhack Democracy Europe Key Findings](#), April 8, 2018.

72 Isabela Mares and Lauren E. Young, “[The Core Voter’s Curse: Clientelistic Threats and Promises in Hungarian Elections](#),” *Comparative Political Studies*, 2019.

pensioners, in exchange for votes ahead of elections. Fidesz mayors offer older members of their community inducements in the form of, for example, potatoes, coffee, pasta, or honey.⁷³

The most important forms involve more extensive use of state resources, combined with economic coercion. For example, while Fidesz considers the workfare program for recipients of public support to be an important aspect of Roma integration, it also uses this as an effective tool of coercion during elections. The party has politicized this social program through which the most deprived people practically become dependent on mayors who could threaten cutting off their benefits if they do not “cast the right ballot” during elections.⁷⁴ The Fidesz major in Tiszacsécse listed the party preferences of each local citizen, while the head of the local Roma self-government in Tiszabecs threatened potential opposition ballot-counting officers.⁷⁵ Moreover, actors such as money lenders and local employers also play an extensive role in this system. Not only they can put pressure on deprived citizens to support Fidesz, in exchange for small sums from the party, they often actively participate in the organized transportation of Roma voters who are to vote for it, although they often “do not even know what are they doing on the spot.”⁷⁶

Poland: The 2020 Turning Point

Elections in Poland met the most important democratic criteria up to the parliamentary elections in 2019. According to the OSCE’s electoral mission, besides individual cases, there were no systemic irregularities that would put in doubt the reliability of the 2019 results.⁷⁷ The 2020 presidential election marked a “dramatic change,” in the words of Poland’s ombud-

sperson, Adam Bodnar.⁷⁸ Held during the coronavirus pandemic, there have been serious doubts raised about the fairness of the contest.

Although the ODIHR mission declared that the authorities handled the 2020 election professionally, it also found that various political and legislative decisions violated procedural norms and the principles of the electoral law.⁷⁹ Despite the discussion about introducing a state of emergency and postponing the election due to the pandemic, the government decided to hold the poll at all costs, disregarding the risks posed by the coronavirus.

The 2020 presidential election marked a “dramatic change,” in the words of Poland’s ombudsperson, Adam Bodnar.

First, the government postponed the election by several weeks, in a backroom deal between Kaczyński and a rebel coalition partner. This decision by two party leaders without any constitutional responsibility once again showed that the real center of power is elsewhere than it is defined by the constitution. Furthermore, the constitution states that the electoral law cannot be amended less than six months before elections are announced, and thus Kaczyński used the pretext of coronavirus crisis to unconstitutionally secure power for PiS in the long run.

One of the greatest concerns was the decision to change the electoral law in order to hold the election by mail voting only. As the analyst Anna Wójcik noted, “The rushed and chaotic organisation of the postal vote also casts doubts over whether the election meets the ‘conducted by secret ballot’ criterion.” The Warsaw’s Provincial Administrative Court also found that Prime Minister Morawiecki had committed a “gross violation of the law” and the constitution when ordering prepa-

73 Research interview, November 16, 2020, Budapest.

74 Mares and Young, “[The Core Voter’s Curse](#).”

75 Szilárd István Papp, “[Szavazatvásárlás, voksturizmus és megfélemlítés - választás a keleti végeken](#),” Merce, April 14, 2018.

76 Interview with Melani Barlai from Unhack Democracy, December 4, 2020, Budapest.

77 OSCE Office for Democratic Institutions and Human Rights, [Final report on the parliamentary elections in Poland](#), 2019.

78 Interview with Adam Bodnar, ombudsperson of Poland, November 10, 2020, Budapest.

79 OSCE Office for Democratic Institutions and Human Rights, [Final report on the presidential elections in Poland](#), 2020.

rations for the vote to be held while the postal vote issue was still being debated in the parliament.⁸⁰

The opposition candidate Rafał Trzaskowski did not have anything approaching equal opportunities in the race with President Duda. While the latter took advantage of state resources with his presidential trips during the campaign, his opponent's moves were significantly limited by the coronavirus lockdown. The state and the incumbent were inseparable, with high-ranking officials conducting campaign activities and mobilizing state resources to support him. For example, free fire trucks were promised to settlements with less than 20,000 inhabitants. It is not known to what extent this influenced voting preferences, but these settlements mostly voted for Duda. Another example of the misuse of state resources was when the Agriculture Social Insurance Fund disseminated to 1.3 million households a letter from the president in which he expressed his support for Polish farmers.⁸¹ The public broadcaster TVP completely failed in its legal duty to provide impartial coverage, functioning as a campaign tool for Duda while depicting Trzaskowski as a threat to the Polish nation.⁸² The Polish Catholic Church also mobilized huge resources on behalf of Duda. Its support for PiS mostly occurs in small parishes where often party posters and leaflets are displayed in churches.⁸³ Thus, the lack of separation between the state and the church in this regard is more evident in smaller municipalities.

When it comes to the informal influence of ultra-catholic Ordo Iuris organization, it became most evident not during elections but in the tightening of the abortion law last year. It has created an influential web of like-minded organizations, drafted the text of

the 2016 bill to ban abortion, and for Poland to leave the Istanbul Convention on violence against women.

The institutional environment built by PiS since coming to power also ensured it could rely on the Supreme Court's approach to dealing with electoral issues, as when approving the deal to postpone the 2020 presidential poll, skewing the playing field further to the benefit of the party. Although the opposition could compete for the executive power in a meaningful way, due to the above mentioned features of the election, the competition is grossly unfair.

Conclusion

The informal exercise of power in Hungary and Poland teaches two key lessons and leaves a warning. The first lesson is that in the case of Fidesz in Hungary a centralized regime with a parliamentary majority allowing it to change the constitution employs informal techniques to distort the domestic political playing field for its benefit. The second lesson is that the level of informal coercion is more limited in Poland where the PiS government employs various tactics to tilt the playing field to its benefit.

There are three main factors that make the nature of clientelism under PiS and Kaczynski in Poland is markedly different from that under Fidesz and Orbán in Hungary. First, due to Poland's constitutional decentralization, it is a lot more difficult to politicize the state in terms of a political and economic monopoly. For instance, while Orbán has used a wide range of allies to capture the most important economic sectors, this is missing from the Polish context almost entirely. The constant power struggle within the United Right alliance requires a lot of mediation from Kaczynski, which might hurt the regime's durability in the long run. Second, in Poland the main venue of clientelism is PiS and there is, so far, no oligarch involved, although the Polish Catholic church, Tadeusz Rydzik and even Ordo Iuris have some influence on decision-making. Also, an increasing number of Kaczynski's friends and close relatives of his allies have appeared in high-level positions in state companies, which indicates that

80 Notes from Poland, "[Polish prime minister committed "gross violation of law" in organising elections, rules court](#)," September 15, 2020.

81 Daniel Flis, "[Duda robi kampanię za publiczne pieniądze. KRUS rozesłał jego list do nawet 1,3 mln osób](#)," OKO.press, April 16, 2020.

82 Interview with Wojciech Sadurski, professor in jurisprudence at the University of Sydney, October 27, 2020, Budapest.

83 Interview with Marek Tatala, vice president and economist at the Civil Development Forum, October 22, 2020, Budapest.

nepotism became more prominent under the United Right alliance. Although the awareness of corruption increased after the tapes of Kaczynski were released in 2019, he is not seen as being motivated by accumulating wealth but rather by power and control.⁸⁴

The warning is that Orbán and Fidesz in Hungary and Kaczynski and PiS in Poland will not stop proceeding by these informal means. Therefore, undermining democracy with various informal tools will not disappear any time soon from within the EU—in fact, quite the contrary. Worrying recent developments in Bulgaria, Slovenia, and the Czech Republic suggest that other ruling parties across Europe have taken note of the key lesson from Hungary and Poland, which is that the EU institutions and other member states have not been able to prevent determined governments from going down the road to authoritarianism.

The Role of the EU

In recent years, the EU institutions have stood up against the PiS government in Poland as it has repeatedly violated the constitution by failing to announce the decisions of the Constitutional Court, among other things. In this they have taken a more aggressive stance than they did against the Fidesz government in Hungary. At the same time, the European Commission has failed to push both governments to fully backtrack on their authoritarian system-building. The EU's "pre-preventive" measures such as the Rule of Law framework and Article 7 procedures have proven incapable of forcing Hungary and Poland to comply with its core values as spelled out in Article 2 of the Treaty on European Union.⁸⁵ One of the most significant innovations of the EU is the recently accepted mechanism that can punish violations of the rule of law with the withdrawal of funding. However, although the European Parliament has ensured that the Rule of Law Mechanism is not as vague as it risked being, it

was significantly watered down under the leadership of the Germany's Presidency of the EU Council last year after Hungary and Poland threatened to veto the Multiannual Financial Framework.

Moreover, Orbán's infamous "peacock dance"—partially backtracking on some issues, while constantly taking small steps forward—worked in keeping Fidesz in the European People's Party (EPP) until earlier this year. He realized that, as long as he met the EU's deficit and debt criteria within the Fiscal Compact and offered strategic partnerships in Hungary to German companies, Berlin's concerns regarding his centralization of power and weakening of checks and balances would remain vague. PiS, on the other hand, has never enjoyed the protection of being in the EPP, in contrast to Fidesz, which was suspended from the party family only in 2019 and left it March as it was facing expulsion.

There has been a troubling decline in the number of infringement procedures, which seem to be the most effective legal tool to slow democratic backsliding.⁸⁶ While the European Commission is obliged to launch this type of legal action against member states that fail to implement EU law, since 2004 the number of these has plummeted to a level not seen since the early 1980s. Also, the PiS government was able to capture Poland's judicial system and the Fidesz government was able to push Central European University out of Budapest while the drawn-out infringement procedures were ongoing.

Thus, the Orbán and the Kaczynski regimes have both benefited from the modus operandi of the EU. They often operate outside the legal framework in Hungary and Poland while the EU operates in a deeply legalized environment in which long-lasting procedures are based on transparency and accountability while cautiously avoiding sanctions against member states. Slow EU procedures, mainly dominated by the

84 Interview with Stanley Bill, senior lecturer in Polish studies at Cambridge University, October 26, 2020, Budapest.

85 Interview with Gábor Halmai, professor of comparative constitutional law at the European University Institute, November 10, 2020, Budapest.

86 R. Daniel Kelemen, "The Curious Case of the Disappearing Infringements: The New Politics of Enforcing EU Law", Rutgers University, Tommaso Pavone – University of Oslo, Unpublished Manuscript, December 2020.

exchange of correspondence in the name of “dialogue” give further leeway and more time to such autocrats to change the system. Which brings us to Laurent Pech’s conclusion in this matter that “dialogue is the autocrat’s best friend”.⁸⁷

Due to its institutional shortcomings, the EU’s legal framework is ill-suited to address formal abuse of power, let alone informal abuses such as the ones in Hungary and Poland in recent years as detailed above. Doing so would require a fundamental reshuffling of the powers of the EU as a whole, which is unlikely to happen any time soon, if at all.⁸⁸ Thus, it is crucial to increase informal pressure on member states that are systematically undermining democracy using various tools within the EU Council.

The European Commission must demand Hungary and Poland substantially comply with the core values of the EU, as enshrined in Article 2 of the Treaty on the EU. It should broaden the interpretation of infringement procedures and employ even more targeted legal arguments—as it has in the case of the overhaul of the judiciary in Poland—so that the Court of Justice of the EU will have more opportunities to interpret the union’s treaties in an effective manner in instances where democracy is informally undermined.

The European Commission should also bring more infringement actions against the governments of Hungary and Poland, related to the Article 7 procedure, given that violations of press freedom and media pluralism are among the major concerns listed under its scope. This must be done effectively with applications for interim measures to avoid further deterioration in member states. For example, despite the continuing decline in media pluralism in Hungary, the European Commission continues to assess a 2016 complaint over state aid for the broadcasting sector. Meanwhile, once again the Fidesz government was able to silence a dissident voice (Klubrádió) due to

the EU’s inaction. And, most importantly, the Court of Justice should prioritize these infringement actions to prevent further harm by governments before its rulings are issued.

Recent developments in Poland and the systemic problems in Hungary indicate that the EU should use its rich toolkit to restrict governments that abusing EU funds. Should the new rule-of-law conditionality mechanism be difficult to enforce, the Common Provisions Regulation should allow suspension of payments in case of systematic violation of the rule of law. As the EU’s structural funds rulebook, it lays down detailed provisions governing regional spending that would be suitable to foster a stronger linkage between the rule of law and the financial integrity of the EU.

While the EU institutions do not involve themselves in monitoring the integrity of electoral processes and elections in member states, the OSCE should reconsider its methodological approach with regard to the issues of informal power seen in Hungary, Poland and elsewhere in the EU. This paper shows that autocratizing regimes like the ones led by Fidesz and PiS have learned to develop new ways to co-opt election monitoring on an informal level. In order to identify the problems posed by electoral clientelism, longer-term monitoring missions are needed, especially in rural areas and using focus group methodology so that observers can get more reliable knowledge about what is happening from people on the ground in settings where they feel comfortable to share information.

Last but not least, more engagement is needed from the United States. President Joe Biden has stressed that the rule of law is crucial for democracy and will be an important issue for his administration. While the countries of Central and Eastern Europe celebrate the 30th anniversary of the fall of the Soviet Union, the United States needs to resume an active role to promote tougher approaches to oppose autocracies, including more support for local non-government media and civil society, and educational programs to support freedom and pluralism.

87 Interview with Laurent Pech, head of the Law and Politics Department at Middlesex University, November 27, 2020, Budapest.

88 Interview with Dániel Hegedűs, research fellow at the German Marshall Fund, November 24, 2020, in Budapest.

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