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# Illiberal democracies in the EU:

The Visegrad Group and the risk of disintegration

**Pol Morillas (ed.)**

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## INTRODUCTION

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**K**nown as the Visegrad Group, or V4, the alliance of the Czech Republic, Hungary, Poland and Slovakia was formed in 1993, with all countries accessing the European Union nearly a decade later, in 2004. In recent years, these four countries have become an area of increasing political concern and analysis, as their leaders have moved towards a more Eurosceptic stance, widening the so-called east-west divide in the EU. The V4 countries, particularly Poland and Hungary, have largely shifted to self-described “illiberal democracies” that mark a turn away from political liberalism, with some countries consolidating extraordinary government prerogatives and limiting constitutional provisions that once nurtured an environment promoting the rule of law and a free and open society. These countries’ disillusionment over the handling of recent crises, most notably the refugee crisis, has created a backlash in which the V4 is challenging the decisions made in Brussels while at the same time still benefiting greatly from EU membership, particularly through structural and cohesion funds.

The political stance of Poland’s Law and Justice Party (PiS) and Hungary’s Fidesz, led by Viktor Orbán, should not be considered an overnight phenomenon, but one that has developed and taken hold over the past decade with deep roots of discontent. Their governments have, however, used the refugee crisis to their advantage to fuel the antagonism between state sovereignty and a shared EU vision. Strong nationalistic undercurrents have led the V4 to argue that securing borders must be the utmost priority and that the arrival of refugees is too much of a strain on welfare systems. At the same time, within these illiberal democracies, there are continued crackdowns on democratic processes – the consolidation of laws placing more power in the hands of a few politicians, the limitations of the press in reporting any views opposing the dominant political parties, and the declarations that civil society groups that promote government accountability and transparency are enemies of the state. And while the move towards illiberal democracies in the V4 countries has found public support, there also exists strong opposition within the population towards extreme measures that have limited civil liberties and promoted an anti-EU discourse.

The east-west divide currently poses myriad questions on the way forward for the EU. With no signs of a permanent solution being found to the refugee crisis and with the continued rise and strength of the V4's illiberal democracies, reflections move on to larger discussions of whether this divide will continue to grow or if there are opportunities for reconciliation between Brussels and the governments of the V4. Are illiberal democracies here to stay and, if so, can the EU coexist with the normative challenge they represent? Will the consequences of illiberal democracies contribute further to EU disintegration, or is it possible that these countries will in time elect governments more supportive of the EU, thus facilitating a joint resolution to the current crises?

This publication is the collection of papers that were presented at the expert workshop "Illiberal Democracies, the Visegrad Group and Future Prospects for the EU" that took place at CIDOB in Barcelona on July 11<sup>th</sup>, 2016 and which was jointly organised with the Madrid office of the Friedrich Ebert Stiftung with support from the Europe for Citizens programme of the European Commission. The contributions analyse the events that have given rise to illiberal democracies in the EU and that have severely impacted the relations between the V4 countries and Brussels.

The first chapter by Marek A. Cichocki provides an overview that critically examines the complexity of the great divide that has polarised the relationship between the V4 and EU and what it means for the European Union at large, specifically in regard to further integration. He argues that recent "polymorphic" crises, such as the migration wave, have led to the accumulation of difficulties in Europe's democratic societies and that the perceived rise of illiberal democracies is not really a deviation from the European norm, but rather an alternative response to these crises. And while this drift into illiberal forms of democracy may signal a departure from the norm, it needs to be looked at in a broader context, in which the populations in these countries believe more in European values than has been thought, often with pro-European attitudes and values scoring higher in polls.

In the second chapter, Zsuzsanna Csornai, Nikolett Garai and Máté Szalai explore the V4's migration policy in more depth as a way to further elucidate the conflicting narratives and relationships between these central European countries and their European counterparts. Using the main schools of International Relations and foreign policy analysis, the authors discuss how divergent policies emerged between the V4 and the rest of the EU, concluding that the neorealist perspective is better suited to explain the current divide from a geopolitical perspective. According to the authors, the national framing of the refugee crisis as a security issue can be partly explained by the V4's vast external land borders.

The remaining four papers in the collection have a specific country focus that examines the history and evolution of the events that have given rise to the current state of illiberal democracies. András Bíró-Nagy explores the social background in Hungary that led to the rise of current Prime Minister Viktor Orbán and the Fidesz party in 2010 after twenty-five years of socioeconomic changes that did not bring the highly anticipated prosperity. As a result, general distrust in political

institutions began to wane, and there was a decline in democratic principles and citizen engagement. And while Orbán has publicly stated his beliefs that liberalism is corrupt and serves only the elite few, Fidesz's policies have moved to consolidate power in the hands of the very few while attempting to create measures that limit any opposition. This has been seen in changes to the limiting of the powers of the Constitutional Court and the removal of the offices of the ombudsman under the new Fundamental Law. These changes have proved challenging to relations with EU institutions, but Hungarian support among the population remains pro-European despite Fidesz's hold on power.

The next two papers focus on the illiberal democracies and the political landscape in Poland. Jarosław Kuisz examines the refugee crisis as one example of the erosion of the rule of law and the increase in the government's grip on authoritarian power by the Law and Justice (PiS) party. After PiS's majority win in the 2015 presidential and parliamentary elections, the party started enacting a series of reforms aimed at members of the judiciary and the media, garnering rebukes from EU institutions and the US. Once the refugee crisis began, the rise of anti-immigration political parties in Poland facilitated the emergence of a discourse based on the rejection of the EU's refugee quotas, which the PiS used to blame EU policies for Poland's disillusionment with the European integration project.

Katarzyna Szymielewicz's paper outlines how the rule of law came under attack in Poland after November 2015 and considers whether the country has entered a new era of "radical democracy". The PiS's changes to the Constitutional Tribunal have sparked concern within the European Commission and led the Venice Commission's advisory board to issue opinions on the deteriorating legal mechanisms. These manoeuvres, in addition to new surveillance laws, the accessing of data on citizens without judicial oversight, and the campaigns to discredit civil society in the media have raised tensions with the European Commission, but also with independent organisations and grass-roots movements within Poland. In this context, PiS has promoted the idea that sovereignty should take priority over the rule of law.

To conclude the series, Michal Vit's paper provides an analysis of the rise of nationalism in central Europe with a particular focus on the Czech Republic and the immigration crisis as a way of highlighting the interaction with EU institutions. 2004 marked the Czech Republic's "Return to Europe" and entry into the EU, so it was a time of transition as the country moved to align itself with the EU institutions. However, the Czech Republic, along with the other V4 countries, struggled with the acceptance of transnationalism within the European context. The country formed its own national identity that continued to evolve after the economic and refugee crisis, which, in turn, drove a deeper wedge between it and the EU, given the lack of a shared narrative.

The contributions in this monograph offer expert analysis of how these seemingly recent shifts to illiberal democracies have actually been part of a much longer transition, with the divide growing between the east and west of the EU for over a decade. The refugee crisis is the most recent of many events that points to the downward turn of EU-V4 relations. And while the V4 still gain from being members of the EU in terms of social

and economic development, questions arise of how these countries will continue to play a constructive role in the EU if the division between Brussels and the V4 widens. At a time when the EU witnesses the rise of nationalist movements that erode the logic behind “ever closer union”, and with Brexit looming large, reconciliation between Brussels and the V4 becomes a prerequisite for efficient crisis resolution in the EU.

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### **Entering the time of strong polarisation**

The blow of financial crisis has changed the political and social landscape in Europe significantly. Seven years after the collapse of Lehman Brothers in 2008 the situation of the EU has got even worse. The different forms of crises are now challenging the European community and the future of the whole post-war integration project is at stake. The crisis of growth and employment, geopolitical crisis in eastern European and the tensions with the Middle East, the migration crisis and the consequences of Brexit are simultaneously causing an existential threat to the EU. And now Trump's unexpected victory in the US has undermined the strong belief in the imperturbable character of the liberal world order.

This text aims to show how the new forms of popular and protest movements in the EU member states are determined by the polymorphic crisis in the West. In the analysis the main focus is put on the countries of central Europe in order to examine whether the concept of the illiberal democracy really helps us to better understand the new situation in Europe and the extent to which it is rooted in the old tenets of the Cold War and post-Cold War division into Western and Eastern Europe. This paper will present the main tendencies in the public opinion of the central European countries based on the latest survey from the PEW Research Centre, which shows the huge complexity of opinions on the "polycrisis" in the EU in all European societies. This is followed by a closer examination of the concept of illiberal democracy introduced by Fareed Zakaria in order to consider its descriptive usefulness for the current situation. By reflecting further on the wider situation in the EU this paper will argue that the political and social turmoil in central Europe cannot be correctly conceived as a deviation from the European norm, or as an exception, but in fact belongs to the pan-European problem of the systemic crisis of democratic and liberal Europe.

In general we should reflect on the crisis as the moment of truth and the return of politics (Van Middelaar, 2016: 496). It means that the crisis is the situation in which the key question of political legitimacy arises anew. Therefore, to understand the logic of crisis it is essential to view

the process of increasing polarisation within the EU as directly linked to the relationship between the high politics of the political elites and the expectations and needs of democratic societies. In general after the collapse of the Soviet Union in 1990 the integration process was viewed as the guarantee of the stable post-Cold War order in Europe thanks to the belief that the Western liberal elites were able to convincingly achieve the compromise with their democratic electorates in terms of covering the main needs of prosperity and security. This post-Cold War pact has now been cancelled (Walt, 2016).

As one of the main pillars of the liberal post-Cold War order in the West, this new situation affects the EU directly, exposing it to the extremely dangerous forms of polarisation appearing in many places, in the relation between states, between states, supranational institutions and societies, societies and markets, and governments and electorates. The threat of increasing polarisation has entirely overshadowed any benefits of further integration, leading to general confusion about the future of the EU and its unity. The old divides, which seemed to have been overcome a long time ago thanks to the integration process now occur anew with great intensity: the north-south divide between the debt and surplus countries of the eurozone and the west-east divide between the friends and critics of the migration policy (Kalan, 2015). In the latter case, the old and enduring belief that Europe is deeply divided between west and east with regard to certain values (modernisation, open society, tolerance and liberalism) has been brought back to life, questioning the success of the integration of central European countries after the enlargement in 2004.

### **No exit option for central Europe**

The conflict over the right way to tackle the migration crisis in Europe, which broke out at first between the central European countries and Germany, has proved that relations between Berlin as the key player in the EU and the V4 countries, which are looking for an alternative European policy to respond to the new migration wave and more broadly to the threats caused by the general EU crisis, have changed. However, on the other hand, the split on the migration issue has opened up speculation about central Europe possibly drifting away from the EU in a less Western and less liberal direction. This perception was there even before the migration crisis and has been fuelled by different factors, among them by the friendlier attitude of Hungary, the Czech Republic and Slovakia towards Vladimir Putin – especially controversial in light of the sanctions policy implemented by the EU after the annexation of Crimea. The conflict between Hungary and the European Commission and, above all, certain political statements such as Orban's speech in Tuzsádföld in 2014 on the end of the liberal democratic paradigm in Europe and the need for illiberal solutions, gave life to a new wave of speculation about the increasing split between old and new Europe and the possible shift of the latter eastwards. Central Europe has been accused of turning back from the integration project and its main principles. The Brexit campaign and the British referendum in June 2016 proved the situation in Europe to be much more complex than the criticism on central Europe suggests. First of all the argument indicating that central European countries are the most

anti-European and most affected by populism needs to be examined critically in light of results presented by the PEW Research Center in its Spring 2016 Global Attitudes Survey “Euroskepticism Beyond Brexit” (Stokes, 2016). PEW’s findings do not place central Europe at the front of the anti-European revolt in the EU, which is mostly boosted by the protest electorate and populist movements from the old member states. Greece and France are champions in this regard with, respectively, 71% and 61% viewing the EU unfavourably. Surprisingly, Poland and Hungary are at the top of the list of countries whose public opinion looks most favourably on the EU. Additionally, the people in both countries tend to assess the economic situation in Europe much more optimistically than in case of other member states in the EU (of course with exception of Germany) where the financial crisis has devastated the social consensus around government policy. In many other questions related to the main challenges to the integration project the PEW research underlines the existing consistency and inconsistency of views between the central European countries and the old members of the EU. There is the same level of criticism of the way the problem of refugees and migrants is handled by the EU and similar scepticism about the pushing of integration into a more tightened form to overcome the crisis. In many member states an expectation prevails that in times of crisis we should rely more on our own states and governments than on shared European institutions which now should return some of their competences to the national level. Therefore, the thesis that central Europe is turning away from the EU should be evaluated more critically, at least with regard to the societies and public opinion. The high politics of the central European leaders’ work can sometimes be confusing, but in principle the whole region should not be perceived as the exception to the common rules but rather as the inherent part of the pan-European problem of the continental post-Cold War order undermined by the current polycrisis.

## The concept of illiberal democracy examined

The concept of illiberal democracy also has to be examined more closely since it seems to be the key term for describing the current problem of the democratic evolution of some of the EU countries. How should we understand the concept? The term itself was coined by Fareed Zakaria in his famous article in *Foreign Affairs* in 1997, at the peak of the post-Cold War globalisation process and transformation of Europe (Zakaria, 1997). It was the moment liberalism seemed to be most influential. However, the problem of the relationship between democracy and liberalism is much older than that. It traces back to the French and American Revolutions at the end of the 18<sup>th</sup> century when the old feudal order collapsed and the need arose to find the new right and balanced order to make it possible to keep together two principle developments in modern Europe: the evolution of capitalism and the bourgeoisie and the evolution toward more democratised societies. This constituted the very essence of the relationship between liberalism and democracy.

The concept of the liberal democracy reflects – at least since the end of WWII – the widespread belief that democracy should be exercised in the framework of the constitutional order, based on certain liberal values like the rule of law, separation of powers, and the protection of basic liberties of speech, assembly, religion and property. On the one

hand free and fair elections (as characterised in Huntington's procedural definition of democracy: democratic method – collective decision-makers are selected through fair, honest and periodic elections in which candidates freely compete for votes). But on the other there need to be some constraints or rules over the democratic majority that should have constituting character. This necessity to keep democracy within constitutional limits is mainly legitimised by the gloomy experience in Europe of fascist and Nazi regimes.

Therefore the notion of the liberal democracy and its illiberal counterpart points to the key problem of the post-war order in Europe. The features of the liberal and democratic society and government seemed to be clear and self-evident in Cold War Europe thanks to the contrast with the communist regimes in the eastern part of the continent. This explicitness of the concept was declared to be its strength after the collapse of the USSR and the Soviet bloc, especially in light of the alleged lack of alternatives (Fukuyama, 1989). It served to set up the standard of rules to be necessarily adopted by countries from central Europe which sought to overcome the communist heritage in politics and economy and to join the EU. Therefore, the Commission and the member states have coined their own criteria, addressed to the candidates in 1993, the so-called Copenhagen criteria, where the notion of liberal democracy appears in the indirect but obvious way. Institutions of stable democracy and the rule of law are there quoted in first place among political standards. This reflects the broad understanding of the main components of liberal democracy. But on the other hand the concept of liberal democracy described in the way Zakaria did in his article encounters at least two important difficulties. The first is about the relationship between liberalism and democracy – not at all as clear and obvious as is often taken for granted. De Tocqueville, Madison and Schmitt are just a few of the many political thinkers who have tried to tackle the problem of the inner contradictions of the liberal democracy concept which cannot, therefore, be perceived as if it were the Weberian ideal type. The concept of liberal democracy is just a much more practical solution to reuniting liberalism with democracy in order to keep democratic majoritarianism under control. However, this concept is constantly exposed to the criticism and polemic of those who ask rhetorically: who will control the controller in such a case? Even more important is the fact that the model of liberal democracy is not a value, it is a method. It is rather the concept of how to organise the democratic government to achieve concrete liberal values which are first anchored in the principle of individual freedom protected against any form of tyranny and suppression. This concept has its roots in some general supranational principles shared by all states in the liberal community but, at the same time, results from the particular consensus reached with each political system.

The second difficulty is related to the use of the term illiberal democracy to refer to the post-transformation countries in central Europe. Actually, the applicability of the term is usually much broader according to the belief in the universal meaning of the liberal model. Transformed societies and countries from Asia and Latin America are described in line with the same concept of liberal democracy as central Europe. This approach confuses different cases and ignores historical contexts

and traditions unjustifiably. The problem of liberal democracy in central Europe cannot be analysed if we neglect the fact of the longstanding historical tradition of social pluralism, anti-absolutism, political participation and individual freedoms in the region. Central Europe is not Asia or Latin America. It is an inherent part of the political and cultural development of Europe.

## **Transformation and modernisation on trial**

To understand the current development in central Europe and its relationship to the polycrisis in the EU, the problem of the transformation process after the breakdown of 1989 and 1990 has to be analysed closely. In his report on the future of the EU single market Mario Monti, the former EU commissioner and prime minister of Italy, rightly suggests that despite shared common values the European integration member states have their own perspectives resulting from their cultural traditions which make them diverge on the further social and economic integrity of Europe (Monti, 2010). Among the main groupings of countries with diverging priorities he identifies the group of new member states, notably those in central Europe, as a model that is separate to three others: continental social-economy countries, Anglo-Saxon countries and Nordic countries. He sees the new member states as the strong advocates of the market and competition, giving priority to growth over heavy social protection. According to him, central European countries, not being large economies, are compelled to compete with larger and economically more powerful old member states thanks to the protection of the single market rules.

Monti's intuition that the countries of central Europe should be treated as separate from the social and economic model of others in the EU is absolutely correct as this model is specifically formed by the process of economic and political transformation since the turn in 1989. The collapse of state socialism and the planned economy in the region opened up the path for the post-communist transition, aiming at establishing the liberal form of democracy and free market economy in the central European countries. Therefore, the reforms were first of all focused on providing free market competition, restoring private ownership, rolling back the state's competences as collective owner, securing free elections and establishing liberal constitutionalism and rule of law over democratic majoritarianism.

In general this transformation process can be defined as: "the transformation from centrally planned economies governed by one party communist regimes into democratic market-type system" (Hare & Davis, 1997: 1). In practice the policies of transformation, projected mostly from outside the region which was the object of them, aimed not only to help the central European countries with the know-how and investments to complete the path they had to take from failed communism to the promised free market and democracy but to model them completely anew accordingly to the neoliberal beliefs dominating then in the West. Therefore, one can rightly perceive the transformation of the central European countries in the 1990s as the last successful move and at the same time the epilogue of the neoliberal revolution in Europe. As Stuart Shields states "From the 1970s onwards, a major shift

occurred in the Western countries from national strategies for economic growth towards the neoliberal policies of privatization, deregulation and stabilization” (Shields, 2012: 20).

The transformation of the economy, social order and political practices of the central European countries directly according to the neoliberal model meant, in practice, often the shock therapy of enforcing acontextual systemic change through the functioning, stable and legal new order in economy and public life. The effectiveness of such a mode of transformation, which enabled the constant economic growth (at least in the Polish case) and modernisation of post-communist countries and opened up the chance to realise the ambitious project of EU enlargement to the east, was often possible only at the expense of other values like justice or democratic legitimacy.<sup>1</sup>

Therefore, on a different scale and with a different intensity but generally in the whole region disappointment and contestation over the transformation process has increasingly appeared in the politics and public opinion of the first decade of the 21st century. More and more complaints about the unjust and unfair redistribution of growth, rising productivity and competition with low labour costs and wages below the standard of living fuelled political movements contesting the political parties of the mainstream and pro-transformation camp. As in the case of Law and Justice in Poland or of Fidesz in Hungary and Smer in Slovakia, political forces with a critical stance on the outcomes of the transformation have now gained democratic majority and taken the helm. The criticism towards the neoliberal, acontextual transformation led to several attempts in Poland to correct the process through elements of more evolutionary changes or through institutionalisation to gain more legitimacy (Shields, 2012: 26–31). But the main point of the critical assessment of the transformation was, after all, the ability of the transformed countries to further develop and compete with stronger economies in the common single European market. Especially after the accession to the EU the weakness of the transformation turned out to be visible in the case of newcomers which were capable of generating growth but without prosperity and higher social benefits and, first of all, without being able to change the structural constraints of their economy and society. This all led to the conclusion that the transformation is not the vehicle for sustainable modernisation and that in reality European integration brings the transformed countries in central Europe into the grave problem of the middle-development trap temporarily neutralised with EU funds.

This trap has to be overcome by putting the economies of transformed countries more on their own footing – a challenge which is especially important if we consider the shrinking volume of the structural funds in the future. Apart from the postulate of social redistribution of the economic growth which has fuelled parties contesting the method of transition and the structural problems of the middle-development trap, the additional, third factor of the financial crisis has undermined the belief in the efficiency of the neoliberal model in central Europe. The economic crisis in the eurozone has profoundly changed the perception of the West as the only feasible blueprint for development for the European peripheries. Regardless of the different social and economic conditions and consequences this changed perspective

1. More about this problem in:  
*Rethinking the Rule of Law after Communism*, ed. CZARNOTA Adam, KRYGIER Martin and SADURSKI Wojciech, Budapest & New York: Central European University Press, 2005.

strongly affected the countries in southern and central Europe as well. Therefore, the current development – especially in V4 countries (apart from the special case of the migration crisis) – has to be perceived in the first place as the reaction to the transformation failures and not as the fundamental contestation of European integration as is the case of many populist movements in member states that have been part of the EU for a longer period.

## Supranational activism doesn't help

In the context of the polycrisis the EU has been undergoing since at least the breakdown of stability of the eurozone in 2010 central Europe is no exception but forms part of the pan-European problem of shrinking integration capacity in Europe. The main challenge the EU is facing now is to find the new conditions under which the integration project could regain its vigour and come out from the deepest stagnation in its history. The key dilemma for any attempts undertaken in this direction was rightly described once by the French sociologist Alain Touraine who has argued in his sociology of crisis that each critical situation evaluates the capability of the system to maintain itself as a whole, in unity (Touraine, 2010).

This brings us to another key problem of balancing between unity and difference which seems to be essential when searching for the potential solution to the current polycrisis in the EU. Rebalancing the EU to find the common point of support in order to keep member states together and to overcome the increasing polarisation between them has to be taken now as the *raison d'être* of integration after the Brexit referendum. To make it possible, new forms and mechanisms of mediation are urgently required that go beyond the existing beaten paths of how the common EU institutions have functioned until now. Luuk van Middelaar, the excellent expert on European integration, identifies the crisis as a moment of truth which requires increased politicisation, the return of politics (Van Middelaar, 2016). He observes this turn in favour of politics in the case of reactions to the euro crisis and the geopolitical situation in Ukraine after the annexation of Crimea. However, such politicisation of the EU in times of crises can produce adverse effects in light of the necessary balance between the unity and differences mentioned above. Firstly, Middelaar admits that politicisation leads to the pre-eminence of non-rule-based decisions in times of crises departing from the community method and common market principles. Secondly, the logic of politicisation usually brings increasing centralisation. As in Habermas' argument for transnational European democracy or in the expectation to overcome the euro crisis thanks to the common transnational fiscal policy with one European parliamentary sovereign, political centralization leads to replacement of diversity by one coherent agent.

This effect of political centralisation (which once gave rise to the formation of modern statehood in the Europe of the 18th century) can now lead to disastrous consequences for European integration (Huntington, 1996: 93–98). Never before has the thesis of Nicolaïdis that the EU is a system of different *demos* (different democratic communities) creating a specific system of European "demoicracy" come to seem as

clearly true as it does now in the times of the polycrisis (Nicolaidis, 2013: 353).<sup>2</sup> This system suffers from the increasing polarisation caused in different member states by the economic and social consequences of the crisis. Uncertainty about the future, lack of security, the shrinking cohesion of societies, the gloomy perspective for economic growth and sustainable development in Europe makes the citizenry in the member states address their needs and fears with their national governments. The vicious circle where the citizens organised in protest movements to hold their national political elites accountable and the governments have to yield under the pressure of protesters starts to determine now the political situation in the EU and the main direction of its further development. As the latest examples of the British referendum on the withdrawal from the EU and the Dutch one on the association agreement with Ukraine indicate, we are now increasingly witnessing a bottom-up revolt on the national level against the supranational policy of the EU. We have to understand the reasons why the political elites of the EU have lost the confidence, trust and in consequence the lead in Europe. The response has to be as complex as today's situation in Europe. The further centralisation of the EU has to be replaced by the flexible and selective integration of only certain strong common foundations such as the single market, the Schengen zone with common external borders, and common EU institutions. The huge challenge remains the future of the euro, which is still a big question mark despite the many new arrangements applied to the eurozone in order to make it more stable and functional. The much more modest attitude to integration seems to be more appropriate for the times of polycrisis and overwhelming distrust of the transnational elites and institutions. It can help the integration project to survive the difficult times of inner European polarisation. All this will, however, be baseless without regaining the balance in the EU which is urgently required in many aspects. First of all, the balance between the national citizenry, political representation and governments has to be re-established in the states around the new post-liberal consensus, especially with regard to the relations between society and the market in its national and transnational dimension. Secondly, the balance between the European member states, including their societies, should be rediscovered in the EU and may be achieved with the reformed and strengthened single market and Schengen zone. And finally the new balance has to be found among the EU institutions and member states. The European Commission still holds the main power over initiating the legislation process, playing the role of the political agent instead of fulfilling its prior mediation role among the interests of member states as a safeguard of the single market. And the national parliaments still have no say about whether the EU legislation will be approved or rejected, whereas the European Parliament is unable to take its representation role seriously vis-à-vis the national citizenry. This is only one example of the many institutional paradoxes that make the EU currently entirely lacking in credibility.

2. Nicolaidis defines European democracy as "a Union of peoples, understood both as states and as citizens, who govern together but not as one. It represents a third way against two alternatives which both equate democracy with a single demos, whether national or European".

These circumstances of deepening systemic crises in the EU and increasing uncertainty in the future push the decision-makers on the European and national levels to intensify actions and make new spectacular decisions in order to prove their decisiveness and ability to react. However, this kind of activism in crisis management can be counterproductive if the risk of new solutions carried out by decision-

makers turns into uncertainty and pressure in the eyes of people affected by those decisions they cannot control. We have to be smart towards the crisis and see differences between popular movements in different member states. Their roots and reasons very often differ significantly and should not be cleared by one general theoretical or political concept. Social and economic changes required in the central European countries by new governments and popular political forces, even if counter to the same of liberal recipes, are deeply rooted in the critical approach to the modernisation concept of the transformation the societies in this part of Europe underwent in last two decades. Hence, similarities between popular movements in central Europe and the old member states play just the selective role, like in the case of immigration policy. Those movements are not the same phenomena. And, differently from France or Germany, those movements in central Europe do not aim to undermine the EU as such.

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## V4 MIGRATION POLICY: CONFLICTING NARRATIVES AND INTERPRETATIVE FRAMEWORKS

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**D**uring the migration crisis of 2015-2016, the Visegrad (V4) countries (the Czech Republic, Hungary, Poland and Slovakia) articulated a very pronounced and distinctive stance on the highly debated issue. The V4's approach basically stood against the open-door policy attributed to Germany and Sweden (and the European Union in general) and thus the central European countries and their suggestions raised interest (and eyebrows) all over Europe and the world.

Consequently, many different narratives have been formed regarding V4 migration policy. The different political, economic and social actors of the European public interpreted the four countries' stance from various perspectives, framing it in different contexts: some saw it as a consequence of the "illiberal" tendencies in the region while others considered the Visegrad approach as proof of the European east-west divide.

When one tries to systematically analyse the different narratives about V4 migration policy, it becomes evident that almost all of them can be put into three categories, which (intentionally or unintentionally) also resonate with the main schools of International Relations (IR) and foreign policy analysis (FPA). The first considers migration policy as a consequence of state interests and geopolitical circumstances using neorealist reasoning. The second group of narratives uses domestic party politics as the best explanatory factor of the V4's foreign policy on migration issues, echoing the neoliberal institutionalist approach. The third category, which uses the basic principles of social constructivist methodology, explains the central European bloc's approach to migration based on particular identities and norms in the Visegrad countries.

In the following pages, the authors seek to describe the three types of narrative on V4 migration policy; while, at the end, we compare them on the basis of their explanatory value. The strict separation and comparison of these interpretative frameworks serves two broad aims. First, avoiding the mixed usage of IR traditions prevents us from mixing separate methodologies. Second, it also helps us to differentiate between the causes of the Visegrad behaviour, whether it is a structural necessity or, for example, part of a domestic political strategy. Our analysis aims at answering why this policy emerged among the Visegrad countries and not in other regions of the EU.

## The migration policy of the Visegrad countries

The bloc consisting of the Czech Republic, Hungary, Poland and Slovakia first articulated its common position on migration in September 2015 and several times afterwards (Visegrad Group, 2015a). On the basis of these statements, we can summarise V4 migration policy in three points:

*a. Protecting the external borders of the EU and underlining the importance of fulfilling the obligations deriving from the EU acquis<sup>1</sup>*

Preserving the integrity of the external borders of the European Union has served as a cornerstone for Visegrad migration policy. The reasoning behind putting the emphasis on this question is built on the interpretation of the obligations originating from the European legal norms, especially the Schengen Agreement and the Dublin Regulation. Facilitating the free movement of people within the territories of participating countries (mostly EU member states),<sup>2</sup> the Schengen Agreement requires further regulation among and attention from its signatories to preserve the integrity of the system and the security of its members, since they apply common rules on people crossing European borders coming from third countries. The Dublin Regulation – another important tool within the Schengen framework from this perspective – deals with the question of asylum seekers.<sup>3</sup>

The migration crisis of 2015 challenged these rules and made their consistent fulfilment quite difficult, especially due to the different approaches implemented by member states. In accordance with the Schengen system, internal borders were reintroduced temporarily by Austria, Denmark, France, Germany, Sweden and Norway. According to the V4's approach, in order to avoid the collapse of the system, further steps were necessary to protect the external borders of the Schengen area. This is why Hungary closed its border with Serbia and Croatia, as Slovenia also did with Croatia. Another cornerstone of the V4's migration policy is standing against internal border closing and against the idea of a mini-Schengen, which was proposed by the Dutch presidency in order to develop a smaller open border area made up of the Netherlands, Belgium, Luxembourg, Germany and Austria, which would work together and control its external borders more carefully (Euractiv, 2016).

1. These policies were stated in all Joint Statements of the V4 from June 4<sup>th</sup> 2015 to July 21<sup>st</sup> 2016.
2. The Schengen Agreement is an EU regulation, but Iceland, Switzerland, Norway, Liechtenstein are also parties to it.
3. According to the regulation, citizens of third countries should apply for asylum in the first country where they enter the EU. If they leave this country for another member state, they should be sent back to the first country and the asylum procedure should be implemented there.

On the other hand, Visegrad countries also advocate the reform of the Dublin Regulation. But until the member states reach an agreement on that, they have to fulfil the existing rules which require the protection of external borders (Visegrad Group, 2016a). On the other hand, according to the V4's policies, the effective functioning of the Dublin system is indispensable and the allocation mechanism and penalty system for refusing to comply with it, which means that the Commission proposes a sanction of €250,000 per refugee, is unacceptable (Visegrad Group, 2016b).

***b. Effective management of the root causes of migration flows, which could help reduce the number of migrants***

In order to lift the pressure created by the migration crisis, the Visegrad countries propose to seek solutions outside the EU, an idea that basically consists of two parts. First, one has to identify and deal with the root causes of migration. "Continuing the support to the international coalition fighting Da'esh in Iraq and Syria and providing various means of contribution (political, military and humanitarian) to the efforts of the coalition and to the stabilization of Iraq as tangible forms of tackling the root causes of the migration flows" (Visegrad Group, 2015a). Second, the Visegrad countries propose to increase financial, technical and expert support for the origin and transit countries (Visegrad Group, 2015b) of migration. Another recurrent element of the V4's rhetoric is to reiterate the concept of "hotspots" (Visegrad Group, 2015b; 2016a) inside and outside the EU, besides underlining the importance of developing both FRONTEX and EURODAC. It was in this framework that the V4 welcomed the EU-Turkey deal too.

***c. Refusing Germany's open-door migration policy***

On the basis of the above-described points, there is a decisive difference between the migration policies of Germany and that of the V4 countries, who fully disagree with the so-called "open-door policy" (DW, 2016). The political conflict surfaced most clearly regarding the different proposals for a quota-based refugee relocation system. First, in September 2015, the member states agreed to relocate 120,000 refugees from Greece and Italy, a decision which was refused by the Czech Republic, Slovakia, Hungary and Romania. Poland, despite its previous rhetoric, voted in favour of the proposition. Nonetheless, after the change of government in Warsaw, the V4 stood united against a new proposal submitted by the European Commission in May 2016 aiming to relocate 400,000 people in need of international protection.

Beside these three points, the V4 also agree on and advocate the importance of consensus-based decision-making among the member states on European integration (Visegrad Group, 2016c). This consensus is important for the central European states in connection with the implementation of the EU-Turkey deal, the protection of the external borders of the EU with proper border management, the establishment of fully functioning hotspots, the implementation of an effective return policy and the treatment of the roots of migration.

## Conflicting narratives of the V4 migration policy

Due to the highly politicised nature of the debates regarding migration policy, it is useful to interpret Visegrad migration policy through the different schools of thought of International Relations theory. Using consistent methodological frameworks, one can set up three separate narratives on the subject, namely, explanations focusing on: state interests and geopolitics (neorealism), domestic politics and party competition (neoliberalism), and social values (constructivism). This way we can avoid superficial analyses and labelling.

### Geopolitics and intra-European competition: the neorealist narrative

It is not self-explanatory to view migration through the lenses of geopolitics and geopolitical struggles. Many considered the cross-border movement of people a consequence of globalisation – the victory of the new world order over the traditional territorial state system. Nonetheless, after a closer examination, one can clearly see that geopolitical considerations did not cease to shape state responses to migration. “Across the world”, argues Roderick Parkes, “countries are not only trying to reassert control of their borders but to use people flows and differences of population size for geostrategic gain” (Parkes, 2015: 1).

Interpreting migration policies based on these premises (and neglecting domestic aspects) is also in accordance with the most mainstream traditions of IR theory and, specifically, neorealism. Migration has not been on the top of the agenda for this school of thought, since it was considered to be a part of “low politics”. Nevertheless, after 1990 – due to theoretical advancements and the growing volume of the cross-border movement of people – the question became securitised in the West, especially after 2001 (Hyndman, 2012: 246-247) and was considered to be related to state security and sovereignty (Zogata-Kusz, 2012).

However, the level and process of securitisation differed in the various European states to a great extent. Parkes presents a very thorough analysis of how geopolitics shape national considerations regarding migration policy through two factors. Firstly, the different types of borders inside the EU shape national regulatory traditions regarding border control policy. In this regard, we can distinguish between three categories:

- states with no external borders, which experience non-EU migration through major air and seaports (Germany, Great Britain, France);
- states with massive external sea borders (Italy, Spain); and
- states with massive external land borders (Hungary, Poland).

These geopolitical circumstances affect the way in which governments perceive the phenomenon of mass migration. Members of the last two categories are more likely to consider the mass influx of people a security threat since they are ones that experience the crossing of external European borders. From their perspective, mass migration primarily means an external process which challenges the control over the state's territory and they react by emphasising the physical safety of borders. “Poland is responsible for protecting the second longest section of the EU's

external land border”, which is why “any kind of mechanism to strengthen solidarity in the protection of the external land border (including burden sharing) is evidently in Poland’s interest. In this respect, Hungary’s interests are quite similar” (Gaciars, 2012: 30). On the other hand, countries without external Schengen borders are those which have the biggest air and seaports and have their own set of problems, which is why migration is securitised more in connection with terrorism and not the movement of people by itself.

Secondly, geopolitics also play its part through economic forms. As Hyndman put it, “the demand for skilled labour in most countries of the global North has created a competitive global market place for potential migrants with expertise and professional background (...). So migrants are welcomed in, or at least their labour is” (2012: 245). That is why there is a strong urge for such states, especially Germany, to distinguish between labour migration and irregular migration as securitisation only affects the second category, not the first (Parkes, 2015, 10).<sup>4</sup> This differentiation is non-existent in the Visegrad countries, which do not serve as a destination for labour migration, which is why securitisation has reached a higher level.

These circumstances play a huge role in shaping security perceptions, nonetheless they are not enough in themselves to describe the Visegrad stance on migration, since Slovakia and the Czech Republic do not share the same attributes as Poland or Hungary. That is why we have to introduce another aspect as well.

Migration has always been a cause and a tool in the competition between the different geopolitical blocs inside the European Union. This rivalry traditionally occurred between the north and the south of the continent (based on the above-described differences in perception), nonetheless the enlargement in 2004 paved the way for central Europe to join the game.

Members of the Visegrad group – a bloc which has always been based on interests and pragmatism – had several incentives in the last years to pursue their interests on the European level collectively. Firstly, the economic crisis (and the debates regarding the future of integration and Brexit) have left the European Union highly divided (Schweiger, 2013), which can be seen as an opportunity for the V4 to enhance their leverage. Secondly, due to the new voting system introduced by the Lisbon Treaty, the institutional power of the Visegrad countries diminished as they remained unable to form a blocking minority. “The four are increasingly aware of the prospect of their being marginalised in the emergent EU setup” (Gostynska & Parkes, 2012: 5), which urged them to tighten their grip on the pursuit of common interests.

From this perspective, migration was basically a tool to increase the leverage of the Visegrad countries which caused political tensions. According to the neorealist argument, the distribution of power determines international relations, thus conflict is caused by changes in the balance between states. The V4 lacks the material resources to question the leadership of Germany, France or the United Kingdom, but in the framework of the migration crisis, their bargaining power is much higher than usual. Due to the routes of the movement of people, the four central European countries are among the strongest stakeholders in the management of the crisis. To put it shortly, their geopolitical allocation

4. Although it is true that the labour force coming from countries inside the EU like Poland, “appears to be far more palatable and desirable in public opinion, compared to a potential workforce envisaged as uninvited asylum seekers”, nonetheless this point only strengthens the differentiated approach to migration.

became a capability and changed the European balance of power in this policy area, which automatically creates conflict from the neorealist perspective.

All in all, geopolitics has a high explanatory value when it comes to the interpretation of Visegrad migration policy. First of all, disposing over huge external land borders on the edge of the Schengen zone, the four central European countries – primarily Poland and Hungary – consider migration solely as a security threat primarily in connection with border security. In contrast, the states in the core region of Europe have more differentiated views of migration: as destination countries they consider the movement of labour force an advantageous phenomenon. That is why the level of securitisation is much lower. Second, the crisis of 2015 became a field of the internal struggle of the different European geopolitical blocs. In this regard, the novelty in the current situation is not that migration became a matter of political rivalry but rather the fact that central Europe became a player besides the traditional “north” and “south”. From this narrative perspective, migration was only a tool and not the aim of the political debates inside Europe.

### **Domestic and party politics: the neoliberal narrative**

Following the neoliberal school of thought, the actions of states cannot only be interpreted by states’ capabilities and power, as neorealists argue. Foreign policy can also be understood as a given set of state preferences in the form of “national interests” that grow out of domestic political movements. Neoliberals argue that, on the one hand, states represent a subset of domestic society whose interests are taken into account by state officials, who, on the other hand, define state preferences and act according to these preferences in world politics. Therefore, domestic politics do matter when formulating foreign policy choices, since political institutions shape those choices (de Mesquita & Smith, 2012).

When analysing the current migration crisis and the different interpretations of V4 policy choices, the neoliberal narrative invites us to take a closer look at the literature of party competition and the role of niche parties in the domestic political system of a state in order to understand the possible reasons behind the reactions of the Visegrad countries’ governments.

According to the party competition theory of Abou-Chadi (2014) regarding niche party effects on mainstream parties, there is a connection between the emergence of niche parties and the politicisation of immigration by mainstream parties. Green parties, ethnic regionalists and radical rights parties are also commonly referred to as niche parties. However, there are three generally accepted attributes that characterise such political groups: (1) they usually raise issues that are not part of the traditional class cleavage; (2) they address only a very limited number of issues and sometimes even look like that they are single-issue parties; (3) the issues advocated by niche parties intersect with traditional lines of cleavage and cause a shift in partisan alignment (Wagner, 2011).

Party competition theories suggest that parties do not only have different policy positions, they also prioritise different issues in order to become

the owner of a particular issue (*issue ownership*). A party owns an issue if voters consider the given party the most competent and effective problem-solving actor on the issue. Usually, immigration is not necessarily and exclusively connected by voters to only one party. (Abou-Chadi, 2014) However, before the refugee crisis, immigration was usually addressed by radical right parties who could thrive in the political environment of the European Union by advocating issues like immigration, national sovereignty, international terrorism and globalisation after the financial crisis (Kallis, 2015).

In the wake of the current crisis, immigration became a top priority issue. As radical right parties increased their support among voters, party competition increased as well. This means that if radical right parties gain support from the voters, pressure starts to mount on conservative and moderate right-wing parties forcing them to move their position stance on immigration to the right in order to avert further success of the radical right parties. In such a way, mainstream parties tend to politicise immigration, elevate it into their own political agenda and adopt more restrictive immigration policies to counter the possible electoral loss they might suffer. This strategy is called the accommodative or adversarial strategy, which is based on the spatial logic of party competition and is used to trigger partisan realignment (Abou-Chadi, 2014).

By examining the results of the latest outcome of the elections in the V4 countries and comparing them to the previous elections in the given countries, it is striking that radical right-wing parties became stronger by acquiring higher percentages of support in the general elections. In the Czech Republic the radical right-wing party Dawn - National Coalition (Úsvit Národní Koalice), which came into existence in 2013, gained 6.9% of the votes in the 2013 elections (electionresources.org, 2014). Jobbik, the Movement for a Better Hungary managed to increase their electoral support from 16.67% to 23% from the elections of 2010 to the 2014 elections in Hungary (OSCE, 2014). Similarly, in Slovakia, People's Party - Our Slovakia gained 8.4% of the votes in 2016, compared to 1.58% in 2012 (OSCE, 2016a). In Poland, a delicate situation emerged as the strongest voice of anti-immigration policies, the Law and Justice Party, won the elections in 2015 and overtook the previous ruling party, the Civic Platform. Although PiS is a mainstream party, niche parties like Kukiz 15 address issues other than immigration. For example, ownership of the media and nationalism, which has also been addressed by PiS since Kukiz 15 gained 8.81% at the last elections (OSCE 2016b). These tendencies suggest that niche parties have indeed increased party competition and have set the focus on issue ownership.

Contrary to the neorealist narrative, the neoliberal school interprets V4 migration policy in the framework of domestic political competition, not of geopolitical struggles. Governing parties in central Europe tried to prevent radical right-wing parties from owning the issue of migration and therefore built up their own strategy against the mass movement of people.

### **Social norms and xenophobia: the constructivist narrative**

In order to interpret V4 migration policy, constructivism is a useful tool to trace back the causes of the difference between V4 migration policy and

that of the rest of the West. One possible interpretation emerged which explains policy variation with social norms that are generally present in post-communist central Europe. According to this narrative, the lack of historical experience with migration and the socialist past made the societies of the Visegrad region more hostile to foreigners, which is also reflected at foreign policy level.

However, data does not support the conception of central Europe as a xenophobic bloc. Quantitatively, norms related to migration and foreigners are constantly changing in European societies, and there are huge differences in this regard inside the V4 too. According to Nyiri, “surveys refute the simplistic but popular notion that Eastern Europe is a homogeneously xenophobic region (...). Indeed, differences in levels of xenophobia between individual Eastern European countries are as great as between individual Eastern and Western European countries” (2003: 30). This notion was supported by other analyses as well (Card *et al*, 2005). Moreover, this research also points out that social values related to xenophobia and intolerance have changed rapidly in these societies since 1990 (probably due to the communist past), which would suggest that they are not quite fixed.

Consequently, the social constructivist narrative should not be based on generalised xenophobia in the Visegrad countries, but more on the easily changeable nature of such values in the region, which can urge politicians to implement more “national” policies. Rovny investigated the distribution of norms about migration in the post-communist region and found that migration policy in the central and eastern European region depends on states’ historical experiences with participation in communist, federalist structures (federal heritage) and co-existence with other national minorities (ethnic affiliations). According to this narrative (see Annex 1), there are three patterns that influence migration policy outcomes: 1) countries with a transition to democracy by seceding from a communist federation which contain a federal diaspora; 2) countries in which a prominent ethnic minority is present other than the ethnicity of the federal centre; 3) countries with ethnic homogeneity. The Czech Republic, Hungary and Poland belong to the third group. The theory suggests that in these ethnically homogeneous countries party competition is not influenced by ethnic minority topics.<sup>5</sup> The second pattern describes Slovakia, where the left-wing has a tendency to oppose migration. The established patterns alone do not clarify why some countries are more restrictive than others (Rovny, 2014).

Two other important factors affect policy outcomes: the current governments’ political ideology, and the geography of the country, which determines whether a migration route crosses it or not. From this point of view, a government of left or right-wing conservatives tend to produce negative rhetoric towards migration in the current migration crisis regardless of whether their country is on the Balkan migration route or not. However, in the case of Bulgaria – which is on the Balkan migration route – the liberal government also has a negative stance (Rovny, 2016).<sup>6</sup> By examining the dataset provided by Rovny, we can conclude that there is negative rhetoric regardless of the government’s colour and whether the migration route crosses the country or not. Secondly, where other minorities are present than the ex-Soviet federal ethnicity, it seems like that the variables of conservatism or being on the route may both

5. Rovny does not specify the connection between Roma minorities and party competition in these countries even though this is an important political topic, especially in Hungary and Slovakia.

6. The political colour of the Bulgarian government which is composed of GERB, the Reformist Bloc and the Alternative for Bulgarian Revival in a form of partnership agreement is labelled a liberal government by Rovny who uses the Chapel Hill Expert Survey to determine the policy and ideological stances of national political parties.

influence governments to be negative because of the example of Bulgaria. In countries where a federal diaspora exists, conservatism seems to cause negative positions.

Rovny's model is somewhat more adequate for interpreting the present processes and invites us to assume that conservatism coupled with ethnic homogeneity might be behind a more restrictive governmental policy towards migration in Visegrad countries.

## Comparing the narratives

After setting up the three narratives, one is able to compare them on the basis of their explanatory value. As was stated in the first pages, our goal is to determine the reasons why the V4 developed this migration policy and why other states in the EU did not do so. While neorealists attribute the phenomenon to geopolitical exposure and intra-EU struggles, neoliberals focus on domestic party competition, and constructivists on norm distribution.

Although each narrative provides useful insights on the question, the authors believe that it is the neorealist framework which has the most explanatory value. One can explain the Visegrad migration policy without making any reference to domestic politics and social values without any questions left unanswered. Introducing domestic politics, the neoliberal narrative seems adequate. Nonetheless, it is not able to explain why central European countries were the ones to make the anti-migration alliance.

The migration crisis created an international environment in which all parties, especially governmental parties in CEE region, should have reacted to the issue regardless of niche party positions, since the Western Balkan route proved to be a popular migration line to the EU. It is also clear that niche parties started to gain more popularity in other countries inside the EU. Despite the increase of party competition, government reactions did not always shift to anti-immigration sentiments. Alternative für Deutschland in Germany also gained a lot of support from voters during the last regional elections in 2016, but despite the fact that the German open-door policy changed since the beginning of the crisis, the government's rhetoric did not shift to a negative spectrum as it did in case of the V4 countries (The Guardian, 2016).

Lastly, the constructivist narrative has the severe limitation that without proper research, one can hardly establish a causal relationship between social norms and policy outcomes. Methodologically, we can only analyse the conjunction of these parameters but we cannot prove that they served as a cause of V4 migration policy. The true value of the constructivist narrative is to shed light on the social environment of this policy – central European societies did not necessarily support their government's approach a priori, but without strong, deep-rooted values in connection with migration they accepted the political narrative.

Therefore, from a strictly theoretical perspective, the geopolitical investigation serves as the best explanatory framework to interpret the Visegrad countries' migration policy.

## Annex 1

Annex 1				
Country	Pattern	Is the country on the Balkan migration route?	Political colour of the government in autumn 2015	Rhetoric
Czech Republic	Homogenous	No	Liberal/conservative (centre)	Negative
Hungary	Homogenous	Yes	Conservative (right)	Negative
Poland	Homogenous	No	Conservative (right)	Negative
Slovakia	Other minorities	No	Conservative (left)	Negative
Romania	Other minorities	No	Technical (liberal)	Neutral
Lithuania	Other minorities	No	Liberal (centre)	Positive
Bulgaria	Other minorities	Yes	Liberal (right)	Negative
Latvia	Federal diaspora	No	Conservative (right)	Negative
Estonia	Federal diaspora	No	Liberal/conservative (right)	Positive
Croatia	Federal diaspora	Yes	Liberal (left)	Positive
Slovenia	Federal diaspora	Yes	Liberal (centre/left)	Positive

Annex 2		
	What are the main causes of V4 migration policy?	What are the limits of the narrative?
Neorealist narrative	Geopolitical struggles inside the EU	None
Neoliberal narrative	Domestic party competition	The lack of similar policies all over Europe
Constructivist narrative	Distribution of values	Methodological obstacles

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## ILLIBERAL DEMOCRACY IN HUNGARY: THE SOCIAL BACKGROUND AND PRACTICAL STEPS OF BUILDING AN ILLIBERAL STATE

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Since 2010, Hungarian democracy has been fundamentally transformed, and most observers agree that the quality has decreased in this time. Most critics of Prime Minister Viktor Orbán, of the Fidesz party, felt vindicated when, in a major speech in 2014, he outlined his vision of building an “illiberal democracy” in Hungary. The goal of this study is to analyse some of the factors that made it possible that the Orbán government could go on its illiberal way relatively easily. Therefore, the first part of the study presents the Hungarian public attitudes concerning socioeconomic changes twenty-five years on from the country’s regime change and also tries to explain how shifting perceptions of the systemic changes, democracy and capitalism laid the foundation for the implementation of illiberal domestic policies following 2010. This will be followed by the description of some of the key moves of the Hungarian government since 2010 that indicate what the building process of an illiberal democracy looks like in practice. The third section will analyse whether the Eurosceptic standpoint of Viktor Orbán’s government has had an influence on the attitudes of the Hungarian population towards the European Union. Finally, there will be discussion of what conclusions can be drawn from the general disappointment of the Hungarians with the regime change, democracy and capitalism, and how trust in democracy could be improved in Hungary in the future.

### **Social background of the illiberal trend in Hungary**

In Hungary, the regime change that unfolded in 1989 and 1990 led to fundamental changes in the political system, as well as in the country’s social and economic structure. The one-party state was replaced by a pluralist democracy, there was a shift from a planned to a market economy and the privatisation of state property also got under way. Changes in the economy had an effect on the labour market and employment, resulting in a rapid rise in unemployment and a shrinking of the working population. The structure of society also changed: a new class of domestic plutocrats emerged, the number of small- and medium-sized enterprises increased, while the size of the underclass and those living in

poverty increased significantly faster, leading to widening social disparities. Compared to earlier relatively widespread equality, Hungarian society essentially split in two. The relatively well-off made up 12-15% of the population, while the majority was poor or on the way to poverty.

In a 1989 survey Hungarians generally believed that the most salient features of democracy included social welfare, freedom and participation, at that time marked primarily by independence from Russia, freedom of expression, popular sovereignty, general welfare and a more equitable distribution of wealth (Simon, 1995). In other words, along with the process of democratisation, the population also expected the regime change to bring economic prosperity and material improvement.

Hungarian society's value structure rests on rational yet closed thinking, a relatively weak commitment to democracy, distrust, a lack of tolerance and a demand for strong state intervention (Tóth, 2009). A dominant role played by the state had been a fundamental feature of the state socialism in place before the regime change. The systemic changes, transition to a market economy and a period of privatisation notwithstanding, demand for state intervention, along with the desire to escape social instability, remained key aspects of the national preferences.

Hungarian society is further characterised by an extremely low level of confidence in political institutions and interpersonal relations as well. The general lack of trust evidenced by Hungarian society is harmful not only because it undermines the political system and the quality of democracy (if citizens have no trust in elected officials, they will have no stake in participating in the democratic process), distrust also hampers the development of such fundamental social values as tolerance and solidarity. And all this, aside from eroding social cohesion, also eliminates opportunities for economic development, i.e. a lack of trust has a detrimental effect on all aspects of public life.

In combination with a strong demand for state intervention, distrust of state institutions betrays Hungarian society's highly unusual and ambivalent attitude towards the state. Even 25 years after the regime change the majority of Hungarians continue to expect the state to improve their living standards and, indirectly, control their destiny while, simultaneously, they have no trust in politicians and institutions that should – at least in their opinion – provide all of the above benefits.

### **Disappointment with the regime change**

Of all social groups, the winners of the regime change came primarily from among the captains of industry and top political leaders (Ferge, 1996). This is explained by the fact that those with sufficient capital prior to the regime change were in a position to participate in the privatisation of state-owned factories and agricultural cooperatives. The biggest losers of the regime change were skilled workers and labourers. This came about when heavy industry was replaced with less labour-intensive operations, and in many cases the new business owners rationalised the labour force or shut factories down.

There were similar tendencies in respect to education backgrounds. The largest number of winners was among those with a university degree or diploma, and there were also fewer losers in this group. The largest number of losers came from among those with the lowest level of education. 70% of the people with a primary or vocational education fall in that group, and the lowest number of winners is also found in this category. The composition of the group of winners and losers is also determined by age. The number of winners gradually declines with age, with a simultaneous loss of confidence in the future.

The social impact of the regime change is evident at the regional level as well. Inequality has increased between the residents of Budapest and other urban centres and the rural population. So-called backward regions have emerged, primarily in some rural areas of the Great Plain, eastern and northern Hungary. Concomitant to the economic regime change, a social class emerged that lost its jobs in urban-based industries and, without marketable skills, found securing a job more and more difficult. These people became permanently unemployed and tried to survive by relying on a variety of social welfare benefits. Unemployment became a mass phenomenon, with 41% of those without a job having no more than a primary-school education.

It is fair to conclude that those living in villages and small settlements, old people, those with little education and the inactive ended up as losers, while residents of the capital and bigger cities, as well as active young people with a higher level of education may be described as the winners of the regime change. Moreover, changes taking place in the labour market and in employment practices have essentially favoured the latter segment of society.

A 1995 survey revealed that 51% of the Hungarians claimed the new regime was inferior to the old one (Kolosi & Róbert, 1992). 26% believed it was much worse and barely every fourth respondent thought the new system was for the better – reflecting the most pessimistic view in the whole region. Disillusionment with the regime change is explained in part by changes in income levels, and in part by deteriorating living standards. Inflation, a drop in income, structural changes in homeownership and the healthcare system have been major contributing factors.

When asked in a 2000 survey on the assessment of change conducted by Tárki, a Hungarian research institute, whether the socialist system caused more harm than good, 20% of the respondents said that it caused more harm, while a significantly larger number, 50% said the same about the new regime (Csizér, 2000). In other words, in addition to having ambivalent feelings about the regime change, even at the turn of the millennium many continued to entertain nostalgic feelings for the previous regime. In the survey, Hungarians described freedom of expression and foreign travel as the most positive changes, and associated the most negative changes with employment, declining public security and living standards. This also means that from the point of the extension of individual rights they saw the changes in a positive light, although in all other respects they perceived things as going from bad to worse.

Tárki's 2014 survey also reconfirmed this correlation, demonstrating that those with more education were the most satisfied with the regime change: the higher the level of education, the higher the rate of satisfaction (Tárki, 2014). 46% of those with a diploma, 20% with primary education, 27% with a skill and 29% with a high school diploma considered the current regime superior to the previous one. In a 2014 survey 26% of the respondents said that residents of Hungary are better or much better off than prior to the regime change, and 20% saw no difference. A relative majority of the respondents – 44% – thought Hungarians were in a worse situation than before the regime change. At the same time, slightly more agreed on the need for change: according to close to half (47%) the regime change was worth it, while 40% said it was not.

On the whole, it can be stated that in the years following the regime change public acceptance of the new system improved, although not by any significant degree. This also demonstrates that in the eyes of the population individual rights such as a say in political decisions and the opportunities offered by the freedom to travel are no match for existential security or a guaranteed job, which are considered more important than the previous issues. Since in these areas very few people experienced positive change, their satisfaction with democracy and their assessment of the regime change has been undermined. In short, Hungarian society's negative assessment of the systemic changes is mostly associated with rising unemployment, declining social mobility, deepening social disparities and an erosion of social stability.

### **Disappointment with democracy**

Since the above conclusion already implies a quite stunning conception of democracy, a review of attitudes toward democracy may be a useful exercise. According to the World Values Survey while Hungarians continue to believe in the need for democracy, they are considerably more critical of its day-to-day operation (World Values Survey, 2009). Of course, the level of satisfaction also depends on what Hungarian society sees as the essence of democracy. Over four-fifths of the respondents believe that the free election of leaders is one of the most crucial aspects of democracy, and the severe punishment of criminals is seen (by 84%) as an even more defining feature. Three-quarters consider the amendment of legislation through popular votes as a major component of democracy and the perception of democracy as offering protection against repression through individual rights is equally strong (70%).

In addition to the above, a large number of Hungarians associate democracy with economic growth, material wealth and state-controlled redistribution. This is demonstrated by the surprising finding that the majority considers a prosperous economy to be as crucial for democracy as free elections. According to two-thirds of Hungarians, a government taxing the rich and supporting the poor is also an indispensable feature of democracy and over 55% include benefits provided to the unemployed as part of these fundamental democratic values. In other words, a definition of even the most basic precepts of democracy reflects the Hungarian population's paternalistic yearnings.

The conclusions of the most recent Hungarian studies fit with the findings of the World Values Survey. Based on responses to a survey conducted in 2015 by the Hungarian Academy of Sciences, while the majority of Hungarians continue to be devoted to the democratic system, there is also a palpable sense of disillusionment in democracy. Close to half the respondents (49%) say that democracy is better than any other political system and only 7% would prefer to see a dictatorial regime under some circumstances. At the same time, a large number of people, accounting for almost one-third of the population (32%), are critical of the political system, arguing there are no fundamental differences between the various systems (Ger & Szabó, 2015). In other words, while in favour of democracy in general, Hungarians' perception of democracy is shot through with scepticism, and a large percentage believes it makes no difference under what form of government the country is run.

Based on the findings of empirical studies, it may be concluded that Hungarians consider economic well-being and financial security to be as much an integral part of democracy as free elections, the institution of the popular vote and civil liberties. When evaluating the quality of democracy, economic and social factors play an even more important role in the eyes of citizens than the liberties related to democracy, which explains why in times of economic downturns and crises popular confidence in democracy noticeably declines. In light of Hungarian attitudes, it is safe to assume that in this context a positive assessment of Hungarian democracy becomes highly tenuous.

### **Disappointment with capitalism**

Specific aspects of the regime change are worth examining, as popular attitudes also indicate that Hungarians take fundamentally different approaches to economic and political changes. Public opinion is most critical of the economic dimension, i.e. capitalism. For the most part, this is explained by Hungarian society's persistent yearning for state tutelage which, in many respects, is in conflict with the transition to a free-market economy, as well as with social inequality exacerbated by capitalism.

Surveys conducted in the past 25 years show that on the whole the Hungarian population believes that in economic terms the country is worse off than under socialism. According to the findings of a PEW Survey, while in 1990 there was general enthusiasm (80% in support) for a transition to capitalism in Hungary, by 2009 only 46% of the respondents approved of the changes, meaning that in two decades support for the economic changes dropped by almost 50% (Pew Research Center, 2009). Of all the former Eastern Bloc countries Hungary is the most dissatisfied with the current capitalist system; in 2009 72% believed that the country was worse off economically than under the socialist regime. It is worth noting here that in 2009 Hungary experienced a period of deep economic and political crisis that may also account for the overwhelmingly negative attitudes.

As part of the assessment of capitalism, it is worth noting how experiences gained in the previous regime shaped attitudes to free competition. In 2009, Eurobarometer asked citizens to what extent they

agreed with the statement that competition between companies drives down prices (Eurobarometer, 2010). Within the EU, with 27 member states at the time, Hungary took the least pro-market position with only 62% of the respondents agreeing in full or in part with the statement, as opposed to the EU's 83% average. Hungarian opinion also differs somewhat concerning the statement that more competition offers more choices to consumers. In Hungary 16% fewer agree with that statement than in the EU on average. While an overwhelming majority expressed its consent, 20% of the respondents (a high percentage within the EU) maintained that the establishment of a competitive environment at the state or European level would not bring any benefits to consumers or society in general.

## Illiberal democracy in practice

In a speech delivered at the 25th Bálványos Free Summer University located in Romania's Transylvania region, in front of an audience primarily made up of ethnic Hungarians, Prime Minister Viktor Orbán declared that Hungary had abandoned the liberal principles of societal organisation and, inspired by today's "international stars" such as China, Singapore, Turkey and Russia, would adopt an illiberal form of governance (Orbán, 2014). Orbán reasoned that as liberalism promotes the selfish interests of – often unpatriotic – individuals, only an illiberal democracy can devotedly serve the general interest of the whole nation.

Orbán's own understanding of illiberal democracy is most likely a combination of certain socioeconomic and political objectives. As he noted, he envisions a work-based society in which holding down a job will be paramount, implying that those who cannot or do not want to work will forfeit certain rights. He was most likely drawing on his oft-repeated admiration for what he broadly calls the Asian model, by which he means high levels of social discipline and low levels of public dissent. Based on Fidesz's actual policies, it is also fair to deduce that illiberal democracy also features measures aimed at eliminating checks on executive powers and limiting, through a variety of means rarely employed in Western democracies, genuine opportunities for opposition voices to be heard.

This chimes with a key feature in Fareed Zakaria's original version of illiberal democracy (Zakaria, 1997). A liberal democracy imagines inherent and substantial limits on the powers of a temporary majority to prevent a "tyranny of the majority," while Fidesz's interpretation allows very few such limitations. Narrowing the constraints on the government's latitude to shape public affairs is in fact one of the key Fidesz objectives and presumably also a major component of Orbán's illiberal democracy. According to Zakaria, in illiberal democracies political power is increasingly centralised while the freedom of people is concurrently eroded. Depending on the degree of centralisation, the character of an illiberal democracy can range from "nearly liberal" to "openly autocratic". The transformation from one end of the scale to the extreme opposite is well illustrated by the political developments in Hungary since the initiation of the second Orbán government. In the following section, a few key moves towards building an illiberal democracy will be highlighted.

## **The new Fundamental Law**

The reshaping of Hungary according to Fidesz's ideal image began with the passing of the country's new Fundamental Law, which entered into force on the 1<sup>st</sup> of January 2012. Already at the outset, the drafting process and passing of the law came under heavy criticism for lacking any political or professional debate. Consultation with opposition parties and civil organisations was neglected. By explicitly drawing up the normative preferences of an individual's private life, the Fundamental Law set out the vision of a Christian-conservative political community, while also laying the groundwork for political centralisation.

## **Limiting constitutional review: the Constitutional Court and the president**

The Constitutional Court was the principal check in Hungary on the executive branch during and after the transition period of the 1990s, and enjoyed some of the strongest powers of all its international counterparts. However, in 2010, then Fidesz faction leader János Lázár came out with the argument that with the consolidation of democratic values and institutions, the Constitutional Court no longer needed its exceptionally wide scope of jurisdiction. Consequently, it was stripped of its power to rule on tax and budgetary matters. The court's role was virtually annulled when the government, with an amendment to the Fundamental Law, allowed for the bypassing of the court's judgement by making it constitutional to enact laws that the court deemed unconstitutional. The selection of the judges was also changed – the previous, fair system where a delegate from each parliamentary party could pick a nominee was overturned in favour of a new method where the party with the most delegates got to pick the nominee. With these changes, as well as by replacing retiring judges with pro-Fidesz ones with questionable political backgrounds, the court has since, unsurprisingly, made rulings favouring the government's will in an overwhelming majority of cases.

The other democratic institution that could in theory exercise constitutional control over the executive branch is the figure of the president. However, this position has also been filled by Fidesz party politicians. Pál Schmitt, who served in the position from 2010 until his scandalous resignation in 2012, did not send any laws for constitutional review – he simply signed every single document that the government put on his desk. His successor, János Áder generally uses his political veto rather than asking for a constitutional review – an instrument that can be easily ignored by Fidesz with its two-thirds majority in the parliament.

## **The chief prosecutor, the State Audit Office and the Fiscal Council**

The position of the chief prosecutor was taken up by Péter Polt. Polt, a former member of Fidesz and an unsuccessful parliamentary candidate in the 1994 general elections, has come under wide scrutiny as under his watch the percentage of rejected complaints about corrupt officials has increased by 300%. The State Audit Office, the principal organ responsible for overseeing the government's spending has been chaired

by László Domokos, a former Fidesz MP. Other signs that Fidesz cannot stand criticism are the radical transformation of the Fiscal Council and the nomination of government-leaning experts to its leadership.

### **The ombudsman and the judiciary**

With the enacting of the Fundamental Law, all four ombudsmen's offices have been done away with and replaced by a single commissioner for fundamental rights. The current commissioner, László Székely, is well-known for his ties to Fidesz, formerly being the party's expert on environmental issues. The dissolving of the ombudsmen's offices were not without legal consequences. The removal of András Jóri, former ombudsman responsible for data protection before the end of his mandate was found contrary to European law by the European Court of Justice. The discharge of András Baka, head of the Supreme Court, as well as the lowering of the retirement age of judges from 70 to 62 were similarly deemed unlawful by the European Union's court. The European Union also intervened in mandating the revision of the excess powers of the National Judicial Office led by Tünde Handó, the wife of member of the European Parliament József Szájer (Fidesz – European People's Party), which would have had the power to reshuffle judges from their positions without the need for justification.

### **The media**

The rearranging of the country's media structure with a set of media regulations was one of the most internationally criticised Fidesz policies. A self-censoring, biased and overly pro-government centralised media was built up, filling the Media Council and the National Media and Infocommunication Authority (NMHH), a body with a wide range of oversight over media outlets. In this centralised media empire, available frequencies were given to pro-government businesses whose news broadcasts have omitted any point of view that is critical of the government's policies. Tellingly, the evening state news on the public channel is dominated overwhelmingly by reports highlighting the government's achievements, while the opposition's perspective is usually left out or presented in a flagrantly biased manner. News anchors with expertise were fired and replaced by inexperienced amateurs often giving near comical onscreen performances. Freedom House has qualified the Hungarian media as only "partly free" due to Viktor Orbán's intense political pressure on independent media outlets.

### **The electoral system**

With Hungary's disproportionate electoral system Fidesz gained a two-thirds majority in the 2010 parliamentary election by winning just 52% of the popular vote. Then, during its first term Fidesz ventured to amend the legal framework of the electoral system to help regain its two-thirds majority in the 2014 elections too. With a new method that "compensated the winner" and arbitrary gerrymandering, the system was shaped and rigged – without any substantial dialogue with opposition parties – in Fidesz's favour. According to the OSCE/ODIHR

election observation report, Fidesz enjoyed an “undue advantage” during the 2014 campaign period in which it “blurred the separation between [the ruling] political party and the State” (OSCE/ODIHR, 2014). While observers found the election transparent and efficiently administered, opposition parties were found to have suffered a crippling disadvantage due to the unfair allocation of state advertising, biased media coverage and a general lack of media pluralism. The election was ultimately assessed in the report as “free but unfair.”

### **Pressure on civil society**

Fidesz also turned to demonising a group that it considered exercised unwanted influence over the country’s domestic affairs: NGOs. Consultation with the civilian sphere has been largely neglected during political decision-making and thus left marginalised. However, Viktor Orbán still regards the activists of human rights organisations, primarily those that also receive funding from foreign sources, as agents trying to undermine Hungary’s sovereignty. The government accused beneficiaries of the Norway Grants, a fund aimed at boosting the economies of central European countries, of supporting the political goals of opposition groups. In 2014, police raided the offices of an organisation responsible for distributing Norway Grants funds. The government justified the act by arguing that it should be entitled to have oversight of who gets to benefit from foreign funds. In a similar manner, the migrant crisis was blamed on George Soros, a billionaire philanthropist who used to fund scholarships for Fidesz’s current top officials to study at British universities. Soros was accused of single-handedly unleashing the migrant crisis on Hungary via the funding of humanitarian aid organisations and was subsequently declared a threat to the nation’s security.

### **Eurosceptic political leadership, pro-European electorate**

The frequent clashes with different EU institutions and leading European politicians over some of his illiberal moves have caused several international PR disasters for Viktor Orbán, but he has apparently been ignoring them. The Hungarian PM has had numerous very difficult political situations and negative media coverage outside Hungary (for example on issues like the media law in 2011, the new constitution in 2011-2012, his comments on illiberal democracies in 2014, his remarks on the death penalty, and hardliner anti-immigration politics in 2015), but he never seems to care as his main goal is to maintain support for his party at home. As long as he is able to win or at least keep votes by being tough against “Brussels”, Orbán is expected to continue this strategy. Moreover, the refugee crisis has provided Viktor Orbán with an extraordinary opportunity to bring his agenda to the European level and gain some international followers as well.

After more than six years of conflict between the Hungarian government and the European Union, it is clear that the EU lacks the proper instruments and mechanisms to tackle right-wing populism and the illiberal tendencies that have come with it in the Hungarian case. The European Parliament addressed the Hungarian situation

on several occasions, adopted resolutions and a report on the political developments in Hungary, but these debates and written documents have remained largely symbolic actions, with no real political consequences. Viktor Orbán was well aware that international scandals that do not result in legal consequences would have limited impact on his domestic popularity and, reinforced by the protection extended by the European People's Party, he felt he could easily handle the conflicts with the European Parliament.

In the last few years, the European Commission has been more cautious in tone than the European Parliament, but has been more effective in terms of keeping the Hungarian government on a European trajectory. At the same time, it must be emphasised that it was only successful in situations in which it had specific financial or legal "disciplinary instruments" at its disposal. Infringement procedures and financial rules have mostly resulted in compliance. However, in many cases, when the international watchdog organisations and the press claimed that Hungary was violating the "fundamental principles of the EU", the European Commission's lawyers assessed that those actions by the Hungarian government did not fall under the EU's jurisdiction. Open criticism from the leaders of the EU was also mostly ignored by the Hungarian government.

The lessons are clear: right-wing populists in Hungary only change their course when they face hard power. Soft power is seen as weak and irrelevant. It is now also obvious that the European institutions have only a very limited set of tools with which to take actions against a member state in the realms of democracy, rule of law, political rights or freedom of the press. Most importantly, it has also become evident that political pressure at European level will not result in loss of popularity for the government.

Despite the frequent fights between the Hungarian government and the European Union, the Hungarian electorate has not become Eurosceptic. Research findings published in the past six years show that the majority of Hungarians continue to see the future of the country inside the European Union (Medián, 2016). While perceptions of the regime change and democracy have declined precipitously in the past few years, Hungarians have remained steadfast in their European orientation. Based on the results of a survey conducted jointly by Policy Solutions and Medián in 2011 slightly over two-thirds of Hungarians (69%) would have voted to reaffirm the country's membership of the EU, only every fourth citizen (24%) would have rejected accession, and 8% were undecided (Policy Solutions, 2012). According to the latest survey conducted by Századvég in the summer of 2016, following Brexit, three-quarters of Hungarians (76%) would continue to vote for "stay" and only 13% for "leave" in a potentially high turnout, with only 5% saying they would not go to the polls (Századvég, 2016). In short, Hungarian society takes a firm pro-European stance, where a considerable majority sees the country's future as a member of the European Union.

For Hungarians, when it comes to the EU, the first things that come to mind are EU citizens' right to travel freely, study and get a job in other member states, with four out of ten (41%) giving that answer.

Hungarians also commonly associate the EU with the inadequate control of external borders and cultural diversity – issues ranked in importance in second and third place. At the same time, both EU citizens and Hungarians rarely associate economic growth and social protection with EU membership. The rate of Hungarians believing they have more say in world affairs through the EU is well below the European average. It is also interesting that, compared to the EU-28 average, considerably fewer Hungarians make an association between bureaucracy and the EU (15% as opposed to 24% in the wider EU), and half as many think that the EU project is a waste of money (Policy Solutions, 2016).

Regarding citizen confidence in the European Union and national policies, the following conclusions can be drawn. First, in the wake of a series of crises over the past five years European citizens have lost some confidence in the European Union. Second, while confidence in the EU has declined in Hungary, Hungarian citizens are still less Eurosceptic than the average measured in European member states. Third, public disappointment has been more pronounced in domestic politics than in the EU: there has been more erosion of confidence in domestic politicians, both at EU and local level, than in EU institutions. In this context, the continued support of Orbán and Fidesz can be explained by the weakness and the lack of credibility of the opposition – there is no confidence in the opposition politicians and parties either.

Neither the European Union nor national political institutions enjoy the confidence of the majority of citizens. Numbers also show that the level of confidence in institutions is not necessarily related to a so-called democratic deficit, but rather to the dissatisfaction with the political elites and the functioning of the political system. All things considered, one may conclude that many Europeans continue to place more trust in EU institutions than in their respective political leaderships, who, at least in theory, maintain a much closer relationship with citizens. Although the perception of the European Union has deteriorated in recent months, considering a similar loss of credibility involving national institutions, this cannot be considered a failure of the European project. While there is a genuine institutional crisis, it is not due primarily to a public perception of EU incompetence and is much more closely related to disillusionment with the prevailing political system as a whole.

## Conclusions

The Hungarian public's expectations of regime change and democracy clearly show that following 1990 the Hungarian political elite consistently underestimated the importance of welfare issues. For the majority of Hungarians democracy is identified with financial advancement and existential security. However, the quarter century since the regime change has brought growing social inequality, leaving entire regions behind, increasing the gap between rural and urban populations and, as a result of all the changes, leaving the less well-educated and those already struggling in even worse conditions. Not surprisingly, regime change was quickly followed by disillusionment: as early as the mid-1990s, half of Hungarians were of the opinion that the system was inferior to the old one. This perception has not changed to any significant degree in the 2010s, and a relative majority of Hungarians

continue to believe that the country is worse off than it was before the regime change. Hungarian society's negative assessment of the systemic changes is attributed for the most part to rising unemployment, declining social mobility, deepening social disparities and an erosion of social stability. While this mindset and disaffection with capitalism and democracy have not made dictatorship popular, it should be a warning sign that today one-third of the population no longer cares whether the country is run as a dictatorship or a democracy, for they no longer believe that democracy can bring real change in their life.

After 2010, this has made it all the easier for Fidesz to fundamentally restructure the Hungarian democratic system – involving the justice system, the media, independent watchdog organisations and the electoral system – and has also allowed the party to implement radical changes without facing effective public opposition. Hungary's example could also serve as an important lesson for other European countries: growing inequality, and increasing and ignored social tensions may undermine the foundations of democracy and spark a revolt against the elite that, in turn, may prepare the ground for the further advancement of anti-establishment forces holding out the prospect of eradicating the status quo. Since Hungarians' subjective problem-chart continues to be dominated by poverty, labour issues and the deficiencies of the social welfare system, it is safe to say that the rebuilding of public confidence in democracy in Hungary must be achieved through improvements in living conditions and welfare programmes. Hungarians expect the state to guarantee their financial security and well-being. Concurrently, there is a strong rejection of social inequality. In the eyes of Hungarians, economic prosperity and the state's redistributive role are fundamental aspects of democracy's core values. While party choices are little affected by policy issues, voting is strongly determined by perceptions regarding the state of the economy.

Demand for state intervention has primed political parties to promote leftist economic policy measures even when they subscribe to a culturally/socially conservative ideology. This makes things extremely difficult for the left. First, because for 12 of the 20 years following the regime change the socialists were in power (i.e. for most of it) and Hungarian voters tend to blame them for all the missed opportunities for economic/social improvement; and, second, in an ideological space vacated by the left today democratic parties must compete with right-wing parties (the governing Fidesz and far-right Jobbik). This makes reclaiming the credibility of a leftist economic policy an extremely complex task for the Hungarian left.

It must be noted that an escalation of Eurosceptic propaganda in Hungary following 2010 notwithstanding, voters have not scapegoated the European Union for the difficulties facing the country. Even as confidence in the European Union declined after 2010, trust in Hungarian political institutions plunged even deeper. In other words, there is a system-wide lack of confidence reaching all levels of politics. While for the most part thinking about European integration is consistently positive and there is solid support for the country's continued EU membership, it is worth noting that by now Hungarian voters no longer associate EU membership with economic prosperity and social stability. In the long term, this may undermine confidence in European integration, as well as the assessment of democracy.

The overall conclusion is that in the eyes of Hungarian voters having a say in political decisions and fundamental freedoms are no match for a promise of existential security, material well-being and a guaranteed job. Potentially, this negative perception can be reversed with a political vision and policy initiatives that – in line with public expectations and hopes – reduce inequalities, improve opportunities for social mobility and create a more equitable society in general where jobs and livelihoods are more secure than had been the case in the past 25 years. Consequently, there is an urgent need to create conditions for economic prosperity and a wide distribution of assets across all social sectors so as to make sure that in a constantly changing world an increasing number of people see themselves as winners rather than losers. While the current Fidesz government managed to implement its illiberal programme by relying on public disappointment even as it has failed to alleviate inequalities and social tensions arising since 2010, in the long term the current state of affairs may offer its political rivals the opportunity to challenge the right effectively.

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## THE NEW IRON CURTAIN? THE V4 AND THE REFUGEE CRISIS AS SEEN FROM THE POLISH PERSPECTIVE

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When in February 2016 three US senators published an open letter to the Polish prime minister it was certain that they neither expected her to respond so rapidly, nor for the answer to come in a tone which was somewhat different from previous Washington-Warsaw exchanges. John McCain, Richard Durbin and Ben Cardin, concerned by the worrying news reaching them about the erosion of the rule of law in Poland, wrote their letter in order to ask their central European ally to follow the letter of the law, as would be expected of any liberal democracy.

Not a week had gone by before Beata Szydło, Poland's prime minister, assured them in writing that the state of the democratic process in Poland had never been better. The suggestion was that unfair gossip about the conduct of her Law and Justice (Prawo i Sprawiedliwość [PiS]) party had been disseminated by her political enemies across the globe. The following extract from her response letter seems especially interesting: "Sirs, your concern over the affairs of Poland is important and valuable. And yet the curiosity and good will of American politicians *cannot turn into lecturing* and the imposition of actions which will influence the internal affairs of my Homeland".<sup>1</sup>

The diplomatic tone does not quite conceal the intended message: "Please mind your own business". This is no linguistic lapse or one-off blunder. Similar statements have already been heard from the mouths of Poland's new political elite, such as the new minister of foreign affairs who, following the first wave of foreign criticisms of the activities of PiS, stated, diplomatically, "We are regaining our independence", or Jarosław Kaczyński, the head of PiS himself, who warned that foreign criticisms of the Polish government (in relation to the dispute over the constitutional court) were "a very serious challenge to our sovereignty".

The open letter incident is highly instructive for understanding what is happening in central Europe. For the idea of "regaining our independence" touches other areas of political life, including the refugee crisis (2015-2016). If we do not picture the larger context, it will be difficult to understand not only the utterances of Ms. Szydło and other

1. From: wPolityce.pl. "Premier Beata Szydło błyskawicznie odpowiada amerykańskim senatorom na ich list: «Chcemy by szanowano nasze suwerenne wybory i decyzje»", (2016, February 14), (on-line) [Date accessed: 21.12.2016] <http://wpolityce.pl/polityka/281662-tylko-u-nas-premier-beata-szydlo-blyskawicznie-odpowiada-amerykanskim-senatorom-na-ich-list-chcemy-by-szanowano-nasze-suwerenne-wybory-i-decyzje>.

Polish politicians, but also that of Viktor Orbán, the prime minister of Hungary, who in the context of the migration crisis has also spoken about the “Sovietisation of the European Union” (Mickiewicz, 2016).

Here I would like to focus on selected aspects of the refugee crisis in the V4 countries as seen from the Polish perspective. First, in section 1 I will outline the background of the refugee crisis, describe what has happened in Poland since the last parliamentary elections in 2015 and describe some political paradoxes related to these changes. Secondly (section 2), I will analyse certain aspects of the V4 and the refugee crises: namely, the first reactions to the crises and the possibility of the new Iron Curtain. I will then (3) describe the radicalisation of the language of Polish public debate concerning the migration crisis in Europe and provide an overview of the results of *Kultura Liberalna's* Public Debate Observatory Reports (2015-2016). Finally, (4) I will describe the refugee crisis (2015-2016) in the post-communist countries and (5) draw conclusions.

### **Background of the refugee crisis. General description of the Polish situation after the last parliamentary elections in 2015**

In 2015, the conservative-rightist Law and Justice (PiS) party, led by Jarosław Kaczyński, won a bravura victory in both presidential and parliamentary elections in Poland. The basis for the party's programme was a mix of sovereign, nationalistic and patriotic terminology, peppered with fashionable phrases about a struggle against economic inequality. Not surprisingly, during the election campaign, Kaczyński made enthusiastic reference to Thomas Piketty's *Capital in the Twenty-First Century*. Campaign trail promises, based on a critique of existing elites and reputedly ineffective modernisation, found favour with the majority of those who ended up voting.

Following an overwhelming victory in the ensuing elections, PiS then initiated a spectacular (in terms of both speed and intensity) process of subjecting various segments of government to their will. Rapid reforms were followed by an assault on elite spheres of influence – the tsunami of changes hit the public media, the civil service and the judiciary, and direct moves were made to marginalise the Constitutional Tribunal. Needless to say, not a thing was said about such aims during the election campaign.

The Polish constitutional court, whose aim is essentially to oversee the constitutional validity of laws being put in place, did not surrender to this assault and entered into a real political and legal struggle in order to retain its independence from the ruling party. As a result, for the first time ever, many Poles have recently begun taking an active interest in documents relating to the national constitutional legislation put in place at the start of Europe's post-communist era.

This political thriller is far from over. When the line between an elected party and governmental structures began to be erased, Frans Timmermans, vice-president of the European Commission, informed Poland that the EU had decided to take the first steps of a procedure

designed to stop the threat to the rule of law in Poland. A major shock was also brought by the decision of Standard and Poor's to lower Poland's credit rating from A- to BBB+. This happened as a direct result of the early decisions made by the PiS government, in spite of good overall economic results. As if that wasn't enough, in March the advisory committee of the Council of Europe, the so-called Venice Commission, published a highly critical statement relating to the reforms introduced to the Polish Constitutional Tribunal. It wasn't only McCain, Durbin or Cardin who sent their concerns in writing. Barack Obama's administration also expressed its concerns over the Constitutional Tribunal during the last NATO Summit held in Warsaw.

Trying to view Poland from the outside, one can see it as little more than a battle ground of paradoxes. Why are the people of a nation which has undergone such a successful – even model – transformation from communism to liberal democracy suddenly handing over power to politicians who, in the space of just a few months, are attempting to subvert the independent role played by key institutions of governance? A country which essentially avoided any sort of fallout from the 2008 global economic crisis, with low rates of unemployment, renowned for years of unprecedented economic growth (in the last quarter of 2015, Polish GDP rose by 3.9%, the fastest growth in the past four years), is suddenly taking the so-called “Hungarian path”, a shock therapy of statist reforms the likes of which Viktor Orbán, the prime minister of Hungary, resorted to during a dramatic political and economic crisis. We should add here that Poland is also a country which is not experiencing any real challenges related to the influx of mass migration (in fact, it has almost no such problems), but has a falling birth rate and is suffering from what the EU terms a “brain drain”. For all that, Poland is not proving keen to take in immigrants, much like other countries in the region.

Hence, the question “What has happened to Europe's model pupil?” is being asked more and more often. In order to answer it, Poland's case should be treated as a piece of a puzzle which fits into the bigger regional picture, as well as a measuring stick to assess the effectiveness of systematic changes taking place, for better or worse, in states which have been moving away from communist pasts towards liberal, democratic futures since 1989. These questions apply to all of the other “good students” of central Europe, including the Czech Republic, Slovakia and Hungary, which in the past years have surprised European and American partners by starting to question the direction of transformation as well as the established ways of doing international politics.

## **Analysis of selected aspects of the V4 and the refugee crises**

Since the second half of 2015, images of endless crowds of refugees and immigrants streaming into Europe by boat and dinghy, crossing rivers and traipsing along motorways towards the heart of Europe have turned out to be a test for its declared values of tolerance, solidarity and human rights. What is more, the attitude towards the issue of mass migration has revealed an attitude among the V4 countries that suggests they have

no intention of agreeing with the orders imposed by EU policies and those suggested by authority figures from western Europe.

When the French minister of foreign affairs, Laurent Fabius, criticised central European countries half-way through 2015 for conducting “scandalous politics” in the face of the refugee crisis, the prime minister of Slovakia, Robert Fico, publicly protested against this sort of moralising tone from Paris. He shot back that it was not Slovakia which took part in destabilising countries such as Syria or Libya. In February 2016, Fico announced that, as long as he remains in charge, Slovakia will not take in a single Muslim refugee.

The Czech president, Miloš Zeman, is almost renowned for his politically incorrect comments on the subject of mass migration. In one of his infamous interviews he explained to his fellow citizens that an influx of refugees was an “organised invasion”. Then there was Orbán, trying to convince his countrymen in various media campaigns that only he is capable of defending national borders from the “flood of terrorism”. Radically anti-migration rhetoric isn’t costing anyone votes in the region, quite the opposite: Orbán’s Fidesz party enjoys the biggest backing of any political faction in Hungary (some 32%–25% of votes). Second place, with half the votes garnered by Fidesz, is taken by the far-right, or, as some claim, neo-Nazi, Jobbik party.

In mid-2015, *Le Monde* wrote about a new Iron Curtain going up across the old continent, caused by a dispute over the issue of refugees (Kauffmann, 2015).<sup>2</sup> The events which have followed show how the attitudes of various western European states have evolved in respect of this. Some reclaimed control of their own borders, others permitted legislative changes which dissuaded new arrivals from applying for asylum (such as Denmark), while still others adopted a sneaky stance in terms of their actual responsibilities for accepting refugees. Also, support for political factions with anti-immigrant rhetoric has visibly increased, regardless of how Europe was divided prior to 1989.

And yet the image of central Europe torpedoing the politics of obligatory immigrant quotas in the post-communist bloc remains. This can be seen in the speech given recently by the former prime minister of Italy. In February 2016, during a summit meeting in Brussels, Matteo Renzi almost threatened central European states by saying that EU funds would be withheld if they refused to show solidarity with the West on the issue of migration. He repeated it recently (October 25<sup>th</sup>) in an interview for RAI television (Polish Press Agency, 2016).

Inhabitants of central Europe often feel disrespected by negative stereotypes of their region. But let’s assume for a while that there is a grain of truth in them and that the reaction of Polish and V4 inhabitants to the refugee crisis shows some deeper change in their societies. Perhaps this change might be illustrated by the attitude of the youngest generation to the crisis. The shape of the public debate about it would thus be very meaningful.

Young Poles, Czechs, Slovaks and Hungarians are the first generation which can feasibly travel across borders without using passports, but also without the need to compare themselves with peers from Berlin

2 See also: Kuisz, Jarosław, interviewed by Jonathan Chalié, “La Position de la Pologne. Entretien avec Jarosław Kuisz”. *Esprit* (November 2015), vol. 419, p. 111-113.

or Paris. This doesn't, however, instantly convert into a sense of unity with refugees. It has turned out that in the most recent parliamentary elections in Slovakia an unfeasibly high number of young voters came out in support of the as-some-claim neo-Nazi Lidová Strana party led by Marian Kotleba. Surveys suggest that in Poland it is the youngest (18–35 years old) who most often disagree with taking in refugees from places experiencing armed conflict (according to the Centre for Public Opinion Research).<sup>3</sup>

## The debate on the refugee crisis in Poland and the rest of the V4

In 2015 and 2016 the debate on the refugee crisis in Poland has become gradually more radical than before. In the mainstream mass media the negative stereotyped picture of refugees has been presented on many occasions and arguments against refugees have been heard in western Europe as part of far-right rhetoric. Especially peculiar is the fact that the refugee crisis has not been directly experienced in any way in Poland, either recently or ever before. In this sense one could speak of “virtual refugees”, rather than the real ones (Kuisz, 2015).

In 2014 at *Kultura Liberalna* we established the Public Debate Observatory, a research institute whose purpose is to collect and analyse cases of radicalisation in Polish public debate.<sup>4</sup> Public Debate Observatory research is not only concerned with hate speech – a phenomenon that is well known and partially monitored by other organisations – but also other forms of radicalisation, which include antagonistic, simplified and insulting communication. These changes are interconnected with broadening the gap between ideological groups. Not only are the opinions expressed in electronic and paper media radicalising, the forms of these expressions are too.

Among groups of topics the Public Debate Observatory have chosen seven common perceptions that are most likely to be influenced by radicalisations present in the media, including “Alien, Other. Attitude towards immigrants and national minorities”. The Public Debate Observatory constantly monitors selected magazines from different sides of the ideological spectrum: *Gazeta Wyborcza*, *Rzeczpospolita*, *Fakt*, *Polityka*, *Newsweek*, *W sieci*, *Do Rzeczy*. In justified cases we also monitor selected radio and television stations and web forums. The results of the ongoing monitoring were published monthly on the *Kultura Liberalna*'s Public Debate Observatory website.

The large article by Karolina Wigura and Łukasz Bertram based on the Public Debate Observatory reports was published in *Polen-Analysen* (Bertram & Wigura 2016). The main feature of the radicalisation diagnosed was that the language of the far right moves very easily to the political centre (the tendency is sometimes presented as an example of widening the democratic pluralism in the mainstream media). In our report the radicalisation of debate was described in the following order:

A gradual popularisation of the language of the clash of civilisations was to be observed in the 2015–2016 period. In order to describe the refugee crisis, the right- or far-right-wing weeklies, websites and so

- 3 See for example: Centre for Public Opinion Research “Komunikat z badań nr 149/2015”. (November 2015) (on-line) [Date accessed: 21.12.2016] [http://www.cbos.pl/SPISKOM.POL/2015/K\\_149\\_15.PDF](http://www.cbos.pl/SPISKOM.POL/2015/K_149_15.PDF).
- 4 For the official description of the Public Debate Observatory of *Kultura Liberalna* see: <http://observatorium.kulturaliberalna.pl/english/>.

on began to more straightforwardly paint a picture where a Christian (or post-Christian) European citizen is opposed to a Muslim migrant. The concept of welcoming culture (*Willkommenskultur*) was therefore presented as a *leftist idea of the degenerated EU* as well as *suicidal for European civilisation* (Bertram & Wigura 2016, p. 5).

In the 2015–2016 period the concept of multiculturalism was under severe attack from the Law and Justice politicians and public intellectuals supporting the Kaczyński party. And, paradoxically, the statements of those western leaders who expressed their doubts about the multiculturalism policy (Angela Merkel, David Cameron and Nicolas Sarkozy) were enthusiastically quoted (Bertram & Wigura 2016, p. 7). It is perhaps particular to the V4 countries that one could observe comparisons of multiculturalism to “soft totalitarianism”. In particular the attacks on women in Cologne on New Year’s Eve were described as “the end of multicultural Europe”.

Since the beginning of the refugee crisis, in more and more opinions in the mass media it has been virtually impossible to see any difference between a refugee and terrorist (Bertram & Wigura 2016, p. 5). A series of terror attacks (like the Charlie Hebdo shooting or those in Brussels) were presented as a consequence of the welcoming culture concept. It was not the explanation itself, but its popularisation on a massive scale that was striking in 2015–2016. The conclusions of this kind of thinking may be presented as a basic statement: welcoming the refugees poses a terrorist threat (now or in the future), so politicians should not allow the V4 to make the Western countries’ mistake (Bertram & Wigura 2016, p. 6). It is one of the main examples of the thesis that for the first time in the EU’s history of enlargement V4 countries have radically sought not to follow the scheme of “copy-paste” modernisation.

The stereotype of a Muslim refugee that migrates not in order to save his/her life, but to receive benefits from the social security system. Refugees are stigmatised as people that are not willing to join the European culture of work. In the long run the refugee crisis is presented as a threat to the welfare state (Bertram & Wigura 2016, p. 6).

Angela Merkel’s positive attitude towards the refugees and the *Willkommenskultur* has been under permanent attack in the Polish mass media. The quotas on migrants were often presented as imposed by larger EU countries on the V4 group. Here the alleged political pressure from Berlin has been particularly underlined and criticised. Obviously, in the context of the refugee crisis debate (2015–2016) one could easily find the anti-German sentiments, with occasional references to anti-German WWII stereotypes (Bertram & Wigura 2016, p. 6).

It is highly difficult to conduct any rational discussion about the refugee crisis. One should underline that some opinions are copied from the right or far-right statements of Western politicians. At the same time the EU is presented as ideologically weak or even harmful to its members (Bertram & Wigura 2016, p. 4). In spite of the fact that the relocations did not take place and in Poland the refugees are still “virtual”, one could be afraid of the fact that intolerance towards foreigners seems to infuse the public discussion with unprecedented ease (since 1989).

## The V4 and the refugee crisis: series of crises

At first some commentators explained Poland's anti-immigrant stance through its strong Catholic tendencies and reluctance to embrace other faiths. Yet it seems that in fact fears of an influx of immigrants have nothing to do with the levels of religiousness in central Europe: the same fears seem to be shared by both Czechs (one of the most secular societies on earth) and Poles (one of the most religious in Europe, according to studies from 2011, which showed that up to 86% of Poles declared themselves to be Catholic) (Central Statistical Office in Poland, 2013). What is more, the negative attitude to the refugees coming to Poland is in obvious contradiction to Pope Francis' declarations on the need for human solidarity in times of war and migration crisis.

Perhaps, then, another explanation for Poland's attitude towards the migrant crisis is possible. My hypothesis would be that the negative reaction is a part of a wider cultural change happening in Poland, the main feature of which is a distancing of Poland from the West and its popular image. In this interpretation the refugee crisis of 2015–2016 is treated in the V4 as one of the series of moral disasters attributed to the West: lies about the weapons of mass destruction in Iraq, Polish and German cooperation in building secret prisons enforced by the CIA, the use of ancient forms of torture under fancy new names, the dirty dealings which led to the 2008 stock market collapse, WikiLeaks, troublesome disputes over Grexit and Brexit, the successes of Eurosceptics in EU parliamentary elections and so on.

This list can go on and on, branching out along a number of paths. This new way of seeing the countries of western Europe and the United States is connected with a series of crises which have meant that the West no longer represents the peak of anyone's moral aspirations. The above-summarised main features of the public debate in Poland about the refugee crisis are a good illustration of this. As seen above, the European Union is shown as weak, valueless and degenerated. It is not one single event, but a whole sequence of disappointments relayed to the residents of central Europe without any form of censorship. The naïve perceptions of the West have thus undergone a process of defragmentation and disintegration. And this is a process that has dragged out over time and been accompanied by the discreet return by western European elites to the "*Der Untergang des Abendlandes*" (*The Decline of the West*) narrative, with a definite Spengleresque undertone.<sup>5</sup>

A key influence here has also been the gradual "discovery" that the European Union is not just a wonderful ideal, some dreamlike version of Immanuel Kant's notion of eternal peace, but also an everyday, decidedly less attractive *Game of Thrones* between competing nation-states. Countries which until only a few years ago represented the peak of aspiration for post-communist states, such as Greece, go on experiencing serious troubles. The wave of EU-scepticism sweeping the West itself is also not without influence, stronger than at any time in the past quarter of a century, forcing many to ask questions about sovereignty and influence under EU rule.

5. Oswald Spengler (1880 -1936), author of the classic work *The Decline of the West* is here a constant point of reference. For example "The Future of the West", *European View*, vol. 9, number 2, December 2010, in which, alongside "professionally" optimistic texts by Herman Van Rompuy, we can also read "Is the Decline of the West irreversible?" by Maurice Fraser, or Franck Debbie's "The Decline of the West in Contemporary French Literature".

In effect, we are dealing with a very complex situation: on the one hand, residents of eastern Europe do not intend to leave the EU, on the other they are not willing to accept all the ideas put forward by Brussels. This is clearly seen in the results of surveys, which indicate that Poles, for example, are declaring their wish to remain in the EU, while at the same time remaining against accepting the euro (in 2014, this was almost 70% of those questioned by the Centre for Public Opinion Research). In the region, only Slovakia has thus far tried to join eurozone.

## Conclusion

“Who are we?” Globalisation and the flow of migrations is forcing all the nations of Europe to pose this question today. In post-communist Europe, which has experienced neither its own “Trente Glorieuses” nor a cultural revolution during the 1960s and 70s, but has weathered the storms of two totalitarian invasions, the Holocaust and the annihilation of the old noble-bourgeois elites, this question comes across quite differently. For almost three decades since 1989, the desire to capture the myth of the West, to replicate its moral and material good and create a better world has, paradoxically, relieved the V4 countries of accepting their own full responsibility for the reforms.<sup>6</sup>

Today, central European politicians often bring up arguments for a return to *realpolitik*. This is hollow rhetoric. We are rather dealing with a reversal of previous scenarios and a return to defensive forms of political positioning. Neither Warsaw nor Prague nor Bratislava nor Budapest have put forward any constructive plans for the future of the European Union. Quite the opposite, many elements of present-day politics emerging from the governments based in these capital cities can still be read as a continuation of “imitating the West”. The only difference is that now they are drawing their inspiration from political factions just beginning to develop within Western democracies – those led by nationalistic and Eurosceptic philosophies. In practice, this means that the border between Eurosceptics (such as UKIP and the Front National) and parties wishing to be seen in central Europe as centre-right is vanishing as we speak.

The refugee crisis is a challenge for each and every European country. Each of them has tried to solve the problem in its own way and a part of the societies in both western and eastern EU countries did not always react in the most welcoming way (as Brexit itself proved). There is, however, indeed something that makes the V4 countries similar. Poles, Hungarians, Czechs, and Slovaks seem to fear that their communities, re-established after the collapse of communism (also in the meaning of material wealth), would be endangered by numerous newcomers. At the same time, at least a part of the public opinion did not want to be lectured by their western partners. It is a pity that the so many politicians from Poland and other countries so eagerly strengthened those attitudes, instead of understanding that the V4 countries themselves have become a part of the West within the past twelve years. There was an opportunity window for the V4 countries to launch new initiatives for better EU integration and present more a solidary policy on the old continent.

6. See more: Kuisz, Jarosław. “Ende eines Mythos. Polen, Ostmitteleuropa und das Bild vom Westen”. *Osteuropa*, no. 1-2 (2016), p. 201–208.

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## POLAND AFTER NOVEMBER 2015: THE END OF THE RULE OF LAW OR A PHASE OF “RADICAL DEMOCRACY”?

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“**A**s your friends and ally we’ve urged all parties to work together to sustain Poland’s democratic institutions. That’s what makes us democracies – not just by the words written in constitutions or in the fact that we vote in elections – but the institutions we depend on every day, such as rule of law, independent judiciaries, and a free press.”<sup>1</sup> With this remark, made during the NATO Summit in Warsaw in July 2016, President Barack Obama fuelled the debate on the condition of Polish democracy. Legal reforms implemented by the Law and Justice (PiS) party government elected in November 2015 have spurred a lot of controversy and attracted unprecedented – in the last 20 years – attention from international organisations, particularly within the EU and the institutions in Brussels.

Over the past two years, the European Commission has expressed its concerns regarding the legal and political battle around the functioning of the Constitutional Tribunal. On June 1<sup>st</sup> 2016, the European Commission adopted an Opinion on the rule of law in Poland, which may lead to the issuing of a Rule of Law Recommendation – a much stronger instrument that sets fixed time limits for solving the problems identified by the Commission. In its press release the Commission made it very clear that it will not stop the rule of law mechanism until Poland’s Constitutional Tribunal is able to “ensure an effective constitutional review of legislative acts”.<sup>2</sup> It is hardly a surprising requirement for a state with a 25-year history of building democratic institutions. Therefore, the battle started by PiS is not so much about the formal functioning of the Polish democracy but about its quality and the direction in which the state is heading. Should Poland build a strong, strategic relationship with the EU or – in strong coalition with V4 countries – work harder to question the very idea of European integration? Are “checks and balances” in the political system – such as a clear separation of executive and legislative powers and independence of the courts – really necessary? What should be the role of the Constitutional Tribunal? In the conflict between the “rule of law” and the will of the political majority, which should prevail?

1. The White House, Remarks by President Obama and President Duda of Poland After Bilateral Meeting.(on-line) [Date accessed 10.09.2016] <https://www.whitehouse.gov/the-press-office/2016/07/08/remarks-president-obama-and-president-duda-poland-after-bilateral>
2. European Commission, Press release “Rule of Law: Commission issues recommendation to Poland”. (on-line) [Date accessed 15.09.2016] [http://europa.eu/rapid/press-release\\_IP-16-2643\\_en.htm](http://europa.eu/rapid/press-release_IP-16-2643_en.htm)

Such questions shape current debate on public matters in Poland, engaging lawyers, politicians, human rights defenders and media people alike. Looking back over 25 years, the public has never been so divided. One part of society seems to believe that PiS started asking the right questions, because the very fundamentals of Polish democracy – including the role and structure of the key institutions – need to be revised. These citizens follow Jarosław Kaczyński conspiracy theory, according to which Poland is yet to regain its independence – from the oppressive EU regime and its own corrupted elites that have kept power for the last eight years. The other part of Polish society believes exactly the opposite: by taking over key political institutions and removing “checks and balances” from the legal system, PiS is about to destroy Polish democracy and install a new form of authoritarian regime.

It is in this context that the Venice Commission – the advisory body of the Council of Europe composed of independent experts who advise countries on constitutional matters – got involved in the Polish battle of interpretations. So far neither the rule of law mechanism nor the opinions expressed by independent experts, or even the “encouragement” that came from President Obama has had any visible influence on decisions taken by Prime Minister Beata Szydło, who follows only the PiS leader and founder, Jarosław Kaczyński, who served as prime minister from 2006-2007.

Over the last 11 months the Polish legal landscape has been changing so fast that even internal opposition, media and watchdog organisations have struggled to catch up. In which direction does Poland seem to be heading as a result of this process? What may be the impact of these legal changes on people, media, non-governmental organisations and political opposition? In my analysis I will try to answer these questions by looking at key battlefields opened up by PiS. I will also offer my interpretations as to why the government adopted this strategy and what future scenarios for Poland are possible, and how these tensions threaten the relationship and co-existence with the EU.

## **Main battlefields**

From the human rights perspective, the legislative and institutional changes that we have been witnessing in Poland since November 2015 have led to the dismantling of some of the legal safeguards that were supposed to protect people from state oppression. Undermining the legitimacy and paralysing the functioning of the Constitutional Tribunal, increasing political control over key public institutions, introducing new surveillance powers without any independent oversight – the government seems to be removing “checks and balances” from the legal system. The mere fact that PiS has managed to do so much damage in such a short time proves that – being focused on economic and cultural transformation – in the last 25 years Polish society has not managed to strengthen democratic institutions to the point where they can resist political attacks. In this part of the analysis I will look at the main battlefields, summarising what has changed in the law or in the public institutions, and what impact it may have on the protection of human rights.

## **Constitutional crisis: from a battle of interpretations to legal dualism**

### *Provocation and revenge*

Political fighting over the composition of the Constitutional Tribunal – which escalated to a level that attracted attention of Brussels, international institutions and foreign diplomats – started before PiS took power. On June 25<sup>th</sup> 2015, exactly four months before the general elections, the Sejm (lower chamber of the Polish Parliament) amended the Act on the Constitutional Tribunal and changed the procedure according to which new judges should be elected and enabled the election of successors for all judges, whose mandate would end in 2015, by the Sejm of the 7<sup>th</sup> term. In consequence, the outgoing political majority, Civic Platform (PO), would have gained non-proportionate influence over the composition of the Constitutional Tribunal. On November 19<sup>th</sup>, the Sejm of the 8<sup>th</sup> term amended the Act on the Constitutional Tribunal, introducing the possibility of annulling the judicial nominations made by the previous legislature and nominating five new judges. The amendment also shortened the terms of office of the president and vice-president of the tribunal from nine to three years.

### *Executive branch questioning judicial decisions*

The Constitutional Tribunal was asked to rule on the decisions of both the previous legislature and the incoming legislature. The tribunal delivered two judgements, on December 3<sup>rd</sup> and 9<sup>th</sup> 2015. On December 3<sup>rd</sup>, the court ruled that the previous legislature was entitled to nominate three judges for seats vacated during its mandate, but was not entitled to make the two nominations for seats vacated during the term of the new legislature. Summing up, the December judgements showed a way to achieve a political compromise in accordance with the constitution.

If President Andrzej Duda had followed this line and accepted the oath of office of the three judges nominated by the previous legislature, the crisis would have been over. Instead, the president accepted the oath of all five judges nominated by the new legislature. At the same time the government refused to publish the December judgements in the Official Journal, arguing that they were invalid on procedural grounds. These political decisions started a battle of interpretations that continues to polarise the Polish media, public institutions and citizens. Is the Constitutional Tribunal entitled to “rule on its own case”? If the case concerns the composition of the court, what should its composition be while hearing the case? Which decisions of the tribunal are binding and lawful – those adopted in accordance with the old rules or the new rules?

The legal complexity of this debate can be seen as a Kaczyński tactical masterpiece: lawyers (including representatives of the international bodies) can argue both sides as long as they like. For politicians and citizens legal details are less relevant: they are either with PiS or against it. To further complicate the legal landscape and keep fuelling political debate, the Sejm of the 8<sup>th</sup> term on December 22<sup>nd</sup> 2015 adopted its second amendment to the Act on the Constitutional Tribunal, which

affected both the functioning of the tribunal and the independence of the judges. At that point the European Commission entered the game and in its letter of December 23<sup>rd</sup> 2015 to the Polish government asked to “be informed about the constitutional situation in Poland”.<sup>3</sup> On the same day the government asked for the opinion of the Venice Commission on the law of December 22<sup>nd</sup> 2015, thus sending the signal that it may be open for some international advice. Clearly, it was just an “outside game” played by the government. Internal attitudes must have been different because the parliament did not even wait for the Venice Commission to issue its opinion: the amended Act on the Constitutional Tribunal entered into force on December 28<sup>th</sup> 2015.

Neither the tribunal nor the Venice Commission stayed silent. On 9 March 2016, the tribunal ruled that the law of December 22<sup>nd</sup> 2015 is unconstitutional and thus decided that its own functioning be governed by the old procedures. On March 11<sup>th</sup>, the Venice Commission issued an opinion confirming that the December amendments were incompatible with the rule of law.

### *PiS reinvents the Constitutional Tribunal*

The political response to the concerted criticism from the Council of Europe and the tribunal itself was ruthless. In July 2016 PiS – using its absolute parliamentary majority – pushed for adoption of the new law on the Constitutional Tribunal, not only changing the model of its functioning and safeguards for the independence of the judges, but also questioning the legally binding character of its judgments. According to the Helsinki Foundation for Human Rights, the new Act on the Constitutional Tribunal introduced procedures that may paralyse the tribunal’s work.<sup>4</sup> This move can hardly be seen as an invitation to reach a compromise, at odds with what was suggested by the international institutions. In this context it comes with no surprise that on the 9<sup>th</sup> of March the Constitutional Tribunal responded with another judgement (the fourth on the matter in less than six months) and the Venice Commission has announced that it will send another delegation to Poland in order to analyse the situation.

After months of continual political battle around the Constitutional Tribunal, it became clear that PiS is not planning to end this crisis with a real compromise. In fact, Kaczyński has much more to win by exploiting this situation, both in Poland and at EU level. In Poland this battle keeps the political opposition and media busy and at the same time proves to PiS supporters that the government will not cease in its crusade against “corrupted elites”. In international forums, PiS is using this case to reassert its sovereignty and independence from EU institutions; to prove that it is ready to renegotiate the meaning of democratic standards in line with its political agenda. This new approach to European policy is welcomed by PiS supporters, who are mostly disenchanted with the promise of quick economic growth (closely associated with Poland joining the EU), afraid of cultural revolution from this direction (“gay marriages”; “the flood of migrants”, “Islam taking over Catholic tradition”) and seeking their own dignity in nationalistic ideals. Coming from that perspective, it is not difficult to portray the EU – together with its values, standards and legal instruments – as alienating and anti-democratic.

3. European Commission, “Opinion on the Rule of Law in Poland and the Rule of Law Framework: Questions & Answers” (on-line) [Date accessed 15.09.2016] [http://europa.eu/rapid/press-release\\_MEMO-16-2017\\_en.htm](http://europa.eu/rapid/press-release_MEMO-16-2017_en.htm).

4. Helsinki Foundation for Human Rights, “Constitutional Tribunal – the monitoring of legislative amendments” (on-line) [Date accessed 12.09.2016] <http://www.hfhr.pl/en/constitutional-tribunal-act-the-monitoring-of-legislative-amendments/>

### *Consequences of the constitutional crisis*

The longer the battle of interpretations continues, the more difficult it becomes to answer what should be a rather simple question: what rules regulate the functioning of the Constitutional Tribunal and the publication of its judgements? Is this a new law, an old law, or something in between? Taking into account the unusually fast pace of the parliamentary work leading to the inflation of new procedures as well as a double game played by the PiS leadership, it seems very likely that Mr Kaczyński has already achieved his goal. Without removing or subordinating the whole Constitutional Tribunal, he managed to paralyse its work and undermine its legitimacy.

What is the impact of this constitutional crisis from a human rights point of view? The full damage still remains to be seen; however, by its refusal to publish the judgements of the Constitutional Tribunal the government has already created legal uncertainty, which may soon turn into legal dualism affecting all areas of public life. This battle of interpretations involves not only the government and the tribunal itself but all public institutions – including regional and appellate courts – which have to choose where they stand. By now many courts and municipal bodies have declared that they will apply the Constitutional Tribunal's judgements regardless of their publication. On the other hand, public bodies that are subordinate to the government will most likely follow the opposite line. For example, assuming that in the near future the Constitutional Tribunal issues a critical judgement on the Antiterrorist Law (discussed later in this analysis), Polish citizens will face a situation in which the police and intelligence agencies continue to apply the Antiterrorist Law, while human rights organisations and independent public institutions maintain that these provisions have ceased to exist. Therefore, though it may seem very abstract and confusing, the battle concerning the functioning of the Constitutional Tribunal remains central to the rule of law and the protection of human rights in Poland.

### **Strengthening the surveillance state**

#### *Long history of accessing citizens' data without judicial oversight*

Controversies related to the use of surveillance powers by Polish authorities date back 15 years, long before PiS took the power. In 2003 Poland imposed on telecommunication companies the obligation to retain so-called telecommunication metadata and make this data available upon every law enforcement request, without judicial oversight. Metadata includes information about phone calls placed or received, numbers dialled, duration of calls, geographical location of mobile devices, websites visited, log-ins, personal settings, addresses of email correspondence, etc. While it does not reveal the content of private communications, it may reveal a lot about a person's private life (social connections, habits, interests, travelling patterns).

Data retention obligations assume that data about every connection may become "interesting for the state", thus making every communi-

cating person a suspect. This controversial logic was adopted at EU level in the form of the Data Retention Directive (2006/24/EC). Poland used the implementation of the directive to strengthen general surveillance powers. Law enforcement and intelligence agencies gained direct access to the databases of the telecommunication companies (via online interfaces and without judicial oversight). On these grounds the Polish data retention law has been criticised by human rights organisations, including the Panoptykon Foundation and the Polish Helsinki Foundation for Human Rights.

### ***Constitutional Tribunal demands “independent oversight”***

Soon after the Court of Justice of the EU ruled the Data Retention Directive invalid (in April 2014), the Polish Constitutional Tribunal in its judgement of July 30<sup>th</sup> 2014 ruled that surveillance powers of Polish law enforcement and intelligence agencies with regard to telecommunication metadata needed to be limited. In particular, the court said that “independent oversight” is necessary but it did not specify how it should be implemented and whether it should be performed by the judges. Bringing this judgement is essential to understanding the origins of the reform carried out by PiS at the beginning of their mandate. On January 15<sup>th</sup> the parliament amended the Act on Police and other legal acts, including those that regulate the surveillance powers of all intelligence agencies.

While this amendment was immediately labelled “the surveillance law” by the media and gained rather a bad reputation, the original intention behind the reform was to limit surveillance powers and introduce independent oversight, in accordance with the ruling of the Constitutional Tribunal. This is partly why the government maintains that the criticism of the Act on Police is politically motivated and unjustified. However, NGOs and independent experts – including the Venice Commission in its second opinion published in June 2016 – have raised a number of concerns regarding this law. Taken together these concerns lead to the conclusion that the government not only failed to implement the judgement of the Constitutional Tribunal but also used the opportunity to extend surveillance powers in the online environment.

### ***Overview of the new “surveillance law”***

As far as the (partial) implementation of the judgement of the Constitutional Tribunal is concerned, the Act on Police did bring some positive changes, such as: increased internal control over the use of data (performed by data protection officers working inside the intelligence agencies); limitation of the purposes that justify access to telecommunication data (to crimes prosecuted by the state and those committed with the use of electronic communication); and the obligation to delete the requested data after a defined period of time. However, the Act on Police maintained the logic that metadata collection is less intrusive and therefore does not necessitate the same guarantees as “classical” surveillance. As a result, independent judicial oversight was not introduced and access to telecommunication metadata remained virtually uncontrolled.

Additional safeguards that were supposed to protect professional secrecy also seem rather weak. According to the Act on Police, as soon as the agency carrying out surveillance of metadata realises that this activity concerns a person protected by professional secrecy (e.g. a journalist or solicitor), it should refer the case to the court and wait for judicial authorisation. This safeguard can only work on the assumption of effective internal control and high ethical standards inside such agencies. Considering that there are known cases of premeditated, unlawful surveillance of journalists in Poland, this assumption may not hold up against the reality.

### *Exceptional mechanisms without exceptional circumstances: the Polish Antiterrorist Law*

While the quick adoption of the Act on Police was provoked by the deadline for the implementation of the judgement of the Constitutional Tribunal, there was no immediate need to introduce new antiterrorism legislation. Nevertheless, on June 10<sup>th</sup> 2016 the parliament adopted the Act on Antiterrorist Activities, arguing that it was necessary to increase coordination between the intelligence agencies and to prepare for security threats related to international events organised in Poland in July 2016 – the NATO Summit and World Youth Days.

The authors of this reform did not present any evidence that would prove that the existing coordination mechanisms or surveillance powers were indeed insufficient in the context of high-risk events. Notably, security experts who analysed the proposal pointed to a number of inconsistencies and grey areas which could result in the opposite effect, namely the weakening of coordination of the intelligence agencies and slowing their response down. Finally, the very idea of rewriting anti-terrorist procedures only weeks before high-security events – with no time for proper implementation or training – could not be seen as rational. Therefore it seemed that the real rationale behind rushing the antiterrorist law through without public consultation had little to do with the summer events.

The government developed a fear-based rhetoric in order to weaken public dissent, which might otherwise have been much stronger. Nevertheless, non-governmental organisations (including the Panoptykon Foundation), independent media and the ombudsman voiced their concerns during the legislative process. Among other provisions, this critique concerned: a broad definition of “terroristic activity”; the possibility of wire-tapping phone calls and obtaining the content of electronic communications of all foreigners without judicial oversight; the possibility of blocking online content “related to the terroristic activity”; and the obligation to register all pre-paid phone cards.

A general problem, signalled by NGOs and independent experts, is that the limitations of rights and freedoms provided in the anti-terrorist law go much further than necessary, even in the context of emergency procedures, especially when it comes to foreigners living in or visiting the country. The government failed to justify how measures such as targeting all foreigners or all users of certain technologies are supposed to increase public security.

Summing up, the Polish legal landscape when it comes to surveillance powers looks gloomy. On the one hand, the government didn't solve problems that have been known about for more than a decade, such as the lack of effective judicial oversight over access to telecommunication metadata. As a result the location and contacts of all citizens – including journalists, politicians and solicitors – can be easily tracked by a number of law enforcement and intelligence agencies. On the other hand, the Act on Police and the Act on Antiterrorist Activities further extended these surveillance powers, especially in the online environment. Combined with the lack of independent oversight and mechanisms for redress, these provisions open a way for mass surveillance or the targeting of innocent people. If the government decided to use these instruments for political fights or the persecution of activists and critical media it would be extremely difficult to prove that unlawful surveillance was taking place and demand accountability.

### **Political “take over” of key public institutions**

While the struggle around the composition and the leadership of the Constitutional Tribunal continues, PiS has managed to take political control over other key institutions: public media and the (so far independent) prosecution.

On January 28<sup>th</sup> 2016 – less than 2 months after the formation of the new government – the parliament adopted the Act on Prosecution and changed the role and powers of the prosecutor general. The new law integrated (the so far independent) functions of the minister of justice and the prosecutor general in one stroke, turning the latter into a political figure. The new minister-prosecutor gained additional powers, which correspond to his political function. Notably, he gained significant influence over appointing prosecutors across the country as well as the possibility of giving them direct orders with regard to how to carry out an investigation. This is not the first time in Poland that prosecution has become deeply politicised and used as an “armed hand” of the government – PiS did the same experiment during its previous term of government (2005-2007). Personal takeover of the public media started even faster in December 2015 with an amendment to the Act on Broadcasting. It simply changed the rules on appointing the governing bodies of the public media. Instead of the National Broadcasting Council (a constitutional body responsible for supervising public media), the key role was given to the Minister of the Treasury. With this move the government resolved that the public media will be treated just like any other state-owned enterprise, with no need to ensure political independence or other qualities related to their mission. Notably, the December amendment – on the day of its coming into force – ended the terms of all managing and supervisory boards, thus forcing an immediate personnel change.

The shift from public to national media (i.e. entirely controlled by the political majority and promoting so-called national values) was completed by the adoption of the Act on National Media in June 2016. It introduced a new programming and supervisory body – the National Media Council. The political intention behind this change was to “circumvent” the National Broadcasting Council – a constitutional body

formally responsible for the supervision of the public media – without removing it, which would have been much more difficult. Key persons in the new council are active politicians, such as Krzysztof Czabański – an elected member of the parliament, government official (in the Ministry of Culture), the author of the new law on national media and, since 2016, the Chairman of the National Media Council. Not surprisingly, the personal takeover of the public media did not end at the managerial level. Between December 2015 and September 2016 more than 200 journalists, including national TV anchors, either resigned or were dismissed.

PiS does not hide its strategy of regaining control over public institutions. On the contrary, it is presented to the public as a necessary step in fixing the “broken state”, namely, it is a way to solve urgent social and economic problems that have been long ignored by the PO. In the PiS narrative Poland has been suffering from staggering economic inequalities, whole regions are marginalised, public investment opportunities (including EU funds) have been wasted, while the area of culture traditional values and “historical truth” have been neglected or ridiculed. In accordance with this narrative, public officials, experts and journalists who lose their positions of influence are portrayed as “rotten elites”, while those who replace them are defenders of national values and true reformers.

With this rhetoric politicians are trying to undermine the legitimacy of those institutions that cannot be easily controlled, such as the Constitutional Tribunal and other courts. In June 2016 President Andrzej Duda refused to nominate 10 judges who were appointed by the National Judiciary Council – a constitutional body with full competence in this area. According to jurisprudence, the president may not refuse to nominate a judge who was duly appointed by the National Judiciary Council, as it is a symbolic act and not his prerogative. President Andrzej Duda clearly has another view, because the refusal of the nomination came without a word of justification. It seems that the main purpose behind this act was to extend presidential power into the area of the – so far independent – justice system.

### *The response of civil society and the “smear campaign” in the national media*

Even with the national media under control – which immediately became a tool of political propaganda – PiS has not been able to successfully impose its narrative on the majority of the society. Poland remains divided, with very vocal political opposition in the parliament, fiercely critical private media and a strong civil society movement. PiS has been following a “blitzkrieg” tactic – voting new laws in within days rather than weeks and leaving no time for the opposition or civil society to react – probably hoping that by the time civil society gets organised, their plan will be complete. Certainly, with the support of an absolute parliamentary majority, Mr Kaczyński was able to implement every legal change he wanted. But not a single one went through without strong civic reactions. In fact, the awakening of Polish civil society can be seen as one positive phenomenon that is directly related to the policy pursued by the new government.

The battle around the Constitutional Tribunal catalysed the creation of a massive social movement – the Committee Defending Democracy (“KOD”), which is growing in numbers and building its constituencies around the country. The scale and frequency of the street protests was unprecedented since the Solidarity movement – the biggest demonstrations mobilised hundreds of thousands people around the country, not just in the biggest cities. A great number of civil society organisations took very critical positions in the public debate: human rights defenders, watchdog organisations, chambers of solicitors, independent associations of judges and journalists. A similar response came after the take-over of the public media, changes in the structure of the judiciary and public prosecution. Of all changes implemented by PiS, the strengthening of the surveillance law was probably the least comprehensible for the broader public. Still, this reform attracted a lot of media attention, triggered a number of protests online and for months became the main issue for human rights defenders and watchdogs, including the Panoptikon Foundation.

PiS could not ignore that scale of civic unrest and opposition coming from grass-roots, non-partisan movements and independent organisations. Not being able to take over or close down civil society organisations, it started to undermine their credibility and legitimacy. Since its very beginning KOD was presented in the media controlled by PiS as a marginal movement of “elites defending their interests”. After personal changes in the public media (now national media), even massive demonstrations organised under the KOD’s own label were reported as relatively small events inspired by political parties. Recently, the national media have started an orchestrated smear campaign directed against independent organisations, including watchdogs. They have to face (entirely unfounded) charges of corruption, personal connections with former political elites and acting on the instructions of the “controversial billionaire” George Soros. It seems likely that after this campaign, PiS will propose legal changes weakening the position of non-governmental organisations and restricting their ability to obtain foreign funding.

## Interpretations and future scenarios

Looking at the legal changes implemented by the political majority after November 2015 as well as the political rhetoric used by its leaders, it would not be exaggerated to say that Poland has moved towards illiberal democracy – no longer respecting universal rights and freedoms or the rule of law. While such a diagnosis may be a useful tool of international criticism or internal pressure, it is not very helpful in understanding why this is happening and what future scenarios are possible.

In order to gain more insight into the strategy pursued by PiS, we should turn to Carl Schmidt – the most quoted political philosopher by Jarosław Kaczyński and other prominent figures in the party. Carl Schmidt developed a very influential theory of the sovereign, placing the ability to introduce a state of exception (in exceptional circumstances to suspend the law and act solely in accordance with political rationale) at its very centre. According to Schmidt, the sovereign is the one who defines the borders of legal protection, and as such is able to exclude anybody from

the law and kill them. PiS leaders also made it very clear that if there is any conflict between the “will of the majority” and the rule of law, the former should prevail. In other words, the governing party openly supports the Schmidtian vision of “radical democracy”, which is presented as the value on its own.

What will happen if other values – such as European integration, political or economic stability, international alliances – come into conflict with the will of the majority? The leader will decide. So far Jarosław Kaczyński has been interpreting the voice of the majority in accordance with his own political goals, which makes it only more difficult to predict the next step and possible scenarios. In the aftermath of the Brexit referendum, Kaczyński surprised many in his speech by stressing that Poland is and will always remain part of the EU. Whether it was an expression of his true belief or just a trick in a political game remains to be seen.

What is striking in the current landscape and calls for more analysis is the fact that PiS appears able to maintain absolute political power, regardless of the fierce social critique it receives and the obvious fact that it is not representing the majority. PiS won the elections in 2015 and gained an absolute majority in the parliament with 5.7 million votes, with the total number of people who are entitled to vote exceeding 30.6 million. Therefore, their moral claim to represent the whole of society seems much exaggerated. On the other hand, according to social surveys a significant part of society (between 19% and 39% of the respondents depending on the source of data) does support the reforms implemented by the government, including the most controversial ones. Why this is the case?

Political commentators seem to agree that the “radical democracy” narrative responded to the expectations and frustrations of those Poles who did not feel duly represented or included in the narrative promoted by PO (and endorsed by European institutions). This vision of an open, pro-European, liberal, strong Poland with a growing economy simply did not correspond with the personal experience of people who live in less developed regions of the country, struggle with low incomes and cannot benefit from European integration (travel, study, work abroad). These conditions, combined with poor education and prevailing cultural stereotypes, provided strong fuel for politics based on fear, be they the fear of terrorism or illegal migration. From the perspective of these voters, the liberal, human rights-based narrative – which requires openness, tolerance and respect for “the other” – is seen as something imposed (either by the previous government or distant EU institutions) and contradictory to their personal interests.

PiS won the elections by giving voice to these groups of voters and promising them deep institutional change – a “Poland reborn”. It is therefore not surprising that “radical democracy” became their main narrative. By doing so, PiS responds to the emotions and expectations of its voters. Thinking of future scenarios, it is uncertain how far the government is prepared to move with its legal and institutional revolution and whether it is ready to put at stake Poland’s position within the EU. In other words, have they already fulfilled their goal by proving loyalty to their voters, or are they determined to use the existing social climate to build a Polish version of an illiberal democracy, which then becomes a goal in itself?

The first scenario is much more optimistic and leaves space for reaching political compromise in the near future. It assumes that Mr Kaczyński remains a rational, forward-looking politician who only chose to build his political position with the use of powerful populist arguments but is not determined by this agenda in the long run. The second scenario assumes that building illiberal, radical democracy in Poland became a real political goal for PiS and will be pursued at the cost of other values. Such a scenario poses a real and significant threat not only to the rule of law in Poland but also to the stability of the European Union. If Jarosław Kaczyński were to follow those emotions, fears and aspirations that are most vocal in Polish society – not just in the mainstream media but even more so in the social media – he wouldn't support human rights or any of the other values behind European integration. Responding to the needs of those who are frustrated, lost in the global village, disenchanted with liberal values and therefore seek dignity or a sense of security in the proud, strong nation-state, PiS would end up leaving the EU or at least blocking every development that makes Europe stronger and more interdependent.

## CENTRAL EUROPE AND THE RISE OF NATIONALISM: THE CASE OF THE CZECH REPUBLIC

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This paper deals with the broader context of political development of the V4 region over the past decade and in particular the Czech Republic in the light of the immigration crisis of 2015 and 2016. The main point is to describe the interaction between European politics, domestic politics and the perception of EU integration held by political parties in the Czech Republic. To do so, the paper understands EU membership as a space in which political parties are influenced by the norms and procedures of the EU political arena formed of the EU institutions and European political parties. National political parties are socialised into accepting the norms and procedures of this EU space, which is supportive of deeper EU integration. As a consequence, parties transform this influence into election manifestos. Therefore, the development of the interaction between European politics and domestic politics shows the lack of a new post-accession vision for the integrated EU and a broad shift from EU-supportive policies towards national-oriented ones when analysing the V4 region.

This decade has resulted in a politically emotional response to the immigrant crisis followed by negative attitudes towards the EU. The paper focuses on the political parties and their election manifestos presented for general election in the past decade (2006–2016). The main point of interest is the issue of European integration when it appears in the election manifestos. To get an up-to-date analysis of this development in the Czech Republic, analysis of EU integration is followed by analysis of the responses of political parties to the migrant crisis in 2016.

In the first part, the paper introduces the general context of the effects of the political parties participating in European politics considering the historical development since 1989. The main point of interest is the impact of the European political space on parties with emphasis on election manifestos for the past three general elections. The second part focuses on the political context of the Czech Republic in regard to European integration. The third part analyses the development of the parties' perception of the EU as well as the recent (2016) rise of anti-EU sentiment going hand-in-hand with the anti-migrant discourse spreading in Czech politics.

## The “Return to Europe” and its consequences

With entry to the EU, the Czech Republic, like the other V4 countries, enacted a so-called “Return to Europe”. The year 2004 is perceived as the time of the greatest shared enthusiasm for EU integration and, at the same time, an opportunity for political parties to broaden their influence to also cover the European level. This necessarily involves the parties’ adoption of the norms shared in the European political environment, which supports the EU integration process by definition. All V4 countries have aimed to be part of Western Europe since 1989 and therefore incorporated the norms of Western communities. Much of the process of getting closer to Europe began only after the year 2004, but it was in that year that a much more difficult process began – accepting the norms of the functions of the EU and of European politics.

For the decade after 2004 there was a drop in these positive perceptions and a shift toward the model of a daily struggle with European matters. Parties and societies in the V4 countries experience the impact of growing transnationalisation on their own and they assess the implications in regard to their electorate. The result of this process is a not always positive acceptance of the transnationalisation process in terms of *effective* participation in the European political space. This is demonstrated, for instance, by research published by Klingemann (2014: 123) showing that the perception of democracy as a positive value in eastern European societies did not rise significantly in the 1999 to 2009 period. Therefore, it is expected that the impact of transnationalisation on societies in the CEE region, as well as political parties, may result in deeper changes to political competition. Constant evolution of the external environment – such as the EU – is reflected not only in the form of deepening EU integration in a federalised sense. The main factor remains the ever-increasing degree of interconnectedness of the individual EU member states and their regions.

Boosting social and political expectations in the Czech Republic during the pro-EU pre-accession campaign has, in the longer term, only led in the opposite direction. Namely, the shaping of the new narrative *national identity* as a new member state, coping with the economic crisis and also experiencing the negative aspects of the free market and the migration crisis. In this context, historian Philipp Ther (2015) puts the European context into the reality of the past decade of the V4 region as struggling in the search for its role in the globalised Europe. This flux is thus often translated into national identity politics as a search for the easiest political solutions.<sup>1</sup> Therefore, national identity-related issues – not just in the V4 – grow in significance and are used to create a new political cleavage.

## EU integration as a topic for political competition

Political texts such as election manifestos provide one of the main information resources from which to gain information about political parties and their attitudes. Even if the election manifestos are not the elements shaping the pre-electoral discourse they are offering political parties more or less unlimited space for expressing their attitude within various topics and issues. Political parties are solely responsible for the content of the manifestos issued by councils of elected party

1. The concept of national identity policy emerges from two perspectives: (1) national identity is operationalised as an analytical concept for further research; and (2) national identity matters as a unit for citizens’ identification. Translated into parties’ activities, national identity is exercised by doing. This means, in terms of political parties, doing national identity by using an election manifesto as a tool. The overview shows the different analytical attempts to set up a definition of national identity. The term “policy of national identity” covers the following issues: positions towards the EU, minorities, values, and external environment. For more details see: Némčok, Vít (2016) and Černocho et al., (2011).

elites or legally ratified by party conventions. Thus, they can be seen as authoritative statements of party preferences and represent the whole party. Furthermore, the manifestos are issued at regular intervals, therefore programmatic changes can be observed over parties' lifetimes as well as programmatic differences at a particular point in time within specific countries. The methodology researching parties' emphasis on EU-related issues (and in a broader use relating to the issues connected to national identity) was developed by Němčok and Vít (2016). The research is based on grounded theory as a significant methodological part of qualitative method in social sciences. The emphasis is placed on creating 70 codes that are relevant for national identity based on the research of election manifestos in V4 countries. Out of 70 codes, six are dedicated to EU integration. Speaking about EU-related issues, codes explore how the EU integration is perceived within manifestos. The purpose is to enhance the party's attitude towards issues relating to the EU. The most crucial point is the party's position towards the deeper integration of the EU. In other words, the party's commitment to the European idea. Usually, the manifesto does not contain a statement supporting or rejecting deeper integration. It might be collected from various mentions such as supporting joining the monetary union or the explicit mention of nationally sensitive policy such as the integration of tax policy. The domain of the EU is composed of declaratory statements as well as of its mention in various policy fields.

The starting point for the analysis of the Czech political parties is the period beginning in 2006 and the first general election after accession to the EU. Broadly, in the period after 1989 a decrease in the relevance of topics related to extremist forms of nationalism is observable. Looking at Czech parliamentary parties, a convergence of policies related to national identity occurred within the realms of the party systems. This means that all parties are exposed to the same influence within EU institutions and European politics. However, after the 2010 general election a rise in the importance of national identity and EU-related issues, in particular those relating to political competition takes place. Hand in hand with this, a number of newly founded parties operationalising national identity increases as well as parties like Public Affairs (in parliament in the 2010–2013 period) and the Dawn of Direct Democracy (Úsvit) movement (in parliament 2013–2017).

An interesting point on the rise of new political parties is made by Hanley and Sikk (2013) that "in CEE anti-establishment reform parties more often broke through in economic good times than bad". It shows the demand for a kind of *story* that is in these cases promoted by new parties and often heavily politicises the issue of the EU integration, for example, as a threat to national sovereignty.

## Czech politics and EU integration

The Czech Republic's accession to the EU was perceived dominantly as opening up new opportunities for society as well as for political parties. In this context, one has to consider the high expectations of the public and political parties to support the Czech Republic's accession with a de facto non-existent parliamentary democratic opposition against membership of the EU. Hand in hand with new treaty reform (later known as the Lisbon Treaty) opposition to strengthening the supranational substance

of political integration began to form. This was the case not just of less relevant political formations, but also among government representatives such as ODS, the leading government party between 2006 and 2009.<sup>2</sup> As a consequence of this, EU integration issues became an important government cleavage during the 2007–2009 centre-right coalition (ODS, KDU-ČSL, Green Party). The issue of deeper EU integration was concluded by the approval of the Lisbon Treaty in November 2009. The internal contradiction in the ODS had no impact on the creation of a possible “European cleavage” in Czech domestic policy. In light of this development, in 2009 the newly formed centre-right party TOP 09 built up its profile on strong support of the EU. Contrary to this, ODS increasingly started to define itself as defender of Czech national interests in Europe, such as opposing membership of the eurozone. From a broader perspective EU-related issues did not become one of the most significant cleavages in Czech politics. In this regard, parties’ perceptions of the EU-related issues have moved a much closer to the political centre. However, though the conservative-right party TOP 09 represents the most EU-supportive stream of Czech politics, its relevance has been falling continuously since the 2013 general election. Also evident from the overview are the rather convergent trends of parties’ policies when it comes to EU integration.

**Table 1: Overview of political parties and their electoral gains (gains in % and number of seats in the parliament)**

Party	Profile	2006/seats	2010/seats	2013/seats	Coalition government
ČSSD <sup>3</sup>	Left-wing	35.38 /81	22.08/56	20.45/50	2013 - 2017
ODS	Conservative Right-wing	32.32/74	20.22/53	7.72/16	2006 – 2009; 2010 – 2013
KDU-ČSL <sup>4</sup>	Centre-right	7.22/13		6.78/14	2006 – 2009
KSČM <sup>5</sup>	Communist	12.81/26	11.27/26	14.91/33	-
TOP 09 <sup>6</sup>	Liberal Right	-	16.7/41	11.99/26	2010 – 2013
ANO 2011 <sup>7</sup>	Centre	-	-	18.65/47	2013 – 2017
VV <sup>8</sup>	Centre-right	-	10.88/24	-	2010 - 2013
Úsvit	-	-	-	6.88/14	-
Zelení	Left	6.29/6	-	-	- 2009

Source: Volby.cz.

The summary of election manifestos shows the decline of perceptions supporting deeper integration moves. Looking at the mentions of eurozone membership, all parties have moved towards reluctant positions: from support for membership in the case of the social democrats (ČSSD) in 2006 and 2010 to the strict opposition of ODS (2013). In addition to this, the main scope of perceptions has also moved from economic arguments towards emotional ones – membership as a political issue rather than economic one for KDU-ČSL (2013) as well as using sovereignty arguments in the case of ODS (2013). Despite moves showing a decline in support in the case of ČSSD and KDU-ČSL, one can observe that support for eurozone membership remains significant.

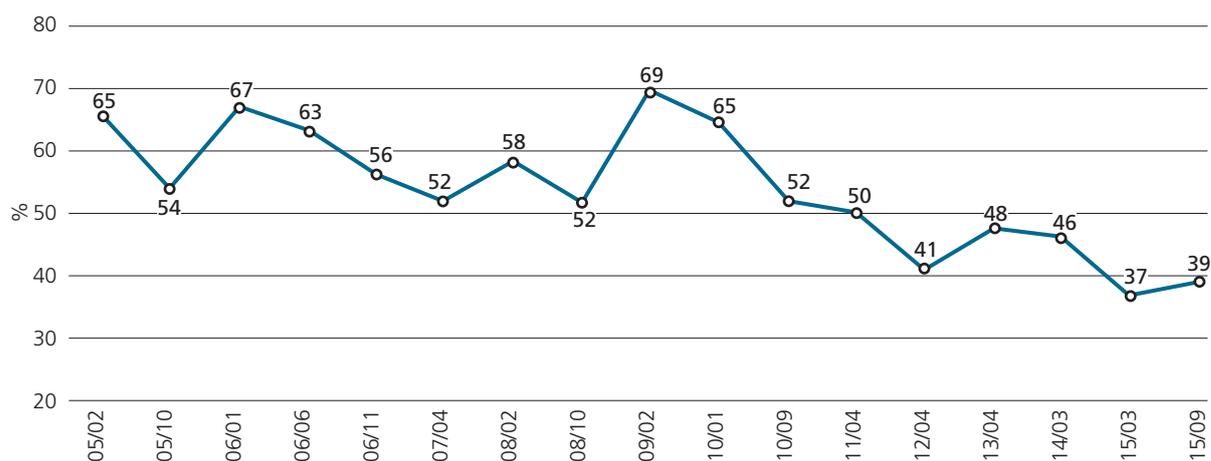
### Less support for EU integration despite EU membership?

In 2009 ODS decided to cease its membership of the EPP (European Peoples’ Party) and establish the ERG (European Reformist Group) a new political group in the European Parliament whose stance towards

2. Civic Democratic Party/Občanská demokratická strana, ODS.
3. Czech Social Democratic Party/Česká strana sociálně demokratická, ČSSD.
4. Christian and Democratic Union – Czechoslovak People’s Party/ Křesťanská a demokratická unie – Československá strana lidová, KDU-ČSL.
5. Communist Party of Bohemia and Moravia/Komunistická strana Čech a Moravy, KSČM.
6. Tradice Odpovědnost Prosperita/ Tradition Responsibility Prosperity.
7. Action of Unsatisfied Citizen 2011/ Akce nespokojených občanů 2011, ANO 2011.
8. Public Affairs/Věci veřejné, VV.

deeper integration is decidedly negative. Although at European level ODS has for a long time been represented in various institutional structures, its adjustment to European norms arising from the party's socialisation in the European environment has not been taking place. It may thus be concluded that the long-term tensions within the party in relation to the European environment that was perceived as supportive of deeper integration played a role in the transformation in the party's perception of national identity. Nevertheless, this transformation may be thought of as belonging to a wider trend – the extent to which this transformation is related to the party's depletion of the liberal-conservative politics from the transformation period and an objective crisis of human resources in the party itself. The party's membership of a European political group with whom it does not completely share its mission is another factor in this regard. The European group does not serve as an ancillary anchor that is able to contribute towards upholding the ideological framework in relative concordance with that of the European political group. As a result, it may be concluded that party's mission and ideology play a greater role than a sort of ad hoc identification of individual and rather haphazard political topics and their prioritisation.

**Table 2: Overview of EU membership support in the Czech Republic over time**



Source: STEM, 2015: 6.

In the case of the Czech political parties it is possible to observe the following tendency: with their increased involvement in the structures of the European political space, their emphasis on nationalism-coloured politics decreases. As a result, it would be fruitful to focus further research on the ideological centre, the main ideological force during the transformation period, and the ways in which it is influenced by relevant developments in this regard, such as the challenge presented by the immigration wave of 2015.

Between the years 2012 and 2013 the Tomio Okamura phenomenon emerged. For the 2013 parliamentary elections, he set up the Úsvit movement whose political campaign was concerned with the question of socially excluded localities with a negative emphasis on the Roma

population to exclude them (socially) from the majority society. The party won 7.3% in the elections and continued to intensively pursue the thematisation of the Roma issue even in parliament. The party also intensively focused on the negative definition of globalisation, the EU and the occasional support of conspiracy theories until its demise. Despite the fact that the movement fell apart in the first half of 2015 due to disputes about party finances, it showed the rise in the use of anti-EU sentiments among relevant (parliamentary) political parties. This successful shift of a primarily positive EU understanding culminated in 2015 during the peak of the migrant crisis when anti-EU rhetoric was used by most of the parliamentary parties. It also has to be mentioned that the Úsvit movement (later called the SPD under the leadership of Tomio Okamura) did not have any significant political cooperation at EU level as well as having no aspiration for such cooperation.

**Table 3: Overview of attitudes of parties' positions towards EU integration**

Party	Election	Integration of the EU	Change
ČSSD	2006	Strengthening political and social dimension	-
	2010	Joining EUR	Softening openness
	2013	Joining EUR only if bringing benefits	Softening openness
ODS	2006	Fiscal and social sovereignty	-
	2010	Strengthening intergovernmental cooperation; Joining EUR only if bringing benefits	No change
	2013	Against joining EUR	Nationalising
KDU-ČSL	2006	EU as set of values, no specific mention	-
	2010	Joining EUR, political union	Stressing openness
	2013	Joining EUR at the "right time"	No change
KSČM	2006	Joining EUR only if bringing benefits	-
	2010	No specific mention	Nationalising
	2013	No specific mention	No change
TOP 09	2010	Joining EUR, political union	-
	2013	Joining EUR, political union	No change
ANO 2011	2013	No specific mention	-
Úsvit	2013	Joining EUR only if bringing benefits	-
Greens	2006	Joining EUR, political union	-
	2010	Joining EUR, political union	No change
Public Affairs	2010	Joining EUR only if bringing benefits	-

Source: author, ceidentity.eu.

**Table 4: Development of the perception of the EU in the election manifestos**

	2006	2010	2013
ČSSD	Strong in the EU	Support for deeper integration	Support for deeper integration
	-	-	Strong in the EU
ODS	Strong in the EU	Strong in the EU	Strong in the EU
	Support for the EU	Europe of nations	Negative perception for EU
KDU-ČSL	Strong in the EU	Support for deeper integration	Support for deeper integration
KSČM	No special emphasis	No special emphasis	Strong in the EU
TOP09	-	Support for deeper integration	Support for deeper integration
			Strong in the EU
ANO2011	-	-	No special emphasis
Úsvit	-	-	No special emphasis

Source: election manifestos, ceidentity.eu.

The whole range of national identity relevant issues such as sovereignty, culture and external threats have been rising in the period since the last general election in 2013. However, national identity in its extreme form in terms of far-right-wing parties in Czech politics is not stepping into the political mainstream in terms of significant electoral success unlike in Slovakia or Hungary. Although there have been parties such as Úsvit and KSČM playing the national identity card in their demonstrations, its use does not cause a significant rise in the emphasis on national identity in its extreme form, such as violence against minorities or immigrants. The following section covers the most relevant issues regarding how features of national identity are reflected in Czech politics. The entry of the ANO and the Úsvit political movements to the political scene has caused a significant shift in the handling of the issue of EU integration. Úsvit (Tomio Okamura) has thematised this issue intensely. From the perspective of strategic, purposive and instrumental use of anti-EU and, subsequently, national identity feelings, it is expected to focus on the ideological centre of the party system.

## Anti-immigrant sentiments in the context of Czech EU policy

The rise of anti-immigrant sentiments in 2015 and 2016 has much broader roots than just a single policy issue that has affected Czech politics as shown by the contrast with the support for EU integration. It also shows how the issue of the immigrant crisis sped up a process of weakening the shared EU-supporting narrative. Therefore, the immigrant issue is a tool for getting attention instead of a thought-through policy. This is also supported by the fact that none of the parties stressing anti-immigrant policy have long proven track records of anti-immigrant policies. The background can be therefore divided into the following parts: lack of deep-rooted penetration of the EU narrative among the Czech political parties; a changing European environment that gives weaker transformative power to the political parties; and generational change within Czech politics.

**Table 5: Overview of EU and immigration-related priorities for regional elections in 2016**

	EU	Immigration
<b>ČSSD</b>	Strong voice in the EU, but still supportive	No special emphasis
<b>ODS</b>	Against silly EU policies	Against quotas and refugee camps
<b>KDU-ČSL</b>	Supportive of EU membership and cooperation within the EU	Party is divided
<b>KSČM</b>	Cooperation of regions	Against quotas
<b>ANO 2011</b>	EU under attack, against shared responsibility	Against quotas
<b>SPD/SPO</b>	Against dictates of Brussels	Against quotas
<b>TOP 09</b>	Supportive of the EU idea, despite some misfits	Against quotas
<b>STAN</b>	Cooperation of regions	No special emphasis

Source: author, election manifestos.

A deeper perspective is offered by analysis of party manifestos for the regional elections that took place in October 2016. Despite the fact that regional councils have very limited competence when it comes to EU policy on the Czech Republic, the issue of EU integration was used very extensively, as well as immigrant issue. As the overview of parties below shows (the most relevant ones) almost all parties have been opposed to

accepting shared responsibility for coping with refugees. Even parties supporting a quota system have shifted their policies to a position of reluctance (KDU-ČSL) or even opposition (TOP 09). This example shows how an issue that is totally outside the competence of regions has heavily influenced the election campaign and even allowed the anti-EU, anti-immigrant party SPD/SPO to enter 10 of the 13 regional councils. Despite this, there has been no significant extremist political movement in Czech politics of significance in the past decade. Nevertheless, the significant shift from EU supporting attitudes towards EU reluctance or even firm opposition shows much broader developments and shifts in Czech politics.

Analysing the political parties, it has to be also said that the attractiveness of the EU narrative has declined significantly. Instead of the expected deepening of supranational EU integration, the EU representatives and national representatives are trying to keep the EU together. In this context, it cannot be expected that political parties will invest any energy in rescuing the EU integration process if they are not thought to contribute to developing the shared narrative. It is a paradox that the Czech Republic has the EU's lowest unemployment rate and yet the population's dissatisfaction with the EU in general and even with EU membership grows constantly.

## Conclusion

The generation of representatives of political parties that brought the Czech Republic into the EU is mostly gone. This generation was replaced by a more pragmatic, less visionary generation administrating the country instead of building it or even bringing it back towards Europe. Hand in hand with missing rooted support of the EU narrative in the Czech politics and society, the EU is treated as something granted. Current representatives are less motivated to search for partners beyond their home countries and cultivate long-term relationships in order to get their support as was the case in the accession period. What does it mean for the current political context? The immigrant crisis shows the much broader consequences of the political development of the Czech Republic. It shows that the use of national identity coloured politics is again a politically relevant tool not only for extreme right parties but even for mainstream parties. Since there is no broader narrative of belonging to the EU this will not change any time soon.

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