

Hungary-Orbán's project towards "illiberal democracy"

The recent developments in the country and its controversial reforms reflect, that Hungary is steadily moving away from the principles of a liberal democracy and is heading towards becoming a centralized, semi-authoritarian state.¹ The course of Hungary was clearly stated by Prime Minister Orbán himself as he announced his preference of "illiberal democracy", in 2014 at a speech in Transylvania, Romania.² Viktor Orbán, being on the political scene since 1988, once a dissident fighting against communism, started his career as a liberal academic and turned his course to become an illiberal populist and an autocratic leader.³

Re-elected as Prime Minister in 2010, Orbán and his alliance of the ruling parties Fidesz and KDNP won with a two-third parliamentary majority and began to exploit their legislative dominance⁴ and weaken Hungary's democratic institutions.⁵ Shortly after the election, Hungary experienced a notable decrease in democratic values, limitations to the freedom of media, and the abolition of the checks-and-balances system, from the Constitutional Court throughout the judiciary system.⁶

The rapid deterioration of democracy in Hungary was made easier mainly due to Hungary's electoral system. Hungary, unlike the other post-communist countries, chose not to adopt a new constitution after the fall of the Iron Curtain and only amended its 1949-law. This amendment, did on one hand, show a separation of powers, however, on the other hand, enabled a two-thirds parliamentary majority to push through major institutional changes. The assumption that no single party would ever win such a majority was proven to be wrong after the elections in 2010, in which Fidesz won 53 percent of the popular vote, which was sufficient to reach a 68 percent majority in parliament. This enabled Fidesz to unilaterally change the constitution and replace the staff of the key institutions and transform the Prosecutor-General's Office and Electoral Commission, state media,

and Constitutional Court.⁷ The qualified majority of Fidesz paved its way for several legal reforms in 2011 and 2012, empowering the ruling party's agenda. The wider public became concerned about the speed of the reforms and the scope of the legislative changes. Many European states directed criticism at the newly amended laws, which were in breach of the European Union rules.⁸

One of the controversial reforms was the adoption of the new Constitution that was approved by the Parliament in 2011 without consulting the opposition.⁹ The new Fundamental Law gave rise to the term "one-party Constitution."¹⁰ One of the biggest critiques in regard to the new Constitution was the fact, that it contained several "detailed rules" concerning certain issues that were about to be regulated by the so-called *Cardinal Laws*. For Cardinal Laws to be adopted, there is a need of qualified majority of two-thirds of the Parliament members' votes- this system could therefore easily lead to over-strengthening the political preferences of the current government and could make future reforms difficult.¹¹

Additional risks to democracy can be noted when it comes to the Constitutional Court. According to the Venice Commission, an expert body at the Council of Europe, the Hungarian Constitution lacks a clear statement ensuring that the Court is an independent, separate power. Moreover, given the composition of the parliamentary committee, the concern arises that the government is able to appoint new members of the Court without consulting the opposition.¹² As a matter of fact all of the 11 judges of the Constitutional Court between 2010 and 2014 were appointed by the Fidesz government.¹³

The Constitution was also set to alter the retirement age of judges and stirred a turbulent discussion in the country as well, as this constitutional provision according to article 26(2) caused a large number of

judges to forcefully retire. However, the government defended this provision as an effort to standardize the age limit for civil servants.¹⁴

Furthermore, a Judicial reform in 2011 created the National Judicial Office (NJO). Until then the appointment of judges has been exercised under the jurisdiction of an organization consisting of high-level judges, however, was now abolished and replaced by the NJO.¹⁵ The NJO is responsible for the administration of the courts and the appointment of judges and placed a single person in charge, which meant, that the President of the NJO can move judges to different courts and draw up court rules, and hold multiple legal powers. The current President of the NJO is Tünde Handó, a long-term friend of Prime Minister Orbán.¹⁶

When it comes to the reform of the electoral system, Hungary consists of a complex parliamentary voting system; a mixed proportional and single-member district system. In 2011 a new electoral law was passed called "*The Act on the elections of Members of Parliament of Hungary*". The law combined the mixed proportional and single-member district basis of the previous system but managed to reduce the number of seats in the Parliament from 386 to 199 and increased the share of single-member districts with 106 individually elected seats and 93 party-list seats. Thus, the number of single-member districts increased from 45.6 percent in the old system to 53 per cent in the new.¹⁷ Therewith, altering the shape and size of electoral districts, which turned out to be of clear advantage to the Fidesz party.¹⁸

The freedom of media was hampered by a package of media laws being introduced by Fidesz in 2011, thanks to which Orbán's government could easily introduce laws that significantly worsened the working conditions of media outlets. A new Media Council within the *National Media and Info Communications Authority* was created.

According to the media laws, all media outlets must register with the Media Council and the Council is entitled to issue fines for news reports that are "imbalanced" or insulting.¹⁹

After the range of successful legislative changes beneficial to the ruling party, Fidesz started paving its way towards a second consecutive term, Orbán's Fidesz won with a successful turnout of 45 percent in the 2014 elections. Within this term, in order to suppress the opposition party Jobbik and gain an even bigger popularity amongst voters, the ruling party decided to make a U-turn and directed its focus at an anti-migration propaganda. According to polls, the move was successful, as between 2014 and 2015, Hungary saw an increase in anti-foreigner sentiment, with only 10 percent of the population, willing to allow an immigrant to enter Hungary.²⁰ Orbán started his fight against Brussels in order to block the European Union's relocation quota scheme and provided an example for other Central European countries to follow.²¹ He built a border fence with Serbia and made several legislative changes to the asylum policy, making the irregular crossing of the border a criminal offence sanctioned with up to eight years of imprisonment.²² Since 2015, the government has spent more than 100 million euros to attract the attention of its voters towards the Hungarian-American billionaire George Soros. The Fidesz led anti-Soros campaign was trying to convince voters that Soros and his hidden network, plan to bring millions of immigrants to Europe, all with the goal to promote a "cultural counter-revolution."²³ Paradoxically, Soros was one of the first mentors of Orbán, funding his scholarship at Oxford during his student years.²⁴

Fidesz propaganda also resulted in strengthened anti-Western and promoted pro-Russian attitudes among the wider Hungarian public. According to a survey, 51 percent of Fidesz voters would prefer Russia to be the strategic partner of Hungary and not the United States. Vladimir Putin has the lead in popularity over Angela Merkel or Donald Trump within the country.²⁵

In order to promote a propaganda of such scale, the ruling party used its media empire, meaning that in 2017, Fidesz made sure that the rhetoric was supported by Hungary's regional newspapers; its second-largest commercial television company and its sole national commercial radio network. An example of the propaganda apparatus is the weekly *Figyelő* (Observer), owned by a government consultant. This newspaper helps to shape the political environment and disposes with advertising revenue of 70 percent coming from the state. "Figyelő published a list of more than two-hundred people (mainly academics and human-rights activists) whom it called "mercenaries" hired by Soros."²⁶

In 2017, a sum of USD 250 million was paid directed at advertisements on billboards, television ads, through which Orbán addressed his main enemies such as Brussels and George Soros.²⁷

In the elections of April 2018, Fidesz, declared its third super majority victory, with the four-time Prime Minister in the lead winning 133 seats, out of 199.²⁸ Many believed that Orbán would slow down his illiberal state building activities, mainly due to the pressure coming from Brussels²⁹ as a reaction on the Hungarian Government and its billboard campaign with the slogan "Let's Stop Brussels"³⁰ in 2017, however this presumption turned out to be far from true. The government took several steps to complete what it started and to defeat the last remaining independent protectors of the rule of law.³¹ The refugee question continued to be the main topic of the 2018 campaign, no surprise as since the attention was put on the refugee crisis, Fidesz gained half a million new voters.³²

Anti-migration reforms continued to be high on the agenda, moreover a seventh amendment to the Basic Law of Hungary was passed in May 2018 stating in article 5 (1) "No alien population shall be settled in Hungary. Any foreign citizen, excluding persons having the right of free movement and residence, shall be allowed to live in the territory of Hungary on the basis of his or her application individually evaluated

by the Hungarian authorities. The fundamental rules of the preconditions of the submission and evaluation of the application shall be established by a cardinal Act".³³

Amendments to the Fundamental Law didn't concern only the matter of migration but also changes to the Law on the Freedom of Assembly were passed on July 20, 2018, making it difficult for the citizens of Hungary to protest.³⁴ Causing restriction of the freedom of assembly, clearly stated in its provision that "practicing the right to assembly cannot involve the violation of others private and family life or home."³⁵

Throughout the year 2018, the government continued its destructive efforts by putting any organization with ties to Soros under attack from the media and the legislative initiatives.³⁶ In June 2018, Hungary passed the so called "Stop Soros" package of laws, with the aim to curb promoting and supporting illegal migration.³⁷ The law entered into force in July 2018 and changed the Criminal Code by criminalizing support to asylum and residence applications punishable by imprisonment.³⁸ The law banned any individuals or organizations from providing assistance to undocumented immigrants.³⁹ The bill, also imposes a 25 percent tax on foreign donations to NGOs that support migration⁴⁰ with actions such as "carrying out and participating in media campaigns", "building and operating a network" or "educational activities."⁴¹

Amendments to the Fundamental Law also include the prohibition of homelessness, which was considered to be a Human Rights violation by watchdog organizations. The government's defense in this matter is, that this provision is supposed to protect the use of public spaces.⁴²

One of the constitutional amendments (Bill T/332) was further aimed to erase the boundaries between executive and judicial powers and give the government more control over the courts by establishing the new Administrative Court system, that is to be dominated by judges, arriving from the state's public administration headed by a

political appointee selected by the Parliament.⁴³ The Administrative High Court will dispose with the power to deal with all legal challenges of decisions taken by state authorities, including cases on public procurement and civil liberties.⁴⁴

In 2018 further moves were made against the freedom of media, as the shutdown of key media outlets (daily Magyar Nemzet, weekly *HetiVálasz*) or change of ownership (HírTV)⁴⁵ and several NGOs were publicly labeled, by a Fidesz MP as 'organizations promoting migration'.⁴⁶ In April, the aforementioned Figyelő, as part of the government's propaganda machinery, published an article titled "The Speculator's People", which listed around 200 persons who are supposedly active in "Soros organizations".⁴⁷

After a legal war with the government, the Central European University was forced out of the country and moved its accredited programs to Vienna.⁴⁸ Furthermore, the Soros-supported Open Society Foundations due to government hostilities moved their regional office to Berlin.⁴⁹ In August 2018, the government introduced its plan to abolish gender studies from the country's list of accredited university study programs. This decision, considered as a state intervention into higher education was addressed against two universities, the Eötvös-Loránd University (ELTE), and the private Central European University, which were not consulted in advance.⁵⁰

Leading European bodies as the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE) expressed criticism towards the new package of "Stop Soros laws".⁵¹ In addition, the European Commission initiated an infringement procedure against "Stop Soros laws" due to them, being in breach of the EU's legal standards⁵² and referred Hungary to the Court of Justice of the European Union (CJEU) in July 2018 for violating EU law on asylum.

This is not the first time, that an infringement procedure was started against Hungary due to questionable laws. In December 2017, the European Commis-

sion referred Hungary to the Court of Justice for its NGO Law⁵³ that according to the reasoned opinion of the Commission indirectly discriminates and disproportionately restricts donations from abroad to civil society organizations.⁵⁴

The European Parliament has also voted in favor of starting a disciplinary action against Hungary as it breached the EU's core values in September 2018. It was particularly concerned about the constitutional and electoral system, privacy and data protection, freedom of expression, and academic freedom.⁵⁵

The Parliament has therefore asked the EU member states to determine the breach in accordance with Article 7 of the Treaty on the European Union based on the Judith Sargentini Green MP, report against Hungary.⁵⁶ The sanctions that could possibly follow would be the most serious that the EU can impose after a clear risk of breaching fundamental values such as democracy, the rule of law, or respect for human rights and could result into the suspension of EU voting rights.⁵⁷

However, this is yet to be seen despite the actions taken by the Parliament, this procedure might not result into sanctions in the near future as a decision is unlikely to be taken prior to the European Parliament election in May 2019. The vote itself however signalizes a turning point in the relations between the EU and Hungary. It also reveals emerging cracks in the mutual relationship between Fidesz and the European People's Party.⁵⁸

Conclusion

The generally shared reputation of Orbán among the European politicians has deteriorated over the last few years. It can be said that the completion of an illiberal state in Hungary is soon to be finalized. Although Hungary remains part of the European Union, the actions of the country mirror a conduct that breaches the core values of the block. Hungary does have constitutional institutions, but they lack the needed checks and balances.⁵⁹ It is not only Brussels that is concerned

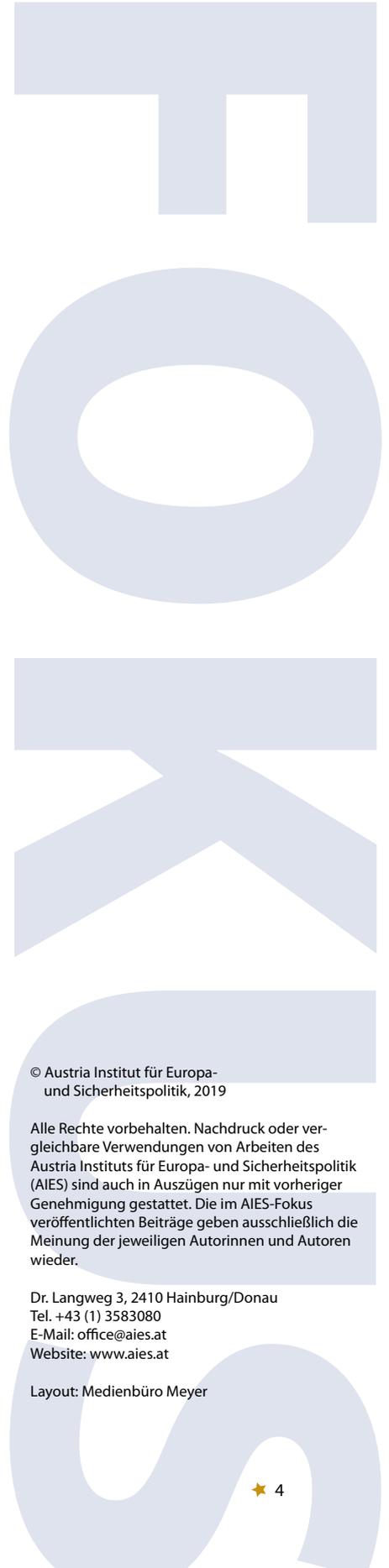
about the overhaul of democracy in the country. The wider Hungarian public itself has recently shown dissatisfaction with the government's outrageous actions. Prime Minister Viktor Orbán has been facing waves of protests peaking in December 2018 and January 2019. The dissatisfaction of the Hungarian society notably increased, in particular after the nationalist administration pushed through new labor laws that could require workers to pursue up to 400 hours overtime per year; a legislation also known as "slave law".⁶⁰ This is strongly disapproved by the opposition groups, which are preparing for more nationwide demonstrations and are a promising step of the opposition starting to work together more effectively. These developments could finally create a counter weight towards Orbán's "monopolistic rule" and in a positive scenario alter the anti-democratic course of Hungary.⁶¹

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