

THE EUROPEAN UNION’S POLICIES TO PROTECT THE RULE OF LAW IN THE CASE OF DEMOCRATIC BACKSLIDING IN HUNGARY*

Fulya AKGÜL DURAKÇAY**

Abstract

Hungary is one of the European Union (EU) members challenging the EU from within. The recent legal and constitutional changes under Viktor Orban’s governments question the EU’s capacity and political will to prevent the violations by its members of its rules, norms and values pertaining to democracy. In conjunction with the definition of the current democratic decline in the country as “illiberal” democracy, “defective” democracy or “elected autocracy”, this study addresses the process as democratic backsliding. This study aims to analyse how the EU manages democratic backsliding in Hungary. For this purpose, the research is based on the content analysis of official EU documents and publications, democracy indexes of various international institutions as well as secondary literature. Considering the EU’s approach to democratic decline in Hungary as a rule of law crisis, the study explores the EU’s institutional mechanisms and policy tools to protect the rule of law in its member states. This study seeks to make a contemporary contribution by discussing the EU’s political will and mechanisms to protect the rule of law in the case of Hungary’s democratic backsliding.

Keywords: *European Union, Hungary, Democracy, Rule of Law, Democratic Backsliding.*

MACARİSTAN’DA DEMOKRASİNİN GERİLEMESİ ÖRNEĞİNDE AVRUPA BİRLİĞİ’NİN HUKUKUN ÜSTÜNLÜĞÜNÜ KORUMA POLİTİKALARI

Öz

Macaristan, Avrupa Birliği’ne (AB) içeriden meydan okuyan üye ülkelerden biridir. Viktor Orban yönetimindeki son yasal ve anayasal değişiklikler AB’nin demokrasi ile ilgili kural, norm ve değerlerinin üyeleri tarafından ihlalini engellemeye yönelik kapasitesini ve siyasi iradesini sorgulamaktadır. Ülkedeki mevcut demokratik gerilemenin “illiberal” demokrasi, “sorunlu” ya da “arızalı”

* This study is derived from the paper titled “Macaristan’da Demokrasinin Gerilemesi ve Avrupa Birliği’nin Tutumu Üzerine Bir Değerlendirme (Democratic Backsliding in Hungary and an Evaluation of the European Union’s Attitude)” and presented at the International Turkish World Social Sciences Symposium on December 2-3, 2022 at Ege University, İzmir.

** Dr., Dokuz Eylül University, Faculty of Business, Department of International Relations, fulya.akgul@deu.edu.tr, <https://orcid.org/0000-0003-0200-7911>

demokrasi ve “seçimli otokrasi” olarak tanımlanmasıyla bağlantılı olarak bu çalışma süreci demokrasinin gerilemesi olarak ele almaktadır. Bu çalışma, AB’nin Macaristan’da demokrasinin gerilemesini nasıl yönettiğini analiz etmeyi amaçlamaktadır. Bu amaçla araştırma AB resmi belgeleri ve yayınları ile çeşitli uluslararası kuruluşların demokrasi indekslerinin içerik analizine ve ikincil literatüre dayanmaktadır. AB’nin, Macaristan’daki demokratik gerilemeyi bir hukukun üstünlüğü krizi olarak ele aldığı bulgusundan hareket eden çalışma, AB’nin üye devletlerde hukukun üstünlüğünü korumaya yönelik kurumsal mekanizmalarını ve politika araçlarını araştırmaktadır. Çalışma Macaristan’da demokrasinin gerilemesi örneği üzerinden AB’nin hukukun üstünlüğünü korumada siyasi iradesini ve mekanizmalarını tartışarak güncel bir katkı sunmayı amaçlamaktadır.

Anahtar Kelimeler: Avrupa Birliği, Macaristan, Demokrasi, Hukukun Üstünlüğü, Demokrasinin Gerilemesi.

Introduction

Recent literature on democratization puts emphasis on the deterioration of democracy’s quality in Central and Eastern European countries (CEECs) (Iusmen, 2015; Cianetti, Dawson and Hanley, 2018; Sitter and Bakke, 2019). Freedom House as one of the most credited international-ranking institutions has also indicated this trend. Its report titled “The Global Expansion of Authoritarian Rule” finds that freedoms are in decline globally for 16 years in a row. One of the prominent issues underlined in the 2022 Freedom House report is the democratic decline in established democracies where freedoms are gradually eroding (Repucci and Slipowitz, 2022). The reason for the recent academic interest and call for attention to the democratic decline in the established democracies is linked to the particular challenge of the CEECs’ joining the EU as of 2004. Although these states have fulfilled the Copenhagen criteria relating to democratization, some of them such as Hungary, Poland and Romania embarked on some actions to get off the track of democratic consolidation after accession. In this respect, Hungary presents a special case for the EU to challenge its reputation from the inside as its first real democratic backsliding crisis since 2010 under the Viktor Orban and his Fidesz party governments.

Democratic decline or backsliding has led the Hungarian regime to be conceptualized as “elected autocracy” (Agh, 2015), “illiberal democracy” (Buzogany, 2017) and “diffusely defective democracy” (Bogaards, 2018). However, Hungary’s democratization during the post-communist transition has been hailed as a success (Buzogany, 2017, p. 1307). The Hungarian Socialist Party’s ruling elite restructured “a secular and democratically committed” politics during the transition process instead of basing their policies on nationalist and ethnic grounds (Nagle, 1997, p. 41). Regardless of their ideological leanings, Hungarian governments adopted a European orientation after the Cold War, prioritizing integration into Euro-Atlantic

structures with full EU (then European Community) membership aspirations, which resulted in Hungary's application for EU membership in 1994. After given candidacy in 1997, Hungary's advancement toward meeting the Copenhagen criteria in the medium term was acknowledged by the EU when the accession negotiations started in 1998 (Batory, 2002, p. 2). During the negotiations from 1998 to 2002, Viktor Orban's Fidesz party were in power for the first time in a coalition government with Orban serving as prime minister. Despite having a soft Eurosceptic stance, the party pursued democratic commitment (Pridham, 2005, pp. 110-111). Although Orban challenged the new government after assuming the position of opposition leader following the 2002 elections by putting forth some demands arising from political rivalry in exchange for his support for necessary constitutional amendments to become an EU member, Orban declared himself to be pro-EU (Pridham, 2005, p. 156). Hungary became a member in 2004 after fulfilling the EU's democratic conditionality and *acquis* conditionality. In this regard, the EU has been given credit for the role it has played in the successful democratic transformation of the CEECs including Hungary through its external incentives model where its most effective instrument has been conditionality in conjunction with a credible membership perspective. However, as Hungary being in the first place, the presence of democratic backsliding in the MSs questions the sustainability of the EU's democratic conditionality without credible sanctions in the post-accession period (Schimmelfennig and Sedelmeier, 2020, pp. 814-822).

Before analysing any episode of democratic backsliding, it is necessary to go beyond the minimalist or electoral democracy model such as Schumpeter's (2003) which considers democracy as a political mechanism for arriving at decisions through free, fair and regular elections. Although this electoral or procedural conception of democracy is vital for any democracy to emerge, according to Sodaro (2008), it is insufficient for a fully functioning democracy. Some substantial or normative criteria pertaining to freedoms as included by Dahl (1971) are required to protect against the "fallacy of electoralism" as warned by Karl (1995, p. 73). In this regard, conceptualization of democracy as a liberal democracy is of significance to go beyond democracy's institutional and procedural dimensions. In its definition of liberal democracy, Diamond's (1997, p. xiv) emphasis on "a strong rule of law secured through an independent, impartial democracy" is crucial for any conceptualization of democratic backsliding.

Waldner and Lust (2018, p. 95) associate democratic backsliding with intentional changes in a democratic regime to connote a decline in democratic quality. Bermeo (2016, p. 6) emphasizes democratic backsliding's leading to regimes that are ambiguously democratic or hybrid when it is operationalized through gradual changes. Waldner and Lust (2018, p. 95) emphasize democratic backsliding's distinction from transitions across regime types,

then, as a concept, it excludes the removal of the democratic regime by sudden actions such as a revolution or a coup d'état to establish an autocracy. Bakke and Sitter (2022, p. 23) conceptualize backsliding “as a process of deliberate, intended action designed to gradually undermine the fundamental rules of the game in an existing democracy, carried out by democratically elected government”.

Democratic backsliding in its prevailing forms challenges the components of democracy in a way to deteriorate the electoral mechanism, participation and accountability without eliminating them (Waldner and Lust, 2018, p. 95). Bermeo (2016) draws attention to the frequency of democratic backsliding in its contemporary form to term it as “executive aggrandizement”, whereby “elected executives weaken checks on executive power one by one, undertaking a series of institutional changes that hamper the power of opposition forces to challenge executive preferences” (Bermeo, 2016, p. 10). Gandhi (2019, p. 11) also underlines democratic backsliding’s institutional roots because of elites with “executive power prerogatives” having partisan allies within the legislative branch to pass laws that weaken and repress the press, the opposition and the electorate.

The focus of this study is structured as follows. First, it traces Hungary’s democratic backsliding pathway by reviewing the existing literature and democracy indexes on Hungary’s democratic backsliding. After that, since the EU approaches democratic decline as a rule of law crisis, the study explores the Union’s principles as well as institutional mechanisms for safeguarding the rule of law in its member states (MSs). Lastly, it analyses how the EU manages democratic backsliding in Hungary benefiting from a content analysis of official EU documents besides secondary literature. This paper seeks to contribute to the contemporary literature by discussing the EU’s political will and limitations in its procedures for the rule of law protection in Hungary’s democratic backsliding case.

1. DEMOCRATIC BACKSLIDING IN HUNGARY AT A GLANCE

Victor Orban’s “Alliance of Young Democrats-Hungarian Civic Union (Fidesz)” party’s victory in 2010 and three subsequent parliamentary elections thereafter signalled Hungary’s becoming the EU’s “the worst-case scenario” (Agh, 2016) as Fidesz consolidated its power through challenging the EU norms, values and principles. Orban himself publicly expressed his affection for “illiberal state” as an alternative to liberal democracy (Sitter and Bakke, 2019) by citing Russia and China as role models for establishing an illiberal state (Mahony, 2014). Has-been a “consolidated democracy”, Hungary was downgraded to the regime category of “semi-consolidated democracy” by Freedom House in 2015 (Szeles, 2015). After losing its “free” status in Freedom House scores and becoming “partly free” in 2019, Hungary became the first EU country to be grouped with “transitional/hybrid regimes” by

leaving the group of democracies entirely in 2020 (Csaky, 2020, p. 2). Varieties of Democracy (V-Dem) Institute (2020, p. 6) also announced Hungary as the EU's first non-democracy by classifying the country as an "electoral authoritarian regime". These classifications have signalled Orbán's strengthening of its governments and deterioration of the rule of law through legal changes targeting the electoral system to turn it in favour of strengthening the executive branch, limiting the independence of judiciary, tightening the control over media, weakening the civil society and interfering with the minority rights.

Hungary's backsliding path started after the 2010 electoral success of Fidesz by securing a majority of 66% in coalition with the "Christian Democratic People's Party (KDNP)", sufficient to retain the legal right to a new constitution-making that would allow the party "to remain in power even if out of office" (Wilkin, 2018, pp. 22-23). With this purpose, the party's supermajority has been abused to push constitutional and legislative changes resulting in strengthening its hold on power. The Fidesz government amended the inherited Constitution twelve times in its first year to abolish most of the institutional checks for the sake of installing a new constitution (Scheppele, 2015, p. 111). In this regard, the new constitution of 2012 was amended five times just by the end of 2013. Kovacs (2014, p. 268) underlines the possibility of any future opposition government without supermajorities to find it more difficult to function effectively under the new constitutional framework due to the expanded range of laws that necessitates a supermajority for passing. Scheppele (2015, pp. 112-113) points out the lack of any support from political opposition or civil society for these amendments, resulting in its becoming "a one-party constitution" thanks to its "magic two-thirds".

One of the first steps the government took for increasing executive power was to embark on electoral reform by redesigning the mixed system of single-member representatives and proportional party representation. Through the acts of 2011 and 2013, the electoral system has become more disproportional due to making the majoritarian principle of single-member districts dominant over the proportional representation through a national electoral list and changing the voting patterns geographically by redistricting (Kovacs and Vida, 2015, pp. 55-58). Following this reform, although Fidesz could not get the majority of the votes in the 2014 and 2018 elections by obtaining 45% and 48% of the vote respectively, it won 91% and 86% of the districts in turn (Scheppele, 2022, p. 54). Besides, in 2021, the government introduced "voter tourism", permitting any Hungarian citizen to vote in any district without having to reside in the address they declare to be registered (Makszimov, 2021).

Beyond these changes, the Orbán administration embarked on processes to consolidate the executive power over independent institutions which are crucial for the institutional and substantial components of democracy. In this regard, as a first step, freedom of opinion, press and

information was severely limited by the government's control of media. Right after starting their term in 2010, a new regulation created two mechanisms to supervise the means of communication – a National Media and Telecommunication Authority for supervising the private ones and a Public Service Foundation for managing the public institutions (Bajomi-Lazar, 2013, p. 70). A Media Council whose head and members are all elected or appointed by Fidesz for a nine-year term –exceeding the lifetime of two parliaments- is composed to supervise both public and private media (Bertelsmann Stiftung, 2012, p. 6). Fidesz's capture of media since 2010 has been reinforced by its take over of private independent media outlets, resulting in unifying pro-government media (Bertelsmann Stiftung 2022, pp. 8-10). On curbing media pluralism, Griffen (2020, p. 58) calls this “the Orban model” in which media is captured not by imprisonment or legal harassment but through subversion of the rules of media market and purchases of media outlets by friendly oligarchs.

The independence of the judiciary was another target of democratic backsliding as a primary deterioration of the rule of law. When Fidesz took office, the government embarked on “court-packing” – “the politically expedient modifications of the composition or structure of a court by a government to replace independent or oppositional judges with political loyalists” (Chennamaneni, 2019). For this sake, the Constitutional Court's powers were limited. Its size was increased from 11 to 15 to have four more judges named by the party and the judicial election procedure was changed to eliminate the opposition from the former multiparty agreement for their election (Scheppele, 2015, p. 115). A new National Judicial Office was established as a control mechanism over the judiciary. This was followed by forcing many judges, along with prosecutors and notaries at different levels, into retirement by decreasing the retirement age (Holesch and Kyriazi, 2022, p. 11). The National Judicial Office became influential over new appointments (Batory, 2016, p. 9) as well as the authority “to hire, fire, promote, demote and discipline all judges in the system without any substantive oversight by any other institution” (Scheppele, 2015, p. 118). Freedom House (2017) draws attention to the politicization of the judiciary between 2010 and 2014 due to Fidesz's selection of all 11 judges in the Constitutional Court -except for the inclusion of one opposition party in discussions for the election of four new judges in 2016- resulting in rulings in favour of government interests. The Fidesz government also limited the Constitutional Court's powers by restricting its jurisdiction (Scheppele, 2015, p. 117).

The Fidesz government weakened the function of civil society as a check on political power. It increased control over civil society organizations (CSOs) through “New Cardinal Acts on the freedom of association and regulation of non-governmental organizations (NGOs)” in 2011 (Herman, 2015, p. 259). By transforming the grant system, the distribution of state funding to CSOs has generated controversy (Havasi, 2022, p. 509). Herman

(2015, p. 259) finds that the National Cooperation Fund, which made decisions on distributing state funds, favoured the CSOs that were associated with pro-government activities. In addition to creating “pro-government pseudo-civil organizations”, after its re-election in 2014, the government also tried to exert control over the independent NGOs (Agh, 2015, p. 11). For this purpose, firstly the Hungarian NGOs receiving foreign funding from Norway’s Civil Support Fund were pressured to disclose all financing details (Herman, 2015, p. 259). The government backed down after Norway suspended all funds (Sitter and Bakke, 2019).

Yet, it is crucial here to mention the Orban government’s continuous discrediting of civil society actors as “foreign agents” with the agenda of pursuing foreign interests leading to damage Hungary’s sovereignty (Molnar, 2020, p. 56). Adding up to this perspective, Europe’s refugee and migration crisis of 2015 was securitized by Orban along with Euroscepticism (Canveren and Akgül Durakçay, 2017). Within this context, NGOs supporting migrants and refugees as opposed to the government’s anti-immigration position (Molnar, 2020, p. 61) as well as the ones presenting unbiased information about the existing situation of immigrants became the target of the government (Enyedi, 2018, p. 1070). Reflecting this perspective, in 2017 with a “law on the transparency of foreign-funded organizations”, it became compulsory for NGOs receiving financial support from abroad to report their funding to the registration authority to make this acknowledgement publicly disseminated and indicate their foreign support with a label (Christopoulou, 2022, p. 245).

These measures converged with the government’s campaign against George Soros who was portrayed as destroying European culture by furthering the integration of “illegal migrants” (Batory and Svenson, 2019, p. 235). The government’s information campaign on the link between Soros’ financing NGOs and those NGOs’ helping immigrants was intertwined with a new bill in 2017 on the functioning of foreign universities in the country. The Central European University (CEU) was the sole academy affected by the bill introducing the fulfilment of new criteria. The decision echoed Fidesz’s anti-Soros campaign given that Soros founded the CEU. Protests in defence of academic freedom were dismissed on the grounds of a campaign to discredit the government for its opposition to the pro-refugee policies of the EU (Enyedi, 2018, pp. 1067-1068). When the law prohibited the CEU to accept new students as of 2019, the CEU was forced to leave its operations in Hungary (Central Eastern University, 2018).

In response to the Covid-19 pandemic, the government proclaimed “a state of danger” in March 2020. The Authorization Act granted Orban the authority to rule by decree for an indefinite time without parliamentary approval. It was replaced in June by a state of medical emergency still without parliamentary oversight and a time limit (Freedom House, 2021). Within this period, more than 100 decrees were issued by the Fidesz government (Tanacs and Huet, 2020). Opposition parties were affected by the government’s

decision to cut party funding to transfer the funds for the fight against the coronavirus. Freedoms of the press and expression were limited on the grounds of spreading misleading or inaccurate information when a state of emergency was in effect (Freedom House, 2021). Rights of minority groups such as the LGBTQ+ community were curtailed by adding this community to the construction of “public enemies” along with oppositional political elites, Brussels, migrants, CSOs, representatives of free media and Soros (Bertelsmann Stiftung, 2022). The scope of conditions for declaring “a state of emergency” was extended to include “armed conflict, war, or humanitarian catastrophe” in neighbours following the Russia-Ukraine war leading to the extension of the executive’s emergency powers in November 2022 (Freedom House, 2023).

2. THE RULE OF LAW PRINCIPLE AND PROTECTION MECHANISMS IN THE EU

The EU, as it evolved towards political integration, set certain norms, values and principles. Starting with the 1970s, the European Council issued several declarations defining the normative basis. The European Council listed “representative democracy, of the rule of law, of social justice ...and of respect for human rights” as the core elements of European identity in the "Declaration on European Identity" of 1973 (European Council, 1974). By adopting the "Declaration on Democracy" in 1978, the MSs reaffirmed their dedication to these principles and recognized that adhering to them was necessary for membership of the European Communities (European Council, 1978). Membership requirements were set as the Copenhagen criteria in 1993 summit, including the political component with references to democratic credentials including the rule of law (European Council, 1993).

The MSs reaffirmed their commitment to “the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule law” in the Treaty on European Union’s (TEU) preamble (EU, 1992). The values on which the Union is established are described in Consolidated Version of the TEU Article 2 as “respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities”. With Article 49, respecting and promoting these values are embraced as a principal condition for membership (EU, 2012a). In this regard, the obligation to comply with these values begins with candidacy and continues throughout membership (Bayram, 2018, p. 69).

The Treaty of Amsterdam in 1997 introduced a new Article 7, preserved with some changes as Article 7 of the TEU that prescribes some sanctions for MSs who violate the values referred to in Article 2 (EU, 2012a). The first paragraph of Article 7 gives the Council of the European Union –the Council hereafter-, in a preventive manner, an early warning right aiming at resolving the conflict through dialogue with the member state in question (Soyaltun

Colella, 2020, p. 76). It empowers the Council to determine by a majority of four-fifths of its members with the European Parliament's (EP) consent that "there is a clear risk of a serious breach by a Member State of the values referred to in Article 2". Here, one-third of the MSs, the EP or the European Commission (the Commission hereafter) may initiate this process (EU, 2012a). The Council may address recommendations without taking legally binding measures (Güneş, 2016, p. 334).

When the preventive phase is inconclusive or even without the need to go through the first phase, the corrective element of Article 7 TEU is used (Soyaltın Colella, 2020, p. 76). Its second paragraph empowers the European Council to determine unanimously with the EP's consent "the existence of a serious and persistent breach by a Member State of the values referred to in Article 2". Here, one-third of MSs or the Commission may initiate the process (EU, 2012a). This declaratory decision is required as a precondition for sanctions regulated in the third paragraph (Güneş, 2016, p. 334). After this decision, the Council may decide by a qualified majority in favour of some sanctions such as the suspension of the voting rights in the Council (EU, 2012a). Within the context of sanctions, MSs' rights to vote, speak, and make a proposal, participate in sessions and presidency in several EU institutions and organs can be suspended. However, the rights of the representatives of MSs in the EP and Commission cannot be suspended. Within the scope of sanctions, MSs can be deprived of the EU financial aid and incentives in areas such as agriculture, fisheries and structural policies (Güneş, 2016, p. 335).

Articles 258-259-260 of the Consolidated Version of the Treaty on the Functioning of the European Union (TFEU) regulate the infringement procedure against MSs failing to uphold a treaty obligation. The Commission can bring infringement cases against those MSs before the Court of Justice of the European Union (CJEU). The CJEU may impose financial sanctions on MSs after finding an infringement and a failure to take the appropriate actions in accordance with the EC's recommendations (EU, 2012b). Infringement cases may be brought against MSs who violate the principles of Article 2 (Güneş, 2016, p. 337). However, open-ended nature of the values in Article 2 has set limitations for its effective use because initiating infringement procedures against MSs require a violation of a specific provision of EU law (Kochenov and Pech, 2015, p. 4).

The rule of law principle is a cornerstone of the EU's self-conception (Soyaltın Colella, 2020, p. 71). The judgment of the Court of Justice in the case "Les Verts v Parliament" (1986) defined the European Economic Community as "a Community based on the rule of law" (EUR-Lex, n.d.). Furthermore, the Commission played a significant role for consolidating the rule of law as "a well-established constitutional principle of EU law" (Pech, 2022, p. 107). The rule of law, according to the then Vice-President of the Commission and EU Justice Commissioner Viviane Reding's speech from

2013, is the cornerstone of contemporary democracies as well as a requirement for ensuring the protection of all fundamental values listed in Article 2 (European Commission [EC], 2013a).

As of the 2000s, the EU faced some practices against these values in various MSs. Berlusconi's government in Italy and far-right Haider's joining the government in Austria set a precedent for violating the Article 2 values. Based on its experience of lagging in developing policies against the violations in old MSs, the EU took an action toward promoting the rule of law besides combatting corruption with Bulgaria and Romania joining in 2007. "The Cooperation and Verification Mechanism (CVM)" was introduced by the Commission as a soft mechanism to assist these two countries¹ in their progress through benchmarks especially in their judicial and administrative systems to meet the EU membership obligations (Soyaltın Colella, 2020, pp. 73-74).

The EU faced several crises specifically concerning upholding the rule of law in several MSs including France, Romania and Hungary since 2010. In response, the EU developed some soft mechanisms to protect the rule of law in MSs without giving rise to legally binding consequences but "as a preparatory step towards legal action" (EP, 2019). The then President of the Commission Barroso in his address to the EP in September 2012 drew attention to the insufficiency of the available institutional arrangements for rule of law protection in MSs. He underlined the necessity for a new set of instruments besides "the alternative between the 'soft power' of political persuasion and the 'nuclear option' of article 7 of the Treaty" (EC, 2012a). In the next year's speech, Barroso stressed the EC's crucial role and duty in addressing the rule of law challenges. He also pointed the way for a new framework to bridge the gap between Article 7 and the EC's infringement powers. In circumstances "where there is a serious, systemic risk to the rule of law," a new mechanism would actively involve the Commission and be activated by predetermined benchmarks (EC, 2013b).

Throughout 2013, the concern over "the rule of law crisis", as pointed out in Reding's speech (EC, 2013a), gained intensity in the EU. The EP raised the need for confronting emerging rule of law challenges in MSs by urging the Commission to act. In 2014, as a result, it introduced a new tool as an early warning mechanism or "the pre-Article 7 procedure" to address potential rule of law challenges. The Commission's communication titled "a new EU Framework to strengthen the Rule of Law" acknowledged the current EU mechanisms' inefficiency to address the rule of law challenges in MSs. This new mechanism is presented as a complementary rather than an alternative to the infringement procedures and Article 7 TEU's preventive and sanctioning

¹ Bulgaria and Romania as of 2019 and 2022 respectively are no longer monitored or reported under the CVM.

mechanisms. The “Rule of Law Framework” is triggered by systemic threats to the rule of law (EC, 2014).

The Commission, in a progressive manner, attempted to define the rule of law while admitting that there may be variations at the national level. In this regard, with this new mechanism, principles of the rule of law are defined as “legality, legal certainty, prohibition of arbitrariness of the executive powers, independent and impartial courts, effective judicial review including respect for fundamental rights, and equality before the law.” Besides, the rule of law is defined as a “constitutional principle with both formal and substantive components” that is interlinked to “respect for democracy and fundamental rights; there can be no democracy and respect for fundamental rights without respect for the rule of law and vice versa” (EC, 2014). Apart from the EC’s positive efforts to present a clearly defined outline for detecting the rule of law breaches with this framework. Kochenov and Pech (2015, p. 12) draw attention to its failure to clarify the concepts of “systemic threat” and “systemic violation” as a critical shortcoming for its effectiveness.

Since 2014, the EU institutions' agendas have consistently featured a significant discussion about the rule of law protection. In response to the EC’s Framework, the Council established its own “Rule of Law Dialogue” in December 2014. This reflected national governments’ reluctance to empower a supranational body “to look into rule of law matters beyond the area governed by EU law” (Kochenov and Pech, 2015, p. 13). The EP in 2016 adopted a resolution “on the establishment of an EU mechanism for democracy, the rule of law and fundamental rights” to integrate and complement the existing mechanisms (EP, 2016). After the EP’s calls, the Commission launched a discussion for strengthening the EU toolbox (EC, 2019a). It invited stakeholders including external experts and non-governmental organisations aside from MSs, EU institutions and bodies to contribute to resolving this crisis. The EC’s consultation reflected some MSs’s scepticism - such as Poland and Hungary (Grabowska-Moroz and Kochenov, 2020, p. 3).

After the consultations, the Commission in July 2019 published a communication titled “Strengthening the rule of law within the Union – A blueprint for action”. Here, it defined the rule of law as “well-defined in its core meaning” by presenting specific short- and medium-term initiatives for strengthening the rule of law. The Commission will take actions by promoting a common rule of law culture, preventing rule of law violations by deepening the EU’s capacity to monitor the rule of law-related developments in MSs through a “Rule of Law Review Cycle”, and focusing on the EU-level response when national safeguards are incapable. It also underlined how crucial it is to find a solution “to ensure a swift de-escalation or exit perspective from the formal rule of law process” (EC, 2019b). The rule of law mechanism, as a new preventive mechanism, establishes an annual dialogue

between the EC, the Council and the EP. This dialogue is set by including MSs, national parliaments and civil society in the process. The Commission publishes “the Rule of Law Report” to monitor the rule of law-related developments in MSs since 2020 (EC, n.d.). Following the EC’s first report in 2020, the Council launched its “Rule of Law Dialogue” (Wahl, 2020).

Most recently, the Commission offered a conditionality mechanism for safeguarding the EU budget by establishing a link between EU funds and continuous observance of the rule of law by MSs (Von Bogdandy and Lacy, 2020, p. 1). The “Rule of Law Conditionality Regulation 2020/2092” was adopted in December 2020 and introduced “the rule of law conditionality” for protecting the EU budget. Suspending EU funds is specified as a sanction for certain violations of the rule of law, such as endangering the judicial independence (EU, 2020). With its entry into force in 2021 and after the CJEU rulings, the rule of law conditionality mechanism has been transformed into “an instrument of budgetary conditionality” (Staudinger, 2022, p. 726).

3. ANALYSIS OF THE EU’S PRACTICES TO PROTECT THE RULE OF LAW IN THE CASE OF DEMOCRATIC BACKSLIDING IN HUNGARY

Orban’s policies constitute a real backsliding crisis for the EU. As it has developed legal and political mechanisms to protect the values in Article 2 TEU, the EU’s challenge in responding democratic backsliding as a gradual and open-ended process concerns the scope of these mechanisms and the political will of different EU institutions, as well as the timing of a likely response (Sitter and Bakke, 2019). Among the EU’s legal and political mechanisms against violations of its founding values by MSs, Article 7 has the highest deterrent. However, some political barriers prevent using Article 7 due to a combination of voting rules, member state preferences and party politics (Sedelmeier, 2017, p. 339). First of all, putting Article 7 into effect necessitates cooperation among the EU institutions (Soyaltın Colella, 2020, p. 76). Its preventive mechanism to determine whether there is “a clear risk of a serious breach” requires a very demanding majority in the Council. Its corrective phase, including the possibility of sanctions, requires unanimity in the European Council reflecting MSs’ concerns over sovereignty and unwillingness for any supranational interference in their domestic affairs. Besides, for both phases in Article 7, the EP’s consent is required. Thus, party politics becomes a possible obstacle to using this mechanism even for initiating the preventive mechanism for the breach of values (Sedelmeier, 2017, pp. 339-340).

The Commission refrained from activating the preventive phase of Article 7 despite Hungary’s deterioration in democratic standards. It also refrained from applying its “Rule of Law Framework” to Hungary despite the EP’s passing a resolution and urging the Commission to utilize this

mechanism (EP, 2015a; EP 2015b). Kelemen (2017) explains the Commission's inaction in activating its own Framework against Hungary based on party politics. In this sense, Kelemen (2017, p. 226) argues that the Commission declined to invoke its Framework against Hungary due to the lack of support for the resolution by the European People's Party's (EPP) - that dominated then Juncker Commission and included Fidesz members. Closa (2019, p. 699) voices the EC's anticipation of a possible refusal by the Council, European Council and/or the EP for the lack of its enforcement actions. Wilms (2017, p. 68) draws attention to the political damage that would occur because of a negative decision that would confirm the relevant member state's illiberal path by giving it additional legitimacy as well as further alienating the target government and its population from the EU.

Regarding Hungary's democratic backsliding outlined in the first part of this study, infringement proceedings have been used by the Commission as its primary mechanism against Hungary following Article 258 TFEU since 2012 to push Hungary for upholding the rule of law. This preference over Article 7 as the "nuclear option" stems from infringement proceedings' relatively low decisional thresholds when compared to Article 7 (Anders and Priebus, 2020, p. 237) as well as the Commission's reliance on obtaining compliance through engagement (Closa, 2019, p. 697). With the infringement procedures, the Commission prefers engagement with the relative member state through the successive steps of sending a letter of formal notice at the initial phase and progressing with giving a reasoned opinion. The Commission may bring cases before the CJEU if the member state fails to provide a legitimate justification for its failure to comply with particular aspects of EU legislation at this point. Therefore, it combines engagement and ultimate enforcement with the infringement procedures (Closa, 2019, p. 703).

The Commission initiated infringement procedures against Hungary regarding the independence of the judiciary due to the forced retirement (EC, 2012b), the Hungarian Higher Education Law's amendments targeting the CEU's operation in Hungary (EC, 2017a), its new law on foreign-funded NGOs (EC, 2017b), its so-called "Stop Soros" legislation criminalizing support for asylum applicants (EC, 2019c), and Hungary's "child protection law" discriminating "against people based on their sexual orientation and gender identity" targeting the LGBTQ+ community (EC, 2022). In all these cases, the Commission acted based on a violation of specific EU law provisions but still underlined the rights and freedoms dimension of breaches of certain provisions to raise its concerns regarding the rule of law and essential democratic preconditions (Anders and Priebus, 2022, pp. 241-243). It brought all these cases before the CJEU and obtained a judgment of Hungary's non-compliance with specific provisions of EU law -except for the last case due to the absence of a ruling at the time of writing (CJEU, 2012, 2020a, 2020b, 2020c).

The effectiveness of the infringement procedures to induce compliance in the Hungarian case is debatable. Regarding the non-compliance judgments for these infringement cases, the Fidesz governments have not yet implemented any changes in the legislation to comply with the EC's demands and the CJEU's judgments except for partial compliance with the judgment concerning the judicial independence. The Hungarian parliament decided to raise the retirement age to 65 within ten years and reinstate the unlawfully retired judiciary to their former positions if not filled. However, as most of the positions had already been filled, these legislative changes remained ineffective in practice (Anders and Priebus, 2022, pp. 245-255). The low compliance of Hungary with these rulings is justified by Judit Varga, Minister for Justice of Hungary, by revealing the Hungarian perspective, which refuses the Union's competence on rule of law-related matters. She further asserted that the EU's rule of law debate is about differences in the Hungarian migration policy and national cultures instead of genuine rule of law protection (Varga, 2019).

Along with the limits and ineffectiveness concerning the soft power of infringement procedures or persuasion, party politics in the EP have long been a major obstacle for taking action against Hungary. From the very beginning of democratic backsliding, the EP's efforts to take action against the Fidesz government were blocked by the EPP in the EP (Jenne and Mudde, 2012, p.150). Kelemen (2020, p. 487) argues that the EPP has protected the Orban regime because of its delivering seats in the EP, and in turn, contributing to the EPP's remaining as the most powerful party in the EP. As a reflection of this protection, the Members of the European Parliament (MEPs) from the EPP were less inclined to underline Hungary's democratic quality and to support resolutions condemning its democratic backsliding (Meijers and van der Veer, 2019, p. 851).

In this regard, the EPP group rejected the EP's "Tavares Report" (EP, 2013) criticizing the state of fundamental rights in Hungary regarding the values in Article 2 on the grounds of the European leftist parties' intentions to impose their own political agenda on Hungary (Wolkenstein, 2022, p. 58). Besides, the EPP voted against the EP's resolution requesting the Commission to activate its "Rule of Law Framework" against Hungary in 2015 and the party group leadership publicly defended the Fidesz government (Kelemen, 2017, p. 226). However, as a recent development, internal divisions in the EPP about the Orban regime came forward, especially after the government's expulsion of the CEU. Some MEPs from the EPP argued for Fidesz's expulsion from the EPP.² In the meantime, the EPP leadership expressed their support for the "Sargentini Report" (Wolkenstein, 2022, p. 59) calling for triggering Article 7 against Hungary (EP, 2018a). A driver for this radical

² Orban announced that Fidesz quit the EPP after a possible vote of suspension or expansion in March 2021. For details, please see De la Baume, 2021.

change in the EPP's position on Hungary's backsliding is explained by Manfred Weber's –head of the EPP parliamentary group– calculations of low chances of getting support from other political parties in the EP to run as the next president of the Commission in case of his continuous backing up the Orban regime (Hegedüs, n.d.).

The EP, as a first in its history, triggered the first phase of Article 7 against Hungary in September 2018 to determine “the existence of a clear risk of a serious breach ... of the values referred to in Article 2” by Hungary (EP, 2018b). Wolkenstein (2022, p. 67) draws attention to initiating Article 7 procedure's possibility only thanks to the endorsement of the resolution by a majority within the EPP. This move of the EP is significant for putting normative pressure on Hungary. However, MSs showed great reluctance over the years to vote for determining whether there is “a clear risk of a serious breach of the values referred to in Article 2 TEU”. The EP expressed its dissatisfaction with the Council on the Article 7 progress against Hungary in a resolution in May 2022, calling the Council to demonstrate a sincere commitment for making real progress in accordance with its obligations under the Treaties to uphold the values in Article 2 TEU (EP, 2022a). Under these circumstances, progressing towards the second phase of Article 7 is not likely to be the case. Since the determination of “the existence of a serious and persistent breach by a Member State of the values referred to in Article 2” requires unanimity in the European Council, one significant impediment is the Hungarian-Polish coalition's role³. The two countries have expressed solidarity and political support for each other against pressure from the EU (Holesch and Kyriazi, 2022). This veto assurance acts as a crucial impediment advancing Article 7 as the last resort and “nuclear option” to restrain democratic backsliding.

Most recently, the Commission activated “the rule of law conditionality” mechanism against Hungary on April 27, 2022, by giving its first notification due to its concerns over corruption. Based on its assessment of the existence of breaches of the rule of law principle in the areas related to “the implementation of the Union budget and the compliance with sound financial management principles”, it adopted a proposal on measures to

³ The specific coalition between Hungary and Poland stems from the fact that both governments in these countries have illiberal tendencies and are backsliding from democracy. The friendship between the two countries has been emphasized reflecting the identitarian focus of this coalition (Holesch and Kyriazi, 2022, p. 6). Hungary and Poland are the two founding members along with the Czech Republic and Slovakia of the Visegrad Group (V4) where they are in close cooperation. The reason for this close cooperation stems from common interests in foreign policy and in the EU affairs after their post-communist transitions (Pinzari, 2014, p. 165) as well as they are “linked by neighbourhood and similar geopolitical situation but above all by common history, traditions, culture, and values” (Ministry of Foreign Affairs Republic of Poland, n.d.). Since their backsliding began, this coalition has had its first significant impact on European level particularly during the migration crisis when they adopted similar rhetoric highlighting the threat that Muslims pose to Christian identity and Euroscepticism that the EU policies do harm national sovereignty (Everett, 2021). Their coalition regarding the rule of crisis serves as a protection from the EU's sanction regimes requiring unanimity.

protect the Union budget against the rule of law violations in Hungary on September 18, 2022. The Council decided on December 12, 2022, to suspend 55% of the cohesion funds, approximately 6.3 billion Euros in budgetary commitments for Hungary (Council, 2022). To release these funds, the Orban government has to meet a total of 27 super milestones set by the Commission and adopted by the Council in the Hungarian recovery and resilience plan. Most of these super milestones are related to the rule of law issues such as corruption, judicial independence and transparency of the decision-making process that have already been raised by the EU in its rule of law-related mechanisms (EP, 2023). As the necessary milestones are not met by Hungary, the frozen EU funds to Hungary amounted to 27.8 billion Euros, making 68% of total EU transfers to Hungary as of January 2023 (Freund, 2023).

Last but not least, the EP became the first EU institution in September 2022 to formally acknowledge that Hungary is no longer a democracy by naming it as an “electoral autocracy” (EP, 2022b). This move by the EP is bold considering the reluctance and the lack of political will on the side of the EC, the Council and the European Council to admit that the EU has an authoritarian member of its own. However, Cotter (2022) identifies a key legal issue arising from the EP’s acknowledgement of a non-democratic EU member. He argues that Article 10 TEU requires the EU –in this regard, the Council and the European Council- to be composed of democracies. Therefore, it could be inferred that an undemocratic member state is not entitled to be represented in the European Council or the Council, to contribute to confronting its own democratic legitimacy enquiry (Cotter, 2022, p. 69)

Conclusion

The EU is not an exception for democratic backsliding as the existence of a global democratic decline in established democracies has become clear in recent years. Hungary under the Fidesz governments led by Viktor Orban has become the EU’s first non-democracy as categorized under different nametags by several scholars and international democracy-ranking institutions. Orban since the early 2010s embarked on consolidating his power by undertaking constitutional and institutional changes weakening the checks on the executive, namely the Fidesz party. It has been a significant challenge for the EU to act with one voice in responding to Orban’s undermining the rule of law. Hungary’s anti-democratic practices since the early 2010s are of significance for revealing the EU lack of political will and insufficiency of pre-existing mechanisms.

Hungary’s democratic backsliding has led to the expansion of the EU’s toolbox for the rule of law protection. The Commission developed several mechanisms for preventing the rule of law-related issues before the EU is required to response formally. For this purpose, the Commission places dialogue at the centre of its approach to address the rule of law breaches.

However, its soft mechanisms are not enough to deter those MSs - as Hungary has demonstrated- deliberately challenging the rules of the game. Besides, the Commission lacks the necessary political will given that it has not yet activated its “Rule of Law Framework” against Hungary. Member state preferences, party politics in the EP and the institutional design requiring genuine cooperation between the EU institutions and MSs have played their part as impediments to discourage Hungary from backsliding.

Although the EU had the Article 7 existing since the pre-democratic backsliding era as a preventive mechanism, the decisional traps and lack of political will have long impeded its use. Even after the EP’s triggering the Article 7 procedures against Hungary, the meaningful progress has not yet been made. As the Hungarian case exemplifies, although membership in the EU is a voluntary decision, sovereignty is still an issue at stake for some MSs even after accession given their reluctance for supranational interference in the rule of law-related issues. Hungary is testing the efficacy of the EU’s rule of law protection mechanisms. As the Hungarian regime’s questioning the EU competence through the CJEU’s judgments in non-compliance resulting from infringement procedures, the issue is not just developing new tools or appealing the existing ones but also the deficiency of enforcement. For this reason, democratic backsliding constitutes an existential crisis for the EU “as a community based on the rule of law”.

Hakem Değerlendirmesi: Dış Bağımsız

Yazar Katkısı: Fulya Akgül Durakçay % 100

Destek ve Teşekkür Beyanı: Çalışma için destek alınmamıştır.

Etik Onay: Bu çalışma etik onay gerektiren herhangi bir insan veya hayvan araştırması içermemektedir.

Çıkar Çatışması Beyanı: Çalışma ile ilgili herhangi bir kurum veya kişi ile çıkar çatışması bulunmamaktadır.

Peer Review: Independent double-blind

Author Contributions: Fulya Akgül Durakçay 100%

Funding and Acknowledgement: No support was received for the study.

Ethics Approval: This study does not contain any human or animal research that requires ethical approval.

Conflict of Interest: There is no conflict of interest with any institution or person related to the study.

References

- Agh, A. (2015). Redemocratization efforts in Hungary as a second try: Civil society organizations and mass movements. *Problemy Polityki Społecznej Studia i Dyskusje*, 31(3), 9-35.
- Agh, A. (2016). The decline of democracy in East-Central Europe: Hungary as the worst-case scenario. *Problems of Post-Communism*, 63(5), 277-287. <https://doi.org/10.1080/10758216.2015.1113383>
- Anders, L.H. and Priebe, S. (2021). Does it help to call a spade a spade? Examining the legal bases and effects of rule of law-related infringement procedures against Hungary. In A. Lorenz and L.H. Anders (Eds.), *Illiberal trends and anti-EU politics in East Central Europe* (235-262). Switzerland: Palgrave Studies in European Union Politics.
- Bajomi-Lazar, P. (2013). The party colonisation of the media. *East European Politics and Societies and Cultures*, 27(1), 69-89. <https://doi.org/10.1177/0888325412465085>.
- Bakke, E. and Sitter, N. (2022). The EU's enfants terribles: democratic backsliding in Central Europe since 2010. *Perspectives on Politics*, 20(1), 22-37. <https://doi.org/10.1017/S1537592720001292>
- Batory, A. (2022). The political context of EU accession in Hungary. The *Royal Institute of International Affairs* Briefing Paper. Retrieved from <https://www.chathamhouse.org/sites/default/files/public/Research/Europe/hungarian.pdf> on 20.06.2023
- Batory, A. (2016). Defying the Commission: Creative compliance and respect for the rule of law in the EU. *Public Administration*, 94(3), 685-699. <https://doi.org/10.1111/padm.12254>
- Batory, A. and Svensson, S. (2019). The use and abuse of participatory governance by populist governments. *Policy and Politics*, 47(2), 227-244. <https://doi.org/10.1332/030557319X15487805848586>
- Bayram, M.H. (2018). Avrupa Birliği'nin dayandığı değerlerin korunması. *T.C. Uyuşmazlık Mahkemesi*, 6(1), 67-82.
- Bermeo, N. (2016). On democratic backsliding. *Journal of Democracy*, 27(1), 5-19.
- Bertelsmann Stiftung. (2012). *BTI 2012 – Hungary country report*. Retrieved from https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2012_HUN.pdf on 11.11.2022
- Bertelsmann Stiftung. (2022). *BTI 2022 country report – Hungary*. Retrieved from https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_HUN.pdf on 11.11.2022

- Bogaards, M. (2018). De-democratization in Hungary: Diffusely defective democracy. *Democratization*, 25(8), 1481-1499. <https://doi.org/10.1080/13510347.2018.1485015>
- Buzogany, A. (2017). Illiberal democracy in Hungary: authoritarian diffusion or domestic causation?. *Democratization*, 24(7), 1307-1325.
- Canveren, Ö. and Akgül Durakçay, F. (2017). The analysis of the Hungarian government's discourse towards the migrant crisis: a combination of securitization and Euroscepticism. *Yönetim ve Ekonomi*, 24(3), 857-876. <https://doi.org/10.18657/yonveek.307339>
- Central European University. (2018, December 3). *CEU forced out of Budapest: to launch U.S. degree programs in Vienna in September 2019*. Retrieved from <https://www.ceu.edu/article/2018-12-03/ceu-forced-out-budapest-launch-us-degree-programs-vienna-september-2019> on 22.02.2023
- Chennamaneni, L. (2019, September 9). Towards a concept of court-packing. <http://dx.doi.org/10.2139/ssrn.3496986>
- Christopoulou, A.E. (2022). Civil society and rule of law backsliding in the EU. *European Public Law*, 28(2), 245-268. <https://doi.org/10.54648/euro2022013>
- Cianetti, L., Dawson, J. and Hanley, S. (2018). Rethinking 'democratic backsliding' in Central and Eastern Europe – looking beyond Hungary and Poland. *East European Politics*, 34(3), 243-256. <https://doi.org/10.1080/21599165.2018.1491401>
- Closa, C. (2019). The politics of guarding the Treaties: Commission scrutiny of rule of law compliance. *Journal of European Public Policy*, 26(5), 696-716. <https://doi.org/10.1080/13501763.2018.1477822>
- Cotter, J. (2022, March 29). To everything there is a season: instrumentalising Article 10 TEU to exclude undemocratic member state representatives from the European Council and the Council. *European Law Review*, 47(1), 69-84. <http://dx.doi.org/10.2139/ssrn.4032080>
- Council of the European Union (Council). (2022, December 12). *Press release – Rule of law conditionality mechanism: Council decides to suspend €6.3 billion given only partial remedial action by Hungary*. Retrieved from <https://www.consilium.europa.eu/en/press/press-releases/2022/12/12/rule-of-law-conditionality-mechanism/> on 19.04.2023
- Csaky, Z. (2020). *Nations in transit 2020: dropping the democratic facade*. Freedom House. Retrieved from https://freedomhouse.org/sites/default/files/2020-04/05062020_FH_NIT2020_vfinal.pdf on 02.02.2023

- Dahl, R.A. (1971). *Polyarchy: participation and opposition*. New Haven and London: Yale University Press.
- De la Baume, M. (2021, March 3). *Orban's Fidesz quits EPP group in European Parliament*. Politico. Retrieved from <https://www.politico.eu/article/epp-suspension-rules-fidesz-european-parliament-viktor-orban-hungary/> on 20.04.2023
- Diamond, L. (1997). Introduction: in search of consolidation. In L. Diamond, M.F. Plattner, Y. Chu and H. Tien (Eds.), *Consolidating the third wave democracies: themes and perspectives* (xiii-xxvii). Baltimore and London: Johns Hopkins University Press.
- Enyedi, Z. (2018). Democratic backsliding and academic freedom in Hungary. *American Political Science Association*, 16(4), 1067-1074. <https://doi.org/10.1017/S1537592718002165>
- EUR-Lex. (n.d.). *Judgment of the Court of 23 April 1986. Parti écologiste "Les Verts" v European Parliament. Action for annulment – information campaign for the elections of the European Parliament. Case 294/83*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61983CJ0294> on 19.04.2023
- European Commission (EC). (2012a, September 12). *Speech: José Manuel Durão Barroso President of the European Commission state of the Union 2012 address plenary session of the European Parliament/Strasbourg 12 September 2012*. Retrieved from https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_12_596 on 04.04.2023
- European Commission (EC). (2012b, April 25). *Press release – Hungary – infringements: European Commission satisfied with changes to central bank statute, but refers Hungary to the Court of Justice on the independence of the data protection authority and measures affecting the judiciary*. Retrieved from https://ec.europa.eu/commission/presscorner/detail/en/IP_12_395 on 07.04.2023
- European Commission (EC). (2013a, September 4). *Speech: The EU and the rule of law – what next?*. Retrieved from https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_13_677 on 03.04.2023
- European Commission (EC). (2013b, September 11). *Speech: state of the Union address 2013*. Retrieved from https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_13_684 on 04.04.2023
- European Commission (EC). (2014, March 11). *Communication from the Commission to the European Parliament and the Council – a new EU framework to strengthen the rule of law COM(2014) 158 final*.

- Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0158&from=EN> on 05.04.2023
- European Commission (EC). (2017a, December 7). *Press release – Commission refers Hungary to the European Court of Justice of the EU over the higher education law*. Retrieved from https://ec.europa.eu/commission/presscorner/detail/es/IP_17_5004 on 07.04.2023
- European Commission (EC). (2017b, December 7). *Press release – infringements – European Commission refers Hungary to the Court of Justice for its NGO law*. Retrieved from https://ec.europa.eu/commission/presscorner/detail/ES/IP_17_5003 on 07.04.2023
- European Commission (EC). (2019a, April 3). *Press release – rule of law: the Commission opens a debate to strengthen the rule of law in the EU*. Retrieved from https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1912 on 07.04.2023
- European Commission (EC). (2019b, July 17). *Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – strengthening the rule of law within the Union - a blueprint for action COM(2019) 343 final*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019DC0343&from=EN> on 08.04.2023
- European Commission (EC). (2019c, July 25). *Press release – Commission takes Hungary to Court for criminalising activities in support of asylum seekers and opens new infringement for non-provision of food in transit zones*. Retrieved from https://ec.europa.eu/commission/presscorner/detail/en/ip_19_4260 on 09.04.2023
- European Commission (EC). (2022, July 15). *Press release – Commission refers Hungary to the Court of Justice of the EU over violation of LGBTIQ rights*. Retrieved from https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2689 on 10.04.2023
- European Commission (EC). (n.d.) *Rule of law mechanism*. Retrieved from https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en on 07.04.2023

- European Council. (1974, December 14). Declaration on European identity. *Bulletin of the European Communities*, (12). Retrieved from https://www.cvce.eu/content/publication/1999/1/1/02798dc9-9c69-4b7d-b2c9-f03a8db7da32/publishable_en.pdf on 02.04.2023
- European Council. (1978, April 7-8). Conclusions of the sessions of the European Council. *Bulletin of the European Communities*, (8). Retrieved from http://aei.pitt.edu/1440/1/Copenhagen_1978.pdf on 02.04.2023
- European Council. (1993, June 21-22). *European Council in Copenhagen – conclusions of the Presidency*. Retrieved from <https://www.consilium.europa.eu/media/21225/72921.pdf> on 02.04.2023
- European Parliament (EP). (2013). *Report on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012) 2012/2130(INI)*. Retrieved from https://www.europarl.europa.eu/doceo/document/A-7-2013-0229_EN.pdf on 14.04.2023
- European Parliament (EP). (2015a, June 10). *European Parliament resolution of 10 June 2015 on the situation in Hungary (2015/2700(RSP))*. Retrieved from https://www.europarl.europa.eu/doceo/document/TA-8-2015-0227_EN.pdf on 09.04.2023
- European Parliament (EP). (2015b, December 16). *European Parliament resolution of 16 December 2015 on the situation in Hungary (2015/2935(RES))*. Retrieved from https://www.europarl.europa.eu/doceo/document/TA-8-2015-0461_EN.pdf on 09.04.2023
- European Parliament (EP). (2016, October 25). *Resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights 2015/2254(INL)*. Retrieved from https://www.europarl.europa.eu/doceo/document/TA-8-2016-0409_EN.html on 06.04.2023
- European Parliament (EP). (2018a, July 4). *Report on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded 2017/2131(INL)*. Retrieved from https://www.europarl.europa.eu/doceo/document/A-8-2018-0250_EN.pdf on 15.04.2023
- European Parliament (EP). (2018b, September 12). *European Parliament resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union,*

- the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded* 2017/2131(INL). Retrieved from https://www.europarl.europa.eu/doceo/document/TA-8-2018-0340_EN.html on 18.04.2023
- European Parliament (EP). (2019, November). *Briefing – protecting the rule of law in the EU: existing mechanisms and possible improvements*. Retrieved from [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/642280/ERS_BRI\(2019\)642280_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/642280/ERS_BRI(2019)642280_EN.pdf) on 04.04.2023
- European Parliament (EP). (2022a, May 5). *European Parliament resolution of 5 May 2022 on ongoing hearings under Article 7(1) TEU regarding Poland and Hungary*. Retrieved from https://www.europarl.europa.eu/doceo/document/TA-9-2022-0204_EN.html on 22.04.2023
- European Parliament (EP). (2022b, September 15). MEPs: Hungary can no longer be considered a full democracy. Retrieved from <https://www.europarl.europa.eu/news/en/press-room/20220909IPR40137/meps-hungary-can-no-longer-be-considered-a-full-democracy> on 15.11.2022
- European Parliament (EP). (2023, January). *Briefing – rule of law-related ‘super milestones’ in the recovery and resilience plans of Hungary and Poland*. Retrieved from [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/741581/I_POL_BRI\(2023\)741581_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/741581/I_POL_BRI(2023)741581_EN.pdf) on 19.04.2023
- European Union (EU). (1992, July 29). Treaty on European Union. *Official Journal of the European Communities*, C 191/1.
- European Union (EU). (2012a, October 26). Consolidated Version of the Treaty on European Union. *Official Journal of the European Union*, C 326/13.
- European Union (EU). (2012b, October 26). Consolidated Version of the Treaty on the Functioning of the European Union. *Official Journal of the European Union*, C 326/47.
- European Union (EU). (2020, December 22). Regulation 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget. *Official Journal of the European Union*, L 433 I/1.
- Everett, J. (2021). Poland and Hungary: democratic backsliding and the shifting European political landscape. *RUDN Journal of Political Science*, 23(3), 394-406. DOI: 10.22363/2313-1438-2021-23-3-394-406.

- Freedom House. (2017). *Freedom in the world 2017: Hungary*. Retrieved from <https://freedomhouse.org/country/hungary/freedom-world/2017> on 14.03.2023
- Freedom House. (2021). *Freedom in the world 2021: Hungary* Retrieved from <https://freedomhouse.org/country/hungary/freedom-world/2021> on 29.03.2023
- Freedom House. (2023). *Freedom in the world 2023: Hungary*. Retrieved from <https://freedomhouse.org/country/hungary/freedom-world/2023> on 29.03.2023
- Freund, D. (2023, January 31). *Poland and Hungary: more than two thirds of EU funds frozen – background*. Freund. Retrieved from <https://danielfreund.eu/poland-and-hungary-more-than-two-thirds-of-eu-funds-frozen-background/?lang=en> on 19.04.2023
- Gandhi, J. (2019). The institutional roots of democratic backsliding. *The Journal of Politics*, 81(1), 11-16. <http://dx.doi.org/10.1086/700653>
- Grabowska-Moroz, B. and Kochenov, D. (2020, September 11). EU rule of law: the state of play following the debates surrounding the 2019 Commission’s communication. *SSRN Electronic Journal*, 1-18. <http://dx.doi.org/10.2139/ssrn.3690975>
- Griffen, S. (2020). Hungary: a lesson in media control. *British Journalism Review*, 31(1), 57-62. <https://doi.org/10.1177/0956474820910071>
- Güneş, A. (2016). Avrupa Birliği’nin temel değerleri üzerine. *TBB Dergisi*, (125), 307-340.
- Havasi, V. (2022). Power and powerlessness of the civil society in Hungarian illiberal democracy between 2010-2022. *Politics in Central Europe*, 18(4), 499-529. <https://doi.org/10.2478/pce-2022-0022>
- Hegedüs, D. (n.d.) *European Parliament’s Article 7 against Hungary not a nuclear option, but the right step*. The German Marshall Fund of the United States (GMF). Retrieved from <https://www.gmfus.org/news/european-parliaments-article-7-against-hungary-not-nuclear-option-right-step> on 16.04.2023
- Herman, L.E. (2015). Re-evaluating the post-communist success story: party elite loyalty, citizen mobilization and the erosion of Hungarian democracy. *European Political Science Review*, 8(2), 251-284. <https://doi.org/10.1017/S1755773914000472>
- Holesch, A. and Kyriazi, A. (2022). Democratic backsliding in the European Union: the role of the Hungarian-Polish coalition. *East European Politics*, 38(1), 1-20. <https://doi.org/10.1080/21599165.2020.1865319>
- Iusmen, I. (2015). EU leverage and democratic backsliding in Central and Eastern Europe: the case of Romania. *Journal of Common Market Studies*, 53(3), 593-608. <https://doi.org/10.1111/jcms.12193>

- Jenne, E.K. and Mudde, C. (2012). Hungary's illiberal turn: can outsiders help?. *Journal of Democracy*, 23(3), 147-155.
- Karl, T.L. (1995). The hybrid regimes of Central America. *Journal of Democracy*, 6(3), 72-86.
- Kelemen, R.D. (2017). Europe's other democratic deficit: national authoritarianism in Europe's democratic union. *Government and Opposition*, 52(2), 211-238. <https://doi.org/10.1017/gov.2016.41>
- Kelemen, R.D. (2020). The European Union's authoritarian equilibrium. *Journal of European Public Policy*, 27(3), 481-499. <https://doi.org/10.1080/13501763.2020.1712455>
- Kochenov, D. and Pech, L. (2015, July 3). Upholding the rule of law in the EU: on the Commission's 'pre-Article 7 procedure' as a timid step in the right direction. *EUI Working Papers* (2015/24). <http://dx.doi.org/10.2139/ssrn.2625602>
- Kovacs, B.A. (2014). *Nations in transit 2014: Hungary*. Freedom House. Retrieved from https://freedomhouse.org/sites/default/files/NIT14_Hungary_final.pdf on 28.02.2023
- Kovacs, Z. and Vida, G. (2015). Geography of the new electoral system and changing voting patterns in Hungary. *Acta Geobalcanica*, 1(2), 55-64. <http://dx.doi.org/10.18509/AGB.2015.06>
- Mahony, H. (2014, July 28). *Orban wants to build "illiberal state"*. EUobserver. Retrieved from <https://euobserver.com/eu-political/125128> on 20.11.2022
- Makszimov, V. (2021, November 17). *"Voter tourism": new Hungarian residency law raises risk of electorate manipulation, NGO warn*. Euractiv. Retrieved from <https://www.euractiv.com/section/elections/news/voter-tourism-new-hungarian-residency-law-raises-risk-of-electorate-manipulation-ngos-warn/> on 30.11.2022
- Meijers, M.J. and van der Veer, H. (2019). MEP responses to democratic backsliding in Hungary and Poland. An analysis of agenda-setting and voting behaviour. *Journal of Common Market Studies*, 57(4), 838-856. <https://doi.org/10.1111/jcms.12850>
- Ministry of Foreign Affairs Republic of Poland. (n.d.). *Visegrad Group*. Retrieved from [https://www.gov.pl/web/diplomacy/visegrad-group#:~:text=The%20Visegrad%20Group%20\(V4\)%20is,traditions%2C%20culture%2C%20and%20values](https://www.gov.pl/web/diplomacy/visegrad-group#:~:text=The%20Visegrad%20Group%20(V4)%20is,traditions%2C%20culture%2C%20and%20values) on 19.06.2023
- Molnar, V. (2020). Civil Society in an illiberal democracy: government-friendly NGOs, "foreign agents", and uncivil publics. In J.M. Kovacs

- and B. Trencsenyi, (Eds.), *Brave New Hungary: Mapping the "System of National Cooperation* (51-72). London: Lexington Books.
- Nagle, J. (1997). Ethnos, demos and democratization: a comparison of the Czech Republic, Hungary and Poland, *Democratization*, 4(2), 28-56. <https://doi.org/10.1080/13510349708403514>
- Pech, L. (2022). The rule of law as a well-established and well-defined principle of EU law. *Hague Journal on the Rule of Law*, 14, 107-138. <https://doi.org/10.1007/s40803-022-00176-8>
- Pinzari, S. (2014). The European Union as a diplomatic actor: the role of Visegrad countries in shaping the EU's foreign policy. In J. Dyduch, M. Michalewska-Pawlak and R. Murphy (Eds.), *European Union as a Global Actor* (157-173). Warsaw: ASPRA.
- Pridham, G. (2005). *Designing democracy: EU enlargement and regime change in post-communist Europe*. New York: Palgrave Macmillan.
- Repucci, S. and Slipowitz, A. (2022). *Freedom in the world 2022: the Global expansion of authoritarian rule*. Freedom House. Retrieved from <https://freedomhouse.org/report/freedom-world/2022/global-expansion-authoritarian-rule> on 02.03.2023
- Scheppele, K.L. (2015). Understanding Hungary's constitutional revolution. In A. von Bogdandy and P. Sonnevend (Eds.), *Constitutional crisis in the European constitutional area: theory, law and politics in Hungary and Romania* (111-124). London: Hart/Beck.
- Scheppele, K.L. (2022). How Viktor Orban wins. *Journal of Democracy*, 33(3), 45-61.
- Schimmelfennig, F. and Sedelmeier, U. (2020). The Europeanization of Eastern Europe: the external incentives model revisited. *Journal of European Public Policy*, 27(6), 814-833. <https://doi.org/10.1080/13501763.2019.1617333>.
- Schumpeter, J.A. (2003). *Capitalism, Socialism and Democracy*. London and New York: Routledge.
- Sedelmeier, U. (2017). Political safeguards against democratic backsliding in the EU: the limits of material sanctions and the scope of social pressure. *Journal of European Public Policy*, 24(3), 337-351. <https://doi.org/10.1080/13501763.2016.1229358>
- Sitter, N. and Bakke, E. (2019, August 28). Democratic backsliding in the European Union. *Oxford Research Encyclopedia of Politics*. <https://doi.org/10.1093/acrefore/9780190228637.013.1476>
- Sodaro, M. (2008). *Comparative Politics: A Global Introduction*. New York: McGraw Hill.
- Soyaltın Colella, D. (2020). Avrupa Birliği'nde hukukun üstünlüğü krizi üye ve aday ülkelere yönelik önleyici politikaların siyaseti. *Pamukkale*

Üniversitesi Sosyal Bilimler Enstitüsü Dergisi, 38, 69-85.
<https://doi.org/10.30794/pausbed.650339>

- Staudinger, I. (2022). The rise and fall of rule of law conditionality. *European Papers*, 7(2), 721-737. Doi: 10.15166/2499-8249/595
- Szeles, A. (2015, June 24). "Semi-consolidated democracy": *Freedom House downgrades Hungary*. Liberties. Retrieved from <https://www.liberties.eu/en/stories/semi-consolidated-democracy-freedom-house-downgrades-hungary-sn-5459/24410> on 03.03.2023
- Tanacs, G. and Huey, N. (2020, June 16). *Hungary ends emergency powers, but new law opens up potential to re-apply them*. Euronews. Retrieved from <https://www.euronews.com/2020/06/16/hungary-debates-end-to-emergency-powers-but-new-law-opens-up-potential-to-re-apply-them> on 29.03.2023
- The Court of Justice of the European Union (CJEU). (2012, November 6). *C-286/12 - Commission v Hungary*. Retrieved from <https://curia.europa.eu/juris/liste.jsf?num=C-286/12> on 19.04.2023
- The Court of Justice of the European Union (CJEU). (2020a, October 6). *C-66/18 - Commission v Hungary (Enseignement supéieur)*. Retrieved from <https://curia.europa.eu/juris/liste.jsf?num=C-66/18> on 19.04.2023
- The Court of Justice of the European Union (CJEU). (2020b, June 18). *C-78/18 - Commission v Hungary (transparency of associations)*. Retrieved from <https://curia.europa.eu/juris/liste.jsf?num=C-78/18> on 19.04.2023
- The Court of Justice of the European Union (CJEU). (2020c, December 17). *C-808/18 - Commission v Hungary (Accueil des demandeurs de protection internationale)*. Retrieved from <https://curia.europa.eu/juris/liste.jsf?num=C-808/18> on 19.04.2023
- Varga, J. (2019, November 22). *Judit Varga: facts you always wanted to know about rule of law but never dared to ask*. Euronews. Retrieved from <https://www.euronews.com/2019/11/19/judit-varga-facts-you-always-wanted-to-know-about-rule-of-law-hungary-view> on 12.04.2023
- Varieties of Democracy (V-Dem) Institute. (2020). *Autocratization Surges – Resistance Grows Democracy Report 2020*. Retrieved from https://v-dem.net/documents/14/dr_2020_dqumD5e.pdf on 22.02.2023
- Von Bogdandy, A. and Lachny J. (2020, July 21). Suspension of EU funds for member states breaching the rule of law – a dose of tough love needed?. *Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper* (2020-24). <http://dx.doi.org/10.2139/ssrn.3638175>
- Wahl, T. (2020, December 8). *Council Launches Rule of Law Dialogue*. The European Criminal Law Associations' Forum. Retrieved from

<https://eucrim.eu/news/council-launches-rule-law-dialogue/#:~:text=On%20the%20basis%20of%20the,meeting%20on%2013%20October%202020> on 08.04.2023

- Waldner, D. and Lust, E. (2018). Unwelcome change: coming to terms with democratic backsliding. *Annual Review of Political Science*, 21, 93-113. <https://doi.org/10.1146/annurev-polisci-050517-114628>
- Wilkin, P. (2018). The rise of “illiberal” democracy: the Orbanization of Hungarian political culture. *Journal of World-Systems Research*, 24(1), 5-42. <https://doi.org/10.5195/jwsr.2018.716>
- Wilms, G. (2017). *Protecting fundamental values in the European Union through the rule of law: Articles 2 and 7 TEU from a legal, historical and comparative angle*. Florence: European University Institute.
- Wolkenstein, F. (2022). European political parties’ complicity in democratic backsliding. *Global Constitutionalism*, 11(1), 55-82. <https://doi.org/10.1017/S2045381720000386>