

The Winner  
Takes It All:  
Kaczyński,  
Orbán  
and Ponta  
Versus  
Constitutional  
Courts



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The processes leading to the EU accession of post-communist countries in 2004 and 2007 posed a unique challenge for those states. They were required to transform politically while at the same time strengthening democracy and the rule of law. The EU and the mechanisms of integration effectively pushed for much needed reforms. The Copenhagen criteria and the adoption of the EU's *acquis* has helped the Central European region resist the calls of special interest groups that would eventually result in bad policies. Central European countries remain committed to a parliamentary system of governance as opposed to the presidential system favored by most of their counterparts in the former Soviet bloc. They remain committed to the balance of powers and the rule of law as opposed to the authoritarian tendencies and the rule of a party or a leader. Their stories were supposed to have happy endings and make Central Europe a valedictorian of the European Union. Unfortunately, this did not last long.

**T**he governments of Victor Ponta in Romania, of Victor Orbán in Hungary, and of Law and Justice in Poland showed that the transition into a liberal democracy is not given once and for all. So far in the 2010s, we could observe dangerous and populist attempts of limiting the balance of powers and shifting in a direction of strong-arm regime in the three abovementioned countries. The radical agenda came into Central European picture, in the heart of the European Union, and made it go astray. Even if the goal of the actions taken was very similar, the means applied were different. Despite that, there is one thing that the governments of Romania, Hungary and Poland had in common: they all perceived constitutional courts as their enemy and tried to circumscribe their power and authority. Thus, all three governments embarked on a journey, the destination of which was to cripple

the constitutional courts, and silence all possible reactions after the damage was done.

## ROMANIA

The Romanian Constitutional Court was significantly empowered in 2003, in light of the EU accession. Until then it had been a subordinate of the parliament. The external, European dimension of this reform was clear in the Parliamentary Commission for the Revision of the Constitution and in the parliamentary debates. The reformed Court received the role of a warrantor of the supremacy of the Constitution. It was provided with the power of ultimate interpretation of the Constitution as well as with powers of mediation and legal resolution with regard to conflicts between public institutions.

President Traian Băsescu (Democratic Liberal Party; PDL) and Prime Minister Victor Ponta (Social Democratic Party; PSD)



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became locked in a constitutional judicial conflict over Romania's representation at the meeting of the European Council on June 28, 2012. Băsescu issued a complaint to the Constitutional Court. Ponta got the parliament to pass a resolution mandating that the Prime Minister represents the country in Brussels<sup>1</sup>. That decision triggered a fierce conflict between the President and the Prime Minister. President Băsescu sent a letter to PM Ponta in which drew attention to the fact that participation in the European Council without a mandate from the president legally means the ownership of constitutional prerogatives of the President. Shortly after this, Ponta tore up the letter during a press conference.

On June 27, 2012 the Romanian Constitutional Court decided that the President had the constitutional right to attend the session of the European Council. Despite

that, it was Ponta who attended it (thus ignoring the ruling) and accused Băsescu of manipulating the Court and other public institutions. Ponta started proceedings to suspend Băsescu for his own political gain. The government took the Official Monitor in authority, thus delaying publication of the Constitutional Court's decision regarding participation in the session of the European Council and making the presence of Victor Ponta in Brussels legal. The Court thereby lost power over the parliament.

Ponta attacked the Constitutional Court, calling for his justice minister to remove all of the judges who voted against him as regards the matter of the Brussels visit from office. In the following days, the Chamber of Deputies approved the referendum law amendment, which established that the President can be easily dismissed – by only half the votes of all the voters. Until that point, the law stipulated that the President is dismissed only if the proposal was passed by the majority of voters registered on electoral lists. On June 27, 2012 the pure uninominal voting law, initiated by Victor Ponta, was declared unconstitutional. On the same day, PDL issued a complaint to the Constitutional Court as regards the referendum law and the Constitutional Court law amendment.

All the above mentioned developments caused the Constitutional Court to send a rather "special" letter to all of the European officials on July 3, 2012 – a plea for help. Nevertheless, Ponta's party passed an emergency resolution through the parliament, removing the power of the Constitutional Court to review any of the parliament's actions. Constitutional judges were deprived of their powers and were not able to take any steps to end the crisis<sup>2</sup>. Ponta

<sup>2</sup> On July 3 and July 4, parliament dismissed the speakers of the Senate and Chamber of Deputies – both members of the PDL – and the country's Ombudsman,

<sup>1</sup> 249 votes in favor, 30 against and two abstentions.

blatantly undermined the authority of the Constitutional Court, thereby upsetting respect for rule of law and democratic checks and balances.

Thereafter, Bănescu was accused of high treason for overstepping his powers through illegal phone-tapping, use of national intelligence services against political enemies, and pressuring prosecutors in criminal cases and was suspended by the parliament in his duties as the President of Romania<sup>3</sup>, of which he then notified the Constitutional Court. On July 9, 2012, the Constitutional Court ascertained President Bănescu's suspension and confirmed Crin Antonescu (Ponta's party member) as the Interim President.

A referendum on impeaching President Bănescu was held in Romania on July 29, 2012. 46.24% of citizens entitled to vote attended the referendum. 87.52% voted for Bănescu's dismissal and against 11.15%. On August 21, the Constitutional Court decided that the Romanian referendum on the presidential impeachment is invalid due to the fact that the turnout did not reach the mandatory 50%. Romanians were sharply divided between two camps.

The situation in Romania met with strong criticism coming from all over Europe. President of the European Commission José Manuel Barroso expressed his serious concerns in relation to the rule of law, the independence of the judiciary, and the role of the Constitutional Court in the country.

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replacing them with members of the ruling coalition. Significantly, the President of the Senate is first in line to succeed the country's President.

<sup>3</sup> According to the Romanian Constitution, this is the first step of the impeachment procedure. An incumbent president who severely violates the Constitution may be suspended by the parliament in joint session. If the suspension motion passes, there is a call for a referendum of impeachment within no more than 30 days from the suspension.

He emphasized that the necessary checks and balances in a democratic system must be guaranteed. He made it clear that the Romanian government must respect the full independence of the judiciary and restore the power of the Constitutional Court and ensure that its decisions are observed.

The then President of the European Liberal Democrat and Reform Party, Graham Watson, alleged that Bănescu's mandate is "illegal" and showed that the best solution for Romania would be to organize new parliamentary and presidential elections. Watson asked the European Commission why it does insist on applying the quorum rule to the presidential impeachment referendum, when in all EU countries, the president is dismissed with 50% plus one of all votes.

Thorbjørn Jagland, Secretary General of the Council of Europe, said he was concerned by the recent developments in Romania, especially those related to the President's suspension, and asked the Venice Commission, the advisory body for the 47-nation Council of Europe<sup>4</sup>, to examine whether these actions are compatible with the rules of state of law and democracy. Moreover, Jagland demanded an investigation of the situation.

On July 2, the Romanian Constitutional Court notified the Venice Commission about what it called "virulent government attacks against its judicial independence". On July 4, the Venice Commission expressed deep concerns over the situation, while the European Commission said it was watching the country closely. The Venice Commission evidenced big problems with respect to many issues that it believed strongly affected the basic principles of the

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<sup>4</sup> The European Commission for Democracy through Law, known as the Venice Commission, is an advisory body of the Council of Europe, composed of independent experts in the field of constitutional law.



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IT ALSO ERODES  
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rule of law. The Commission cited the intent to restrict the competences and jurisdiction of the Constitutional Court by using an emergency ordinance, creating special Senate commission and by the general disrespect shown to judges by demanding their dismissal.

The situation in Romania showed how radical politicians provoke tensions between the executive branch and the judiciary, but also between the people and the judiciary, for their own particular interests. The progress that Romania achieved while reforming itself to enter the EU was partly reverted by the populist government and its illiberal agenda. This revealed the weaknesses of immature democracy in Romania and presented a more general opposition to the rule of law. The Constitution lost this round with the "politics above all" mindset.

#### **HUNGARY**

After the political crisis related to Prime Minister Ferenc Gyurcsány's speech about his party (social democratic MSZP) and the government lying to the public in 2010, the conservative Fidesz party won 52% of votes and more than two-thirds (263 out of 386) of seats in the Hungarian Parliament. The newly elected Prime Minister Viktor Orbán called the situation a "polling booth revolution".

The Fidesz very quickly started to undermine the independence of the media, the central bank, judiciary and other institutions. This especially concerned the Constitutional Court, which – given the weak presidential prerogatives and the lack of an upper house – had played an especially vital role in the Hungarian political system. Orbán's government had, on many occasions, challenged the ultimate nature of the Constitutional Court's decisions. In some cases, when the Court found an act to be incompatible with the Constitution, the





Parliament would either amend the latter and adopt the act in an unchanged form, or raise the rank of the act to constitutional level. Orbán resorted to this trick several times, both under the “old” and the “new” Constitution.

Shortly after the elections, the National Assembly of Hungary passed a bill limiting the jurisdiction of the Constitutional Court on state budget and taxation matters. The law eliminated the Court’s ability to examine the “crisis taxes” imposed on banks, energy companies, foreign retail and telecommunications companies.

According to Article 24 paragraph 5 of the former Constitution, the Constitution could be amended by a two-third majority of the votes of the MPs, however the process of forming a new constitution requires the votes of four-fifth of the MPs. The Fidesz government amended the four-fifth rule to a two thirds rule and then initiated a process for a drafting a new constitution.

The Fundamental Law of Hungary was voted by the Parliament on April 25, 2011, on the first anniversary in office of the governing Fidesz, and came into force on January 1, 2012. Hungary’s new Constitution weakens key checks and balances in government. It also erodes elements of liberal democracy by manipulating electoral districts, restricting media and religious freedom, and promoting a version of ethnic nationalism that may harm minority groups.

The changes in law had a big influence on the composition of the Constitutional Court. The changes made by the parliamentary majority can be summed up in three ways:

Previously, according to the rules of appointment, the governing majority could appoint constitutional judges only together

with the opposition. However, this rule was amended in 2010 to allow the majority to appoint new members on its own.

In 2011, the number of judges in the Constitutional Court was increased from 11 to 15.

In 2012 and 2013, the length of a judicial term was increased from 9 to 12 years, followed by the elimination of the age limit (previously set at 70 years).

As a consequence, 11 of the 15 judges have been appointed to the Constitutional Court by the Fidesz majority without any negotiations with the opposition. In this way, the Court has been “packed” with judges supportive of the governing majority’s agenda. Not surprisingly, some judges were found to have voted in support of the government in 100% of the cases<sup>5</sup>. Moreover, the new constitution vested the parliament with the right to nominate the court’s president (previously, the court’s judges selected one of themselves to be the presiding judge).

Furthermore, the Parliament dominated by Orbán’s party voted for a set of government-backed constitutional amendments, despite warnings from the European Union, the government of the United States and human rights groups that the changes could undermine Hungary’s democracy. President Jose Manuel Barroso’s office said the amendments “raise concerns with re-

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<sup>5</sup> The Eötvös Károly Institute, the Hungarian Helsinki Committee and the Hungarian Civil Liberties Union studied 23 high-profile cases, ten of which were decided before Fidesz-appointed judges constituted a majority, and thirteen after. While rulings in all ten cases decided before the judges selected by the current government formed a majority were contrary to the interests of the government, as soon as the ‘one-party’ judges represented the majority, the imbalance became apparent: in ten out of thirteen cases the ruling favored the government’s interests. Judges Egon Dienes-Oehm, Béla Pokol and Mária Szívós almost always decided in favor of the supposed interests of the government even before the new judges came to form a majority.



spect to the rule of law” (similarly as it was in the case of Romania), which Hungary needs to address with Brussels. Marta Pardavi, Co-Chair of the Hungarian Helsinki Committee, said that “[t]here are no longer any doubts whether there is a constitutional democracy in Hungary – there isn’t one”.

The Fidesz ignored all instances of foreign criticism. “We won’t allow either any international business lobby or the political forces that speak on their behalf to interfere with the decisions of the Hungarian Parliament” – said Antal Rogan, head of the parliamentary faction of Orbán’s Fidesz.

In a synergetic and complementary relationship with EU institutions, the Council of Europe’s Venice Commission delivered eleven different opinions on the situation in Hungary. One of the issues examined was judiciary independence, in regards to which the Commission concluded that essential elements of the reform contravened European standards.

Within the EU, the European Parliament discussed the situation in Hungary with the Committee on Civil Liberties, Justice and Home Affairs holding a special hearing dedicated to Hungary. The plenary adopted a resolution on the situation in Hungary, calling for consideration of “whether to activate necessary measures”, including the initiation of the sanctioning procedure as laid down in Article 7 of the TEU.<sup>1</sup> In the beginning of 2013, following the presentation of the draft Fourth Amendment to the Hungarian Fundamental Law, the European Commission also expressed its concerns with respect to the principle of the rule of law.

In January 2012, the European Commission launched infringement procedures against Hungary on three different grounds.<sup>6</sup> One

of the fields concerned the independence of the judiciary. The European Commission criticized the fact that the retirement age for judges, prosecutors and notaries would be lowered radically and rapidly to 62 from 70 years of age. The Commission could find no objective justification for treating judges, prosecutors and notaries differently from other professional groups, especially at a time when retirement age levels across Europe are being raised, not lowered. These concerns could not be resolved at an informal level and were thus brought before the Court of Justice of the European Union (CJEU). Some other justice-related issues were addressed at an administrative level, including the newly established National Judicial Office, which was set up to take on significant powers to manage the courts’ operations, human resources, budget and allocation of cases. It ended with the judgment of November 6, 2012, when the CJEU found that the radical and rapid lowering of the retirement age violated the EU Employment Directive.

## POLAND

Led by Eurosceptic former Prime Minister Jarosław Kaczyński, the conservative and populist Law and Justice (PiS) won an unprecedented majority in the October 2015 general election after eight years in opposition, during two consecutive terms under the Civic Platform (PO). Beata Szydło, picked by J. Kaczyński as the party’s frontwoman after an impressive performance as campaign manager for Andrzej Duda, became the Prime Minister.

In November, Law and Justice annulled the appointment of five Constitutional Tribunal judges nominated in October right before the elections by the previous parliament dominated by the Civic Platform, the for-

<sup>6</sup> One was concerned with the independence of the na-

tional central bank; the other one was connected with data protection.



mer ruling party. During one of the late-night voting sessions, the bill was voted for by 270 MPs from the ruling conservative Law and Justice and the opposition populist Kukiz'15 parties, and against by 40 MPs from the Nowoczesna (*Modern*) and the agrarian Polish People's Party (PSL). All of the Civic Platform MPs (with the exception of one) left the room for the voting.

Ryszard Petru, head of the opposition Nowoczesna party, told journalists that the PiS party "is testing how far they can go". He also added: "[i]n an address to the Sejm [prior to the voting], I said this was a 'Blitzkrieg'; [...] a well prepared, unannounced, and quick attack on the Constitutional Tribunal"; "Just because the Civic Platform made mistakes in the past, it does not mean that PiS can 'go wild'. It will now change all the judges of the Constitutional Tribunal, and appoint their own. All of this could happen over a very short period of time. Not only could this be unconstitutional, it could also be invalid [on a larger scale]", Petru said. He referred to what had happened in the summer of 2015.

In June 2015, the Sejm amended the Constitutional Tribunal law to allow the Parliament to appoint five judges at the end of its term, including two whose terms of office were not due to expire until December that year, by which time the new Sejm would have already convened. However, the five judges were unable to assume their posts because Law and Justice-backed President Andrzej Duda did not accept their oaths. This opened the way for the newly-elected Sejm to choose five new Tribunal members, in spite of loud protests from opposition parties and legal experts.

In December 2015, the Tribunal ruled that the appointment of two of the five PO-nominated judges was unconstitutional, but that the other three were nominated

legally and should be sworn in immediately. However, President Duda argued that the Tribunal did not have the right to make judgements about the constitutionality of the appointments by the Sejm. In the middle of the night, President Duda swore in the five judges nominated by the new Sejm.

Later that month, PiS passed new legislation that the opposition decried as damaging to the checks and balances within the government. The law creates new hurdles for the Tribunal. The new legislation will require the court to have 13 judges present, as well as a two-thirds majority vote to make a ruling. The previous procedure required only nine judges for the most contentious cases<sup>7</sup> and simple majority of the 15 total judges. The legislation will also introduce a longer waiting period between the time a ruling is to be made and the time the decision is solicited. The time is now set at three to six months – a massive increase from the previous policy of two weeks<sup>8</sup>.

The PiS government's actions met with vociferous protests from opposition politicians and media. The first to protest were legal scholars, lawyers and judges, who issued public statements warning that the new government was undermining the Constitution. The opposition became mobilized and, to a degree, united by the crisis. Thousands of Poles participated in demonstrations organized by the Committee for the Defense of Democracy (KOD)<sup>9</sup>, a new civic movement, on the two

<sup>7</sup> In many cases 5 or even 3 judges were enough.

<sup>8</sup> PiS also proposed to relocate the Tribunal. The idea was to move it far away from politicians and media in Warsaw to some backwoodstown in the East. It was obviously an attempt to undermine the Tribunal's position. Eventually, PiS backed away from this proposal. The Kukiz'15 party suggested the court-packing plan and increasing the number of judges from 15 to 18.

<sup>9</sup> KOD is clearly positioning itself as an heir to the 1976 Committee in Defense of Workers (KOR), a precursor to the 10-million-strong Solidarity movement.



WHILE NEWLY ELECTED GOVERNING PARTIES USUALLY ENJOY A POST-ELECTION “HONEYMOON” PERIOD, RESEARCHERS SUGGEST THAT THE CRISIS HAS LED TO A DROP IN SUPPORT FOR PIS AMONG MORE MODERATE, CENTRIST VOTERS

Saturdays before Christmas; the largest of which, in Warsaw, was attended by app. 50,000 people.

Opinion polls suggest that the majority of Poles recognize the threat to the rule of law<sup>10</sup>. While newly elected governing parties usually enjoy a post-election “honeymoon” period, researchers suggest that the crisis has led to a drop in support for PiS among more moderate, centrist voters<sup>11</sup>. The main beneficiary of this has

<sup>10</sup> <http://www.rp.pl/Polityka/311299906-Polacy-mar-twia-sie-o-demokracje.html#ap-1>

<sup>11</sup> <http://ewybory.eu/sondaze/>; <http://tajnikipolityki.pl/sondaz-pis-traci-pulapka-konserwatywnej-rewolucji-kaczynskiego/>

been Nowoczesna, a new party formed in May 2015 (founded by a liberal economist Ryszard Petru) which has pulled ahead of the Civic Platform and is currently running neck-and-neck with (and, in some surveys, even slightly ahead of) Law and Justice.

There is also a growing concern in the EU and among other European countries about the radical change in Poland. Jean Asselborn, the Foreign Minister of Luxembourg – a state which held the EU presidency – called on the European Commission and European Parliament to act, saying that if Poland fails to change the course it has recently taken, it may have to be faced with sanctions. After an exchange of letters between Polish and EU officials, the EU’s executive asked the government of Beata Szydło to explain laws that have all but paralyzed the work of the Constitutional Tribunal and put public media under direct government control. In early January, the Commission decided – for the first time ever – to launch a procedure to monitor the Polish government’s commitment to the rule of law.

PM Szydło answered questions and listened to the critique by MEPs in Strasbourg on January 19, 2016. Szydło told European Union lawmakers that her government had not breached any European or Polish laws. Guy Verhofstadt, head of the Liberals and Democrats group in the European Parliament, challenged her during the debate: “What a democrat never does is to use or abuse this huge [parliamentary] majority to dismantle the system of checks and balances in the country (...) that makes it impossible to enact laws when they are in contradiction to the Polish Constitution”. The European Commission’s first Vice-president, Frans Timmermans, said the launched investigation would focus on the changes to the Constitutional Tribunal,

a body the mandate of which is to assess whether laws comply with Poland's Constitution.

The decisions of the European Commission regarding the next steps of the procedure will be connected with the opinion of the Venice Commission.

## CONCLUSIONS

In all three countries we could observe a significant crisis of democracy and the rule of law. Hungary, Poland and Romania joined the democratic Europe only in the 1990s. They were very fresh in building their institutions and integrating with Western organizations. Poland, but also Hungary, were seen as leaders in the democratic transition and were shown as an example for other states changing from dictatorship/authoritarian state into democracy. Their achievements were awarded with NATO membership in 1999 and the EU membership in 2004. Romanian democracy was put to the test several times in the 1990s and 2000s but after implementing necessary reforms Bucharest eventually joined both NATO (2004) and the EU (2007).

Twenty-something years after becoming democracies, all three countries caused concern to Western Europe because of reports of lawlessness and lack of respect toward basic rules of liberal democracy. In all three countries the crisis took the form of an open conflict between the political leaders and the constitutional courts. In two of the cases, namely Romania and Hungary, it was a very much personalized conflict between the prime ministers and the courts. In the case of Poland, it was a less personal and more systematic conflict between the government and the Tribunal. The latter is connected with the fact that in Poland the real political leadership is not identical with the official rep-

resentation of the government. Jarosław Kaczyński is the real leader and he controls both President Duda and PM Szydło.

In all three cases, the Prime Ministers supported by their respective governments and the majority in their parliaments attacked the independence of the constitutional courts. Separation of powers is one of the basic structural principles of democratic societies. Although it is neither an end in itself, nor a simple tool for legal theoreticians or political scientists, it is undoubtedly a basic principle that serves other purposes such as freedom or legality of state acts.

The independence of constitutional courts is an objective of the separation of powers, while at the same time independence is its direct result. Unfortunately, politicians sometimes invade the scope of powers of the judiciary. The constitutional courts in Central Europe are targeted because they are the most visible and tend to be the most powerful representatives of the judiciary. Examples from Romania, Hungary and Poland show that the constitutional courts are attacked from the *democratic* angle. The group in power uses the argument of the "will of the people" represented by the majority in the parliament against the power of the unelected judges, the *judiciary*. This could be observed in every single case scrutinized in this article.

Ponta, Orbán and Kaczyński (through his proxies) presented themselves as winners of the elections who are allowed to implement their populist programs. Everyone who wants to stop it or slow it down should be eliminated. They did not see the constitutional courts as crucial elements of the fragile constitutional pattern, but as a part of the regular bureaucracy that must be subordinated to their political caprices.





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In all three countries we clearly saw a reaction against liberal and legal constitutionalism, criticizing a strong distinction between law and politics. This legal resentment can be related to the emergence of the so-called "illiberal constitutionalism". For these governments, liberal constitutionalism became an enemy. Values of normative individualism and its understanding of the "neutral state", together with the protection of individual rights were fought against alongside the constitutional courts. Orbán, Ponta and Kaczyński articulated an alternative view of constitutionalism along communitar-

ian lines. They are all populists, promising to bring the power closer to the "ordinary people" and further away from the "elites".

This illiberal revolution against the constitutional courts was not identical in all the three countries. Nevertheless, we can notice many similarities between Hungary and Poland, as well as between Poland and Romania. However, in many aspects the Romanian case is slightly different.

In both Hungary and Poland, the attempt to destroy the constitutional courts was a part of a broader plan of the party leaders. Orbán and Kaczyński presented a clear and coherent vision of government, constitution and state in their election programs. It was right-wing, conservative and anti-establishment. Both of them were based on the moral values and were connected with nationalism, tradition and values of the Catholic Church. Both politicians were vocal critics of Western liberal democracy. Their plans to remodel the system were based on the following dimensions: the curtailing of the powers of the Constitutional Court; the imposition of a new constitution or related legislation without an adequate pluralistic and public debate; a reference to different ideas of constitutionalism, based on tradition/history and the defense of a particular community; a distinct, limited and exclusionary interpretation of rights<sup>12</sup>. Additionally, both leaders criticize any interference into national legal affairs, especially by the EU institutions. This is the reason why they flout comments and opinions coming from Brussels and European capital cities. Warsaw learned from Hungary's experience as

<sup>12</sup> Paul Blokker, *Illiberal constitutional tendencies and legal resentment in Hungary in Romania*, The 10th World Congress, "Constitutional Challenges: Global and Local".



regards its dealings with the EU, but also as far as the general strategy of implementing the Fidesz's radical program is concerned.

On the other hand, Victor Ponta never left the European track. His party remained on a pro-European track and was very responsive to the criticism from the EU institutions. It also cannot be said that Ponta had a similar political agenda as Orbán. First of all, he represented a left-wing party. Orbán and Kaczyński have been heads of parties for many years; Ponta was a relative newcomer to Romanian politics. Orbán and Kaczyński have absolute control over their parties; Ponta governed with a coalition that consisted of at least one party that had switched sides before. Second of all, his struggle with the Constitutional Court should be seen as an *ad hoc* solution he proposed as a response to his current political problems. Without any doubts, we can say his conduct was illiberal and directed to empower the executive branch, but not as a part of a wider plan of changing the constitutional system of Romania. Ponta was pragmatic in this manner, not dogmatic or driven by ideology.

To some extent, the situation in Romania and Poland is similar, if compared with Hungary. Victor Orbán won a supermajority in the Parliament and was able to change the Constitution. He was even more powerful because the opposition was fragmented and extremely weak. He could develop his long-term radical plan of vigorously readjusting the political (constitutional) system of Hungary according to his own view without being stopped or questioned. There is a strong opposition in Poland and Romania. Both Kaczyński and Ponta had someone to lose with and their normal majority in the parliaments never allowed them to change the constitution.

Three different yet similar stories of limiting the role of the constitutional court in Central Europe have been presented in this article. What happened in Hungary should be a warning for not only the entire region, but also the entire European Union. The institution of the constitutional court became compromised and constricted; the constitutional system was turned inside out. The EU institutions were not able to stop that. Maybe Victor Orbán was seen as an eccentric commander whose bizarre ideas should be accepted in the small state of Hungary. But now the story is repeating itself in Poland. The Polish Constitutional Tribunal and the opposition are in dire need of help. Europe's reaction is not sufficient enough to halt Kaczyński's tide. And Poland is too big and too significant to be allowed to leave the European family of liberal democracies. Even more so, as the alliance of Orbán and Kaczyński can give a nasty example to other politicians in the region that authoritarian tendencies and ignoring the rule of law is acceptable in the EU. Slovakia and the Czech Republic, are watching... Losing the battle over the Polish Constitutional Tribunal can be the beginning of an end of the EU as we know it. ●



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