

Contradicting Political Dynamics: Democratic Backsliding in Hungary and the Role of the EU

Abstract: Two years ago we started to investigate the ever-widening grey zone between liberal democracy and dictatorship, and applied the findings of the scholarship on hybrid regimes to the characteristics of the Orbán regime in Hungary.¹ In this article we continue our analysis in the light of recent events: the 2019 national elections, the Sargentini Report in the European Parliament, the tension between center-right parties and Fidesz in the European People's Party (EPP). When categorizing political systems, we cannot overlook their external embeddedness, and the extent to which outside forces influence the political system itself. Just as it is more difficult for an authoritarian regime to democratize if it is surrounded by other authoritarian regimes, it is also more difficult for a democracy to regress to dictatorship if that democracy is a member of an alliance of democratic states.

Keywords: hybrid regimes; Hungary; liberal democracy; dictatorship

Introduction

We argue that only in the first period of its existence that is, in the first two years after the new constitution, adopted by Orbán's Fidesz party representatives in 2011 and entered into force in 2012, could the regime be described with one of the degraded concepts of democracy.²

At the time, many maintained that the regime can be considered democratic so long as it guarantees free elections. However, defective democracies are dynamically changing and ever hybridizing political systems, in which there are no fixed rules or any guarantees for the maintenance of the remnants of democratic political institutions.³ Since the unilateral modifications of the constitution in 2013 confronting the Constitutional Court's former judgements and interpretation competence, or the 2014 unfair elections at the latest,⁴ Hun-

garian political system belongs to the category of non-democratic regimes. In hybrid regimes, political competition may be real, but the broader institutional structure favors governmental forces and drastically decreases the chances of the opposition, and thus, a democratic change of government.⁵ Since 2014 the occasional empirical distinctions between the concepts of "illiberal" and "antidemocratic" regimes have not only decreased but completely evaporated.⁶

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Due to its hitherto overlooked characteristics, the Orbán regime belongs to a class of its own among hybrid regimes. The unique properties of this Hungarian hybrid regime follow from the fact that it is part of the European Union (EU), which is made up of democratic member states. Since member states transfer parts of their sovereignty to the European Union, the EU is both the loci of “domestic” and “foreign” policy-making, that is, as regime theory suggests, it is both the context in which the Hungarian government operates and an integral part of the Hungarian regime itself. Consequently, the EU functions as a “regime sustaining”, a “regime constraining”, and last but not least as a “regime legitimizing” factor for Hungary, which compels us to describe the current political system of Hungary as an “externally constrained hybrid regime”.

Contrary to expectations, the democratic revolutions of 1989-91 did not automatically replace dictatorships with liberal democracies. The number of mixed regimes, or as they are better known, hybrid regimes, has considerably increased.⁷ While hybrid regimes are far from being identical, the greatest challenge in their categorization has come from the fact that they belong to a transitory category as they are neither democratic nor authoritarian regimes. According to Andreas Schedler, it is a serious problem that the expressions used to describe these transitory categories dampen our sense of danger when it comes to the strengthening of authoritarian tendencies.⁸ Nonetheless, it is empirically obvious that, besides those countries that make up the pure categories of democracy and dictatorship, there are countries that belong to the intermediate group of mixed regimes.

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The main theoretical question about classifying hybrid regimes is whether these systems form a third category of regimes between democracies and dictatorships or they should be considered as “diminished subtypes” of those two.⁹ Given that, as the Hungarian example demonstrates, stable consolidated liberal democracies can fall victim to hybridization, we can no longer consider hybridization as a one-way process or as the defect of democratic transition. This justifies classifying hybrid regimes into an independent category. Definitional features compel us to consider hybrid regimes as an independent regime type that stand between democratic and authoritarian regimes. These features include the presence of one-sided and unfair political competition as well as the formal existence of a liberal constitution but with serious deficiencies in its actual functioning.

The rise of the Hungarian hybrid regime after 2010 is not the result of copying one or more existing models. As a hybrid regime, the Hungarian political system has several unique features that compel us to regard the developments in Hungary as the formation of a new model.¹⁰ This also calls for the partial reevaluation of extant concepts of hybrid regimes.

There are two reasons why the Hungarian case constitutes a unique “group” of hybrid regimes. On the one hand, since 1989 Hungary has been the first – and so long only – state, which used to have a stable, consolidated, western-type liberal democracy, and which has abandoned this democratic regime by transforming its political system into a hybrid regime. The hybrid regimes that have been hitherto analyzed in the literature emerged due to either the partial democratization of authoritarian regimes or the stagnation of the transition process. Therefore, hybridization used to be seen as a unidirectional process. Its starting point and direction remained unquestioned even when the various concepts of hybrid regimes appeared as partial refutations of the theories of transitions, pointing out how the process of democratiza-

tion partially or fully stagnated and led to hybridization in some cases.¹¹ Hungary is an example of how the political system of a stable liberal democracy may erode, which demonstrates that hybridization is a two-way process. The two-way nature of the process needs to be reflected in the conceptual framework of hybrid regimes.

On the other hand, Hungary is the first, and currently only, hybrid regime within the European Union. This fact deserves attention not simply because the European Union sees itself as a multi-level polity made up of liberal democracies, which are bound together by mutual respect for the Union's value system as laid out in Article 2 of the Treaty on European Union (TEU). This is formally incompatible with the presence of a member state with a hybrid political regime. The existence of a hybrid regime in the EU is important not only because the European Union put great emphasis on "political conditionality" in the accession process, stipulating that only stable liberal democracies may gain membership in 2004 and afterwards.¹² Regarding regime typology, Hungary's membership in the European Union is crucial as the EU fulfils a systemic role in the functioning of this hybrid Hungarian regime.

Theories that describe the institutional structure and functioning of the European Union suggest that the EU should not be considered as an environment in which its member states' political systems operate but rather as *a part* of those systems. These include the notions of multi-level governance¹³, multi-level polity¹⁴ and multi-level constitutional system¹⁵. Thus, the European Union does not only exert its influence through providing a framework, but also fulfills systemic functions in the political systems of its member states.

Most scholars who analyzed the post-2010 relationship of Hungary and the European Union agree that the European Union was not capable to stand up effectively to the constitutional engineering process which led Hungary to an authoritarian direction.¹⁶ The Orbán regime created unequal conditions for political competition as well as political and constitutional systems that favor the governing forces – that is, the elements that satisfy the definitional requirements of hybrid regimes.

The European Union fulfils three different functions in Hungary's hybrid regime: it serves as (1) a systemic constraint; (2) a supporter, and (3) legitimizer of the regime. Nevertheless, these functions are not specific to the Hungarian case. The EU would fulfill the same functions in any hybrid regime or defective democracy that is a net beneficiary of the EU's cohesion policy.

Regarding its function as a systemic constraint, the European Union played a Janus-faced role. On the one hand, as expressed in its own discourse of legitimization, the European Commission lacked the political and legal tools to confront effectively the Hungarian government over the dismantling of liberal democracy and liberal constitutionalism except for initiating infringement proceeding against the country.¹⁷ On the other hand, the joint efforts of the Council of Europe and the European Union, especially through the judgements of the European Court of Human Rights (ECtHR), could secure respect for personal freedoms at a relatively high level.

The reason behind these unique developments is that whereas within the EU there is no institutional or procedural precedent¹⁸ to proceed against a member state in violation of the EU values laid down in Article 2 of the Treaty on European Union, the protection of human rights and basic civil liberties has long-standing traditions, stretching over several decades, both at the ECtHR and the Court of Justice of the European Union (CJEU). Furthermore, there is a high correlation between the argumentation of these two courts due to the fact that the case law of the ECtHR also serve as precedents in the jurisprudence of the CJEU. Furthermore, politi-

cal considerations are much less influential in judicial proceedings that concern human rights and civil liberties than in the protection of democracy and liberal constitutionalism.

Accordingly, only when its actions has had solid legal basis, either because they rooted in the legal clauses of EU treaties or in the case law of the ECtHR – for example when the Hungarian government considered the reinstating of the death penalty¹⁹ – could the European Union successfully confront the policies of the Hungarian government. Even the neutralized Hungarian Constitutional Court, which was packed with justices loyal to the governing Fidesz party, accepts and applies the jurisprudence of the ECtHR, and therefore has declared several key clauses of the much debated Law on Religion²⁰ in breach of the Fundamental Law.²¹ As a member state of the European Union, Hungary cannot afford to disregard the decisions of the ECtHR frequently and systematically because that would unequivocally and undeniably mean that Hungary violates its obligation under EU treaties, to protect fundamental human rights and civil liberties. In such cases the violation of norms could be determined and then legally defined, and thus, would make Hungary subject to firmer actions by European institutions than in case of the less clear-cut violations of the principles of democracy and rule of law.

Even though the European Union could not stop the deconstruction of liberal democracy, it did slow down and prevent that the undermining of liberal constitutionalism also significantly curb human rights and liberties in Hungary. Consequently, it is fair to say that membership in the European Union matters: the EU structurally constrained the hybrid regime. At the end of the day, the human rights and liberties of Hungarian citizens are not guaranteed by such constitutional institutions as the Constitutional Court or the Ombudsperson, because these were neutralized during the illiberal constitutional engineering, but by the European Union and the European Court of Human Rights of the Council of Europe.

It is indicative to the decline of rule of law in Hungary that the number of applications by Hungarian citizens to the European Court of Human Rights increased by a dramatic 1177 per cent, from 436 to 5,569 between 2010 and 2016, while Hungary's share of total applications to the court rose from 0.71 per cent to 10.41 percent in the same period. Hungary's share of the ECtHR pending cases totaled up to 11.2 per cent in 2016, while the country's less than ten million citizens represents approximately 1.25 per cent of the population being under ECtHR jurisdiction. Hence Hungary has currently the highest number of ECtHR pending cases on per capita basis and the third highest number of pending cases at all.²² These figures clearly support the claim that the ECtHR plays an increasing, systemic role in the external protection of Hungarian citizens' fundamental rights, while the number of Hungarian citizens seeking for international legal remedy against the judgements of the national judiciary has been skyrocketing during the past few years.

On the one hand, the Hungarian Constitutional Court has been reflecting more on the jurisdiction of the ECtHR and CJEU on the field of fundamental rights since 2010, than it has done before. On the other hand, the application of the ECtHR and CJEU case-law is disputed also more intensively within the Constitutional Court.²³ The reason behind this seemingly contradictory development is that while the guiding light character of ECtHR/CJEU case-law was never put into question within the Hungarian Constitutional Court, there has been ongoing changes in this regard since 2011, hence conscious reflections in the judgments of the Constitutional Court are unavoidable.²⁴ Although the Constitutional Court ruled in its judgement²⁵ that the level of protection provided by international legal mechanisms can be considered as minimum-standards of the limitation of fundamental rights and freedoms, in several further

politically sensitive judgements, the Court did not follow this interpretation and did not maintain these minimum standards.²⁶ In absence of effective domestic forces, the European Union and the ECtHR has become the most important systemic level obstacle to curbing basic human rights and moving toward a more authoritarian regime in Hungary. In general, Hungarian political leadership is externally constrained by European law and institutions.

It is not easy to demonstrate through examples how the constraining function of the European Union works in practice because it is either a structural phenomenon, like in the case of the ECtHR jurisdiction, or the EU's prohibitive and coercive actions are not always done publicly. Open confrontation between the European Commission and the Hungarian government emerged only in a limited number of, and often controversial, cases. One of these concerns the Hungarian government's interest in reinstating the death penalty in 2015. The unusually decisive reaction of the European Union forced the government to abandon the idea within two days.²⁷ On the other hand, we have to note that Orbán's initiative primarily aimed at influencing the political agenda and discourse rather than originated from an honest intention to reinstate the capital punishment. Given the constraining mechanisms of the European Union, Orbán could anticipate the EU's firm resistance and that he would provoke effective EU intervention over an issue that Brussels was unmovable about. Indeed, he most likely hoped that as a result the EU will be more permissive in other issues.

In other cases, the EU was determined but slow in getting its way. This gave the Orbán government enough time to present both the EU and the concerned parties in Hungary with a *fait accompli* over such issues as the independence of the Data Protection Office or the premature pensioning of justices. These issues concern directly the question of constitutional checks and balances rather than fundamental rights; yet, their impact over fundamental rights is undeniable. In both cases the Court of Justice of the European Union (CJEU) located in Luxemburg determined Hungary's infringement of European law, but the courts' decision in each case was limited to compensating the plaintiffs' damages without a restitution order.²⁸

In the case of the government's attack on Central European University (CEU),²⁹ the political and discursive reactions of the European institutions and actors are more determined than in any other previous case before, excluding the case of capital punishment. European Commission proposed the introduction of a new type of "broad political dialogue" with Hungary due to serious concerns about the recent anti-democratic turn.³⁰ Furthermore, the European Commission initiated its infringement procedure with regard to the "lex CEU",³¹ while the European Peoples Party (EPP), the European party alliance of Fidesz, put Orbán under previously never experienced pressure to comply with the Commission's position.³² Last but not least, EPP's evading support for the Hungarian regime was also clearly mirrored by the EP Resolution threatening Hungary with the introduction of the famous Article 7 procedure allowing the sanctioning of the norm-breaking Member State, which enjoyed considerable support also among MEPs of the European Peoples Party.³³ Whether the political conflict around the "lex CEU" and the proposed Hungarian "foreign agent act" stigmatizing NGOs receiving financial resources from abroad turns out as a clear-cut evidence supporting the regime's "externally constrained" character, or the "peacock dance" repeatedly deployed by Viktor Orbán will be successful again, cannot be actually foreseen. However, bearing the determined character of the EU reactions in mind, it fits to the frame of the presented theory of external constraint.

The working of the Hungarian political system and the general pattern of the Hungarian-EU relations provide more convincing evidence for the EU's constraining function than the

cases cited above.³⁴ In individual cases it is difficult to determine beyond doubt a) the original intentions of the Hungarian government and b) the exact influence that Brussels' opposition had on the final outcome. On the other hand, general tendency that while as early as 2013 the Orbán government made significant advances in the dismantling of the constitutional system of checks and balances and the creation the lopsided arena of political competition, the curbing of fundamental rights has been done gradually³⁵ with more caution and repeated references to European standards.

However, the European Union not only constrains the expansion of the hybrid regime in Hungary but also contributes to its survival, and paradoxically plays a regime supporting function. The ruling elite's appropriation of public resources is a frequent element of the definition of hybrid regimes,³⁶ and just as much an organic part of everyday Hungarian political reality.³⁷ Between 2014 and 2020, Hungary is projected to receive, on average, the 3.89 per cent of its gross national income from the cohesion fund of the European Union.³⁸ Nearly all the public resources committed to national development policy come from these EU resources. Considering that the reports of both the European Commission and Transparency International found that in about 50 per cent of public procurement procedures there is only one tender offer and in 70 per cent of these procedures are riddled with corruption, which often results in a 25 per cent spike in pricing and in an additional corruption premium,³⁹ it is easy to understand the regime sustaining function of the EU's developmental funds in the operation of the machine of corruption in Hungary. If we also take into account the centralized nature and politically organized, "reverse state capture" in Hungary one can see how corruption is supporting the regime. In this process, political and economic "entrepreneurs", often called as "political family", occupy the state from inside, and they operate their own network of corruption.⁴⁰

The resources of the European cohesion policy add to the abundance of public resources that can be appropriated by the national ruling elite to its own purposes⁴¹ and thus contribute to the uneven political playing field.⁴² Additionally, through increasing market demand and the potential multiplier effects of investment projects, the EU cohesion fund has contributed to the stability and modest growth of the economy, and thus, the political stability of the regime. Consequently, the Hungarian government is interested in preserving the country's membership in the European Union and, at least during the financial cycle coming to an end in 2020 it cannot (yet) seriously entertain the idea of leaving the EU despite the increasing anti-EU flavor of its illiberal and Eurosceptic rhetoric. For the time being, decision-makers of the Orbán-regime are willing to accept the regime constraining function of the European Union in order to be able to enjoy its regime supporting role.

In addition to the two above functions, the European Union plays a less significant role as the legitimizer of the regime. As it was suggested in the conceptual debates about the nature of the Hungarian regime, theoretically Hungary as a member of the European Union could only be a democracy.⁴³ While we pointed out above that this reasoning ignores the literature that focuses on the potential sanctioning of the developments taking place in Hungary⁴⁴, it does reveal the flaw in the European Union's approach. Article 7 of the Treaty on European Union would have obligated the European Union to initiate proceedings against Hungary if they found Hungary in serious violation of the values laid down in Article 2 of the Treaty. Why this did not happen is the subject of several other studies.⁴⁵ Regardless of the flaws in Article 7, the fact remains that lack of sanctions and open criticism of the political developments in

Hungary indirectly legitimizes the Orbán-regime, and strengthens the self-legitimizing discourse of its leaders who argue for the illiberal but democratic nature of their regime.

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With the national elections held in 2018, Hungarian post-democracy arrived at a turning point. After the overwhelming victory of Prime Minister Viktor Orbán – his third in a row – the outlook for Hungary’s opposition has never looked so grim. Despite some short-lived hopes of an upset before the election, Hungarian voters chose not to dismiss the right-wing Fidesz government, instead rejecting the opposition as a whole. They enhanced the legitimacy of Orbán and his brand of exclusionary, populist paternalism, while the opposition needs to rebuild itself from the ground up. Bearing in mind the existing systemic advantage of Fidesz and the seriously uneven political playing field, it has been rather questionable whether this could be done in the foreseeable future – and it remains to be seen what can be preserved from the ruins of Hungary’s once-thriving liberal democracy.

Both the government and opposition campaigns were largely monothematic. The former neglected nearly any references to important issues like health care, education, or even the prospective policy plans of the government. Instead, Fidesz’s messaging focused nearly exclusively on migration and its attendant threats, with repeated denunciations of the liberal “fifth column” of the investor and philanthropist George Soros, who was repeatedly accused of intervening in Hungarian domestic affairs. The opposition’s discourse, meanwhile, fixated on the systemic corruption of the regime. This topic initially appeared to resonate with the electorate, but the opposition parties failed to offer voters their own vision of Hungary’s future. Due to the dominant position of the government-linked media outlets, especially in the countryside, the left-liberal opposition parties in particular faced huge difficulties in reaching a large segment of the Hungarian electorate.

Nevertheless, the opposition parties’ inability to coordinate and the hidden mobilization capacity of Fidesz turned out to be the two decisive factors of the election. Even after several weeks of negotiations, there were ultimately only three constituencies where one candidate was supported by all the left-liberal opposition parties against their Fidesz and Jobbik counterparts. The voters could hardly keep track of the parties’ complex cooperation schemes and their confusing withdrawal of candidacies.

There was a broad consensus among Hungarian political analysts that Fidesz had the most disciplined and easy-to-mobilize base, but that the party might struggle to effectively reach undecided voters, due to the diffuse but dominant anti-government sentiment among this part of the electorate. From this perspective, Fidesz’s advantages could have been overcome. However, the figures of the election outcome clearly refuted this assumption. Fidesz was able to effectively mobilize undecided voters in the countryside. Fidesz gained 300,000 votes more than it did in 2014, frustrating the mobilization advantage of the opposition. At the end, Orbán’s party had exactly the same number of seats as it did in 2014: 133 out of 199, just enough for the constitutional two-thirds supermajority.

Capturing 91 out of the 106 individual constituencies and 48.49 percent of party list votes at a turnout higher than 70 percent, Orbán won a landslide victory that granted him a strong mandate. Despite the monothematic messaging of his campaign, Orbán’s success cannot be explained by one single factor, be it xenophobia, fear of immigration, the economy, or anything else. The key was his flexible formula of semi-authoritarian populist paternalism, predicated

on the public's subordination to a strong state that takes care of "the people" in both a material and psychological sense. Psychologically speaking, Orbán allows the people to express their innate, irrational fears, often tinged with xenophobia, greed, and outright hate. His politics are tailor-made for the attitudinal structures of post-Soviet Central and Eastern Europe. Orbán offers his supporters self-fulfillment by flattering their prejudices, while liberating the individual from the burden of his or her individual responsibility in a political, economic, and even a broader social sense. Fragmented opposition forces could not elaborate a credible alternative to this.⁴⁶

Considering his record of radicalization since 2010, the regime of Viktor Orbán apparently lacks any ability to moderate. It maintains its stability by constantly centralizing power while dominating the political agenda through the invention of new public enemies. There is no reason to expect any kind of self-moderation from the regime. The European conservative politicians who hope otherwise have been engaging in wishful thinking, blind to the realities of Orbán's past eight years in power.

During the 2018 campaign Orbán publicly threatened his opponents, mostly representatives of the critical civil society and media, implying he would get even with them after the national elections. Just one day after the ballot, the spokesperson of the Fidesz parliamentary group announced the intention to pass the "Stop Soros" bill, aimed at further restricting the functioning of foreign-funded NGOs associated with the Open Society network and introducing sanctions against their employees. Steps taken in this spirit after the elections undoubtedly contributed to the increasing authoritarianism in Hungary, which has set its sights on the country's remaining checks and balances: Critical civil society, the remnants of free media, and fundamental freedoms of association and the press.

The 2018 elections was also a wake-up call for Hungary's transatlantic and European allies to consider standing up against the erosion of liberal and democratic values in the West. The risk posed by the Orbán regime within the European Union and NATO was not imminent, but it should not have to be underestimated either. The Hungarian government might have seemed flexible and ready for compromise when it comes to European and foreign affairs but it could play spoiler, increasing both the level of uncertainty as well as the transaction costs in the European decision-making process. Concerning the domestic developments, key international partners should have reconsider whether the founding values of the NATO and European Union, like the rule of law or pluralist, fair democratic competition, played any systemic role in these organizations, and how a semi- (or even full-fledged) authoritarian system in the heart of Europe with strong, friendly ties to both Moscow and Beijing might affect the functioning of these organizations.

The words widely used to describe the current malaise of Western liberal democracies – rhetorical invocations of the "populist" or "illiberal" threat – fall far short of capturing the dire situation in Hungary. As the election monitoring mission of the Organization for Security and Cooperation in Europe (OSCE) announced on April 9, 2018 the government "diminished the ability of voters to make an informed choice" due to "pervasive overlap between state and Fidesz party resources, undermining contestants' ability to compete on an equal basis." As this statement suggests, Hungary no longer has a rule of law problem so much as a very serious democracy problem. The country's democratic political competition is being systematically undermined; any prospective deterioration of the situation in the future can only tend toward the authoritarian.

Key international partners appeared to be reluctant to influence domestic affairs in Hungary, although they possessed some responsibility and the tools were at their disposal to do so. The European Union possesses remarkable financial and institutional leverage over the Hungarian government, while the United States has serious information leverage. The Hungarian electorate, once responsible for pioneering the country's democratic transition, has failed to halt the country's slide into authoritarianism.

The growing conflict within the European People's Party (EPP) over what to do with Viktor Orbán's Fidesz party, has been temporarily solved by a compromise in early 2019. Threatened with expulsion or suspension, as proposed by 13 EPP member parties, Orbán submitted himself to the latter under the condition that it was framed as a voluntary move by Fidesz. This suited both sides. It helped Hungary's prime minister save face at home and in Europe. It also brought to the EPP political relief in its European Parliament elections campaign, which was suffering from association with Orbán's actions.

For the first time, Orbán has been stood up to and had to back down from his threat to leave the EPP if sanctioned. At the same time, it showed to the European party groups, the EU, and member-states that autocratizing governments respond to pressure, not to coddling. After tolerating the EU's first competitive authoritarian regime for almost nine years, the EPP finally took the first step against it. The suspension was only a compromise; nevertheless, future scrutiny and treatment of Fidesz would provide the EPP with an opportunity to demonstrate its commitment to defending European values.

The suspension deprived Fidesz of its voting rights in the EPP organs and of its right to propose candidates for party positions, as well as stopping its representatives from attending party meetings. Furthermore, Fidesz would be subjected to the scrutiny of a wise-persons group.⁴⁷ They would investigate whether Fidesz complies with the conditions set by the EPP leadership, which include the Hungarian government obeying of rule of law and keeping Central European University in Budapest. The question of Fidesz's status in the EPP was not settled for good, only postponed till after the European Parliament elections of May 2019, when all those involved would have a clearer picture of the European political landscape. However, the negative impact of even this temporary measure on the influence of Hungary's governing party is still significant. Orbán would not be able to take part in important decision-making occasions, like the meetings of EPP prime ministers ahead of EU summits.

Despite the positive spin and face-saving on the surface, the deal was a humiliation for Hungary's prime minister. For the first time since he took office in 2010, he was confronted with real political pressure and he blinked. Fidesz had announced that the party would leave the EPP if suspended, but in the end, it agreed to a solution in which suspension was officially a voluntarily accepted status instead of an externally imposed sanction.

Orbán appeared to have a Plan B in case he had to leave the EPP. Both at the level of party diplomacy across Europe and of the Hungarian public, he invested considerable resources in the preparation of a new European party group centered around Fidesz, Italy's Lega, the Austrian Freedom Party (FPÖ) and Poland's Law and Justice (PiS).

The recent events gave EPP an important lesson into how it should have dealt with its *enfant terrible* during the previous nine years. It took a long time for its leadership to realize that those autocratizing governments in East-Central Europe speak the language of power. Instead of offering them concessions, EU institutions, European parties, and member states would rather search for ways to exploit their political leverage.

The temporary compromise between Manfred Weber (leader of EPP) and Orbán compromise fulfills three goals for the EPP leadership. It temporarily pacifies Fidesz critics and preserves the party family's formal unity. It sidelines Fidesz, neutralizing its effect on the EPP's election campaign and structures. And it allows all those involved to save face, which appeared to be the decisive factor for Fidesz. Ultimately, this compromise will not necessarily have any positive impact on democracy and the rule of law in Hungary. Therefore, how serious the EPP is about defending European values will be demonstrated by what it does in the near future. It will probably exploit the leverage it has gained over Orbán. The EPP will either push Orbán to real political concessions, including easing his grip on civil society and the media, or eventually expel him, opening the way for possible EU sanctions on the government.

Conclusions

One can assume that the Hungarian hybrid regime could openly move toward full authoritarianism in two cases. First, if the European Union drastically alters the generous nature of the cohesion funds, or if the EU denies or limits the access of member states that violate EU values to cohesion transfers. In either of these instances, the lack of financial motivation could prompt Hungary – and any other future hybrid regime within the European Union – to lose interest in remaining in the EU, and could realistically be expected to leave so that it can shake off the EU's constraining function.

Second, if, as result of its political and economic crises, the European Union ceases to work as the political community of liberal democracies based on mutual values and interests, and thus, it is no longer able to fulfill its above-mentioned constraining function, then we can expect Hungary to move further towards authoritarianism. Considering the current developments both in European and Hungarian politics, one cannot fully rule out the possibility of either of the above two scenarios in the future.

The unique nature of the Hungarian regime that makes it a new model of hybrid regimes begs the question if this regime's characteristics allow for contributions to the comparative theories of political regimes. We claim it is necessary to treat hybrid regimes that are part of a multi-level polity as a distinct subtype. Although currently this subtype only applies to the relations of the EU and Hungary, the European Union's role is crucial in understanding the nature of a hybrid regime in a member state. Future research should explore further the European Union's role in the transformation of the political system of Hungary and other currently democratic states, like Poland, which stepped on the illiberal path.

Considering the main questions of the contemporary debate about hybrid regimes, we argued that hybrid regimes should be seen as a distinct category of regimes rather than subtypes of either democracies or dictatorships. It can no longer be considered a one-way process or a distortion of the democratic transformation of an authoritarian state. Stable, consolidated democracies may also fall victim to the process of hybridization. Based on such objective definitional traits as the existence but unfair and unjust nature of political competition or the system-level absence of liberal constitutionality, we conclude that hybrid regimes constitute a third group of regimes between democracy and dictatorship.

It is counterproductive to use adjective democracies to replace the category of hybrid regimes, because it diminishes the differences between democratic and hybrid regimes, and thus, obscures the fact that hybrid regimes do not live up to the criteria of liberal democracies.

Hybrid regimes need to be differentiated from not only democracies but also from authoritarian dictatorships. Given the variety among hybrid regimes, it is necessary to reflect on several new dimensions and possibly to create additional subtypes within hybrid systems. This way we can avoid treating democracies with negative adjectives (illiberal, delegative, defective, etc.) as democracies and authoritarian regimes with positive adjectives as dictatorships. Our approach, thus, could limit the erosion of the concept of democracy particularly in the field of theorizing and within the academia but to a limited extent in the public discourse as well.

In sum, (1) Hungary's "System of National Cooperation" belong to the group of hybrid regimes, be it electoral or competitive authoritarianism, and (2) there is a gap in the literature of regime typologies that needs to be filled by analyzing and understanding the functions of the European Union in the development of the political systems of its member states. We have introduced a new concept of externally constrained hybrid regime in order to describe the Orbán regime and to understand the nature of constant interplay between the community of democratic states and their non-democratic member. Since we published our first article on this, the Orbán regime moved to the direction of far right which provoked harsher constraining reaction of the European Union.

Endnotes

¹ The regime that exists in Hungary since 2010 is named after Prime Minister Viktor Orbán. Sometimes it is referred as the „System of National Cooperation”, as it is formulated by Orbán, to distinguish his own period from the previous two decades of liberal democracy.

² Zakaria, 'Illiberal Democracy'; Merkel et al, *Defekte Demokratien. Bd. 1*; Urbinati, *Democracy Disfigured*

³ Merkel, 'Embedded and Defective Democracies'; Bogaards, 'Where to Draw the Line?'

⁴ Hungary, Parliamentary Elections, 6 April 2014. OSCE/ODIHR Limited Elections Observation Mission, Final Report. <http://www.osce.org/odihr/elections/hungary/121098?download=true>

⁵ Levitsky & Way, *Competitive Authoritarianism*

⁶ Müller, 'The Problem with "Illiberal Democracy"'

⁷ Diamond, 'Thinking about Hybrid Regimes'; Levitsky & Way, 'Elections without Democracy'; Levitsky & Way, *Competitive Authoritarianism*

⁸ Schedler, *Electoral Authoritarianism*, 4.

⁹ Cassani, *Hybrid What?*

¹⁰ Bozóki & Hegedus, "Az Orbán-rezsim értelmezései"

¹¹ Levitsky & Way, 'Elections without Democracy', 52.

¹² Sedelmeier, 'The EU and Democratization in CSE'

¹³ Bache & Flinders, *Multi-level Governance*; Piattoni, 'Multi-level Governance'

¹⁴ Kassim & Le Galés, 'Exploring Governance in a Multi-level Polity'

¹⁵ Pernice, 'Multilevel Constitutionalism'

¹⁶ Halmai, 'Alkotmányosság és demokrácia'; Kelemen, 'Europe's Hungary Problem'; Kelemen, 'Europe's Other Democratic Deficit'; Kochenov, 'Europe's Crisis of Values'; Müller, 'Protecting Democracy and the Rule of Law'; Scheppele, 'The Case of Systemic Infringement Actions'

¹⁷ Scheppele, "Making Infringement Procedures More Effective"

¹⁸ Although the experiences of the Austrian case in 2000 still have a deep influence on the contemporary interpretation of Art. 2 TEU non-compliance and its sanctioning, as a matter of fact it neither fulfils the criteria of a serious breach of the EU fundamental values, nor qualifies it for being an "EU precedent", as that time the concerted action of the fourteen Member States did not include EU institutions.

¹⁹ "EU Chief warns Hungary over return of death penalty comments". *The Guardian*, April 30, 2015. <https://www.theguardian.com/world/2015/apr/30/eu-jean-claude-juncker-viktor-orban-hungary-death-penalty-return>

²⁰ Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and on the Legal Status of Churches, Religious Denominations and Religious Communities.

²¹ European Court of Human Rights, *Case of Hungarian Christian Mennonite Church and Others v. Hungary* (Strasbourg: ECHR, April 8, 2014), <http://hudoc.echr.coe.int/eng?i=001-142196>, and 3144/2015 (VII. 24.) AB Határozat (Constitutional Court decision) <http://public.mkab.hu/dev/dontesek.nsf/0/A4DBC7826F85A134C1257B34002128EB?OpenDocument>.

²² *Judging by Results*

²³ Gárdos-Orosz, 'Alkotmánybíróság 2010-2015'; Polgári, 'Alkotmánybíróság'

²⁴ Gárdos-Orosz, 'Alkotmánybíróság 2010-2015'

²⁵ 61/2011 (VII. 13.) AB határozat, <http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/mk11080.pdf>

²⁶ Polgári, 'Alkotmánybíróság', 8-9

²⁷ According to the famous statement of Jean-Claude Juncker, President of the European Commission, "Mr. Orbán must immediately make clear that this is not his intention. If it would be his intention, it would be a fight." "EU chief warns Hungary over return of death penalty comments." *The Guardian*, May 30, 2015.

²⁸ „By prematurely bringing to an end the term served by its Data Protection Supervisor, Hungary has infringed EU law”, *Court of Justice of the European Union, Press Release No. 53/14*. 2014. April 8. To the analysis of the cases see: Scheppele, "Making Infringement Procedures More Effective"

²⁹ The Central European University, a Hungarian-American private, graduate school of Budapest, was established by George Soros, a financier and philanthropist, in 1991. In the Spring of 2017 the Orbán government passed a bill to shut down the university in the name of „equality” with state universities. This move has been globally understood as an attack on academic freedom and the freedom of expression, and thus provoked wide-scale anti-regime protests in Hungary. For details, see Müller, 'Hungary: The War on Education'

³⁰ Initiated on April 26, 2017. http://europa.eu/rapid/press-release_SPEECH-17-966_en.htm

³¹ Initiated on April 29, 2017. http://europa.eu/rapid/press-release_MEX-17-1116_en.htm

³² <http://www.epp.eu/press-releases/prime-minister-orban-to-comply-with-eu-laws-and-epp-values-following-meeting-with-epp-presidency/>

³³ European Parliament resolution of 17 May 2017 on the situation in Hungary (2017/2656(RSP)), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FTEXT%2bTA%2bP8-TA-2017-0216%2b0%2bDOC%2bXML%2bV0%2F%2FEN&language=EN>

³⁴ Hungary's EU membership might played a role in that the police have not used violence against protesters, unlike in hybrid regimes outside the EU (i.e. Macedonia and Turkey). About anti-regime protests see Krasztev & Van Til, *The Hungarian Patient*

³⁵ See, for example, the issue of rights to information.

³⁶ Levitsky & Way, *Competitive Authoritarianism*

³⁷ Magyar, *Post-Communist Mafia State*

³⁸ Mrak & al., 'Cohesion Policy as a Function of the EU Budget'

³⁹ "EU Anti-Corruption Report – Hungary," European Commission, February 3, 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_hungary_chapter_en.pdf; "Public Procurement Corruption," *Transparency International Hungary*, February 12, 2015, http://transparency.hu/uploads/docs/infografika_angol.pdf

⁴⁰ Freedom House (2016), *Nations in Transit, Hungary Report*, <https://freedomhouse.org/report/nations-transit/2016/hungary>; Freedom House (2017), *Nations in Transit, Hungary Report*, <https://freedomhouse.org/report/nations-transit/2017/hungary>; Kornai, 'Hungary's U-Turn'; Magyar & Vásárhelyi, *Twenty-Five Sides of a Post-Communist Mafia State*

⁴¹ "Az uniós források korrupciós kockázata Magyarországon" [EU Cohesion Funds related Corruption Risks in Hungary], *Transparency International*, 2015. http://transparency.hu/uploads/docs/unios_forrasok_WEB_jav.pdf

⁴² The contribution of resources that the government captures from the European Cohesion Fund to the uneven political playing field is well-illustrated by the buying up of the commercial TV channel, TV2. The state-owned Eximbank used public funds to help Andrew Vajna, a government commissioner and member of the inner circle of Prime Minister Viktor Orbán, acquire Hungary's second largest commercial television channel.

⁴³ Mándi, 'Politikai gondolkodás'

⁴⁴ Blokker, 'Systemic infringement action'; Closa et al., 'Reinforcing Rule of Law Oversight'; Kochenov, 'Europe's Crisis of Values'; Kochenov, 'On Policing Article 2 TEU Compliance'; Müller, 'Protecting Democracy and the Rule of Law'; Scheppelle, 'The Case of Systemic Infringement Actions'

⁴⁵ For analyses of the proceedings based on article 7 of the Treaty on the EU see Bugarcic, 'Protecting Democracy and the Rule of Law in the European Union'; Closa et al., 'Reinforcing Rule of Law Oversight'; Hegedus, 'Protection of the EU's Fundamental Values' and Sadurski, 'Adding a Bite to Bark'. For the political background behind the lack of sanctions see: Kelemen, 'Europe's Other Democratic Deficit'

⁴⁶ Although the right-wing radical party Jobbik remained the largest opposition party, it suffered a strategic defeat in the 2018 elections. It lost its strongholds in northeastern Hungary and only won one single-seat constituency, ending up with 26 seats overall and receiving approximately the same number of party list votes as in 2014 (barely above 1 million ballots). The political Left, constituted by the Hungarian Socialist Party (MSZP) and the Democratic Coalition, also seriously underperformed expectations. The president of MSZP also resigned after the electoral defeat, leaving the party vulnerable to political and institutional chaos. The green party "Politics Can Be Different" (LMP) won eight seats. On the one hand, LMP once again secured its survival without official coordination with the Left, which would have undermined the party's moral integrity in the eyes of much of its core electorate. On the other hand, LMP has been widely seen as bearing the chief responsibility for the failure of the coordination among the opposition parties.

⁴⁷ The three wise men group is consisted of the former Belgian and Austrian prime ministers, Herman van Rompuy and Wolfgang Schäussel, and the former president of the European Parliament, Hans-Gert Pötering, from Germany's Christian Democratic Union.

