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## CAN THE EU RESCUE DEMOCRACY IN HUNGARY?

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The European Union always takes steps to ensure that a prospective member state meets certain criteria<sup>1</sup> regarding democratic practices. But what happens when a state that meets those criteria is accepted into the EU, only to regress later on? That is the question that the EU faces with Hungary, once a democratic front-runner among the post-communist states of Central and Eastern Europe, but now a country that has seen a palpable erosion of democracy. The Hungarian case raises questions about the EU's current governance mechanisms, and whether it can handle further expansion effectively. How should the EU and the wider international community use their leverage to promote democratic practices in post-communist EU states? What role should the United States play?

Europe is suffering from internal divisions, economic weakness, and a loss of legitimacy, even as it officially welcomed another new Central and Eastern European (CEE) state—Croatia—this July 1. In the wake of severe austerity programs, between 2010 and 2012 more than half of the governments in the EU's 28 member states fell or were voted out of office. This instability may have serious consequences for the CEE states, where democracy and the rule of law are newer arrivals. Before these states gained European membership, conditionality pressure was a strong incentive for reform. However, the EU has less leverage over fully-fledged member states. According to scholars Jacques Rupnik and Jan Zielonka, while it was once believed that EU pressure would “make the lands of East-Central Europe safe for democracy,” we are now witnessing a pattern of “erosion of the EU as a democratizing constraint on its old and new members” alike.<sup>2</sup>

Hungary, in particular, is proving to be a test of the EU's ability to prevent the erosion of democracy, and Europe's performance so far raises the question of whether further European expansion at this stage is wise. Since his election in April 2010, Prime Minister Viktor Orbán has overseen a swift and aggressive weakening of democratic freedoms in his country. With a two-thirds majority in parliament, Orbán's Fidesz party pushed through a new constitution, the Fundamental Law (in effect since January 2012). The Fundamental Law solidifies the power of the ruling party on several key fronts. It weakens the Constitutional Court, harms the free press, makes political dissent in Hungary more difficult, and promotes nationalist values that encourage far-right elements at the expense of

<sup>1</sup> The European Union membership criteria are determined by three main documents: the 1992 Treaty of Maastricht, the Copenhagen Criteria and the framework for negotiations with a particular candidate state.

<sup>2</sup> Jacques Rupnik and Jan Zielonka, “Introduction: the State of Democracy 20 years On: Domestic and External Factors,” *East European Politics and Societies* 27:1 (2013), 3-25.

minorities. Orbán's aggressive extension of his political power has coincided with erratic and shortsighted economic policies designed to maintain public support during the economic crisis. These policies have led the economy into its second recession in four years. International organizations such as the International Monetary Fund, global media organizations, and the human rights watchdog Council of Europe which works closely with the EU, have criticized Hungary's political direction—so far, to little avail.

In March 2011, the Council of Europe's Venice Commission criticized the newly written constitution because its drafting had excluded the political opposition. Further amendments weakened opportunities for political competition and loosened checks on executive power. The Commission has reiterated those concerns in a June 2013 report.

In April 2013, the Monitoring Committee of the Council of Europe's Parliamentary Assembly recommended that Hungary be subject to a monitoring procedure, usually begun when a country first joins the Council of Europe. Officially monitoring Hungary would have put this country in the company of Russia and Turkey, which are often criticized for failing to meet democratic standards. It would have been the first EU member state to have its democracy scrutinized in this fashion. On June 25<sup>th</sup> the Parliamentary Assembly voted not to subject Hungary to the monitoring procedure, but its report echoed many of the concerns that the Venice Commission had expressed. The Assembly set out specific actions that Hungarian authorities should take in order to restore the system of checks and balances in Hungary. On July 3, the European Parliament adopted a resolution written by Green MEP Rui Tavares, stating that according to Article 2 of the Treaty on European Union, Hungary's actions are incompatible with EU values.<sup>3</sup>

## THE ROOTS OF HUNGARY'S CRISIS

The crisis over the Hungarian constitution originates in the government's failure to write a new constitution after Hungary's communist regime fell in 1989. The current government has, in turn, used the constitution as a power grab while claiming to be completing the de-communization process. Meanwhile, the roots of Orbán's current popularity and political platform rest in his first-term policies, as well as the incompetence of previous leaders.

In most post-communist transitions, debate over constitutional change occurred during early stages of the political transformation, establishing new "rules of the game" for emerging democracies. Constitutional provisions have had far-reaching and unexpected consequences. For example, the Russian Constitution, which President Boris Yeltsin pushed through hastily in 1993, granted overwhelming power to the executive and provided a legal framework within which current Russian President Vladimir Putin has pursued his agenda with little viable opposition. The new Hungarian constitution similarly constrains opposition forces.

The development of Hungary's constitution followed a unique path—distinct from other CEE states. According to János Kis, Hungary's transitional parliament significantly altered the old constitution in 1989. However, the government remained dominated by the forces of the old ruling party which modified many agreements and reduced the transparency of this process. In the ensuing years, no party held the two-thirds majority required to create a new constitution. Given its ties with the past, the 1949/89 constitution's legitimacy was frequently questioned. In fact, between 1990 and 2010 it was modified 23 times, far ahead of the next most modified constitution of the region (the Czech constitution, amended five times).<sup>4</sup>

Although during this period the West praised Hungary for its democratic development, the country was deeply divided along left-right lines. Orbán served a first term as Prime Minister between 1998 and 2002, an era of greater right-wing influence. Economically, Orbán's first term was generally successful, despite criticism of his government's efforts to combat corruption and inflation. His major accomplishments included implementation of health, education and agricultural reforms, as well as stabilization of the economy. Economic conditions appeared promising enough that some hoped Hungary would join the Eurozone by 2009. Orbán's government also oversaw

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<sup>3</sup> "Hungary: EP Says Legal and Constitutional Changes in Hungary Incompatible with EU Values," The Greens European Free Alliance in the European Parliament, July 3, 2013, <http://www.greens-efa.eu/hungary-10253.html>.

<sup>4</sup> János Kis, "From the 1989 Constitution to the 2011 Fundamental Law," and Andrew Arato, "Regime Change, Revolution, and Legitimacy," in Gábor Attila Tóth, ed., *Constitution for a Disunited Nation: On Hungary's 2011 Fundamental Law* (Budapest: Central European University Press, 2012).

Hungary's accession to NATO in 1999. Although the Fidesz government displayed no significant authoritarian tendencies during its first term, it strengthened the Prime Ministerial role, moving towards more centralized control. Media manipulation also appeared occasionally during this first term.

Hungarians consistently kept the Socialist Party in power between 2002 and 2010, but Fidesz retained significant influence in parliament, as well as 12 out of Hungary's 24 seats in the European Parliament. The socialist governments became unpopular and significantly mismanaged the economy. In 2009, Prime Minister Ferenc Gyurcsány resigned after numerous corruption scandals, including his 2006 confession that he had lied repeatedly about the state of the economy in order to remain in power.

As an opposition leader, Orbán accused the government of allowing the Hungarian economy to fall under foreign control—a threat he continues to warn against—and the economic crisis eventually helped Fidesz, along with its close coalition partner, the Christian Democratic People's Party, to create the two-thirds majority in Parliament necessary to modify the constitution.

Fidesz thus bases its political appeal on an image of rescuing the country from an incompetent and corrupt Hungarian Socialist Party. Orbán's government argues that the Fundamental Law and its many amendments are simply a necessary completion of the post-communist transition process: with the Fundamental Law "Hungary also closed the door on the past...since our country was the last one among the states of the former communist bloc to replace its Soviet model-based constitution." Moreover, the new constitution is portrayed as necessary to create "the constitutional guarantees required for economic renewal and for reducing and controlling the national debt."<sup>5</sup>

#### EUROPEAN REACTIONS TO HUNGARY'S WEAKENING DEMOCRACY

To much of Europe, as well as to many Hungarians in the opposition, Hungary's new constitution weakens key checks and balances in government. It also erodes elements of liberal democracy by manipulating electoral districts, restricting media freedoms, restricting religious freedom, and promoting a version of ethnic nationalism that may harm minority groups. For example, the new constitution specifically privileges Christianity as a fundamental feature of the Hungarian nation, raising fears among non-Christian minorities, such as the Jewish community. Moreover, it defines the Hungarian nation ethnically, and makes reference to the former imperial Hungary, irritating neighboring states who were once dominated by Hungarian rule.

Recently, the radical right-wing party Jobbik—the third-largest party in Parliament—has also grown in influence. Orbán's failure to control Jobbik and his defiant attitude against the EU, combined with the new constitution's nationalist elements, play into Jobbik's ultranationalist agenda. Recently, Jobbik supporters protested against the World Jewish Congress conference in Budapest, and the party's parliamentary delegate called for Hungarian Jews to be listed publicly because he believes they may be disloyal. Orbán gave only a weak speech in response.

In its request to put Hungary under a special monitoring regime, the Council of Europe had cited in particular the recently passed 4th Amendment to the Hungarian constitution, which weakens the Constitutional Court and restricts political advertising during campaigns, as well as several specific problematic laws which have been made possible by the new constitution:<sup>6</sup>

- 1) The Act on the Right to Freedom of Conscience and Religion and the Status of Churches, Denominations, and Religious Communities gives Parliament the right to decide what is or is not a legitimate religious body, and has stripped all but 14 of Hungary's 358 religious groups of their official status.
- 2) The Act on Elections of Members of the Parliament has raised concerns about the method by which election districts are drawn.
- 3) The Act on the Constitutional Court and other Cardinal Acts on the Judiciary significantly weaken the Court by limiting its ability to review state budget and economic laws.

<sup>5</sup> "The Fundamental Law," Hungarian Government at <http://www.kormany.hu/en/hungary/the-constitution>

<sup>6</sup> "Fourth Amendment to Hungary's Fundamental Law," February 2013, Program in Law and Public Affairs, Princeton University, <http://lapa.princeton.edu/hosteddocs/hungary/Fourth%20Amendment%20to%20the%20FL%20-Eng%20Corrected.pdf>

4) The Act on the Media creates a Media Council, which controls radio frequencies, monitors content, and operates on vague standards that can be manipulated to silence critics of the current government.

Most importantly, according to the June 2013 Venice Commission report, the newest amendment to the constitution is being used to gut the power of the Constitutional Court. The Venice Commission noted the Hungarian government's pattern of taking unconstitutional laws and reintroducing them at the constitutional level so they would be beyond challenge. This politicization of the constitution poses serious threats to democracy and the rule of law.<sup>7</sup>

While these developments should be a cause for deep concern, the EU's response has revealed divisions that make a strong resolution unlikely. At its June 25 Parliamentary Assembly debate, the Council of Europe could have demonstrated a strong commitment to preventing the failure of democratic consolidation in member states. However, the debate descended into partisan politics, with left-leaning representatives being more in favor of monitoring Hungary, and center-right representatives largely rejecting that option. The main arguments against monitoring Hungary included concerns over setting a precedent by deciding to monitor a "mature democracy." The opponents of monitoring also argued that Hungary's constitutional problems are mostly technical issues, and the threats to democracy in Hungary are not as severe as those in several other Council of Europe states. Ultimately, the Council of Europe adopted a resolution with a mixed message. While it assertively criticizes the undermining of European democratic standards in Hungary, it resolves only "to closely follow" the situation in Hungary.<sup>8</sup> The Hungarian government has agreed to a few constitutional changes after the latest Council of Europe Venice Commission report, but many problematic provisions remain, including those on political advertising and recognition of religious groups. The Venice Commission response has been cautiously optimistic, and it is taking a conciliatory route.

The European Parliament also has not sent a clear message. As a representative body that reflects the spectrum of political views throughout EU member countries, the Parliament is divided according to political orientation. Although the EU Parliament recently voted in favor of the Tavares Report, which calls for greater scrutiny of Hungary and for the establishment of a new EU body to monitor member states' compliance with EU values, significant dissent came from the center-right bloc. From this perspective, the left-leaning elements of the EU Parliament who have been critical of Hungary are guilty of holding double standards: strict for Hungary, and more lax for Socialist-leaning Bulgaria and Romania.<sup>9</sup>

The European Parliament could decide to sanction Hungary for its actions. One potential powerful approach would be to use the EU's Article 7, in which Hungary's parliamentary voting rights as an EU member could be suspended for a serious breach of democracy and human rights. Given the divided state of parliamentary opinion, however, it is unlikely that Orbán's policies will receive this decisive condemnation.

#### FINANCIAL AID AS LEVERAGE?

In addition to concerns over the state of democracy in Hungary, Orbán's economic policies also have received scrutiny. The Fidesz government has tried to deal with the financial crisis through a variety of unorthodox economic measures and delay tactics. These measures include the nationalization of private pension funds to offset the budget deficit, mandatory utility price cuts, and retroactive industry taxes. New taxes and the lack of a credible long-term solution to Hungary's fiscal situation have caused major drops in foreign direct investment.

During the early stages of the current crisis, international financial institutions provided a partial rescue package. Hungary received a bailout of over \$25 billion jointly from the EU, the IMF and the World Bank. This helped the

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<sup>7</sup> "Opinion on the Fourth Amendment to the Fundamental Law of Hungary," European Commission for Democracy through Law (Venice Commission), Adopted by the Venice Commission at its 95<sup>th</sup> Plenary Session (Venice, 14-15 June, 2013). Opinion 720/2013. CDL-AD(2013)12. Strasbourg, June 17, 2013.

<sup>8</sup> Request for the opening of a monitoring procedure in respect of Hungary. Resolution 1941 (2013). Parliamentary Assembly, Council of Europe, June 25, 2013.

<sup>9</sup> "EP Report on Hungary: EPP Group Rejects the Use of Double Standards," EPP Group in the European Parliament, July 3, 2013, <http://www.eppgroup.eu/press-release/EPP-Group-rejects-the-use-of-double-standards>.

economy recover temporarily. However, ongoing aid talks with the IMF began to fail, partly as a result of Orbán's authoritarian tendencies and his unwillingness to make difficult structural reforms (such as severe cuts in public spending) that might undercut public support. Orbán was also unwilling to compromise with the IMF by keeping the Central Bank autonomous and free of Fidesz control. Because of these factors, the IMF declined to provide the requested flexible credit line for Hungary.

During the time of the unsuccessful aid negotiations with international financial institutions, Orbán and his Fidesz confidant Gregory Matolcsy, the former Minister of Economy and current head of the Central Bank, had been pursuing what Orbán called "economic self-rule." Their attempt to bypass the Constitutional Court by narrowing its scale of competence to review and annul most unconstitutional budgetary measures has garnered some of the boldest criticism in the Venice Commission's June 2013 report: it "results in reducing the position of the Constitutional Court as guarantor of the Fundamental Law and its principles, which include European standards of democracy, the protection of human rights and the rule of law."<sup>10</sup>

Hungary's current economic outlook is grim. Exports, consumption, investments and overall GDP growth are expected to continue to stagnate while government debt is expected to stay at almost 80 percent of GDP (the highest among the EU's post-communist member states) along with gross external debt at 121 percent of GDP, and unsustainably high borrowing costs on government bonds. Meanwhile Hungary's per capita EU funding for 2013 is expected to be higher than ever despite the shrinking EU budget. In a February 2013 speech, Orbán referred to this allocation of funds as "historic compensation for the former Communist states for their economic losses suffered during the Communist era." Besides Orbán's apparently misplaced sense of entitlement to EU funds, he appears to believe that his government has been rewarded for its actions. Orbán sees the EU funding as "a financial framework which Hungary may receive if we are working hard."<sup>11</sup> It was approximately a month after this speech that Fidesz passed the new constitutional amendment, considered Hungary's biggest step backward in years.

## CONCLUSIONS AND POLICY IMPLICATIONS

As the EU expands to include an ever more diverse array of countries at different stages of democratic consolidation, it must face the challenge of reinforcing its economic, social, and political values.

The European response to Hungary's direction starkly shows that there is no consensus on European democratic standards. While some European bodies investigate developments in Hungary and question its new constitution and policies, they are also plagued by conflicting political interests.

European leaders must take Hungary's direction seriously, however, because the country serves as a "test case" showing other EU members, both new and old, what reaction awaits countries that violate democratic values or other major European principles. The EU Parliament's adoption of the Tavares Report is a step in the right direction, but problems remain. It is not clear where the right of individual states to determine their own paths while receiving economic and other benefits of EU membership ends, and the EU's responsibility to make sure its members uphold specific values begins. The EU and related international organizations must tread carefully so as not to alienate Hungary and further encourage fears that the EU violates national sovereignty. At the same time, if Hungary succeeds in using sovereignty as a justification for passing laws that directly contradict important democratic and human rights principles that the EU supports, this may further undercut the concept of a truly democratic European Union.

The 2014 elections are the next opportunity for the Hungarian people to choose new leaders, so in the run-up to these elections, EU and other international attention should be focused particularly on the Orbán government's treatment of the media and on its election campaign laws. Laws that restrict information from reaching the public or that manipulate voting districts will skew election results even if actual voting procedures pass as free and fair, technically speaking.

Crafting a united EU response to Hungary's troubles might be difficult, but individual states and groups of states

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<sup>10</sup> "Opinion on the Fourth Amendment to the Fundamental Law of Hungary," Paragraph 113.

<sup>11</sup> "Prime Minister: Hungary's per capita EU Funding Higher than Ever," EU.kormany.hu, *The EU Policy Website of the Hungarian Government*, February 11, 2013, <http://eu.kormany.hu/prime-minister-hungary-s-per-capita-eu-funding-higher-than-ever>

could work with the Hungarian government to ensure that no further erosion of democracy occurs. One such group is the Visegrad 4, which counts Hungary among its four Central European members. This alliance was originally established in 1991 as a means for the Czech Republic, Poland, Slovakia and Hungary to cooperate and ensure their further European integration. Now that they are full-fledged EU members, these states are eager to establish themselves as equal participants in EU policy-making and to distinguish themselves as credible democratizers outside the EU. Thus the three other Visegrad countries might have the potential to persuade Orbán and Fidesz to compromise. This would both keep the reputation of the alliance strong, and benefit democratic politics in Hungary.

The United States should also pay close attention to Hungary. Despite Orbán's authoritarian tendencies, Hungary is still seen as a role model for the EU's Eastern Neighborhood Policy countries including Ukraine, Georgia, Moldova and Armenia. If the EU and the United States do not effectively address Hungary's political direction, it could further encourage the authoritarian direction taken by leaders such as Prime Minister Yanukovych of Ukraine and Georgia's President Saakashvili. In particular, Saakashvili has looked to Orbán as a source of European support. With this in mind, the United States should work actively with its European allies to counteract the democratic deterioration in Hungary through financial leverage, external pressure and talks with the Hungarian leadership. Failure to do so may result in the further spread of skepticism towards the West, a greater role for ethno-nationalist politics, and increased disregard for democratic principles in the newer EU states and the non-EU former Soviet states.

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