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European Union Backsliding in the Rule of Law: The Hungarian Case

La regresión del Estado de derecho en la Unión Europea: el caso húngaro

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RESUMEN

Hungría ha experimentado un retroceso en su Estado de derecho desde que el partido de Viktor Orbán obtuvo una supermayoría y con ello modificó las normas constitucionales que regían al país. Orbán, caracterizado por un populismo de derecha, ha sido ampliamente cuestionado no solo por la manera en la que ha acaparado el poder, sino por la manera en la que ha favorecido desde el estado a sus amigos y familiares cercanos. El FIDESZ, partido político de Orbán, defiende una visión constitucional que se ha calificado como constitucionalismo iliberal, donde prima una visión opuesta al integracionismo y más bien realza la idea de una identidad nacional opuesta a los valores de la Unión Europea como excusa para incumplir las normas internacionales. Las respuestas de la Unión Europea han sido varias y de distinta índole, tanto política, judicial como económica, pero al verse entrampados por el derecho de vetar las sanciones y el requisito de unanimidad para poder sancionar a un país que no cumple con los valores de la Unión Europea, parecería que no hay salida al deterioro del Estado de derecho. Así, el artículo analiza distintas salidas, opciones y posibilidades frente a la crisis del Estado de derecho y la democracia en Hungría.

PALABRAS CLAVE: democracia iliberal, Estado de derecho, Hungría, Orbán, FIDESZ, Unión Europea, sanciones, integración regional.

ABSTRACT

Hungary has experienced a backslide in its rule of law ever since Viktor Orbán modified its constitution. Orbán, characterized by right-wing populism, has been questioned not only for the way in which he has seized power, but also for the way in which he has favored his close friends and family. Orbán portrays a constitutional vision that has been described as illiberal constitutionalism, which he complements with the idea of an illiberal democracy, where a vision against integration prevails and rather enhances the idea of a national identity opposed to the values of the European Union as an excuse to disregard EU law. The responses of the European Union have varied, from political, judicial and economic sanctions, but seeing themselves trapped by the right to veto sanctions and the requirement of unanimity it would seem that there is no way out of the deterioration of the rule of law. Thus, the article analyzes different solutions, options, and possibilities in the face of the crisis of the rule of law and democracy in Hungary.

KEYWORDS: illiberal democracy, rule of law, Hungary, Orbán, FIDESZ, European Union, sanctions, regional integration.

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INTRODUCTION

Rule of law as a value is essential to the European Union, since Member States (MS) have close links with each other, and this creates a hyper-connected legal, economic, and social system. Which means that there is a common mutual trust and solidarity among the nations that belong to the EU. In this context for that trust to be maintained countries must guarantee minimum standards on the rule of law to assure other parties they will abide by the agreements all of them have committed to.

This essay pretends to tackle the rule of law backsliding in Hungary and what the institutions of the EU have done in dealing with this backsliding. It will explore in a first instance what the Commission has done and its relationship with the Council in acting together and in a synchronous way to fight against the erosion of the rule of law. It will also address the answer of the Court of Justice of the European Union (CEJU) and then explore different political, economic, and legal aspects of the crisis of the rule of law in Hungary. It is out of the scope of this paper establishing and discussing what the European Union understands as rule of law, but rather a institutional analysis of what can be done in the case of Hungary.

THE CONTEXT OF THE BACKSLIDE IN THE RULE OF LAW IN HUNGARY

Hungary has been in a constant backsliding in its rule of law crisis which some have characterized as illiberal democracy, some argue goes hand in hand with illiberal rule of law.[1] In this context, it is quite important to establish how this came to be and theorize about Viktor Orbán and his popularity. This in view that the rule of law backsliding or what certain authors characterize as illiberal constitutionalism, happens within a larger context of backsliding in democracy.[2]

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1. Tímea Drinóczi, and Agnieszka Bień-Kacała. "Illiberal Constitutionalism: The Case of Hungary and Poland". *German Law Journal* 20, n.º 8 (2019): 1140-66. https://doi.org/10.1017/glj.2019.83.
2. Takis S. Pappas, "Populists in Power". *Journal of Democracy* 30, n.º 2 (2019): 70-84. https://doi.org/10.1353/jod.2019.0026.

Viktor Orbán is an old political figure, he has been in the public sphere since the USSR had troops in Hungary, his first political actions were fighting towards USSR occupation and protesting for their troops to leave Hungary.[3] With the rapid decline of the USSR and the end of the communist ruling, Viktor Orbán started out with liberal ideas and started his party FIDESZ as prime minister in 1998, with a complete opposite view of that which he now holds. He lost the elections in 2004 and spent 8 years in the opposition, a timeframe within which he developed a more conservative political view,[4] which he proposed for the new elections to come.

In 2010, Orbán won a supermajority in parliament despite only accumulating 52.76% percent of the vote.[5] This two-thirds majority allowed him to pursue constitutional modifications, which he did in a very profound way.[6] Some have qualified his modifications to the old constitution to have made of it a "wholly new one".[7] Former independent institutions such as the public prosecutor, central bank, election commission, media board, audit office, ombudsman's office, data protection official have been exchanged for those loyal to Orbán.[8] But maybe he is most famous for packing the constitutional court through different reforms to the constitutional system. The two major causes for the change in the Constitutional Court were through broadening the number of judges and by lowering the retiring age.[9] This way the new seats and those left vacant could be filled by those who are sympathetic with Orbán's party.[10]

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3. Rick Lyman, and Alison Smale, "Defying Soviets, Then Pulling Hungary to Putin". *The New York Times*. November 7, 2014. bit.ly/3H8XPGi.
4. William Galston, "Backsliding in Budapest: How Hungary Explains Europe's Retreat from Democracy". *The New Republic* 249, n.º 6 (2018): 10-.
5. Zoltán Ádám, "Explaining Orbán: A Political Transaction Cost Theory of Authoritarian Populism". *Problems of Post-Communism* 66, n.º 6 (2019): 385-401. https://doi.org/10.1080/10758216.2019.1643249.
6. Krisztina Than and Gergely Szakacs, "Fidesz Wins Hungary Election with Strong Mandate", *Reuters*, April 12, 2010, sec. Editor's Picks, eut.rs/3IVLpD0.
7. Kim Lane Sheppele, "European Union's Top Court Rules Against Hungary and Poland in Rule of Law Showdown". *World Justice Project*. February 16, 2022. bit.ly/3kcOh3S.
8. Ibid.
9. Nikolett Hos, and Tamas Gyulavari, "Retirement of Hungarian Judges, Age Discrimination and Judicial Independence: A Tale of Two Courts". *Industrial Law Journal* (London) 42, n.º 3 (2013): 289-97. https://doi.org/10.1093/indlaw/dwt010.
10. David Kosař, Jiří Baroš, and Pavel Dufek, "The Twin Challenges to Separation of Powers in Central Europe: Technocratic Governance and Populism". *European Constitutional Law Review* 15, n.º 3 (2019): 427-61. https://doi.org/10.1017/S1574019619000336.

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He started out strengthening alliances with the liberal parties of the EU since his original proposals aligned with the liberal perspectives.[11] But once he achieved the supermajority his foreign policy took the same turn for, he was later persuaded by the Popular Party of Europe to join their coalition instead. Since then, he started out on a nationalist campaign, creating a tension between Hungary and Brussels. Blaming the EU for liberal politics which do not agree with Christian European values, on which he relies to promote anti LGBT and anti-migration policies. Fidesz left in 2021 the European Popular Party before they threw him out of their lines,[12] and since then there has been an agreement of most of the other Member States, except for Poland, to pursue Article 7 measures in the context of the backsliding of the rule of law.

THE RESPONSES OF THE EU

As it has been stated above, the Rule of Law is a fundamental value of the European Union; it is stated this way in the Treaty of Lisbon in its Article 2. The protection of the values enshrined in article 2 are afforded by the mechanisms contained in Article 7. The institution to rule on breaches of Article 2 would be the CEJU as developed in Article 19 of the Lisbon Treaty. This are the two main possibilities to hold accountable a Member State for the breach of the values of the EU.

The procedure contained in Article 7 requires unanimity from the European Council once there has been a proposal by one third of the Member States ["MS"] or by the Commission and after obtaining the consent of the European Parliament. Its effects are to suspend some of the rights such as voting rights for the representative of the government of that MS.

The Commission responded in several ways to deal with the rule of law crisis over the years. Considering that the erosion started taking place in 2010, it has done an effort to have an "approach to managing the rule of law crisis [that] has long rejected hard, nonnegotiable sanctions"[13] which resulted in a

11. Sebastian Kubas, and Anna Czyż, "From a Liberal Opposition Party to a Right-Wing Party of Power. Three Decades of the Hungarian Fidesz (1988-2018)". (2018).
12. Alexandra Brzozowski, "Orbán's Fidesz Leaves EPP Group before Being Kicked Out". *www.euractiv.com*. March 3, 2021. bit.ly/3kp1w1B.
13. Renata Uitz, "The Rule of Law in the EU: Crisis, Differentiation, Conditionality". *European Papers 2022* 7, n.º 2 (2022): 929-48. https://doi.org/10.15166/2499-8249/587.

decade long dialogue. The first concrete action was when in 2018 the Commission proposed for a budgetary conditionality in defense of the rule of law.[14] Von Bogdandy and Ionnidis qualify the system to deal with the rule of law as deficient, since this founding principle is substantially threatened. This is clear when they establish that "The enforcement mechanisms of Article 7 TEU are not triggered by any deviation from the rule of law; the threshold is set considerably higher. For the mechanism of Article 7 TEU to be activated, the Council must determine that there exists a "clear risk of serious breach" of the values of Article 2 TEU".[15] Setting the bar too high for the Commission to act requires for the commission to take a negotiated approach rather than that of a sanctioning body.

In this context there has been a new rule of law toolbox being developed to deal with the problem of the systemic deficiencies. Renata Uitz wisely points out that, "[t]he latest tools include a comprehensive annual reporting mechanism on the rule of law that covers all member states, and a new regulation that permits withholding EU funds from a member state that poses a risk to the Union's financial interest through breaching the principles of the rule of law".[16]

As part of rule of law toolbox, the response that the Commission was to create a Rule of Law Framework. The main objective of this framework is to, "prevent emerging threats to the rule of law to escalate to the point where the Commission has to trigger the mechanisms of Article 7 of the Treaty on European Union (TEU)".[17] This would address the main point of Von Bogdandy article on systemic deficiencies. The Commission took a three-step approach to the situation in Hungary which gradually escalated until in December 2017, it initiated the procedure under article 7. It had previously expressed concern in 2015 and urged other institutions to act, such as the Parliament, which also expressed concern in 2015.

The latest action has been that the Commission has withheld 7.5 billion euros and 5.8 billion euros in recovery grants to Hungary until Orbán complies with 27 rule-of-law reforms. Which in turn had its response when Hungary

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14. Ibid.
15. Armin von Bogdandy, and Michael Ioannidis, "Systemic Deficiency in the Rule of Law: What It Is, What Has Been Done, What Can Be Done". *Common Market Law Review* 51, n.º 1 (2014): 59. doi:10.54648/COLA2014003.
16. Renata Uitz, "The Rule of Law in the EU: Crisis, Differentiation, Conditionality". *European Papers 2022* 7, n.º 2 (2022): 929-48. https://doi.org/10.15166/2499-8249/587.
17. European Commission, Rule of Law Framework.

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vetoed the EU aid package for Ukraine of 18 billion euros. This has tensed the relationship between Hungary and the EU and has resulted on an agreement on the veto with Poland, who was its longstanding ally.[18]

The Parliament's response approached the problem from a political perspective, pointing fingers at the corruption of oligarchs. Especially in 2018 when the Parliament mentioned to be, "deeply concerned that members of these oligarch structures draw on Union funds particularly in the area of agriculture and cohesion to strengthen their position of power".[19]

However, the Parliament on September 12, 2018, called on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary to the values on which the Union is founded. The specific accusations regarding the rule of law related to the questioning of the Venice Commission on the constitution-making process in Hungary on the "lack of transparency of the process, the inadequate involvement of civil society, the absence of sincere consultation, the endangerment of the separation of powers and the weakening of the national system of checks and balances".[20]

The Council holds a very important place amongst the EU institutions and plays a fundamental role under article 7 of the Lisbon Treaty. For article 7 subsection one requires the Commission, the European Parliament, or one third of the states to initiate it, while the rest of the mechanisms in the article require one third of the member states or the Commission and should have the consent of two thirds of the European Parliament.

The Council has the possibility of imposing preventive and sanctioning actions, but while preventive actions require four fifths of the votes, sanctions require unanimity. In this context, Poland and Hungary have sworn to protect each other in the Council to avoid sanctions, because both have illiberal

18. Paola Tamma, "Poland and Hungary: How a Love Affair Turned Toxic", *POLITICO*, November 29, 2022, bit.ly/3IUFj5x.
19. European Parliament decision on discharge in respect of the implementation of the general budget of the European Union for the financial year 2018, Section III - Commission and executive agencies (2019/2055(DEC)) (13 May 2020).
20. Resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union.

democracies, and both experience the same backsliding in the rule of law.[21] Therefore they veto sanctions for each other.

The Council also developed jointly with the Parliament Regulation 2020/2092 which established that, "respect for the rule of law is essential not only for Union citizens, but also for business initiatives, innovation, investment, economic, social and territorial cohesion, and the proper functioning of the internal market, which will flourish most where a solid legal and institutional framework is in place".[22] Which allowed for a conditionality mechanism for the protection of the Union budget, which was later contested by both Hungary and Poland.

Finally, the CEJU has responded in different ways, though always through a judicial approach to controlling rule of law. In the Case C-286/12, *Commission v. Hungary*, the Commission seeks a declaration from the Court that,

> by adopting a national scheme requiring the compulsory retirement of judges, prosecutors and notaries on reaching the age of 62 – which gives rise to a difference in treatment on grounds of age which is not justified by legitimate objectives and which, in any event, is not appropriate or necessary as regards the objectives pursued – Hungary has failed to fulfil its obligations under Articles 2 and 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, 16).[23]

The CEJU determined that by adopting a national scheme of compulsory retirement of judges, prosecutors, and notaries when they reach age 62, Hungary does not fulfill its obligations under articles 2 and 6(1) of the Council Directive 2000/78/EC. Establishing a strong precedent against Hungary and stating that Hungary's actions are not aligned with the values of the EU.

Furthermore, on a press release of the CEJU on February 16, 2022, the court dismissed the actions brought by Hungary and Poland against the conditionality mechanism, which withheld billions of euros until the Member States respected the principles of rule of law. Hungary and Poland argued that Regulation 2020/2092 of the European Parliament and Council were a circumvention

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21. AFP, "Hungary's Orban Threatens EU Budget Veto", *France 24*, May 4, 2018, bit.ly/3XfT-MxB.
22. Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.
23. Commission v. Hungary C-286/12, 2012, para. 1.

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of the procedure laid down in Article 7. The Court took what could be argued as an objective stance by stating that, "accordingly, the regulation is intended to protect the Union budget from effects resulting, in a sufficiently direct way, from breaches of the principles of the rule of law and not to penalize those breaches as such".[24] In this way, the Court states that it is a lawful mechanism that should not be misused or abused to penalize the breaches as such, but rather to protect the Union's budget. The CEJU furthermore stated that, "since that compliance is a condition for the enjoyment of all the rights deriving from the application of the Treaties to a Member State, the European Union must be able to defend those values, within the limits of its powers".[25] Establishing that economic mechanisms are lawful in seeking compliance with the values of the European Union if they are lawful and are limited in their powers. This in view that, "the sound financial management of the Union budget and the financial interests of the Union may be seriously compromised by breaches of the principles of the rule of law committed in a Member State".[26] In this sense, the CEJU further limits the conditionality mechanism when it establishes that

> such a breach must concern a situation or conduct that is attributable to an authority of a Member State and relevant to the proper implementation of the Union budget. The Court notes that the concept of 'serious risk' is clarified in the EU financial legislation and states that the protective measures that may be adopted must be strictly proportionate to the impact of the breach found on the Union budget.[27]

PROSPECTS FOR A RESOLUTION

After seeing how entrenched the powers at stake are, the situation is not a simple one, and thus requires a complex solution. The backsliding in the rule of law, is a guarantee of keeping those who are in power satisfied. Some may argue that the level of political cronyism Orbán manages in Hungary allows him to coopt the power throughout the institutions in the country. At a first glance political solutions from within are not a real possibility, this in view that in the 2022 elections Orbán won with a blasting majority even after the

24. Court of Justice of the European Union. Press Release n.º 28/22. February 16, 2022.
25. Ibid.
26. Ibid.
27. Ibid.

whole opposition united as a single party.[28] The entrenchment between Poland and Hungary on vetoing the budget could be a way out, in view of the Ukraine war which has pitted Poland against Hungary on different sides of the war. The economical way out is the one at play now with the conditionality mechanism, which does not seem to be effective. Finally, the judicial position on the conflict does not name nor shame Hungary as recurrently and systematically breaching the values of the EU contained in Article 2, but rather softens the stance does not seem a real way out.

Political

Orbán is the closest ally to Putin in Europe, and in the context of the Ukrainian war, Orbán is siding with Russia, while the rest of Europe is siding with Ukraine. The war and the recent explosion of a shell in Polish territory allowed for Poland to be persuaded to abandon its alliance with Hungary.[29] This in view that Poland is part of NATO and had been blocking the efforts of the Commission to aid Ukraine which could be most closely seen as a support for Russia.

In this context Hungary has also opposed and blocked sanctions against Russia which in the eyes of Poland makes them their allies. Though in his rhetoric Orbán tries to say that he is looking for the best benefit of the EU's economy, his statements might break his ties with the Polish government.[30] This break in their relationship seems to have brought Brussels closer to Poland this since,

> Poland is now enjoying more favour in Brussels, after pledging adjustments to its contentious legal regime. Warsaw last week won the European Commission's approval for its €36bn Covid-19 recovery plan, cemented in a visit by commission president Ursula von der Leyen to Warsaw. Hungary's €7.2bn EU package for the same purposes remains stuck, while the commission in April formally triggered its

28. Matt Clinch, "Nationalist Viktor Orban Declares Victory in Hungary Election", *CNBC*, April 3, 2022, bit.ly/3GQljP5.
29. Euronews, "Polish Army Put on Alert after Two Killed in Blast near Ukraine Border", *Euronews*, November 15, 2022, bit.ly/3QIbFTf.
30. Reuters, "Europe 'Shot Itself in the Lungs' with Sanctions on Russia, Orban Says", *Reuters*, July 15, 2022, sec. Europe, bit.ly/3HaN9qt.

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new so-called conditionality mechanism, allowing it to withhold regular funds to Budapest because of corruption concerns.[31]

Though there have not been any public outbreaks where they have been seen to be falling apart, a certain distance has been marked between both countries. This also considering that Poland is on the verge of elections which mean that they will have to rethink their relation to Hungarian politicians if the PiS is hoping to win the election.

Nevertheless, there is also certain media outlets which point out that Poland might be trying to revive relations with Hungary. Especially after Morawiecki's declaration, "'[r]especting our Ukrainian colleagues, we would like to return to the cooperation in this format,' the prime minister announced. While admitting that the approach to the war has come between the group's members, he said he is certain 'that all the remaining issues, in which we showed solidarity and support (with each other), will bind us again".[32]

These declarations contradict that there might be a political way out, but not knowing how the war might evolve, the cautious way to proceed is by affirming that it is uncertain whether the war will have a significant effect. This especially considering that the recently elected majority party in Italy is a far-right illiberal party leaded by Georgia Meloni who is now prime minister of Italy and could further entrench Orbán's position regarding the rule of law.[33]

Though for this position there are also skeptics who mention that Italy might not want to risk the European recovery funds of which one hundred and ninety-one billion euros were allocated to Rome. In this sense, when confronted with the dilemma of supporting Hungary "Meloni would not risk the money, and she would have to follow the economic objectives".[34]

So once again, on the cautious side, it is still too early and unclear on how the Italian government will align itself in the European sphere. What can be sure, is that Orbán will find a rhetorical ally in Meloni who has also used com-

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31. Marton Dunai, "Hungary's Viktor Orbán Loses Friends in Poland over Stance on Russia Sanctions", *Financial Times*, June 9, 2022, http://bit.ly/3CWpffQ.
32. Aleksandra Krzysztoszek, "Morawiecki: Poland to Revive Relations with Hungary", *www.euractiv.com*, September 5, 2022, http://bit.ly/3wa5xcT.
33. Federica Pascale, "Italy's Meloni Backs Orbán, Says Hungary Is 'Democratic'", *www.euractiv.com*. September 16, 2022. http://bit.ly/3Xj6FXE.
34. Eszter Zalan, "[Analysis] Meloni's Likely Win Will Not Necessarily Strengthen Orbán", *EUobserver*, September 22, 2022, http://bit.ly/3QPG6aa.

mon places such as migration and George Soros to gain popularity. Which in turn can reinforce his popularity in Hungary affording him political capital to fight against Brussels.

Economical

The fact that Orbán does not have the money from the budget, makes it harder for him to comply with his political agenda. Making him less powerful and this could set a trend of decreasing his popularity. In some way, the EU's injection of money acts as a fuel for Orbán to keep his corrupt party members happy. For instance, "asked by reporters how he had grown his business faster than Mark Zuckerberg's Facebook, Mr Meszaros quipped, 'Maybe I'm smarter".[35] The cynicism that characterizes this type of statements are only possible because of EU money being injected into the Hungarian economy and later distributed to Orbán's corrupt acolytes.

On a more pragmatic view economic sanctions are the only response available for Europe though it might further disintegrate Europe instead of serving as a protection on the erosion of the rule of law. This in the context that they are withholding a large sum of money such as 7 billion euro which Hungary counted on when planning their annual budget. The fact that Hungary is undergoing the general economic recession, and the fact that it must do so without the money the EU used to afford them might foster deeper resentment towards the future. The conditions of the general population in Hungary will be affected by the decision of the conditionality mechanism. "Thousands of Hungarians, including teachers and students, marched through Budapest on Sunday to protest against the government, demanding higher wages for teachers and a curb on surging inflation that is eroding incomes".[36]

Although this inflation is multifactorial, the fact that the government has less money to spend on its social plans has exacerbated inflation. Hungary could look for money elsewhere, thus strengthening ties with Russia or other non-EU actors, acting as a foreign pressure on EU institutions. Especially considering that, "caps on gas and electricity bills have been a key plan of Orbán's

35. Neil Buckley, and Andrew Byrne, "Subscribe to Read | Financial Times", *www.ft.com*, December 21, 2017, http://bit.ly/3w8lSPd.
36. Krisztina Than, and Krisztina Fenyo, "Thousands Protest against 'Runaway Inflation' in Hungary as It Tops 20pc", *Independent*, October 23, 2022, https://bit.ly/3HccZuk.

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policies, but the costs of the scheme surged this year due to soaring energy prices, burdening the state budget. The government was forced to scrap the cap for higher-usage households from August 1".[37] For which he might decide to negotiate directly with Russia seeing as there is no other option to satisfy Hungary's needs.

Judicial

The last solution to the rule of law backsliding might be through a judicial intervention to unblock the entrapment agreed upon by Poland and Hungary. This would require that the CEJU distance itself from the narrow interpretation capabilities it has in several instances said to be bounded by. In this sense, the judiciary would need to make a deeper intervention in one of many possible ways. It would probably have to rule on Hungary's position as contrary to democratic and rule of law values, but from the cases reviewed in this essay, it is clear that the CEJU is far from adopting this position. In fact, whenever it intervenes it tries to do so in an impartial, objective and distant manner, showing no clear favorites but asserting its authority over the narrow spaces it is confined to.

This solution would rather require the CEJU to affirm that the values contained in article 2 of the Lisbon Treaty are justiciable. Meaning that one can invoke the rule of law as a right to be justiciable in the CEJU and argue on the bad faith of entrenching veto power to not be held accountable. Nevertheless, although it does not seem that the rulings of the CEJU have been too effective on stopping the backslide in the rule of law; there should be some progress to be agreed upon. The fact that both Poland and Hungary respect the decisions emitted by the CEJU, at least those regarding them directly is a good sign that there is not a total erosion of the rule of law. At this point, we must say that the Hungarian constitutional court has resisted EU law based on constitutional identity, making virtually inapplicable EU law that it considers contrary to its constitutional identity.

The true fear is that by exceeding its mandate the CEJU might open a valid point for the Hungarian Constitutional Court to disregard its ruling based on extra limitation of powers. So there is a lesser chance of this solution to be

37. Ibid.

considered, especially in view of how the CEJU has conducted itself during the past years and in special observation to case C-156/21 since it could compromise its institutional values as a respected court. In any case this essay would not rule out this possibility but just categorize it as a less probable one.

This confusion on where the limits of the judicial oversight of the CEJU are arise from the powers contained in articles 263 and 269 of the TFEU. In the opinion of the Advocate General Campos Sánchez-Bardona it is clearly established when he mentions that regarding 263 it "retains its *general* jurisdiction to review the legality of acts adopted by the Commission and the Council pursuant to Regulation 2020/2092 that are subject to an action for annulment. This is established, in particular, by Article 263 TFEU (with regard to decisions imposing remedial measures) and Article 265 TFEU (with regard to possible failure by the Commission to act under the procedure)";[38] and regarding 269 "has, pursuant to Article 269 TFEU, a jurisdiction that is *limited* to breaches of procedural rules rather than substantive rules, where an action for annulment is brought against acts adopted by the European Council or the Council pursuant to Article 7 TEU".[39]

In this sense, the CEJU must be extremely careful on which judicial oversight it is applying not to fall outside its competences regarding annulment on the merits of the case. Which makes the allegation of the backslide in the rule of law more problematic, as there would have to exist a previous discussion on whether this is a substantive matter or a procedural one.

CONCLUSION

The backslide in the rule of law in Hungary is not an isolated incident, but rather a systematic problem. Which has been addressed in different ways from the EU institutions, who did not have a proper framework to deal with it but found creative ways to amplify their toolbox to deal with rule of law backsliding. There is a clear effort to find ways that do not involve sanctions, but when dealing with a highly powerful adversary, it seems to be an inefficient approach to the galloping pace at which rule of law was eroded in a little more than a

38. Opinion of Advocate General Campos Sánchez-Bardona. *Hungary v European Parliament*, Council of the European Union C-156/21. para. 263.
39. Ibid.

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decade. Although the CEJU has not committed to a judicial solution to the problem, it has condemned firmly the actions of Hungary and thus has showed authority when doing so without exceeding its own powers. The political landscape is promising in dividing the alliance of Poland and Hungary, but it is still uncertain as new actors come into it such as the new illiberal Italy. The economic solution is a double-edged sword, which could turn against Europe further disintegrating the EU or by pressuring Orbán's government into aligning with rule of law standards. Any solution requires a degree of complexity which cannot be fully developed because of uncertainty and interpretative constraints. This in turn offers a fruitful field which is constantly changing, allowing for new solutions to emerge, but the decisions towards a solution must be swift and firm for them to work.

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