

How To Deal With Poland And Hungary



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THE EU MUST DEFEND ITS CORE VALUES AND PROTECT THE RULE OF LAW IN EACH AND EVERY COUNTRY IN EUROPE

“Hungary and Poland can no longer be considered liberal democracies. In both countries, the authoritarian institutional system has been established, giving largely unrestricted political power to the ruling party. While they are still not dictatorships, the potential for authoritarian rule increases considerably with every new legislation expanding the power of the government.”

Grzegorz Ekiert

In March 2017, I met with Henning Meyer, Editor-in-Chief of Social Europe, in Cambridge, MA at the Minda de Gunzburg Center for European Studies at Harvard University to discuss the authoritarian turn taking place in two key EU member states in East Central Europe, namely Hungary and Poland. During our conversation, I argued that the EU must not accept the assault on liberal values and democratic institutions and needs to find ways to prevent member states from turning their backs on democracy. Since then, the condition of democracy in Hungary and Poland has deteriorated considerably. Over the past few months, both governments have introduced new legislative acts that restrict political rights and subvert the institutional foundations of democracy. For example, the Hungarian Civic Party (FIDESZ) government launched legal attacks on civil society organizations by restricting the activities of opposition parties and revising laws governing higher education in an effort to destroy the Central European University (CEU), the only institution of higher education that is beyond its control.

After demolishing the Constitutional Tribunal, the PiS government in Poland introduced a series of legislative acts intended to abolish the independence of Polish courts, including the Supreme Court. Three new laws give the ruling party the right to subvert constitutionally prescribed terms of judicial appointments, replace all members of the Supreme Court and heads of all other courts

in the country. They are designed to put the national judicial system under the control of the Ministry of Justice. These laws evidently breach the Polish Constitution and were introduced without consultation and debate. The manner in which these laws were enacted violated parliamentary procedures. This legislative coup provoked huge street protests across the country and fears over the erosion of the rule of law across Europe. What happened in Poland in July is a classic *autogolpe* – a self-coup by the executive power backed by the majority in both chambers of Parliament. Although Poland's President Andrzej Duda, who had supported the Law and Justice Party (PiS) at every turn since his election, unexpectedly vetoed two out of three laws, the PiS majority vowed to continue their crusade to take over the Polish judicial system and promised to target the Polish media as well.

As a result of these and earlier actions, Hungary and Poland can no longer be considered liberal democracies. In both countries, the authoritarian institutional system, giving largely unrestricted political power to the ruling party, has been established. While they are still not dictatorships, with every new legislation expanding the power of the government the potential for authoritarian rule increases considerably. There is no longer a guarantee that the next elections in both countries will be fair and free. Moreover, both governments have become rabidly anti-European, adamantly rejecting any intervention of European institutions in their domestic policies and vowing to protect each other in case the EU recommends any sanctions. They call themselves in a Putinesque fashion illiberal, sovereign democracies but illiberal democracy is an oxymoron. They are rapidly becoming electoral authoritarian regimes.

Recent actions by both governments violate the letter and spirit of EU law and were criticized by the European Parliament, the Council of Europe, the European Commission as well as by civil society organizations and leaders of other EU member countries. As Frans Timmermans, Vice-President of the Commission, recently stated: "Our recommendations to the Polish authorities are clear. It is time to restore the independence of the Constitutional Tribunal and to either withdraw the laws reforming the judiciary or bring them in line with the Polish Constitution and with European standards on judicial independence".

In recent days, the Commission has launched an infringement proceeding against Poland for breaches of EU law and it is almost certain that the Commission will trigger the Article 7 procedure. This is a situation the EU should never face. After all, enlargement to the East was considered to be one of the most successful EU policies. It quickly facilitated consolidation of democracy and economic modernization in countries of the former Soviet bloc. Ironically, today what was regarded as a success is increasingly considered as one of the biggest policy mistakes of the EU. This view has been reinforced in recent months by the irrational crusade of the Polish government to prevent the reappointment of Donald Tusk to a second term as the European Council President and the Hungarian government's assault on the Central European University. These actions pose important questions and critical challenges for the EU today. How could these two countries that were leading the region's democratization process and economic reforms come under an ultra-nationalist leadership that is willing to subvert foundations of democracy and European principles to gain power? Are Poland and Hungary already the first ever authoritarian states within the EU? Can Jarosław Kaczyński and Viktor Orbán be stopped? Can the rule of law be restored and the assault on democratic institutions brought to an end? Can anti-European, populist nationalism be defeated?

After moving cautiously through 2016 to avoid any backlash that could strengthen anti-EU attitudes, European institutions and leaders have realized the gravity of the problem. So far, 2017 has not been kind to right-wing nationalists in power from new member states. After elections in the Netherlands and France the populist tide seems to be receding. It is also increasingly clear, that EU leaders are not going to let Kaczyński and Orbán do whatever they please in their own countries. Other Visegrad countries are reluctant to follow suit against Europe fearing to compromise their vital interests. Specific actions, such as the Polish government's effort to establish its full control over the judiciary or Orbán's assault on CEU have backfired and galvanized opposition in Europe and in their own countries. And finally, key EU leaders are no longer reluctant to voice their criticism and call for sanctions for violation of EU law and fundamental European values. These voices include: German Chancellor Angela Merkel's spokeswoman who noted that: "Freedom, democracy, rule of law and human rights are not up for debate in Europe" Jean Asselborn, Luxemburg's Minister for Foreign Affairs, who at the Global Media Forum observed that by "the end of this year after all important elections are concluded, we need to ask Poland and Hungary whether they want to stay within the European Union and observe its principles or whether they want to go their own way. We cannot work with countries that violate fundamental values. The EU is neither Turkey nor the Philippines".

The unfolding executive coup in Poland already brought condemnation from all European institutions and leaders of key member states. There is no doubt that the Article 7 procedure and other mechanisms will be used to discourage the assault on democracy in Poland. Should the PiS government refuse to cooperate marginalization and sanctions will follow. In an interview with European newspapers French President Emmanuel Macron clearly articulated this position warning against certain leaders "abandoning principles, turning their backs on Europe, having a cynical approach to the European Union that only served as dispensing credit without respecting its values... Europe isn't a supermarket. Europe is a common destiny. It is weakened when it accepts its principles being rejected. The countries in Europe that don't respect the rules should have to face the political consequences. I will speak to everyone with respect but I won't compromise on European principles – on solidarity or democratic values".

Grzegorz Ekiert, Laurence A. Tisch Professor of Government and Director of the Minda de Gunzburg Center for European Studies at Harvard University.

HOW THE EU SHOULD DEAL WITH POLAND AND HUNGARY

The following is an edited transcript of the conversation between Henning Meyer and Grzegorz Ekiert that took place in March 2017.

Some European governments, particularly in Hungary and in Poland, are seemingly becoming more authoritarian in nature. How do you assess the situation?

Already in 2015, Professor János Kornai, the most distinguished Hungarian social scientist, claimed that Hungary is no longer a democratic country. Poland moved away from constitutional democracy as well through a series of legislative acts that demolished the Constitutional Tribunal and recent assaults on the Supreme Court and the independence of the entire judicial system. Curiously, both countries' governments argue that they subvert existing democratic institutions to make democracy stronger and more responsive to popular will. They claim just to fulfil their promises to the majority of voters who elected them. Even assuming that this is not a cynical ploy, the fundamental question for Europe today is where democracy ends and an authoritarian system begins.

This is not at all a trivial question, since there is some confusion among experts about where the border between democracy and authoritarian regimes lies. In the past, it was relatively easy to recognize authoritarian rule: no free and fair elections, no rule of law, no political opposition, no independent media and civil society, no respect for rights and liberties, political repressions, etc. Today, authoritarianism is an elusive concept made more complicated by the emergence of so-called hybrid regimes. In a nutshell, contemporary authoritarian regimes have learned how to live with relatively clean elections and some trappings of political opposition and civil society. They even tolerate some independent organizations and media. They also tolerate open borders and free flows of economic resources and information. As a result, leaders like Orbán, Kaczyński or Putin and Erdogan can claim that theirs is a fully democratic state and that their critics are either "foreign agents" with ulterior motives or the beneficiaries of the old regime who are defending their ill-acquired gains and privileges. Accordingly, these regimes reject EU concerns about human rights and claim that EU interference violates their sovereign rights, that their policies are designed to promote justice and protect vital national interests of their countries. From their perspective, the rule of law serves to protect beneficiaries of the old regime, their liberal allies and foreign interests. They do not hesitate to ignore the opposition and public opinion and push

legislative acts through Parliament even if they violate the Constitution and breach parliamentary procedures.

I think that today's Poland is a clear example of the tyranny of the majority where the ruling party disregards the constitution, the rule of law, parliamentary procedures and citizens' rights on a daily basis. The idea of democracy that Kaczyński believes in implies that the parliamentary majority can do anything it wants, should face no institutional constraints of any kind and that the opposition should shut up and follow. That's his vision of democracy. In fact, Kaczyński's PiS parliamentary majority represents the minority of voters. His party got just 37.6% of votes with only 51% electoral turnout. Thus, fewer than 20% of eligible voters supported the party whose self-declared mission is the wholesale remaking of Polish democratic institutions and reversal of the country's commitment to European integration. Similarly, Hungary's FIDESZ represents only 26.6% of eligible voters after the 2014 election. Both PiS and FIDESZ believe in a Europe of sovereign states and reject any concerns about their national policies as EU diktat. To implement its political agenda, PiS does not hesitate to subvert the Polish Constitution, the rule of law and parliamentary procedures. Viktor Orbán used his extraordinary majority from the 2010 elections to change the constitution, so he does not need to break it like Kaczyński. But the consequences of these changes for the functioning of Hungarian democracy constitute a similar threat to the rule of law and democratic standards.

What we really don't fully understand is the extent to which these two governments are institutionally in the authoritarian territory at this point. Both PiS and FIDESZ are able and willing to do anything to stay in power, except changing the constitution, since they do not have the required majority. But they can easily go around constitutional constraints in their quest for unconstrained power with the approval of the Constitutional Tribunals they already control. FIDESZ and PiS have followed pretty much the standard playbook of authoritarian politics. One can call it "salami tactics". Hungarian Communist leaders used this term to describe the imposition of the communist dictatorship. It implied a gradual takeover of the state, subversion of democratic institutions and the destruction of political opposition. The strategy followed by Orbán and Kaczyński is broadly similar.

In the first step the PiS government took over control of the security services, moved the independent Prosecutor Office to the Minister of Justice, purged the military (90% of the top officers of the Polish general staff were dismissed within a year), the civil service and the diplomatic corp. The rules for public appointments have been changed, substantive requirements were eliminated and the open competition process abandoned. Consequently, PiS was able to staff all top positions across the state administration and agencies with its appointees, often without required skills and experiences. Moreover, administrative decentralization was reversed and decisions, especially regarding resources, recentralized.

The next step was the takeover of public media. The governing rules were amended, over 200 journalists were purged from public television and radio and all executives were replaced. Programs and programmatic principles were changed – in an instant public media became a propaganda tool and full-time supporters of government policies. Independent media linked to the opposition have become the main target in the propaganda war and were starved of resources since advertising by state companies was redirected to state-controlled and state-supporting

media outlets. The Hungarian and Polish governments have both developed strategies to reduce the impact of independent media under the cover of reducing foreign influence or offering the public more balanced coverage. PiS is currently working on a law aimed at “de-concentrating” and “re-Polonizing” private media. But even without this new law, Poland registered the biggest drop in the freedom of media in the world in 2016, according to Freedom House.

The assault on the judiciary’s independence was a critical part of the state’s takeover strategy in Hungary and Poland. Its purpose was to capture Constitutional Tribunals in order to replace all judges appointed by previous governments and remove any independent oversight of new legislative acts. In fact, the Tribunals are used now to validate laws passed by the parliaments and to protect the government from domestic and foreign critiques. PiS prevailed in neutering the Polish Constitutional Tribunal, despite massive street protests by the opposition and objections of European institutions. Now, all other Polish courts, including the Supreme Court face exactly the same situation. Four legislative acts approved by the Polish parliament were designed to purge the courts, give the Ministry of Justice discretionary power over the courts at all levels, and completely recast the institutional foundations of the judicial system.

Both governments have big plans concerning the economy as well. They include staffing boards of all state-owned enterprises with their supporters and replacing all top managers, expanding and protecting the public sector in the economy by forcing foreign companies to sell their assets to Polish or Hungarian state-owned firms and enacting discriminatory tax rules that serve to promote national companies and protect them from foreign competition. Many of these efforts face careful scrutiny at the European level, since they infringe on common market laws and regulations. Nevertheless, both PiS and FIDESZ need more control over the economy and more revenues to be able to pursue their populist economic policies.

In short, both governments follow a similar sequence of measures and use their majority in parliaments to pursue their political objectives. Of course, voices of the oppositions and civil society are completely ignored. Procedures and parliamentary traditions are violated at every turn. There are no meaningful debates in parliament, legislative acts are introduced in quick succession and are voted on without discussion often in the middle of the night. Anything the government wants can be turned into law in a matter of 24 hours. Such a legislative “*Blitzkrieg*” is designed to incapacitate the parliamentary opposition and to demobilize the public.

The biggest concern is that the Polish government is going to change the electoral law governing the forthcoming local elections to make sure that PiS will be able to take over local governments that are mostly in the hands of the opposition. And the same is in store for national elections. This means that PiS may stay in power for as long as it wants. Viktor Orbán changed the electoral law in Hungary to accomplish just that and nothing can prevent his government from tinkering with the electoral law again. I think we have a serious problem here. It is not just that the Hungarian and Polish governments are violating some elements of the rule of law. Free and fair elections and the survival of democracy is at stake.

Can you elaborate how this applies to Poland in particular?

The political situation in Poland is particularly bizarre. From the outside, the Polish government looks like a normal European government ruled by a majority party, but de facto it is the head of PiS and a simple member of parliament – Jarosław Kaczyński - who is running the country without any formal constitutional responsibility. The Prime Minister and the President are just figureheads, who follow every order coming from that one person. I think this is a completely unacceptable situation by any European and democratic standard. When Angela Merkel came to Poland last year, she had to meet Kaczyński to find out what are the views of the Polish government. The country not only has a leader-centred majority party but also a leader-centred governing process in which every important decision is consulted beforehand or reversed if he is displeased.

The question is why EU leaders have tolerated this authoritarian drift for a number of years. Hungary has been pushing the limits since Orbán's victory in 2010. In fact, the infringement proceeding forced him to abandon the idea of wholesale purge of Hungarian judges in 2013 but many other small moves against European laws and values went unchallenged. The answer may lie in the EU's memories of the Haider affair in Austria which have influenced the way EU policy-makers evaluate decisions about interference in domestic politics of member states.

As you remember, after inconclusive elections in 1999, the far-right Austrian Freedom Party (FPÖ) led by the allegedly racist Jörg Haider became a member of the ruling coalition in Austria. In response, diplomatic sanctions were instituted by 14 member states and cultural and educational exchanges were suspended. The EU response didn't work very well. Sanctions alienated Austria, created a lot of complaints and a lot of frictions between Austrian and EU politicians. Public perception in Austria was that the EU was trying to bully a small country, which just followed the rule of law and parliamentary procedures. In the end, Haider resigned as a leader of the FPÖ and sanctions were lifted. But before that happened the EU appointed in 2000 the so-called "three wise men" – former Finish Prime Minister Martti Ahtisaari, international lawyer Jochen Frowein and former Spanish Foreign Minister Marcelino Oreja – to review the commitment of the Austrian government to common European values. This report is relevant to today's situation. It made an important point in re-affirming the concept of common European values, concluding that European states have positive obligation to protect and promote human rights and fundamental freedoms, pluralist democracy and the rule of law.

It should be emphasized that the Austrian government did not change or breach the Austrian constitution. It did not introduce any law to purge the public administration or media. It did not plan to destroy independence of the judiciary nor restrict the right of assembly and freedom of speech. In contrast, the Polish and Hungarian cases go well beyond what happened in Austria. Both governments introduced politically motivated legislations that constituted clear breaches of EU law and European values, undermined the rule of law, and restricted fundamental freedoms. What we see in these two countries is a determined effort to really subvert the existing democratic system in a fundamental way.

Why is this an important issue for the European Union? I think it is important for two reasons. The European Union is founded on two different legitimizing principles. One may be called

institutional legitimacy, which means a system of efficacious and well-governed institutions, which are very efficient in implementing a variety of policies across the EU and in responding effectively to various crises and challenges. The multi-dimensional crisis that has affected the EU since 2009 greatly undermined this legitimizing principle. The crisis exposed the EU's ineffectiveness in managing EU affairs and in responding to unexpected economic and political challenges. Moreover, the debate (largely misguided in my view) about the EU's democratic deficit has further contributed to the unravelling of its institutional legitimacy. Given the uncertainty about institutional legitimacy what is left is the normative legitimacy – the system of values, which epitomizes the European Union. That is why the Polish and Hungarian challenge is so critical. It is the challenge to common European values. If the EU does not consistently pursue a hard line towards those countries, the only standing legitimizing principle of the EU is in danger.

Let me connect this point about values with two issues you mentioned before. You stated that it is very hard to categorize in political science terms what is going on. Is, effectively, what Orbán termed “illiberal democracy” a stepping stone towards an authoritarian regime, which is already beginning to question the value basis on which the European Union stands? Also, you mentioned that, in effect, political power in Poland is vested in one single member of parliament. How is this possible? What is the foundation of the power of Kaczyński given that even though the formal role he plays in the political system is just as a normal member of parliament, he can maintain that power grip on official institutional structures?

Democratic institutions are unique. They require loyalty and the cooperation of all political actors to function. They require minimal trust between those in power and the opposition. They require solidarity and public-minded behavior on the basis of commonly shared norms. The moment someone decides to break this fragile balance the system stops working. You can currently see this happening in the US under the Trump administration where the traditional way American democracy had functioned through the legitimate, formal institutions and a shared informal structure of cooperation, rules and norms is now unravelling.

When the American President can say, forget about the traditional rules and shared norms, he breaks informal underpinnings that make formal institutions work. There is no formal requirement that I show my tax returns so I will not do it; I do not believe in conflict of interest so I am not giving up my companies; my family members are great people so I appoint them to the highest positions.

It's a bit like this in Hungary and Poland. For Polish democracy to function properly it needs to be based on cooperation between those in power and the opposition. This requires some level of trust, civility and good will. Under no constitution is a government obliged to listen to the opposition but in decent democracies it does or at least treats the concerns of the opposition seriously. Thus, civility in politics does not usually come from formal institutions but from shared concerns and understandings, traditions, unwritten norms and informal rules of public behaviour. This relation and the entire normative system around it is now broken in Poland. Politics is no longer about the common good and cooperation in solving the country's problems but about enemies who need to be destroyed and friends who need to be supported, regardless of the moral or political cost.

The fundamental problem of parliamentary democracies is the danger of the tyranny of the majority. The moment you have one more seat in the parliament than the opposition, you can basically do whatever you want. The only check on the power of the parliamentary majority is the Constitutional Tribunal and an independent judiciary. That is why the first thing Kaczyński and Orbán did was to try to take over their respective Constitutional Tribunals. The moment this is done, the power of the majority is almost absolute.

Why Kaczyński has so much power is a very interesting question. He constructed his party in a very peculiar way. It is a Mussolini-like, leader-centred party without Mussolini. Kaczyński, just a simple member of parliament, gives orders to the Prime Minister, President and others holding formal positions in the state and representative institutions. Anyone trying to disagree with the leader is in danger of being expelled from the party. And being out of the party means that you are out of politics since these are people who often have no skills and credibility to survive in politics on their own. Their chances of being embraced by other parties are slim, given the depth of political polarization. They are either part of the Kaczyński party or they are nowhere. That is why their entire public life is invested in loyalty to the leader. That is why the Prime Minister, members of the cabinet and the President follow orders regardless of their nature and consequences. The bizarre crusade against the reappointment of Donald Tusk in opposition to the entire EU is a case in point.

How do you assess the domestic reaction to these developments in the countries in question, the political as well as civil society reactions to that? In Poland, there were widely reported protests. There was also resistance in Hungary, so how do you assess this from the civil society point of view? From the political point of view how effective do you think has the reaction been? What could be improved?

There is a significant difference between Poland and Hungary in this respect. At this point, Viktor Orbán has an iron grip over Hungarian politics and his institutional engineering since 2010 makes FIDESZ almost impossible to dislodge. The threat to his parliamentary majority comes from the far right. The Movement for Better Hungary (Jobbik) is the single most significant opposition party today. This means that Hungarian politics is increasingly pushed to the far right and away from Europe as Orbán competes for voters with Jobbik. The liberal opposition is weak and fragmented and civil society organizations are much weaker than they are in Poland. Although, as the recent street protests in support of the CEU showed, civil society is not dead and still has the capacity to challenge the government. Yet, it is hard to be optimistic about how effective that pressure from civil society can be, even if it is combined with strong pressure from the EU.

In Poland, political divisions are different. PiS does not face any significant challenge from the far-right but the left is also very weak. There is no left-leaning party represented in the Polish parliament. Thus, the main adversaries in Polish politics are nationalists represented by the PiS on the right, and liberals represented by the PO and Nowoczesna as well on the right. Interestingly, the support for major political parties has remained relatively stable since the elections in 2015, despite the fact that the degree of political polarization increased dramatically.

In general, public opinion in Poland has been divided in a relatively stable way in recent years. Approximately 30% of the population supports PiS another 30% liberal opposition parties. The

other 30% or so have withdrawn from politics for various reasons or were never interested in politics. Moreover, electoral participation oscillates just above 50%. Thus, political apathy meets a highly polarized and predictably divided electorate. The question is who will convince the non-committed voters to step in and how would they vote. Of course, Kaczyński, with his populist economic policies, hopes that he can buy that part of the population. He needs the support of 40% of the electorate to win the next election. He's been trying to accomplish this quite diligently: giving special subsidies to families with children, lowering the retirement age, increasing taxes on foreign supermarkets, and so on. So far the reaction of Polish society to these policies has not been as enthusiastic as PiS had expected and it still can only count on its core electorate.

Yet, in contrast to Hungary, Poland has significantly stronger political opposition and civil society. While the opposition is also divided, it could easily pull in more votes than PiS, if it unites. Polish civil society has traditionally been the strongest in the region and has developed impressively since 1989. After the 2015 elections there has been an unprecedented level of mobilization against PiS policies, resulting among other things in the formation of the biggest social movements since the time of Solidarity. Last year, a huge country-wide protest of women forced PiS to abandon its plan to tighten abortion laws. Similarly, the Committee for Defence of Democracy (KOD) brought hundreds of thousands of Poles to the streets in defence of the Constitutional Tribunal. While PiS is trying hard to impose its control on NGOs and to drum up support among organizations allied with it, this is not the battle it is likely to win.

Neither the EU nor civil societies in Hungary and Poland alone, however, are able to reverse the authoritarian drift in these countries. This requires a joint effort of the political opposition, civil society organizations as well as the EU and other European institutions. It is also important that the UK (after leaving the EU) and the US are part of this coalition for protecting democracy in the region. Kaczyński and Orbán need to understand that the West is determined to defend democracy and the rule of law and that the respect for human rights and political liberties is not up for negotiation in Europe. If they do not abide, they risk becoming even further marginalized, suffering real political and economic consequences and cornering themselves into an alliance with Putin and Erdogan.

If we come to the European level, and you already mentioned the challenge to European values being presented by these developments, how do you think the European Union should respond?

Finding the proper response is very difficult for the European Union because it is constructed on the basis of solidarity, trust, voluntary cooperation and dialogue. Some actions also need consensus of all member states. This may be difficult to achieve when two offending countries pledge to protect one another. Moreover, sanctioning one EU member has political consequences. There are many different domains that require close cooperation where one obstructive government may be able to bloc decisions and hamper discussions of issues that may not be directly political. Finally, the instruments at the EU's disposal are few and untested, since such a challenge to democratic rule was never seriously considered as something the EU may face. So, responding appropriately, effectively and resolutely might not be easy.

The obvious instruments are infringement procedures for breaches of EU law and the Article 7 procedure. The infringement procedure is effective since it does not require a consensus of member states and has routinely been used across the EU. It was already successful in stopping the wholesale purge of Hungarian judges by Orbán and it has already been launched against Poland as well. Its obvious constraint is that it's limited to areas covered by European law and that it is time consuming. The Article 7 procedure, while launched by the majority, requires consensus of all members for sanctions to be imposed. But even if the final sanctions are blocked, it has a significant symbolic meaning. No doubt that launching the procedure will alienate the Polish government even further. It could also increase support for nationalism and populism in Poland, and in some other countries. Kaczyński has said several times that Article 7 and potential suspension of Poland's voting rights is a joke. I think that's the attitude of the Polish government at this point. Kaczyński doesn't want to negotiate with the European Union, he wants to stake out his position and force the European Union to accept it. There is no willingness to make any concessions on the Polish side and Kaczyński counts on Orbán's support in preventing any meaningful sanctions. He also tries to rally other new member states to build a sort of regional coalition against Brussels and old member states. Of course, this is a deeply misguided position since the national interest of Poland requires the goodwill of EU partners in negotiating hundreds of issues in the coming years. If this goodwill is not there, Poland will pay a heavy price.

Apart from formal tools there are two or three other ways of reacting to developments in both countries. The first one is informal. The Commission and the heads of important European states should keep the dialogue going with Kaczyński and Orbán. They should keep trying to convince them that what they are doing is not acceptable in Europe and will have serious consequences for their respective countries. There is plenty of goodwill to keep that dialogue on the EU side but it clashes with cynicism of Polish and Hungarian leaders. They should be under no illusion that the EU is going to return to these critical issue over and over again and contest every new law that infringes on EU laws or common European values.

The next option, and I think this is the real nuclear option, is to start looking carefully at the spending of the structural and cohesion funds those countries receive from the European Union. Poland is the biggest beneficiary of structural funds. To put this in context, during the previous budgetary cycle Poland received more than the equivalent of the entire Marshall Plan for Europe. Poland is scheduled to get another Marshall Plan in the current budgetary cycle. It's €1 billion of EU taxpayers' money going to Poland every month, of every year. I think this inflow of funds helps Kaczyński finance many of his populist ideas. He counts on that aid and his populist economic policies can be funded because the Polish budget can be stretched to his benefit. The same applies to Hungary. As Ivan Krastev, Chairman of the Centre for Liberal Strategies in Sofia, once remarked: Orbán and Kaczyński need anti-EU rhetoric and EU money to survive. Of course, the structural funds cannot be cut for political reasons but the way the funds are distributed and controlled by the Commission includes a lot of rules about procedures, legality, the bidding process, transparency and so on and so forth. I think the EU should start to monitor the process more tightly in order to make it more stringent. It needs to look very carefully at every Euro being spent in those two countries to protect European taxpayers. This may be enough to significantly slow down the dispersion of funds and impose some real cost. This is justified since both governments not only try to have full control of these funds but also because they are increasingly being allocated to their cronies and political supporters. Perhaps, by focusing on money, one can

really force both governments to start thinking about what the basis of cooperation between them and the European Union should be and what is the meaning of solidarity.

As former French President François Hollande once said the EU is not a moneybox from which everyone can just take some money out. This is European taxpayers' money and that money can only be spent when the country receiving it shares European values, respects European institutions and reciprocates in solving EU problems. Both Orbán and Kaczyński seem to think that their countries do not have any obligations and are exempt from the principle of solidarity because of historical injustices. I think this is, among all the other problems the European Union faces at this point, one of the biggest threats: having two countries within the Union that are not playing by the rules of the game. We have had disloyal opposition in the European Parliament for some time but now we also have disloyal member states.

Apart from having a stronger focus on compliance to reinforce EU values, is there something individual member states can do by exerting their influence on Hungary and Poland?

I think the Commission should not be the only institution that takes a leading role in insisting on the principles of the rule of law and on compliance with European values. This could reinforce the image of faceless Brussels bureaucrats pushing everyone around. The Commission (and especially Frans Timmermans) is already portrayed as the enemy who is protecting the interests of foreign capitals and cosmopolitan elites. I think that key member states have to take on a big role in persuading the two governments to change. Even if there is a difference of opinion among member states, the key members like France, Spain, Italy or Germany should definitely speak with one voice. We all understand the historical complexities here, and Kaczyński is skilful in exploiting them by evoking parallels to World War II, Polish suffering, or Soviet domination. Consequently, a common voice is crucial. European civil society organizations and European media must also exert their influence. The opposition parties and civil society in Poland and Hungary need support and their voices need to be heard across Europe. The threats to democracy in these two countries are real and persuasion alone is not going to work. The pressure has to come from all institutions, organizations, parties and individuals concerned about the future of Europe, and it has to have some teeth. Persuasion and dialogue needs to be supported by serious measures that result in economic consequences for those countries. I think that the stakes are too high to hope that the problem somehow disappears or that domestic opposition can prevail on its own.

About Grzegorz Ekiert

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About CES Harvard

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