



Will human rights survive illiberal democracy?

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Eszter Zalan, A warning from Hungary: Building an illiberal zombie in the EU threatens political rights and democratic freedoms, pp. 39 – 46,

Viktor Orbán is one of the latest leaders following Turkey's Recep Tayyip Erdogan and Russia's Vladimir Putin in embracing illiberal democracy. But in a sense he is more dangerous for European values, because he has burst the European Union's bubble, and proved that an illiberal state can be established in the EU. Poland's new leaders have followed his lead since, and his tactic is regarded as offering a political model throughout the Balkans. For Orbán, illiberal democracy is a question of survival in an unpredictable and globalized world. He has argued openly in a 2014 speech that "liberal democratic states cannot remain globally competitive", that while the news state will not deny liberal values, such as freedom, society will not be organized around them.

For illiberal leaders to be successful, there needs to be a certain level of frustration with democracy within the society. In these countries, democratic traditions or practice in the democratic process were somewhat or almost entirely lacking in the recent past. A weak economy, and a fragmented political scene verging on political chaos, also add to the right conditions for illiberalism to take hold.

Orbán has long held grudges against the media, which he regards as liberal and biased towards to left-wing parties. His government pressured private media by depriving critical media of crucial state advertisement contracts. Following his 2014 re-election, Orbán's clampdown became more aggressive. His closest aides bought media outlets and created new publications. Pro-government media outlets regularly attack independent publications, even journalists, trying to discredit them. Naturally all political leaders want to have media that support them. But in the illiberal vision of taking over the press, the goal is to repress the role of the media as the "fourth pillar" of democracy.

Another essential step in setting up an illiberal state is rewriting constitutional rules. That way, constitutional checks and balances can be tweaked in a way that suits the new illiberal leaders. The new Hungarian constitution of 2011 curtailed the power of the Constitutional Court, and reduced the number of ombudsmen from four to one. Orbán's government later also got rid of senior judges and prosecutors. Importantly, Orbán's installed

an Attorney General loyal to him, to make sure there would be no investigations into the dubious business of his family or allies. There was no substantial consultation or referendum on the constitution.

An illiberal state also needs to put the economy at the service of the ruling party and its bosses, to control the economy and keep political allies happy. To achieve this the ruling party often speaks of redistributing the nation's wealth. Fidesz has argued that foreign companies had taken advantage of Hungary's weak economy and open policies after the transition, and exploited the country's workforce and resources. Orbán argued that he wanted to support "national capital", but often his friends reaped the benefits. In addition, his cronies receive ample EU funding, although originally meant to help Hungary to close the economic gap between it and Western economies.

Creating an enemy, preferably an enemy within, is key to keep the illiberal rule in power and expand his or her hold on power. The Orbán government has used the Russian and Israeli template to curb the freedoms of civil society organizations and NGOs enjoy. When these organizations receive foreign donations, they will have to declare themselves "foreign funded" organizations, which creates the illusion in society that these groups work for foreign interests.

The significant lesson offered to Europe by Orbán's Hungary, is that even if a country is a member of the EU, there are no guarantees that it will stay democratic. EU leaders did not take the threat Orbán posed seriously enough in early 2011-2012. Only when it became clear that Orbán would not reverse his course because of European scolding, and was in fact mocking the EU's inability to act, painting it as an intrusive, elitist, out-of-touch group of unelected bureaucrats, did the EU amplify its rhetoric and undertook some action.

Daniel Hegedüs, *Responding to illiberal democracies' shrinking space for human rights in the EU*, pp. 57 – 65.

The European institutions, first and foremost the European Commission, were unable to effectively counter the democratic backsliding of Hungary and Poland due to a lack of political will, clear benchmarks of the EU fundamental values, a comprehensive strategy to address the issue, and the serious misperception of the democratic backsliding phenomenon itself. So far, the constraining effect of the European legal and policy settings were only able to slow down, not to stop the democratic backsliding. If the European Union intends to maintain its status as a democratic "community of values", a fundamental revision of its approach toward its own illiberal Member States is urgently needed.

The European "liberal consensus" – the European integration of liberal democracies characterized by liberal constitutionalism, individual human rights, limits on majoritarian power, functioning checks and balances, representative democracy, inclusive pluralistic societies, and free market economies – has been challenged by so-called "illiberal democracies". The existing institutional and procedural setup for ensuring compliance with EU fundamental values – infringement procedures, the Rule of Law Framework and Article 7 procedure – is far from ideal. Nevertheless, due to the lack of genuine political will not even these instruments have been applied in a conscious and consistent manner. To break away from this downward spiral, three key things are necessary: the political will to act; consistent strategic thinking; and a detail-based understanding of the illiberal challenge.

Illiberal democracy is a diminished subtype of democracy where the electoral component of democracy is functioning well, but constitutional checks and balances are weak

and human rights are systemically constrained by the executive or by the majority will. Both in Hungary and Poland, an ongoing and uninterrupted democratic backsliding process can be observed, a diminishing of democratic qualities, and the regimes' downhill slide toward authoritarianism.

A comprehensive strategy is needed for the European Commission to confront the illiberal governments in Warsaw and Budapest, even under the circumstances of inter-institutional conflicts with the European Council. Therefore, the European commission must increase its activity and must forge a political alliance with the European Parliament and an informal cooperation with the Council of Justice of the European Union. The Commission must put its unchallenged legal reputation at stake, base its legal arguments on an extended and instrumental interpretation of EU law, and hope that the CJEU will accommodate the Commission's legal positions.

The combined approach of EU institutions should follow the principle of "sticks and carrots". The level of the EU financial transfers can be decreased via individual sanctions. Such a top-down introduction of EU-wide standards for the independence of constitutional checks and balances, the judiciary, and the separation of powers could level the systemically uneven political playing-field being created in the respective "illiberal" regimes. This would allow an acceptable degree of fairness in the political competition for the democratic contenders.

Robert Dekkers, Tineke Cleiren & Ernst Hirsch Ballin, *The erosion of democracy under the rule of law in Europe*, p. 67 – 74.

Democracy is above all a procedural or electoral matter. The emphasis is on citizens' voting rights and election procedures. In order to ensure that everyone in society is treated equally, the rights of every citizen must be protected from violations of third parties, including the state. A fully-fledged democracy therefore requires more than mere majority decision-making. It must also guarantee fundamental freedoms (e.g. freedom of expression and of assembly) and access to independent courts. This is the dimension of democracy described as *constitutional* or characterized by the rule of law. Democracy and the rule of law (including human rights) are thus inextricably linked.

A condition for democratic erosion is social disengagement. EU citizens increasingly have no confidence in their national government (64 per cent) or in their national parliament (62 per cent). Others go so far as to suggest that people in the United States and Europe have become more cynical about the value of democracy as a political system. How did this social estrangement happen? A large number of trends and factors have played a role, from technological advances and the IT revolution, the rise of social media, and the economic crisis to the decline of the political centre ground in many democracies, the shifting geopolitical balance of power, migrations flows and increased international security threats.

Furthermore, globalization has led to increasing income inequality and wealth inequality. Trust in other people and democratic institutions (including parliament, political parties and the legal system) tends on average to decline as income inequality in a particular country increases. There are also indications that voter turnout in general elections tends on average to decline, particularly among lower income groups, as income inequality increases. The voice of these sections of the population is therefore heard less by politicians.

Two international crises have acted as a catalyst for the undercurrent of dissatisfaction. The first was the financial and economic crisis of 2007-2008 and the subsequent Great

Recession. The second catalyst was the refugee crisis, the full extent of which became clear in 2015 when large numbers of refugees entered Europe in a short space of time, mainly from the Middle East. In this perfect storm, created by two mutually reinforcing crises, electoral opportunities have been created for new movements that combine left-wing emphasis on social protection with right-wing ideas about national sovereignty and national identity. Although their ideas are at odds with the principles of democracy under rule of law, this does not seem to deter their supporters. More and more members of the public have the sense that rights apply mainly to “other people” and not themselves. From here it is only a short step to seeking to restrict those rights. That international treaties and institutions stand in the way only fuels public distrust in the international legal order and in global international cooperation.