

Interview

Over a Decade of ‘Illiberal Democracy’ in the heart of Europe

Professor Gábor Halmai on Orbán’s Hungary

Loes Koenders

On April 28, 2021, Freedom House published a report on the so-called “Antidemocratic Turn.” According to the report, several Central European and Eurasian countries are experiencing attacks on democratic institutions and a spread of autocracy. Hungary was described as having “undergone the biggest decline ever measured in Nations in Transit, plummeting through two categorical boundaries to become a Transitional/Hybrid Regime last year.”ⁱ Hungary has seen a significant decrease of democracy in the last decade under Prime Minister Orbán. In his infamous “Illiberal democracy” speech, Orbán cited China, Russia, Singapore, India, and Turkey as examples to follow.



Professor Gábor Halmai

On January 1, 2012, Hungary enacted a new constitution, which became known as the Fundamental Law, and is seen as an “illiberal constitution”. How illiberal has Hungary become since Orbán’s Fidesz Party gained a two-third majority in the 2010 elections? What role does the EU play? And will the 2022 elections bring change? Loes Koenders, intern with the Netherlands Atlantic Association, spoke with Gábor Halmai, Professor of Comparative Constitutional Law at the European University Institute. He also taught at Princeton University and Eötvös Loránd University in Budapest.

What were the biggest changes that happened in Hungary since 2010, the year Orbán’s Fidesz Party won the elections?

Prof. Halmai: “In a speech in 2014, Prime Minister Viktor Orbán very proudly announced that the intention of this Fundamental Law was not to produce a liberal constitution. Hungary had a liberal constitution from 1989 onwards, and he argued that those institutions had failed all together. Not only in Hungary, but, according to him, all over the world. Therefore, the aim was to produce an illiberal constitution and the state which is a consequence of that constitution is an illiberal state. Let me set aside what it means to him, but let me explain what it means in reality: dismantling all the checks and balances, not only in practice, but they also started to change the state structure. So, the very first step was already taken in 2010, before the new constitution was enacted, to make the Constitutional Court a

government-loyal institution. They changed the nomination procedure, allowing only the governing party to nominate Constitutional Court justices.”

“This meant that by 2013 all the 15 justices were nominated by Fidesz, without the consent of anyone else. They also turned to the ordinary courts. A new law in 2011 changed the retirement age for judges. Through this law, they (Fidesz) got rid of one-tenth of the entire judiciary, as those between 62 and 70 were forced to retire. This also meant that almost 90% of leading judges, court presidents, and court leaders were forced to quit. The President of the Supreme Court, who had been critical of reform of the judiciary, was fired and replaced by a government-loyal President.”

“Another element of this illiberal state is the dismantling of the guarantees of fundamental rights. Even before the enactment of the Fundamental Law, a new media law was introduced. It meant that all the public broadcasting was now overseen by government-appointed bodies. A new law regarding the churches also fits here. It allowed the deregistration of all registered churches in Hungary and introduced a new registration system, according to which the Parliament, with a two-third majority makes the decision on the establishment of churches. As a consequence, out of the 300 previously registered churches, about 32 were registered again. Needless to say, those churches that were in any way not friendly with the government, were not registered. Not being registered means that churches are not able to receive any kind of state subsidy or any kind of contract with state organizations. Some unregistered churches went to Strasburg to fight the decision and won the case. But these churches remain unregistered to this day. The lack of state support means they are financially drained. This is the main characteristic of the Fundamental Law: dismantlement of separation of power and the guarantees of fundamental rights. This is what they call an ‘illiberal constitution’. And in my view, it is not an illiberal state, it is an authoritarian state.”

How was it possible that this could happen?

Prof. Halmai: “Of course, there are elements of responsibility. Some people have asked ‘Why should we care about illiberal democracy in Hungary? The people are voting for this government.’ But this is only half true. People are uninformed, because they do not get proper information about politics. Another part of the story is that from the beginning of 2012, so after the first win in 2010, Fidesz kept changing the electoral law. So, the very first election in 2010 can be characterized as a free and fair election. They won the two-third majority, with a footnote: even in 2010 this two-third majority meant that they got 52% of the votes, and due to the disproportional elections system, they got 67% of the seats through these votes. With this two-third majority in the Parliament, you have the constitution-making majority and you can enact a constitution without any votes from either opposition parties or a referendum. This means that the Fundamental Law was enacted exclusively with the votes of Fidesz. Not a single vote was given by any of the opposition parties. From 2012 onwards, the government made the election system even more disproportionate. In 2014, Fidesz got the same two-third majority with just 45% of the votes. Which means they did not even get the majority of the votes. So, when people argue that a majority supports the governmental party, this is not true.”

What do you think is the reason for the so-called “Populist turn” that happened both in Hungary and in the United States?

Prof. Halmai: “Frankly speaking, I do not like the concept of populism being used to describe what has happened in Hungary. There is a lot of populist rhetoric from the side of Fidesz. They claim to represent the nation and to be against the corrupt elite. And indeed, the socialist-liberal government between 2002 and 2010 was quite a corrupt government, although the corruption is not to compare with that of the current Fidesz government; recently, corruption has been institutionalized. But most importantly, the 2002-2010 government was unsuccessful. They were dealing with the financial crisis very badly. My argument against the populism of Fidesz is that one of the first measures they took was to change the law on referendums, on direct democracy, making it almost impossible to hold a referendum. Is that populism? Do they really want the will of the people to prevail? No, they don’t. The opposition wanted to have a referendum on the new constitution; Fidesz said no. It is autocracy. Their only aim is a government with no limits, without checks and balances whatsoever. Of course, the refugee crisis was a moment of populism. They tried to convince the people that those who are coming to the country are criminals, they will destroy all our Christian culture. And ever since, there has been a state of emergency in Hungary, ever since 2015. Every three months, they prolong it. The number of migrants in Hungary is close to zero. There were migrants in 2014, around 400.000 people marched over Hungary, but they did not intent to stay. To were aiming to go to Germany, to Sweden, or the Netherlands. This was used as a populist rhetoric. They used their media monopoly to convince people that you do not need to comply with the EU rules on the distribution of migrants. So yes, there is populist rhetoric here and there, but the system itself is not populist, it is autocratic.”

Are there parallels between Hungary and the United States under President Trump?

Prof. Halmai: “I do not argue that a disproportionate election system only exists in Hungary. There is gerrymandering (redesigning districts with the aim of getting a different outcome in elections) all over, in the U.S. for sure, but it happened in Hungary as well. From 2012 onwards, Fidesz was able to gerrymander all the districts. This was one of the elements of changing the electoral law. In terms of populist rhetoric, there are of course similarities with the U.S., but the U.S. is still not an autocratic system. The U.S. still has free and fair elections, as we have seen last year, and they still have checks and balances. Even though President Trump was able to appoint Supreme Court Judges, he used his constitutional power to appoint new conservative judges. That did not happen in Hungary; they changed the rules of how to elect and nominate constitutional justices. It was not some kind of fortunate situation like many previous justices dying while Fidesz was in power. No, they changed the rules. This is the big difference.”

Why has the EU not been able to act against the developments in Hungary?

Prof. Halmai: “I think the EU is complicit. While I do not think that transnational organizations can or should change the governmental systems of sovereign states, I do believe that when those states decide to access those transnational institutions, they should accept the values and rules of that institution. The institution should then reinforce those values and rules, and the EU does not do that. Why? I have a very bad suspicion that they do not really want to, mostly because of economic interests. The European People’s Party (EPP), CDU is a member of this party), the most powerful player in the European Parliament, protected Fidesz. There is a joke in Hungary: ‘What are the reasons for Germany protecting Hungary? There are three reasons: BMW, Mercedes, and Audi.’ I am almost convinced that Angela Merkel would like to get rid of Viktor Orbán, but she is not strong enough to go against the German car industry.”

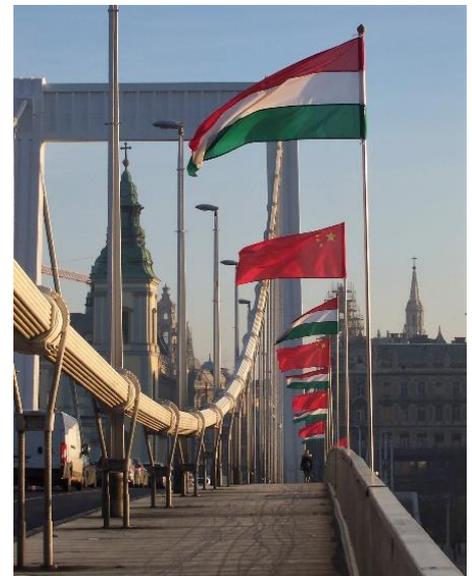
Could the same be said about NATO, which also describes itself as a community of democratic values?

Prof. Halmai: “Yes, and you know what the blackmailing capacity of Hungary is, both in the EU and NATO? Their friendship with Russia and China. NATO cannot afford to have a country allied with Russia in the middle of Europe. You may have heard what Orbán did with the pandemic. He was the only and the first who used Russian and Chinese vaccines, before those were approved by the European Medicines Agency (EMA). They are still not approved and the Chinese vaccine has certain doubts, the Chinese themselves have expressed that the effectiveness of the vaccine is not certain. Hungary bought those vaccines ten times the price as AstraZeneca or other Western vaccines. And the death rate is

the highest in the world. It is ten times higher than in the U.S. I am sure that Biden is very much opposed to what is happening in Hungary. But what the U.S. can do is very limited. And frankly speaking, I do not think Hungary matters that much for the United States.”

Would you argue that the government is using the Corona pandemic to strengthen its power?

Prof. Halmai: “I have written three pieces with my Princeton colleague Kim Scheppele about the emergency situation and how Orbán used it to strengthen the autocratic system. They make it a crime if someone makes announcements about the way the government deals with the crisis. There were people jailed or sentenced for distributing so-called ‘fake news’ about the handling of the crisis by the government. The pandemic was another occasion for the government to centralize. Of course, you need a central power to somehow coordinate efforts in a situation like this, but the Hungarian government misuses its power. Ten big cities have been governed by the opposition, they (Fidesz) dismantled all the powers of these governments with the pandemic the reason for this decision. This only happened with



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those cities which were governed by the opposition.”

What are your predictions for the future of Hungary, especially with the upcoming elections in 2022 in mind?

Prof. Halmai: “There is one new element compared to the 2014 and 2018 elections: there is a more or less united opposition. They (the opposition parties) realize that there is one chance for them to beat Fidesz if they run a joint list. On the other hand, there is a big variety of parties within this united opposition. There is a socialist party, a former communist party, there is an extreme right-wing party. So, can you imagine what kind of politics this united opposition can provide for the voters, other than beating Fidesz? It can be a successful tactic, but in the long term, I do not know how successful it can be. It is very unlikely that the opposition will gain a two-third majority, so changing the constitution is almost impossible.”

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ⁱ Csaky, Zselyke. *Nations in Transit 2021: The Antidemocratic Turn*. Freedom House, 2021. <https://freedomhouse.org/report/nations-transit/2021/antidemocratic-turn>.