

Capturing Democratic Institutions: Lessons from Hungary and Poland

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Commission on Security and Cooperation in Europe
“Upholding OSCE Commitments in Hungary and Poland”
November 3, 2021

Introduction

Thank you, Chairman Cardin, Co-Chairman Cohen, and members of the Commission. It is an honor to testify before you today.

Democratic freedoms globally have been in decline for over 15 years.¹ Developments in Central and Eastern Europe and more specifically, in Hungary and Poland, have contributed considerably to this deterioration.

In fact, Poland and Hungary stand out for their unparalleled democratic erosion over the past decade. Hungary has undergone the largest decline ever measured in *Nations in Transit*, Freedom House’s regional report on democracy in Europe and Eurasia, and last year dropped out of the group of democracies to become a Hybrid Regime.² Poland is still categorized as a Semiconsolidated Democracy in *Nations in Transit*, but its decline over the past five years has been steeper than that of Hungary.

How did we get here?

¹ “Freedom in the World 2021: Democracy under Siege,” Freedom House, 2021.

<https://freedomhouse.org/report/freedom-world/2021/democracy-under-siege>

² “Nations in Transit 2021: The Antidemocratic Turn,” Freedom House, 2021.

<https://freedomhouse.org/report/nations-transit/2021/antidemocratic-turn>

Given the extent of the deterioration, it is important to understand what happened over the past several years. In this testimony, I will focus on four core institutions and demonstrate through examples how the governments in Hungary, but also in Poland, are increasingly silencing or coopting them. This is a story of institutional capture. There are remnants of independence in each of the four areas—the media, the judiciary, the civic sector, and elections—but this independence is shrinking as these institutions are increasingly used to serve the governing parties’ goals. In 1990, Hungary and Poland—alongside the United States and most other OSCE participating states—pledged to “build, consolidate and strengthen democracy as the only system of government of our nations.”³ Today, it is clear that the Hungarian and Polish governments have broken this pledge.

The media

Press freedoms have been severely undermined in Hungary. Independent and government-critical outlets face a hostile regulatory and economic environment and compete against a massive media empire funded by the government. To give you two examples, last year staff at Index.hu, the country’s most-read online portal, resigned en masse over claims of political interference, and earlier this year the media regulator forced Klubradio, a government-critical station off the air on a technicality. At the same time, government-friendly businessmen in 2018 transferred ownership of their outlets for free to KESMA, a nonprofit conglomerate disseminating government propaganda. KESMA unifies more than 400 media products and companies, including TV- and radio stations, online portals, and advertising firms, demonstrating an astonishing level of control and consolidation. By controlling the media, the government can control access to information among large segments of society.

Poland’s media environment remains much more vibrant than that of Hungary, but the Law and Justice party has, similar to Hungary, turned the public broadcaster into a government mouthpiece. Poland’s government has copied other tactics from Hungary. It has used a state-owned energy giant to acquire four-fifths of the country’s regional media outlets and has been pressuring Discovery, the American owner of the government-critical channel TVN, to sell its stake. In addition, journalists increasingly face so-called strategic lawsuits against public participation (SLAPPs) which are abusive lawsuits intended to censor, intimidate, and silence critical voices.

The judiciary

Media pressure in Poland is compounded by a situation in the judiciary that can be described as nothing short of dire. Over the past several years, the government has overhauled the judicial system in an unlawful, unconstitutional way⁴ – which is unprecedented in a democracy. This

³ “Charter of Paris for a New Europe,” Organization for Security and Co-operation in Europe, 1990. <https://www.osce.org/files/f/documents/0/6/39516.pdf>

⁴ “Poland’s Rule of Law Breakdown: A Five-Year Assessment of EU’s (In)Action,” Pech, L., Wachowiec, P., Mazur, D., *Hague Journal on the Rule of Law*, 13, 1–43 (2021). <https://doi.org/10.1007/s40803-021-00151-9>

breach of international norms has been confirmed by the European Court of Human Rights, which in May established that the current composition of the Constitutional Tribunal is unlawful, as well as recent European Court of Justice decisions that ruled that parts of the “reform,” such as the creation of a disciplinary chamber, breach EU law. Judges in Poland have been called enemies of the state and face threats, intimidation, and harassment by the government.

In Hungary, the governing Fidesz party did not need to use such tactics to pressure much of the institution into compliance. Given its supermajority in parliament, it easily adopted a new constitution and strengthened its grip on the judiciary while respecting the letter, if not the spirit, of the law. Putting the final touches on the power grab, last year the Hungarian government expanded the powers of the country’s highest court, the Curia, and appointed a loyalist to lead it.

Civil society

In both countries, civil society, and especially public interest non-governmental organizations (NGOs), have been facing increasing pressure. But while the civic sector is still very vibrant in Poland, the situation is much less encouraging in Hungary. Although the government repealed “Lex NGO”—a law that resembled Russia’s so-called foreign agents law by requiring organizations receiving funding above a certain threshold to register with the authorities—NGOs can now be subject to regular financial inspections by the State Audit Office. Civil society organizations are concerned that the Audit Office, whose main function is to monitor the use of public funds, not private donations, will be used to put pressure on them. In addition, the governing party has undertaken a number of actions directed at the LGBT+ community, including banning the depiction and “promotion” of homosexuality and gender change for those under 18.

Marginalized groups, including women and LGBT+ people, have been the subject of local and national legislative initiatives in Poland as well. Following declarations by numerous local authorities in previous years that certain localities were zones free of “LGBT+ ideology,” in late October the parliament discussed an initiative to ban pride parades and public gatherings that “promote” same-sex orientation and relationships. NGOs, activists, and citizen groups have been vocally opposing these initiatives. Mass protests, such as the Women’s Strike protests last year and pro-EU protests this past month, have brought more than a 100,000 people to the streets, demonstrating the exceptional strength, resolve, and commitment to democratic principles of Polish civil society.

Elections

And finally, the last institution that I would like to mention here is that of free and fair elections, a cornerstone of democracy that is under strain in both countries.

In Hungary, the opposition faces an uneven playing field. Due to changes to the electoral framework, including new district boundaries introduced in 2010 after the governing parties came

to power, opposition forces now have to secure around 3 percentage points more of the popular vote in order to win.⁵ In addition, the elections in 2014 and 2018 have been characterized by the governing parties' massive reliance on state resources, opaque campaign finance, media bias, and intimidating and xenophobic rhetoric. Poland's electoral framework is in much better shape, but the postponement of the presidential vote last year, which was done unlawfully and was the result of an informal political compromise reached by two leaders of the ruling coalition, has eroded trust in the process, as has the ruling coalition's misuse of state resources for political purposes.

Looking ahead

Importantly, both countries will hold parliamentary elections in the near future. Hungary's elections will take place next spring and Poland is scheduled to hold a vote a year after that. This means that developments over the next several months could be decisive for both countries' democratic trajectories.

In Poland, the recent ruling of the Constitutional Tribunal declaring parts of EU law incompatible with the Polish constitution and the October European Court of Justice decision that ordered the payment of a daily fine of €1 million have signaled that the country's tug-of-war with the European Union has entered a new stage. Many have framed this decision as a step towards a potential "Polexit," but such a framing seems to miss the more immediate consequences. Poland does not want to leave the EU, so these rulings primarily undermine the EU's legal fabric and mutual trust among the member states. They also open up a Pandora's box; if other countries, such as Hungary, decide to follow in Poland's footsteps, the EU will no longer have a unified system of rules upon which it can function.

In Hungary, at the same time, the electoral race has tightened considerably recently. The opposition has united and elected a joint candidate, a conservative politician who is a newcomer in national politics. Based on recent polls, it seems that, perhaps for the first time in over a decade, the opposition has a realistic chance of defeating Fidesz. Whether they will win, however, and whether they would be able to undo the damage that more than a decade of institutional capture has wrought on Hungary's democracy is too early to tell.

What can the United States do?

1. **Press Poland and Hungary to uphold democratic norms and values and speak out publicly in their defense.** The autocratic turn in Poland and Hungary has undermined fundamental rights in both countries and contravenes their commitments as members of the OSCE and NATO. Their actions have the potential of inspiring similar autocratic turns in neighboring countries, something that would undermine rights and security in the entire

⁵ "Orban: Hungary's Strongman," Paul Lendvai, Oxford University Press, 2018, p. 129.

region. The US should make use of its historical ties and leverage in the region and speak out firmly against the spread of autocracy, while also maintaining dialogue with these important partners. Developments in Central Europe need to be monitored closely by both the administration and Congress, as trends in the region have an outsized impact on the cause of democracy globally.

2. **Work with other European allies and the European Union to counter the antidemocratic trends in Poland and Hungary.** Recent steps in Warsaw and Budapest present an existential challenge not only for the European Union, but also for the close alliance the United States has previously enjoyed with each country. The United States should support current steps by the European Commission that aim to address the democratic erosion—such as the deployment of the so-called conditionality mechanism that links access to EU funds to respecting the rule of law—and encourage Poland and Hungary to restore the rule of law and a respect for democratic rights.
3. **Contribute to fostering systemic resilience in the civic sector.** A vibrant and healthy civil society works as the first line of defense against autocracy. The United States should support systemic resilience of the sector in Central Europe by, for example, providing trainings on professionalization and sustainable business models; facilitating peer-to-peer learning between local and international civil society; and incentivizing the philanthropic community to support civil society organizations, including with core funding.
4. **Continue supporting free and independent media.** It is important to support the work of Radio Free Europe/Radio Liberty (RFE/RL) in Hungary, which is doing vital work exposing underreported stories and explaining new developments. The US should also take steps to ensure that Hungary’s model for controlling the media does not take root in Poland and other countries that are vulnerable to authoritarian trends. This can be done through the vocal defense of media pluralism and by speaking out against strategic lawsuits against public participation (SLAPP), which are intended to censor, intimidate, and silence critical voices.

Conclusion

Ultimately, it is up to the Polish and Hungarian electorate to change the situation on the ground and with upcoming elections in both countries in 2022 and 2023, they will have a chance to have their say. But the United States can be a force for good if it continues to press for upholding democracy in these two NATO allies, and if it helps to reinvigorate support for fundamental values and human rights in Central and Eastern Europe. While such support needs to be a long-term, strategic commitment to avoid potential instrumentalization in each country’s national political discourse, a firm US stance will protect America’s interests by contributing to safer, securer environment for democracy, both in Europe as well as globally.