

Statement Before the Commission on Security and Co-operation in Europe (US Helsinki Commission) on Upholding Organization for Security and Co-operation in Europe Commitments in Hungary and Poland

# The Rule of Law and “Democratic Backsliding” in Central Europe

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Mr. Chairman, Mr. Co-Chairman, Ranking Members, Commissioners,

Thank you for the opportunity to address you today on this important subject.

I, like many others in Washington, have followed the developments across the Visegrád Group countries over the past decade with some degree of concern, having penned my first “alarmist” piece about the deteriorating state of Hungary’s democracy for the *Weekly Standard* in January 2012.<sup>1</sup>

However, a number of American thought leaders on the conservative right, not least the television host Tucker Carlson, have been looking to the current governments of Hungary and Poland with sympathy, if not admiration, rather than with concern. Those sentiments are fundamentally misguided. That is not primarily because there are no policy particulars on which Western conservatives could find themselves in agreement with the current governments in Hungary and Poland, though neither of the two can be seen credibly as a bulwark of religious liberty or even consistently restrictive immigration policy.<sup>2</sup> More importantly, both governments, led respectively by FIDESZ and the Law and Justice Party (PiS), have embarked on a distinctly authoritarian political project of crude majoritarianism, incumbent entrenchment, and a dismantling of checks on political power. Well-documented examples of this development include:

- **Adoption of a New Constitution in Hungary (i.e., the Fundamental Law) Along Purely Partisan Lines.** The constitution left the parliamentary opposition without any impact on the legislative process.<sup>3</sup> It also restricted the right to challenge the constitutionality of legislation at the Constitutional Court to a small number of actors, mostly under government control.<sup>4</sup> The new constitution, moreover, introduced the so-called Cardinal Laws, requiring only a two-thirds majority to amend the constitution—a lower requirement than the previous amendment procedure. In 2011–13 alone, the parliament passed 32 such laws. All Constitutional Court case law prior to 2011 was scrapped and constitutional review of budget and tax laws disabled whenever the debt-to-GDP ratio exceeds 50 percent, which has been the case throughout the post-1989 era.
- **Packing of Courts and Their Politicization in Hungary and Poland.** In both countries, top courts have been politicized, constitutional review of new legislation has been rendered ineffective, and the executive has asserted miscellaneous instruments of control over courts and judges. In Hungary’s case, for instance, Article 26 (2) of the Fundamental Law allowed the government to lower the mandatory retirement age for judges from 70 to 62.<sup>5</sup> This action removed the most senior 10 percent of the judiciary, including 20 percent of the Supreme Court judges and more than half the presidents of all appeals courts. This was declared illegal by Hungary’s Constitutional Court<sup>6</sup> and the European Court of Justice (ECJ).<sup>7</sup> The government

dismissed the president of the Supreme Court, who was also the president of the National Council of Judiciary, before the end of his mandate—a decision that violated the European Charter of Human Rights.<sup>8</sup> In Poland, the composition and operation of the country's Constitutional Tribunal was changed, illegally, in the weeks after the PiS arrival to power. In 2015,<sup>9</sup> new legislation was adopted to give the justice minister sweeping powers over the personnel of lower courts and lowered the retirement age of judges—a measure that was struck down by the ECJ.<sup>10</sup> New legislation on the Supreme Court sought to retire a large fraction of its judges—a measure that was walked back under domestic and international pressure following an ECJ ruling.<sup>11</sup> In contrast, Poland's Constitutional Tribunal struck down an ECJ injunction against a reform that envisaged the creation of a special chamber at the Supreme Court to discipline judges and prosecutors<sup>12</sup> and most recently declared the parts of the Lisbon Treaty pertaining to the European Union's role in overseeing national judiciaries as unconstitutional.<sup>13</sup>

- **Overhaul of Hungary's Electoral System to Strengthen Its Majoritarian, Winner-Takes-All Aspects.**<sup>14</sup> In particular, two-round races in local constituencies were replaced by a simple first-past-the-post system, and the minimum turnout threshold for the seat to be awarded was scrapped. The geographic boundaries between constituencies were redrawn in ways that benefitted FIDESZ. Several constituencies dominated by socialists or left-liberal parties were split up, for example in Budapest, or merged with suburban areas to ensure FIDESZ's dominance, such as in Miskolc, Pécs, and Szeged.<sup>15</sup>
- **Erosion of Media Freedom.** Both countries experienced a politicization of public broadcasting, frivolous lawsuits against independent media outlets, discriminatory advertising policies aimed at rendering opposition media financially nonviable, and arbitrary policies on broadcasting licenses, which has been illustrated by recent efforts by the Polish government to end the license of the US-owned TVN24<sup>16</sup> or by the loss of the broadcasting license of Hungary's Klubrádió.<sup>17</sup> Hungary also moved in 2018 to centralize the ownership of over 470 media outlets under the umbrella of the Central European Press and Media Foundation (KESMA), which is exempt from antitrust law, to which those outlets were “donated” by their previous owners.<sup>18</sup>
- **Attacks on Civil Society.** Examples of this include Hungary's 2017 “Lex NGO,” which required civil society organizations receiving more than €20,000 in foreign funding annually to register as foreign funded and was struck down as unlawful by the ECJ,<sup>19</sup> and the 2018 law criminalizing groups providing assistance to asylum seekers.<sup>20</sup>
- **Deepening of Hungary's Ties with Revisionist Powers (Russia and China).** Viktor Orbán called Hungary a “pillar” of the Belt and Road Initiative<sup>21</sup> and has repeatedly blocked the EU's initiatives and statements seeking to hold China accountable,<sup>22</sup> such as in 2016 on the South China Sea, in 2017 on the torture of detained Chinese lawyers, and over the abuses in Hong

Kong.<sup>23</sup> Not only has Orbán lambasted such efforts as “politically inconsequential and frivolous,”<sup>24</sup> but Hungary also rebuked the Donald Trump administration’s 5G initiative aimed at excluding Huawei from the construction of new 5G networks.<sup>25</sup>

- **FIDESZ’s Kleptocracy.** Hungary’s performance on corruption-related indicators, such as Transparency International’s Corruption Perception Index or the World Bank’s Worldwide Governance Indicators, has deteriorated markedly under the current government. A recent report by the European Commission notes that “[the scope of the government’s anti-corruption strategy] remains limited. Shortcomings persist as regards political party financing, lobbying and ‘revolving doors’. Risks of clientelism, favoritism and nepotism in high-level public administration as well as risks arising from the link between businesses and political actors remain unaddressed. Independent control mechanisms remain insufficient for detecting corruption. Concerns remain regarding the lack of systematic checks and insufficient oversight of asset and interest declarations.”<sup>26</sup> Ample anecdotal evidence exists for the extraordinary growth of wealth among FIDESZ-connected “entrepreneurs”<sup>27</sup> and for the existence of assets that can be tracked to Orbán and his inner circle.<sup>28</sup>

Such developments are deeply problematic, irrespective of one’s views of other policies advanced by PiS and FIDESZ on which reasonable people can disagree. A US response to such practices, which are often casually subsumed under the term of “democratic backsliding,” ought to be guided by clear priorities that are shared across partisan lines, nuanced in their scope, and prudent in their application.

### **Be Careful What You Criticize Central Europeans For**

It is important that engagement with Central European countries, including criticism and pushback, be organized around relatively narrow conceptions of democracy, the rule of law, human rights, and US and Western interests in the region. Too often, however, Western politicians and EU institutions have inserted themselves in local culture- and values-driven conflicts, seeking to promote an expansive understanding of gender equality,<sup>29</sup> rights of sexual minorities,<sup>30</sup> and questions of asylum and immigration. In fact, very few of the clashes between European institutions and Central European countries have been as heated as the conflict over refugee relocation quotas, in which national governments turned their back on EU legislation that passed over the protests of several post-communist member states.<sup>31</sup>

Intentions aside, international displays of support to progressive causes and to a broad understanding of human rights have unintended consequences in societies with cultural attitudes that remain markedly different from those prevailing in the West.<sup>32</sup> For one, they signal—often to societies that are socially and culturally conservative—that social and cultural conservatism remains incompatible with Western-style liberal democracy. They also suggest, incorrectly, that often-agonizing questions involving conflicting moral values in pluralistic societies admit only one, self-evidently correct answer.

Instead of acting as a catalyst of progress, international pressure often encourages the worst, most irresponsible actors to double down and seek confrontation, which may be in their momentary political interest.<sup>33</sup> Worse yet, the frequent sense of being nagged builds resentment against the EU, the US

government, and other Western actors, which is then exploited by the West's adversaries. This is most commonly done by Russia, whose propaganda efforts and international outreach depict it as a bulwark of traditional values against Western decadence.<sup>34</sup> In countries that are facing a genuine democratic erosion at the hands of their authoritarian populist leaders, such as Hungary and Poland, such culture wars risk serving both as a distraction and a wedge issue that keep opposition from consolidating around the defense of the core principles of democracy, the rule of law, and human rights.

Although the success of the European integration is firmly in the US interest, it is likewise important that the United States adopts a cautious perspective on any clashes between EU member states and European institutions. The EU's policies and decision-making remain the subject of legitimate and healthy contestation. Just as President Barack Obama's and President Trump's weighing in on conflicting sides of the Brexit debate have proven unhelpful, inserting the United States into similar conflicts in the future ought best to be avoided.

One case in point is the current stand-off between Poland's Constitutional Tribunal and the ECJ. This case involves the new mechanisms for disciplining the judges of the country's Supreme Court, struck down by the ECJ<sup>35</sup> before Poland's Constitutional Tribunal decided that the provisions of European treaties under which the ECJ constructed its reasoning were themselves unconstitutional.<sup>36</sup> Unlike the 2020 decision of Germany's Federal Constitutional Court (BVerfG) to strike down ECJ judgments upholding the legality of the ECJ's asset purchases,<sup>37</sup> the Polish Tribunal is attacking, arguably in bad faith, some of the most basic tenets of the EU's quasi-constitutional order.

Yet, what may appear as a legal problem is in fact a highly sensitive political one. The EU is neither a unitary state nor a federation; it is an association of member states. As such, although the ECJ has claimed legal supremacy in cases involving EU law, it has not been recognized as such by member states themselves, leading to instances of bargaining, compromising, and mutual accommodation by member states and European institutions. Needless to say, there is no constructive role to be played by the United States in that process.

### **Central European Countries Are Not Identical**

It may be tempting to see the Visegrád countries and post-communist countries more broadly as a homogenous bloc, categorically distinct from the "old" member states of the EU and NATO. Yet, the initial cohort of post-communist countries joined NATO more than two decades ago. Incomes in some of those post-communist countries now exceed those in the "old" member states, such as Portugal or Greece, and there is at least as much variation between different post-communist countries as there is between post-communist countries and the "old" members of the EU and NATO.

At this time, for example, the Czech Republic is in the midst of a thoroughly calm, uncontested change of government following the electoral defeat of Andrej Babiš, a populist leader whose arrival in power in 2017 was greeted with understandable concerns. However, regardless of his own political style (which is less nationalistic and more managerial and technocratic), the Czech Republic has also been far better positioned to withstand attempts at authoritarian rule.<sup>38</sup> It features a reasonably powerful upper chamber and an assertive Constitutional Court, which stopped the two largest parties from entrenching themselves

in power during the period of the “opposition pact” of 1998–2002. Also, the Czech Republic’s proportional representation system—in contrast to Hungary’s winner-takes-all system—helped thwart Babiš by making it harder for his party to gain absolute control over the legislature. Likewise, Slovakia might continue to suffer from chronic rule-of-law and corruption problems, but it never came close to the authoritarian governing style now observed in Hungary and Poland.

A more granular look at Hungary and Poland reveals important differences between the two countries, which ought to inform American policymaking. Hungary’s FIDESZ has enjoyed an essentially unchecked claim on political power for over a decade, including a period of constitutional majority in parliament. PiS, meanwhile, has had many of its power ambitions tempered by its limited political mandate—not even enjoying a parliamentary majority on its own. (Unlike FIDESZ, PiS has been part of an electoral and governing coalition with a number of small, right-of-center parties, forcing it into occasional compromises.) Obviously, Poland’s size as the EU’s fifth most populous country, its strong commitment to the transatlantic alliance shared across all major parties, and a deep-seated distrust of Russia and China also distinguish it from Hungary.

### **Timing Is Everything**

There is a strong case to be made for the revival of America’s traditional democracy-promotion agenda in Central Europe and beyond, including in broadcasting and support to journalism, capacity building, elections monitoring, fighting against kleptocracy, and other activities. Such efforts ought to be organized around a relatively thin and neutral understanding of democracy, the rule of law, and human rights in order to bring together actors of different cultural and ideological stripes who can agree on the importance of free and fair elections, the integrity of the courts, due process, fighting corruption, freedom of association, and media freedom.

However, utmost care should be exercised both by the administration and the legislative branch as they take discrete steps against either Central European authoritarian practices or overtures to revisionist powers. Hungary is holding an election in the spring of 2022, while Poland is holding one in the fall of 2023. In both countries, a fair likelihood exists that the present governments will be defeated by broad, pro-democracy coalitions. Intensifying the pressure against either government, particularly on subjects that are only tangentially related to core liberal democratic values (which ought to be understood very narrowly) or to US interests in the region, risks backfiring and being used as a wedge issue to divide the ideologically diverse opposition ranks. That is particularly true of interventions on culturally contentious subjects such as reproductive rights, the treatment of sexual minorities, and the granting of asylum.

Thirty years since the collapse of Communism in Central and Eastern Europe, the region has made enormous strides and in many ways has become a close and steadfast partner and ally of the United States. While hearing the occasional hard truth is an integral part of any such partnership, there are good and bad ways to hold difficult conversations with one’s partner. Here is to hoping that the US policy on such matters will live up its core values while also being prudent, constructive, and thoughtful.

Thank you.

<sup>1</sup> Dalibor Rohac, "Is Hungary on 'The Road to Serfdom'?", *Weekly Standard*, January 13, 2012, <https://www.washingtonexaminer.com/weekly-standard/is-hungary-on-the-road-to-serfdom>.

<sup>2</sup> Interestingly, in 2020, Poland issued more residency permits to third-country nationals (598,000) than France (225,000) and Germany (312,000) combined. See Eurostat, First Residence Permits Issued, by Reason, 2020, [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:First\\_residence\\_permits\\_issued\\_by\\_reason\\_2020\\_T1.png](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:First_residence_permits_issued_by_reason_2020_T1.png). In 2011, meanwhile, Hungary adopted a new law on churches that stripped hundreds of religious denominations of their legal status and resources overnight, leading to years of protracted legal disputes and a partial rectification in 2019. See Erika Schlager, "Minority Faiths Under the Hungarian Religion Law," Commission on Security and Cooperation in Europe, July 16, 2019, <https://www.csce.gov/international-impact/minority-faiths-under-hungarian-religion-law>.

<sup>3</sup> Miklós Bánkuti, Gábor Halmai, and Kim Lane Scheppele, "Hungary's Illiberal Turn: Disabling the Constitution," *Journal of Democracy*, 23, No. 3 (2012): 138–46, [https://books.google.com/books?hl=en&lr=&id=Zf1fCgAAQBAJ&oi=fnd&pg=PA37&dq=B%C3%A1nkuti,+Mikl%C3%B3s,+G%C3%A1bor+Halmai,+and+Kim+Lane+Scheppele+\(2012\).+%E2%80%9CHungary%E2%80%99s+Illiberal+Turn:+Disabling+the+Constitution.%E2%80%9D+Journal+of+Democracy,+Vol.+23,+No.+3,+pp.+138%E2%80%93146.&ots=yMKqllCZo\\_&sig=tsOT9ynThYgNrSXL7KQhYb79n8#v=onepage&q&f=false](https://books.google.com/books?hl=en&lr=&id=Zf1fCgAAQBAJ&oi=fnd&pg=PA37&dq=B%C3%A1nkuti,+Mikl%C3%B3s,+G%C3%A1bor+Halmai,+and+Kim+Lane+Scheppele+(2012).+%E2%80%9CHungary%E2%80%99s+Illiberal+Turn:+Disabling+the+Constitution.%E2%80%9D+Journal+of+Democracy,+Vol.+23,+No.+3,+pp.+138%E2%80%93146.&ots=yMKqllCZo_&sig=tsOT9ynThYgNrSXL7KQhYb79n8#v=onepage&q&f=false).

<sup>4</sup> Fundamental Law Article 24, April 25, 2011, <https://www.parlament.hu/documents/125505/138409/Fundamental+law/73811993-c377-428d-9808-ee03d6fb8178>.

<sup>5</sup> Gábor Halmai, "The Early Retirement Age of the Hungarian Judges," in *EU Law Stories: Contextual and Critical Histories of European Jurisprudence*, eds. Fernanda Nicola and Bill Davies (Cambridge, UK: Cambridge University Press, 2017), <https://ssrn.com/abstract=2985219>.

<sup>6</sup> Hungarian Constitutional Court, Decision 33/2012. (VII. 17.) AB, July 16, 2012, in *Official Gazette* MK 2012/95, [https://hunconcourt.hu/uploads/sites/3/2017/11/en\\_0033\\_2012.pdf](https://hunconcourt.hu/uploads/sites/3/2017/11/en_0033_2012.pdf).

<sup>7</sup> EU Court of Justice, Judgment of the Court (First Chamber) in *European Commission v. Hungary* EU C-286/12, November 6, 2012, in *Reports of Cases*, <http://curia.europa.eu/juris/liste.jsf?num=C-286/12>.

<sup>8</sup> European Court of Human Rights, Application no. 20261/12 *András Baka v. Hungary*, Judgment, June 23, 2016, <https://hudoc.echr.coe.int/eng?i=001-115532>.

<sup>9</sup> Agence France-Presse, "Poland's Legal Reforms Do Not Comply with Constitution, Court Rules," *Guardian*, March 9, 2016, <https://www.theguardian.com/world/2016/mar/09/poland-constitutional-court-law-and-justice-government-reforms>.

<sup>10</sup> EU Court of Justice, Judgment of the Court (Grand Chamber) of 5 November 2019—*European Commission v Republic of Poland*: Case C-192/18, November 5, 2019, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=221904&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=638022>.

<sup>11</sup> BBC, "Poland Reinstates Supreme Court Judges Following EU Ruling," December 17, 2018, <https://www.bbc.com/news/world-europe-46600425>.

<sup>12</sup> Independent, "Top Poland Court Rejects EU Court Injunctions as Invalid," July 14, 2021, <https://www.independent.co.uk/news/top-poland-court-rejects-eu-court-injunctions-as-invalid-poland-warsaw-european-court-of-justice-supreme-court-netherlands-b1884205.html>.

<sup>13</sup> Constitutional Tribunal of the Republic of Poland, Judgment of October 7, 2021—Assessment of the Conformity to the Polish Constitution of Selected Provisions of the Treaty on European Union, K 3/21, October 7, 2021, <https://trybunal.gov.pl/en/hearings/judgments/art/11662-ocena-zgodnosci-z-konstytucja-rp-wybranych-przepisow-traktatu-o-unii-europejskiej>.

<sup>14</sup> European Commission for Democracy Through Law and Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights, Joint Opinion on the Act on the Elections of Members of Parliament of Hungary Opinion No. 662/2012, October 7, 2021, <https://www.osce.org/odihr/elections/91534?download=true>.

<sup>15</sup> Zoltán Kovács and György Vida, "Geography of the New Electoral System and Changing Voting Patterns in Hungary," *Acta Geobalcánica* 1, No. 2 (2015): 55–64, <http://publicatio.bibl.u-szeged.hu/7698/1/AGB.2015.06.pdf>.

<sup>16</sup> Alicja Ptak, "Polish Broadcast Regulator Approves Licence for U.S.-Owned Broadcaster," Reuters, September 22, 2021, <https://www.reuters.com/world/europe/polands-broadcast-regulator-extends-us-owned-broadcaster-tv-license-2021-09-22/>.

<sup>17</sup> France 24, "Hungary's Leading Independent Radio Station Loses Broadcast Licence," February 10, 2021, <https://www.france24.com/en/europe/20210210-hungary-s-leading-independent-radio-station-loses-broadcast-license>.

<sup>18</sup> Elda Brogi et al., *Assessing Certain Recent Developments in the Hungarian Media Market Through the Prism of the Media Pluralism Monitor*, Centre for Media Pluralism and Media Freedom, April 2019, [https://cmpf.eui.eu/wp-content/uploads/2019/07/Report\\_KESMA\\_Hungary\\_A2.pdf](https://cmpf.eui.eu/wp-content/uploads/2019/07/Report_KESMA_Hungary_A2.pdf).

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- <sup>19</sup> EU Court of Justice, Judgment of the Court (Grand Chamber) of 18 June 2020—*European Commission v Hungary*: C-78/18, June 18, 2020, <https://curia.europa.eu/juris/liste.jsf?num=C-78/18>.
- <sup>20</sup> Human Rights Watch, “Hungary Tries to Stop Asylum Seekers with New Law,” June 22, 2018, <https://www.hrw.org/news/2018/06/22/hungary-tries-stop-asylum-seekers-new-law>.
- <sup>21</sup> Hungarian Cabinet Office of the Prime Minister, “Hungary Is an Ideal Pillar of the One Belt, One Road Initiative,” June 1, 2017, <https://miniszterelnok.hu/hungary-is-an-ideal-pillar-of-the-one-belt-one-road-initiative/>.
- <sup>22</sup> Sándor Zsíros (@EuroSandor), “Eu sanctions against Chinese persons are destructive, useless and exhibitionist moves according to Hungarian Foreign Minister Péter Szijjártó - who talked exclusively to government friendly media in Brussels.,” Twitter, March 22, 2021, 6:21 a.m., <https://twitter.com/EuroSandor/status/1373942948904239107?s=20>.
- <sup>23</sup> Hans von der Burchard and Jacopo Barigazzi, “Germany Slams Hungary for Blocking EU Criticism of China on Hong Kong,” *Politico*, May 10, 2021, <https://www.politico.eu/article/german-foreign-minister-slams-hungary-for-blocking-hong-kong-conclusions/>.
- <sup>24</sup> Viktor Orbán, “Samizdat No. 9.,” Hungarian Cabinet Office of the Prime Minister, <https://miniszterelnok.hu/samizdat-no-9/>.
- <sup>25</sup> Dalibor Rohac, “How Viktor Orbán Became China’s Most Reliable European Ally,” *Dispatch*, June 30, 2021, <https://thedispatch.com/p/how-viktor-orban-became-chinas-most>.
- <sup>26</sup> European Commission, *2021 Rule of Law Report: Country Chapter on the Rule of Law Situation in Hungary*, July 20, 2021, 1, [https://ec.europa.eu/info/sites/default/files/2021\\_rlolr\\_country\\_chapter\\_hungary\\_en.pdf](https://ec.europa.eu/info/sites/default/files/2021_rlolr_country_chapter_hungary_en.pdf).
- <sup>27</sup> Dalibor Rohac, “Authoritarianism in the Heart of Europe,” *American Enterprise Institute*, August 1, 2018, 6–7, <https://www.aei.org/research-products/report/authoritarianism-in-the-heart-of-europe/>.
- <sup>28</sup> Márk Kovács, “Something Big Is Under Construction on the Secret Private Estate of Viktor Orbán,” *Daily News Hungary*, September 20, 2019, <https://dailynewshungary.com/something-big-is-under-construction-on-the-secret-private-estate-of-viktor-orban/>.
- <sup>29</sup> In March 2021, the State Department promised an addendum to its regular report on human rights in Poland, “to include a broader range of issues related to reproductive rights.” See US Department of State, “Poland 2020 Human Rights Report,” March 30, 2021, <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/poland/>. See also the European Parliament report compiled by the Croatian Member of the European Parliament Predrag Fred Matić, EU Parliament, “Report on the Situation of Sexual and Reproductive Health and Rights in the EU, in the Frame of Women’s Health (2020/2215(INI)),” May 21, 2021, [https://www.europarl.europa.eu/doceo/document/A-9-2021-0169\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2021-0169_EN.html).
- <sup>30</sup> Dalibor Rohac, “Public Diplomacy and the Risk of Overmoralizing,” *Bulwark*, June 23, 2020, <https://www.thebulwark.com/public-diplomacy-and-the-risk-of-overmoralizing/>.
- <sup>31</sup> See Vít Novotný, *A Brussels-Based Dictatorship or a Paradise of Subsidiarity? National Prerogatives and EU Migration Policy*, Wilfried Martens Centre for European Studies, September 8, 2021, <https://www.martenscentre.eu/publication/a-brussels-based-dictatorship-or-a-paradise-of-subsidiarity-national-prerogatives-and-eu-migration-policy/>.
- <sup>32</sup> For example, majorities in the region continue to oppose same-sex marriage. See Pew Research Center, *Eastern and Western Europeans Differ on Importance of Religion, Views of Minorities, and Key Social Issues*, October 29, 2018, <https://www.pewforum.org/2018/10/29/eastern-and-western-europeans-differ-on-importance-of-religion-views-of-minorities-and-key-social-issues/>. In a 2019 Pew survey, close to half of respondents in Bulgaria, Lithuania, Poland, and Slovakia and 39 percent of Hungarians expressed the view that homosexuality “should not be accepted by society”—compared to some 10 percent in France, Germany, and Spain and single digits in the Netherlands and Sweden. In a 2019 Pew survey, post-communist countries with small or nonexistent Muslim populations also had a dramatically less favorable view of Muslims than “old” EU countries—with 64 percent of Czechs, 58 percent of Hungarians, 66 percent of Poles, and 77 percent of Slovaks holding an unfavorable view, compared to only 18 percent of British, 22 percent of French, and 24 percent of Germans. See Richard Wike et al., “Minority Groups,” in *European Public Opinion Three Decades After the Fall of Communism*, October 15, 2019, <https://www.pewresearch.org/global/2019/10/14/minority-groups/>.
- <sup>33</sup> Marina Adami, “Czech President Labels Transgender People as ‘Disgusting,’” *Politico*, June 28, 2021, <https://www.politico.eu/article/czech-president-milos-zeman-says-he-finds-transgender-people-disgusting/>.
- <sup>34</sup> Peter S. Henne, “The Geopolitics of Faith: Religious Soft Power in Russian and U.S. Foreign Policy,” *Georgetown University, Berkley Center for Religion, Peace, and World Affairs, Berkley Forum*, June 6, 2019, <https://berkeleycenter.georgetown.edu/posts/the-geopolitics-of-faith-religious-soft-power-in-russian-and-u-s-foreign-policy>.
- <sup>35</sup> Independent, “Top Poland Court Rejects EU Court Injunctions as Invalid.”
- <sup>36</sup> Constitutional Tribunal of the Republic of Poland, Judgment of October 7, 2021.
- <sup>37</sup> Federal Constitutional Court of Germany, “ECB Decisions on the Public Sector Purchase Programme Exceed EU Competences,” May 5, 2020, <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2020/bvg20-032.html>.
- <sup>38</sup> Dalibor Rohac, “Transitions, Populism, and Democratic Decline: Evidence from Hungary and the Czech Republic,” *European Politics and Society*, forthcoming 2021.