

PIOTR MICULA

EXPERT OF THE FOREIGN POLICY &amp; INTERNATIONAL AFFAIRS PROGRAMME AT WISE EUROPA (POLAND)

## POLITICAL SCENARIOS FOR THE DISPUTE OVER THE RULE OF LAW : IS LEAVING THE EU BY POLAND AND HUNGARY POSSIBLE?

On 16th November 2020, the Permanent Representatives Committee (Coreper) which includes 27 ambassadors of EU countries met to approve the EU's Multiannual Financial Framework (MFF) and the NextGenerationEU stimulus package - a historic 1,81 trillion EUR aimed at mitigating economic consequences of the Covid-19 pandemic. However, two countries, namely Poland and Hungary, expressed their willingness to veto the epoch-making deal after Coreper approved the conditionality mechanism that introduces a linkage between respecting the rule of law (as one of the EU's fundamental values) and disbursement of the EU funds. It resulted in a budget deadlock that threatened not only the economic performance of the whole European community, but also ambitious goals of Germany during the last month of Presidency in the EU Council.

It is nothing but a surprise that the conditionality mechanism triggered strong disagreement from two countries that are well known for their years-long disputes over the rule of law on the European forum, mostly with the involvement of the European Commission. But why did the rule of law become so crucial for Poland and Hungary that both countries were ready to overturn the entire economic recovery plan for Europe? To explain it it is not enough to recognize all challenges that come along with the problem of the "authoritarian populism" in both countries<sup>1</sup>.

Indeed, the rule of law is part of the essence of liberal democracy - the system and ideology Orbán himself contested after his fa-

mous Tusnádfüredő speech in 2014. And it is a matter of fact that both Fidesz after the seizure of power in 2010 and PiS after 2015 firstly moved against the independence of the judiciary through amending laws, appointing new judges, and changing the existing procedures (with the most prominent example of the constitutional judiciary in both countries). However, regarding the budget dispute at the end of 2020 - the case of Poland and Hungary should not be lumped together since both Kaczyński and Orbán pursue different political aims in domestic politics. Those discrepancies may be divided into three main issues - 1) the stability of the governmental coalition, 2) political-economic models in both countries and 3) different political roots of Fidesz and PiS and their current position in European politics.

Firstly, one must not forget that since 2010 Orbán has something that Kaczyński has always dreamt of - a comfort of having a stable supermajority in the Parliament. In 199-seats National Assembly in Hungary, Fidesz (along with its satellite KDNP) controls 133 mandates which lets Orbán pass every bill it wishes, including changing the Constitution (that actually occurred already in 2011). In the meanwhile, while making any political decisions, both Kaczyński as party leader and Morawiecki as PM must take into account the opinion of other junior coalition partners, including far-right "United Poland" ("Solidarna Polska") which has enough MPs in the Parliament (Sejm) to block any bill it disagrees with. It is led by Zbigniew Ziobro, the Minister of Justice and General Prosecutor, whose confidants spread the slogan "veto or death" during the budget dispute in November and De-

cember 2020 - the buzzword that refers to 2003 discussion about the distribution of votes in the EU according to the Treaty establishing a Constitution for Europe ("Nicaea albo śmierć" - "(Treaty of) Nice or death!"). Members of the "United Poland", during their press conferences, linked the issue of the rule of law with minority rights, arguing that accepting the mechanism will pose a threat to traditional values, i.e. by the introduction of same-sex marriages or granting homosexuals rights to adopt children, leveraging the quarrel over veto and EU budget to the level of cultural wars and struggle for independence of Poland.

Secondly, coming back to Hungary, in Orbán's case, the stake for the rule of law mechanism was much higher than just positioning himself as a defender of the traditional values as opposed to liberal democratic ideology. In Europe, Hungary not only ranks as one of the greatest beneficiaries of European funds, but according to European Anti-Fraud Office (OLAF) also as a country with one of the highest numbers of irregularities in disbursing them<sup>2</sup>. Rapid economic growth fueled by benefits from the EU market and funding helped Orbán in establishing a system of clientelism along with a new class of oligarchs - like billionaire Lőrinc Mészáros, Orbán's friend and - according to media - his strawman, who once said that his fortune is "thanks to three factors: God, luck and Viktor Orbán"<sup>3</sup>. This model - which may be described as "crony capitalism" - particularly visible in the Hungarian political-economic system, resembles rather something of Eastern European oligarchies and is sometimes referred to as "post-communist mafia state"<sup>4</sup>. From this perspective clientelist model introduced by PiS in Poland, based mostly on soft, political corruption and well-paid positions in state-controlled companies, appears to be rather innocent, and along with political control over the law enforcement system creates something like a "stick and carrot" model which helps Kaczyński keep the governmental coalition stable.

Finally, the position of both Fidesz and PiS is fundamentally different in European politics. While PiS evolved from a moderate center-right conservative party advocating for "more solidarity" in policymaking ("Liberal versus Solidary Poland"), the ideolo-

gical roots of Fidesz and Orbán were rather liberal-conservative. This distinction is still visible in the political affiliation of both parties on a European level - while Fidesz remains a member of EPP, where German Christian democrats from CDU and CSU play a crucial role, PiS remains a member of ECR - a group once dominated by the British Conservative Party, but after Brexit strongly marginalized in the EU institutions (especially European Parliament).

This difference in the affiliation of PiS and Fidesz in European politics affects not only their ability to perceive their negotiating position, but also their capability for building ad hoc alliances. While describing Orbán as the "German creation", as it is sometimes said, includes a high load of exaggeration, there is a small grain of truth in this relationship. It is enough to mention that for about a decade Merkel and EPP leadership tolerated what happened in Hungary in terms of the rule of law - and after many years the only tool that remained on the table was suspending the membership of Fidesz in EPP in 2019. Seemingly it was Orbán who for the sake of German Presidency ambitions to pass the budget and stimulus in December 2020 decided to sof-

ten his position by accepting (however unbinding) declaration in the minutes of the European Council's conclusions and leave the problem of conditionality mechanism unresolved for an unspecified time. And apparently it was the reason why Orbán paid an unexpected visit in Warsaw on December 8th, less than two days before the beginning of the European Council Summit - to personally convince Kaczyński and his junior coalition partners, including Ziobro, that this is the only solution now.

Nevertheless, the dispute over the rule of law and budget veto fuels the discussion about the feasibility of either "Polexit" or "Hungexit". According to polls, both Polish and Hungarian societies remain strongly pro-European (with Polish society beating the records of favorable views of EU)<sup>5</sup>. And for many years both countries strongly benefited from the European integration, mostly economically. In these terms both Polexit and Hungexit do not seem plausible. But one may, however, imagine a situation where the major political party, declaratively pro-European, becomes a hostage of the small electorate group that supports leaving the EU. This may result in falling into the same trap as David Came-

ron with the Brexit referendum in 2016 - the lesson we have learned on what may result from manipulating the public opinion not only by extreme groups, but also populist politicians who feed on electorate disillusioned with the current course of politics. The volatility of the political scene, especially in Poland, where political attitudes change from time to time, may result in unexpected consequences. Therefore, even though the significance of the dispute over the rule of law that occurred in the last months should not be overrated, in these terms giving more floor in public debate to hard Eurosceptics and far-right extremists may induce a long-term risk of paving the way to "Polexit" or "Hungexit" in the future. ●

<sup>1</sup> Bojan Bugarič, Central Europe's descent into autocracy: A constitutional analysis of authoritarian populism, *International Journal of Constitutional Law*, Volume 17, Issue 2, April 2019, Pages 597-616, <https://doi.org/10.1093/icon/moz032>

<sup>2</sup> <https://euobserver.com/justice/149405>

<sup>3</sup> Magyar, Bálint. *Post-Communist Mafia State: The Case of Hungary*. NED - New edition, 1 ed., Central European University Press, 2016. JSTOR, [www.jstor.org/stable/10.7829/j.ctt19z391g](http://www.jstor.org/stable/10.7829/j.ctt19z391g). Accessed 8 Jan. 2021.

<sup>4</sup> Libéralisme au sens anglo-saxon et non pas français, j' imagine (politique plus qu'économique)

<sup>5</sup> <https://www.pewresearch.org/global/2019/10/14/the-european-union/>

