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**LAW AND COLLECTIVE MEMORY IN THE SERVICE  
OF ILLIBERALISM. THROUGH THE LOOKING-GLASS:  
TRANSFORMATION OR A REACTIONARY REVOLUTION?****Introduction**

Poland and Hungary, two countries hailed as success stories of the liberal transformation after 1989, have undergone another transition in the past several years, an illiberal one. From the ‘mosaic’ of changes, usually small, most often based on similar instruments functioning in liberal democracies,<sup>1</sup> a different regime emerges. As if walking through the looking-glass, while all seems similar to the liberal side, the legal institutions and the ways of governing are somehow different on the illiberal side of the mirror.

Having realised that “for the current generation in the region, liberalism is the god that failed,”<sup>2</sup> Viktor Orbán and Jarosław Kaczyński, leaders of the Hungarian and Polish illiberal parties, Fidesz and PiS (Prawo i Sprawiedliwość, Polish for: Law and Justice), respectively, linked the legal, “political and economic

<sup>1</sup> J. Kornai, “Hungary’s U-Turn: Retreating from Democracy”, *Journal of Democracy* 2015, Vol. 26, No. 3, p. 41.

<sup>2</sup> J. Feffer, cited in I. Krastev, “How liberalism became ‘the god that failed’ in eastern Europe”, *The Guardian*, 24.10.2019, <https://www.theguardian.com/world/2019/oct/24/western-liberalism-failed-post-communist-eastern-europe> [accessed: 29.10.2019].

meanings of ‘liberalism’,” promising a transition to an “‘illiberal state’ based on the values of work, family and nation,”<sup>3</sup> using, among other things, “the very instruments that the West once considered crucial for a transition from socialism to liberal democracy – law and the market” to achieve their goal.<sup>4</sup>

The fact that the transformation happened at this particular moment in these two countries has many reasons – social, political, economic – however the purpose of this article is to focus on the two contributing factors which not only made the transition more likely, but now are, in a particular case of *circulus vitiosus*, employed to foster the illiberal system: law and collective memory.

Before moving on to the main investigations I would like to briefly address the numerous calls claiming the rule of law in Poland and Hungary degraded due to their new illiberal systems (with the refugee question taken into account, Czechia and Slovakia have faced similar allegations), which while clearly linked to the main issue of the article, remain a separate matter than the one in hand, i.e. the analysis of the legal and social processes itself.

The backsliding of the rule of law has been defined as the “process through which elected public authorities deliberately implement governmental blueprints which aim to systematically weaken, annihilate or capture internal checks on power with the view of dismantling the liberal democratic state and entrenching the long-term rule of the dominant party.”<sup>5</sup> While problems with regards to the rule of law arise in all countries, Hungary and Poland are often regarded as special cases, since it is their governments’ ‘deliberate strategy’ to introduce changes leading to the perspective of the rule of law’s backsliding.<sup>6</sup>

At the end of 2017, the European Commission decided to initiate the so-called article 7 TEU procedure, as in their opinion some of the changes in Poland are in a ‘clear risk of a serious breach’ of the European values.<sup>7</sup> Moreover, the most recent EU budget has been to a certain degree tied with the respect for the rule of law, a solution which has been submitted to ECJ by Poland and Hungary.<sup>8</sup> While it remains to be seen what the final result of this ‘battle’ on the understanding of the rule of law is going to be, I would like to make four observations regarding the contentious issue.

<sup>3</sup> I. Krastev, *ibidem*.

<sup>4</sup> J.-W. Müller, “Homo Orbánicus”, *The New York Review of Books*, 5.04.2018, <https://www.nybooks.com/articles/2018/04/05/homo-orbanicus-hungary> [accessed: 29.10.2019].

<sup>5</sup> L. Pech and K.L. Scheppele, “Illiberalism Within: Rule of Law Backsliding in the EU”, *Cambridge Yearbook of European Legal Studies* 2017, Vol. 19, p. 7, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3009280](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009280) [accessed: 6.08.2018].

<sup>6</sup> *Ibidem*, p. 8.

<sup>7</sup> K. Baca-Pogorzelska, “Art. 7, czyli Polska i Węgry trafiają do osłej ławki”, 26.06.2018, *Gazeta Prawna*, <https://www.gazetaprawna.pl/artykuly/1151538,wysluchanie-polski-w-brukseli-w-sprawie-wszczecia-procedury-art-7-bez-rewelacji.html> [accessed: 6.08.2018].

<sup>8</sup> “Dr Bonikowska o skardze Polski do TSUE”, 11.03.2021, *PolskieRadio24*, <https://www.polskieradio24.pl/130/5925/Artykul/2695070,Werdykt-bedzie-najwczesniej-za-kilka-miesiecy-Dr-Bonikowska-o-skardze-Polski-do-TSUE> [accessed: 11.03.2021].

First of all, the changes introduced by Orbán and Kaczyński are clearly in line with their illiberal programmes, which means that in most cases, they are not hiding what they are about to do – the question remains, however, whether or not there is a place for other-than-liberal policies within the EU. Importantly, the EU has already lost one battle against Central Europe, when it abandoned its forced relocation policy in 2018.<sup>9</sup>

Also, it is difficult to define what the rule of law actually is – for example, as Brian Z. Tamanaha notes, neither democracy, nor the human rights have a place in the rule of law’s definition – if they were, they would have the “effect of defining the rule of law in terms of institutions that match [only] liberal democracies”<sup>10</sup> – which potentially leaves the door open for illiberal democracies to uphold the rule of law in their own illiberal way.

And, perhaps most crucially, it has been observed that in Central Europe the post-1989 “reformers underestimated the local impediments to liberalisation and democratisation and overestimated the feasibility of importing fully worked-out western models.”<sup>11</sup> In this particular region the rule of law “doesn’t translate quite as crisply and neatly from the Western or the American concept as one might”<sup>12</sup> think – for example in Poland there is “a willingness to prosecute people for defamation of the nation or its leaders,” which in the US would be protected by the First Amendment<sup>13</sup> – and thus quite often what would be regarded by the Americans or the British as an infringement of the rule of law will not be seen as such by Poles or Hungarians.

With these pithy observations in mind – and leaving a profound analysis of the issue of the backsliding of the rule of law for another time and place – I would like to move to the matter in question, showing how law and collective memory contributed to the rise of illiberalism, ultimately becoming ‘cogs’ in the new system.

### **Illiberalism’s legal background**

When the new, liberal legal framework was established after 1989, it was modelled on the trusted Western patterns, with specialists from various countries of the European Union and the US ‘helping’ young, new democracies of Central Europe, sometimes up to the point of a farce – according to an allegedly true

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<sup>9</sup> M. Szuldrzyński, “Sukces Polski: UE bez relokacji uchodźców. Tylko co dalej?”, 29.06.2018, *Rzeczpospolita*, <https://www.rp.pl/Unia-Europejska/180629260-Sukces-Polski-UE-bez-relokacji-uchodzcow-Tylko-co-dalej.html> [accessed: 6.08. 2018].

<sup>10</sup> B.Z. Tamanaha, *On the Rule of Law. History, Politics, Theory*, Cambridge: Cambridge University Press 2000, p. 37.

<sup>11</sup> I. Krastev, *op. cit.*

<sup>12</sup> C. Grossman *et al.*, “Constitutional “Refolution” in the Ex-Communist World: The Rule of Law”, *American University International Law Review* 1997, Vol. 12, No. 1, p. 56.

<sup>13</sup> *Ibidem.*

anecdote, at one point half of the lawyers “in the Washington metropolitan area” were involved in drafting “the Czechoslovakian constitution.”<sup>14</sup>

Branded as “Americanisation, Europeanisation, democratisation, liberalisation, enlargement, integration, harmonisation, globalisation and so forth,” this process of “modernisation by imitation and integration by assimilation”<sup>15</sup> was often conducted with a complete disregard of the particularities of the region, which were bound to manifest themselves at one point.

Ultimately, as Paul Blokker argues in his 2014 study,<sup>16</sup> “democracy has been unevenly institutionalized in the new democracies” of Central Europe, because “a one-sided emphasis on the formal institutions of the rule of law and the entrenchment of democracy has meant a neglect of substantive, participatory, and legitimacy dimensions.” Constitutional democracy was neither well-designed, nor well-implemented,<sup>17</sup> as two regional tendencies emerged: a “judicialization of democratic politics” through the workings of Constitutional Tribunals; and “an unusually strong emphasis on a legal language [...] of fundamental rights and a legalistic view of constitutionalism.”<sup>18</sup> These in turn have resulted in “an overall depoliticized and essentialist view of democratic politics that denies any role of the larger demos and civil society,”<sup>19</sup> thus making it easier for the Central Europeans to be swayed by majoritarian illiberalism, which promises to ‘give the power back to the people’.

The circumstances and timeframes in which the post-1989 constitutions in Central Europe were adopted may also be linked to the rise of illiberalism, in particular in the case of Poland and Hungary – while Václav Havel said that he does “not agree with the view that the constitution is not the principal matter and that it can wait”<sup>20</sup> and Czech and Slovak constitutions were both adopted in 1992 – the new Polish constitution was adopted only in 1997, and the Hungarian one not until 2011 (the 1949 constitution was only amended during the transformation of 1989).<sup>21</sup>

Similar problems regarding new constitutions arose all over the region – as legislatures, instead of a version of an *assemblée nationale constituante* were responsible for drafting the documents. This meant that the new constitutions lacked the people’s legitimacy – when “the legislature has the final word, the legislature can always change the constitution. And even if the constitution they pass

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<sup>14</sup> *Ibidem*, p. 133.

<sup>15</sup> I. Krastev, *op. cit.*

<sup>16</sup> P. Blokker, *New Democracies in Crisis? A Comparative Constitutional Study of the Czech Republic, Hungary, Poland, Romania and Slovakia*, Oxon: Routledge 2014, p. 1.

<sup>17</sup> *Ibidem*, p. 2.

<sup>18</sup> *Ibidem*, pp. 3–4.

<sup>19</sup> *Ibidem*, pp. 5–6.

<sup>20</sup> C. Grossman *et al.*, *op. cit.*, p. 68.

<sup>21</sup> L.Y. Tartakoff, “Religion, Nationalism, History, and Politics in Hungary’s New Constitution”, *Global Society* 2012, Vol. 49, No. 4, p. 363.

says it takes a super majority to change it, that is not necessarily so in that kind of a system.”<sup>22</sup> Moreover, when legislature takes over the creating the constitution, it always means that parts of society are excluded from the process – this common problem was taken to another level in Poland, where when the constitution was adopted not only the president was from a left-wing party, there was also no major right-wing party in the parliament, due to a peculiar electoral law.<sup>23</sup> As a result, it lacks legitimacy to this day – less than 43% of voters participated in the referendum on its adoption<sup>24</sup> – which makes it easier for the government to introduce systematic illiberal changes, even if it lacks the majority to change the text of the constitution itself.

Polish constitution is also an interesting case from another reason – it is full of inherent contradictions and ambiguities, which often lead to conflicts between various institutions, for example over the direction of foreign policy between the government and the president – conflicts are bound to happen when they come from different political parties<sup>25</sup> – or between the Supreme Court and the Supreme Administrative Court.<sup>26</sup> These situations undermine the public’s trust in the institutions – for example in 2019 the parliament was regarded positively by 27% of Poles and negatively by 56%<sup>27</sup> while in 2017 the judiciary was regarded positively by 36% of Poles, and negatively by 51%, a lower result than in 2007.<sup>28</sup> With such negative views of major institutions, it is easier for the general public to support PiS’ programme of major illiberal reforms of the justice system, among other institutional changes. *Nota bene*, one of the reasons behind the problems concerning the Polish constitution may lie in the fact that the final corrections were introduced into its draft not by a group of lawyers, but by a linguist, Jerzy Bralczyk, who freely admits that he was the one to choose from several proposed

<sup>22</sup> C. Grossman *et al.*, *op. cit.*, p. 75.

<sup>23</sup> “Kluby i koła w Sejmie II kadencji”, Sejm RP, <http://www.sejm.gov.pl/archiwum/kluby/kadencja2/kluby.htm> [accessed: 29.10.2019].

<sup>24</sup> “25 maja 1997 r. Referendum konstytucyjne”, 25.05.2016, Interia.pl, <https://nowahistoria.interia.pl/kartka-z-kalendarza/news-25-maja-1997-r-referendum-konstytucyjne,nId,2207514> [accessed: 6.08.2018].

<sup>25</sup> P. Śmiłowicz, “Przydatny «spór o krzesło»”, 20.05.2009, *Newsweek*, <https://www.newsweek.pl/opinie/przydatny-spor-o-krzeslo/ssvps9j> [accessed: 29.10.2019].

<sup>26</sup> P. Słowik, “Bezprawie w Sądzie Najwyższym. Sędziowie nie chcą ujawnić wyciągów ze służbowych kart”, 8.02.2017, *Dziennik*, <https://wiadomosci.dziennik.pl/opinie/artykuly/542133,sad-najwyzszy-karty-sluzbowe-nsa.html> [accessed: 6.08.2018].

<sup>27</sup> “Opinie o działalności Sejmu, Senatu i prezydenta”, CBOS. *Komunikat z Badań* 2019, No. 24, [https://cbos.pl/PL/publikacje/raporty/open\\_file.php?url=2019/K\\_024\\_19.PDF&tytul=Opinie+o+dzia;322;alno;347;ci+Sejmu,+Senatu+i+prezydenta](https://cbos.pl/PL/publikacje/raporty/open_file.php?url=2019/K_024_19.PDF&tytul=Opinie+o+dzia;322;alno;347;ci+Sejmu,+Senatu+i+prezydenta) [accessed: 11.02.2021].

<sup>28</sup> “Społeczne oceny wymiaru sprawiedliwości”, CBOS. *Komunikat z Badań* 2017, No. 31, [https://cbos.pl/PL/publikacje/raporty/open\\_file.php?url=2017/K\\_031\\_17.PDF&tytul=Spo%C5%82eczne%20oceny%20wymiaru%20sprawiedliwo%C5%9Bci](https://cbos.pl/PL/publikacje/raporty/open_file.php?url=2017/K_031_17.PDF&tytul=Spo%C5%82eczne%20oceny%20wymiaru%20sprawiedliwo%C5%9Bci) [accessed: 6.08.2018].

variants of the phrasing of a large number of articles,<sup>29</sup> despite the lack of any professional legal experience.

With this myriad of issues surrounding the legal systems in the two countries, both in Poland and in Hungary the illiberal parties promised to change the law in such a way that it will serve the people, and no longer ‘the elites’ or ‘the system’ – the concept best put into words by the Senior Speaker of the Polish Sejm, Kornel Morawiecki, who, while not a member of the governing party, remarked during one of the parliamentary debates in 2015 that “law is an important thing, but it is not sacred [...] over the law stands the welfare of the nation.”<sup>30</sup> Thus, the reconstruction of the legal system became a vital part of the illiberal transformations. Once changed, various legal mechanisms were to be used to support the new illiberal regimes, as I will demonstrate in the next part of the paper.

### Law in the service of illiberalism

When Viktor Orbán won the 2010 Hungarian election by a landslide, he regarded the results “as a new social contract,” a “revolution”, even.<sup>31</sup> One year later, after PiS lost the parliamentary elections for the second time in a row, Jarosław Kaczyński promised that “there will come a day when there will be Budapest in Warsaw”<sup>32</sup> – referring to the illiberal changes already taking place in Hungary. His dream came true four years later, when PiS, while coming well short of the ability to change the constitution, won the first single-party majority in the Polish Parliament after the 1989 transformation.

Soon after their electoral wins, both Orbán and Kaczyński began the transition of Hungary and Poland into illiberal democracies, starting with the reconstructions of all the liberal democracy’s safety valves: Constitutional Tribunals, courts’ organisation, councils of judiciary, councils of the media, etc. Interestingly, in spite of different political realities in the two countries (constitutional majority in Hungary, regular majority in Poland), changes in both countries follow the same pattern, providing in a way a template for building an illiberal regime.

<sup>29</sup> *Kulisy powstania konstytucji z 1997 roku* [video], 2011, Dzień dobry TVN, <https://dziendobry.tvn.pl/wideo,2064,n/kulisy-powstania-konstytucji-z-1997-roku,11284.html> [accessed: 6.08.2018].

<sup>30</sup> “Kornel Morawiecki w Sejmie: Nad prawem jest dobro Narodu! «Prawo, które nie służy narodowi to bezprawie!» Reakcja? Owacja na stojąco”, 26.11.2015, wPolityce.pl, <https://wpolityce.pl/polityka/273101-kornel-morawiecki-w-sejmie-nad-prawem-jest-dobro-narodu-prawo-ktorenie-sluzy-narodowi-to-bezprawie-reakcja-owacja-na-stojaco-wideo> [accessed: 29.10.2019].

<sup>31</sup> A. Bozóki, “The Illusion of Inclusion: Configurations of Populism in Hungary”, *EUI Working Paper SPS* 2012/06, p. 16.

<sup>32</sup> “Przyjdzie dzień, że w Warszawie będzie Budapeszt”, 2011, TVN24, <https://www.tvn24.pl/wiadomosci-z-kraju,3/przyjdzie-dzien-ze-w-warszawie-bedzie-budapeszt,186922.html> [accessed: 29.10.2019].

## *Hungary*

In the 2010 elections Orbán's Fidesz received 53% of votes, which, according to the Hungarian electoral system, gave them 68% of seats in the parliament, allowing the party to change the constitution the way it saw fit with its two-thirds majority: during the first year there were twelve amendments changing over fifty provisions, including the one requiring four-fifths of the parliament to agree on a new constitution (as it could have been changed by a two-thirds majority).<sup>33</sup>

The fact that the government was not a coalition<sup>34</sup> for the first time in the modern Hungarian history<sup>35</sup> allowed Fidesz to easily pass all the legislation, using 'Blitzkrieg tactics',<sup>36</sup> such as the introduction of legislative proposals by individual motions, which allowed them not to hold public or specialist consultations or conduct impact assessments.<sup>37</sup> As a result, the parliament became 'a law factory': during the years 2010–2014 eighty-eight bills were voted on within a week of introduction, thirteen of which were voted on the same or next day.<sup>38</sup>

With a stable situation in the parliament Orbán could easily embark on his ultimate goal, the adoption of the long-overdue new Hungarian constitution. The initial four steps included choosing a suitable president, constraining the Constitutional Tribunal, changing the referendum process and altering the situation of the media market.<sup>39</sup>

The first of the tasks proved quite easy, since the Hungarian president is chosen by the parliament, which soon elected a former Fidesz member into the office.<sup>40</sup> Knowing well that the Constitutional Tribunal might easily hinder his plans (it found one of Fidesz's first major legislations, a retroactive tax on civil servants' departing bonuses, unconstitutional),<sup>41</sup> Orbán used his party's ability to amend the constitution and first changed the rules of choosing the Constitutional Tribunal's judges, then limited their powers, taking away the jurisdiction over fiscal matters in most cases, and ultimately increased the number of judges from eleven to fifteen, which, combined with the finishing of the term of some of the old judges, ultimately gave Fidesz the opportunity to choose seven new judges

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<sup>33</sup> M. Bánkuti, G. Halmai and K.L. Scheppele, "Hungary's Illiberal Turn: Disabling the Constitution", *Journal of Democracy* 2012, Vol. 23, No. 3, p. 139.

<sup>34</sup> Technically the government is a coalition of two parties, Fidesz and KDNP, but they run on the same list, see: N. Sitter, "Absolute Power? Hungary Twenty Years after the Fall of Communism", [in:] *20 Years since the Fall of the Berlin Wall*, eds. E. Bakke and I. Peters, Cambridge: Intersentia 2011, p. 254.

<sup>35</sup> *Ibidem*, p. 252.

<sup>36</sup> A. Bozóki, "Occupy the State: The Orbán Regime in Hungary", *Journal of Contemporary Central and Eastern Europe* 2011, Vol. 19, No. 3, p. 658.

<sup>37</sup> *Ibidem*.

<sup>38</sup> J. Kornai, *op. cit.*, p. 35.

<sup>39</sup> M. Bánkuti, G. Halmai and K.L. Scheppele, *op. cit.*, p. 141.

<sup>40</sup> *Ibidem*.

<sup>41</sup> *Ibidem*, p. 139.

in the first year and a half of its administration.<sup>42</sup> In the end the Tribunal, one of liberal democracy's key security mechanisms, became a 'cog in the illiberal machine', virtually "disappearing from the political landscape."<sup>43</sup>

Following a similar pattern, being well aware that the Election Commission in Hungary has the power to decide over proposals of referendums (the results of which might have hampered Orbán's plans), Fidesz went on to terminate its members' mandates early and choose new ones, giving the party a majority in the institution. The Commission's decisions may be appealed to the Constitutional Tribunal, but, as I noted above, the Tribunal had already been reformed and thus 'disabled'.<sup>44</sup> The government also reconstructed the Media Authority and created a new institution, the Media Council, appointing the head of the former and all the members of the latter. The Media Council received, among others, the power to fine the media for not providing a 'balanced' news coverage.<sup>45</sup>

All these changes prepared the ground for a new constitution, the adoption of which took place quickly and largely without consultations: first, in December 2010, a parliamentary committee (the proceedings of which were boycotted by the opposition) proposed the principles of a new constitution, not giving any room for debate until March of the following year, when parliamentarians had only one week to propose a draft constitution. While the opposition managed to present its own project, it was quickly dropped by the government, and the Fidesz's proposal was ultimately adopted after one month of public consultations (which in the end did not take place) and nine sessions of parliamentary debate – and signed by the president in April 2011, taking effect in 2012.<sup>46</sup>

While it is not the purpose of this paper to analyse the Hungarian constitutional order, it has to be remarked that the new constitution epitomises the illiberal system: it limits the access to the Constitutional Tribunal, with individuals only able to challenge laws directly affecting them and requiring at least 25% of members of parliament to challenge a law, thus forcing unlikely cooperation among the fragmented opposition;<sup>47</sup> changes the way judges are appointed, with the head of the new National Judicial Office being granted the power to select, promote or demote judges, choose the heads of all courts, and start disciplinary proceedings;<sup>48</sup> reconstructs the ombudsman system, from four separate ones to a single parliamentary commissioner for human rights;<sup>49</sup> gives

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<sup>42</sup> *Ibidem*, p. 140.

<sup>43</sup> *Ibidem*.

<sup>44</sup> *Ibidem*.

<sup>45</sup> *Ibidem*.

<sup>46</sup> *Ibidem*, pp. 141–142.

<sup>47</sup> *Ibidem*, p. 142.

<sup>48</sup> *Ibidem*, p. 143.

<sup>49</sup> *Ibidem*, p. 144.



the parliament-chosen chief public prosecutor the power to decide upon a court in which any criminal case will be heard;<sup>50</sup> and allows the new Budget Council to veto any public budget should it add to national debt.<sup>51</sup>

Other illiberal changes include the limitation of the powers of local authorities by centralising the administration of schools and hospitals;<sup>52</sup> unification of school curriculum<sup>53</sup> and textbooks;<sup>54</sup> and a visible distrust towards civil society,<sup>55</sup> including the Norwegian funds<sup>56</sup> and Central European University.<sup>57</sup>

It has also to be noted that many of the positions created or changed by the new laws have prolonged terms of office, now ranging from six to nine to twelve years, and a large number of the new laws on family protection, taxes and pensions were introduced as ‘cardinal laws’, thus requiring a two-thirds majority in the parliament to change them, further cementing Fidesz’s illiberal regime even if another party was to win an election.<sup>58</sup>

### ***Poland***

The Polish path to illiberalism also begun with an election victory: in 2015 PiS won the first single-party<sup>59</sup> majority in contemporary Polish history, as one party and one coalition almost managed to pass the threshold (but did not), meaning that the proportional electoral system transformed PiS’ 38% of the vote into 51% of the seats in the lower chamber of parliament.<sup>60</sup> While this slim majority did not allow for any changes to the constitution, the act’s peculiarities mentioned in the previous part of the paper, along with the fact that the party won the presidential elections earlier that year, allowed the government to begin the illiberal transformation, in many ways based on the Hungarian template.

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<sup>50</sup> *Ibidem*.

<sup>51</sup> *Ibidem*.

<sup>52</sup> J. Kornai, *op. cit.*, p. 36.

<sup>53</sup> A. Bozóki, “Occupy the State...”, *op. cit.*, p. 656.

<sup>54</sup> J. Kornai, *op. cit.*, p. 45.

<sup>55</sup> J.-W. Müller, *op. cit.*

<sup>56</sup> J. Kornai, *op. cit.*, p. 37.

<sup>57</sup> S. Walker, “‘Dark day for freedom’: Soros-affiliated university quits Hungary”, 3.12.2018, *The Guardian*, <https://www.theguardian.com/world/2018/dec/03/dark-day-freedom-george-soros-affiliated-central-european-university-quits-hungary> [accessed: 29.10.2019].

<sup>58</sup> M. Bánkuti, G. Halmai and K.L. Scheppele, *op. cit.*, pp. 143–145.

<sup>59</sup> Technically the government is composed of three parties: PiS, Solidarna Polska (Polish for: Solidary Poland) and Republikanie (Republicans), which have previously run on one list in the 2015 and 2019 elections as PiS, Solidarna Polska and Porozumienie (Consensus); Republikanie party has been created in 2021 on the basis of some of Porozumienie’s members, including MPs, with others leaving the government.

<sup>60</sup> “Wybory parlamentarne 2015. PKW podała ostateczne wyniki”, 27.10.2015, Onet.pl, <https://wiadomosci.onet.pl/kraj/wybory-parlamentarne-2015-pkw-podala-ostateczne-wyniki/zqe59j> [accessed: 29.10.2019].

The Polish parliament, just like its Hungarian counterpart, soon turned into a ‘law factory’,<sup>61</sup> with, for example, 17,440 pages of bills adopted in the first six months of 2017.<sup>62</sup> Legislation, from regular amendments to changes to flagship government programmes, was often adopted in the process of ‘express voting’, with both the lower and upper chambers of the parliament voting on the same act from the morning one day into the early hours of the morning the very next (from time to time resulting in blatant mistakes).<sup>63</sup> In order to speed up the legislative process even more – and not have to conduct lengthy social consultations – following preparations by the government, many bills were then introduced as proposals of members of parliament, sometimes with the names of their original civil service authors still embedded in the documents.<sup>64</sup>

Also as in the case of Hungary, one of the first steps of the illiberal transition in Poland was the remodelling of the Constitutional Tribunal. Kaczyński knew very well from his previous experience of governing Poland in the years 2005–2007 that a liberal Tribunal may easily hinder any illiberal changes his party would like to introduce. Lacking Orbán’s ability to easily amend the constitution, the head of the PiS was nonetheless presented with a unique opportunity by the previous government to change both the personal composition and the functioning of the Tribunal.

The Civic Platform changed the bill on the functioning of the Constitutional Tribunal in May 2015, after losing presidential elections, predicting that they might as well lose the parliamentary ones. The amendments allowed the parliament to elect new judges for all five positions in the Tribunal that would become empty by the end of 2015, even if the terms of these judges would run out only around and after the already planned October elections.<sup>65</sup>

This legislative Pandora’s box, once opened, was not to be shut by the new illiberal government, which (since they were not sworn in by the president yet) decided to deselect the ‘May amendment’ judges using rules of parliamentary procedure and then alter the law on the functioning of the Tribunal in such a way as to ensure that no decision may be taken without the new judges chosen by

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<sup>61</sup> It has to be noted that to a point this has changed after the October 2019 elections – while PiS won the majority in the lower chamber of the parliament, they lost the Senate, which, while not holding many powers, may – and often does – delay the adoption of new laws by a month.

<sup>62</sup> P. Trudnowski, “Szaleństwo produkcji prawa trwa. 5 pomysłów jak je zatrzymać”, 27.07.2017, Klub Jagielloński, <https://klubjagiellonski.pl/2017/07/27/szalenstwo-produkcji-prawa-trwa-5-pomyslow-jak-je-zatrzymac> [accessed: 29.10.2019].

<sup>63</sup> “Nocne głosowania w Sejmie, ustawy przyjmowane migiem”, 26.04.2019, Gazeta.pl, <http://wiadomosci.gazeta.pl/wiadomosci/7,114884,24701571,nocne-glosowania-w-sejmie-ustawy-przyjmowane-migiem-dwoje.html> [accessed: 29.10.2019].

<sup>64</sup> P. Trudnowski, *op. cit.*

<sup>65</sup> E. Siedlecka, “Platforma psuje Trybunał Konstytucyjny”, 29.05.2015, *Gazeta Wyborcza*, [http://wyborcza.pl/1,75968,18010846,Platforma\\_psuje\\_Trybunał\\_Konstytucyjny.html?disableRedirects=true](http://wyborcza.pl/1,75968,18010846,Platforma_psuje_Trybunał_Konstytucyjny.html?disableRedirects=true) [accessed: 29.10.2019].

PiS.<sup>66</sup> It is not the place of this paper to analyse the long constitutional crisis that was the aftermath of these actions, but it has to be noted that ultimately they were successful and had ‘the Hungarian effect’ on the Tribunal, which became largely dormant,<sup>67</sup> often ‘freezing’ more controversial cases which might force the government to take unpopular decisions for years, for example on the question of eugenic abortion.<sup>68</sup>

Similarly to Fidesz, PiS created a new media body, the National Media Council, responsible for choosing the heads of the public media.<sup>69</sup> This has allowed the government an easy takeover of the public TV, radio and press agency, which, while always politicised by consecutive governments, now became particularly heavily criticised for not being sufficiently objective, almost always supporting the government’s illiberal agenda.<sup>70</sup> While so far the changes concern only the public media, PiS proposed the ‘repolonization’ of the media (the concept that the media in Poland should be owned by Polish companies) as one of its tasks for the second term. How exactly such changes will look remains to be seen, apart from the promises that they will make the media market in Poland akin to the one in France and Germany;<sup>71</sup> so far, the state-owned oil company, Orlen, successfully took over one of the major press publishers,<sup>72</sup> while another attempt at a significant change, which proposed that any television station in Poland could only be owned by a company registered in the EU (thus directly impacting one of the main media groups), was vetoed by the President.<sup>73</sup>

<sup>66</sup> “Najważniejsze przepisy nowelizacji ustawy o TK w punktach”, 28.12.2015, TVN24, <https://www.tvn24.pl/wiadomosci-z-kraju,3/nowelizacja-ustawy-o-tk-najwazniejsze-zmiany-w-punktach,605298.html> [accessed: 29.10.2019].

<sup>67</sup> M. Kryszkiewicz, “Długie wakacje TK. Jest wyznaczonych coraz mniej rozpraw”, 1.10.2019, *Gazeta Prawna*, <https://prawo.gazetaprawna.pl/artykuly/1432580,tk-rozprawa-publickacja-ogloszenie-orzeczenia-przylebska.html> [accessed: 29.10.2019].

<sup>68</sup> M. Szuldrzyński, “Prezes woli pozostawić aborcję w TK”, 10.07.2018, *Rzeczpospolita*, <https://www.rp.pl/Analizy/180719958-Szuldrzynski-Prezes-woli-pozostawic-aborcje-w-TK.html> [accessed: 29.10.2019].

<sup>69</sup> “Ustawa o Radzie Mediów Narodowych już obowiązuje”, 7.07.2016, Sejm RP, [www.sejm.gov.pl/Sejm8.nsf/komunikat.xsp?documentId=D49AF4B1166B6550C1257FE100489A92](http://www.sejm.gov.pl/Sejm8.nsf/komunikat.xsp?documentId=D49AF4B1166B6550C1257FE100489A92) [accessed: 29.10.2019].

<sup>70</sup> M. Wrzos, “Media PiS. Narodowa TVP «dobrej zmiany»”, 10.10.2019, Onet.pl, <https://wiadomosci.onet.pl/tylko-w-onejcie/podsumowanie-rzadow-pis-tvp-jacka-kurskiego/t700495> [accessed: 29.10.2019].

<sup>71</sup> “Repolonizacja mediów. PiS chce wprowadzić przepisy, jakie mają Francja i Niemcy”, 21.06.2019, Salon24, <https://www.salon24.pl/newsroom/964871,repolonizacja-mediow-pis-chce-wprowadzic-przepisy-jakie-maja-francja-i-niemcy> [accessed: 29.10.2019].

<sup>72</sup> “Orlen właścicielem Polska Press. Sfinalizowano transakcję przejęcia”, 2.03.2021, Bankier.pl, <https://www.bankier.pl/wiadomosc/Orlen-wlascicielem-Polska-Press-Sfinalizowano-transakcje-przejecia-8066621.html> [accessed: 30.12.2021].

<sup>73</sup> “«Lex TVN»: Prezydent Andrzej Duda zawetował nowelizację ustawy o radiofonii i telewizji”, 27.12.2021, *Rzeczpospolita*, <https://www.rp.pl/polityka/art19232471-lex-tvn-prezydent-andrzej-duda-zawetowal-nowelizacje-ustawy-o-radiofonii-i-telewizji> [accessed: 30.12.2021].

Ultimately, and also similarly to Hungary, one of the final steps in the illiberal transformation, undertaken in particular in the years 2016–2018, was the reconstruction of the justice system: the return to the unification of the function of the minister of justice and attorney general,<sup>74</sup> giving him the power of choosing the heads of courts;<sup>75</sup> the personal and competence reform of the National Council of Judiciary;<sup>76</sup> the increase in the number of Supreme Court judges, along with the amendments to the functioning of the court and the way its judges are selected.<sup>77</sup>

Over the course of only several years, Fidesz and PiS managed to dismantle many legal institutions of liberal democracy – constitutional tribunals, national councils of judiciary, rules of parliamentary procedure – reconstructing them in a way to propel the new illiberal system, perhaps forever changing what after 1989 was supposed to be the “new, inescapable orthodoxy”<sup>78</sup> of liberalism. Law was not the only social instrument remodelled in such a way – collective memories were the other.

### Collective memory in the service of illiberalism

In his 1995 article *Central Europe: The Present Past* Timothy Garton Ash argued that Polish problems with the past constantly influencing the present could have been in all likelihood avoided: if after the fall of the Berlin Wall the members of the former regime were publicly exposed “in the well-trying Latin American shape of a state or parliamentary ‘truth commission’,” and not allowed to function in the public sphere, the Polish relationship with the pre-transition past could have been quite different.<sup>79</sup>

Returning to the observation four years later – only this time speaking about the whole region – he stressed again that the countries of Central Europe

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<sup>74</sup> “Minister sprawiedliwości znowu Prokuratorem Generalnym?”, 31.01.2016, Polskie Radio24, <https://www.polskieradio24.pl/7/4400/Artykul/1577089,Minister-sprawiedliwosci-znowu-Prokuratorem-Generalnym-Publicyisci-oceniaja> [accessed: 29.10.2019].

<sup>75</sup> A. Łukaszewicz, “Minister sprawiedliwości nie odwoła prezesa sądu bez opinii KRS i kolegium sądu”, 22.05.2018, *Rzeczpospolita*, <https://www.rp.pl/Sedziowie-i-sady/305229936-Minister-sprawiedliwosci-nie-odwola-prezesa-sadu-bez-opinii-KRS-i-kolegium-sadu.html> [accessed: 29.10.2019].

<sup>76</sup> “Weszła w życie nowelizacja ustawy o Krajowej Radzie Sądownictwa”, 17.01.2018, Polsat News, <https://www.polsatnews.pl/wiadomosc/2018-01-17/weszla-w-zycie-nowelizacja-ustawy-o-krajowej-radzie-sadownictwa> [accessed: 29.10.2019].

<sup>77</sup> “Prezydent zmienia sądownictwo”, 2017, TVN24, <https://www.tvn24.pl/raporty/sad-najwyzszy-i-krs-zmiany-w-sadownictwie-wedlug-pis-i-prezydenta,1198> [accessed: 29.10.2019].

<sup>78</sup> I. Krastev, *op. cit.*

<sup>79</sup> T.G. Ash, “Central Europe: The Present Past”, 13.07.1995, *New York Review of Books*, <https://www.nybooks.com/articles/1995/07/13/central-europe-the-present-past> [accessed: 30.09.2019].

should have dealt with the past in the form of truth commissions, as a truth commission “symbolically draws a line between the new era and the old, without calling for forgetting or even, necessarily, forgiving. It is probably the closest a non-revolutionary revolution can come to revolutionary catharsis.”<sup>80</sup>

Ultimately, however, neither Poland nor Hungary<sup>81</sup> had this sort of a revolutionary catharsis, with the collective memories of the communist past constantly influencing the post-communist present and contributing to the rise of illiberalism, as the lack of a real decommunization continuously kept getting back. While for many years “economic issues dominated” the elections, ultimately there came a time when “anti-communism and corruption took precedence.”<sup>82</sup>

The initial decommunization took place both in Poland and in Hungary in the 1990s. The illiberal parties, however, promised to go deeper than the previous governments, with their policies particularly affecting the collective memories in the cityscape: PiS ordered country-wide review (and potential change) of street names and monuments originating in the times of communism, often sparking wide social and legal debates;<sup>83</sup> in Hungary, among other memory policies, Fidesz decided to restore the Kossuth Square in front of the parliament in Budapest to its pre-1944 condition,<sup>84</sup> moving, *inter alia* Imre Nagy’s statue to a less prominent location<sup>85</sup> – while he is a hero to many, Orbán sees Nagy first and foremost as a communist.<sup>86</sup>

Another play of the illiberals on the already existing collective memory focuses on “exaggerating the dark sides of European liberalism,” knowing well that “the passage of time has erased from the collective memory the even darker sides of European illiberalism.”<sup>87</sup> With many researchers asking “whether it was

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<sup>80</sup> T.G. Ash, “Ten Years After”, 18.11.1999, *The New York Review of Books*, <https://nybooks.com/articles/1999/11/18/ten-years-after> [accessed: 6.08.2018].

<sup>81</sup> See: M.M. Sadowski, “Collective Memory and Historical Determinacy: The Shaping of the Polish Transition”, [in:] *Central and Eastern European Socio-Political and Legal Transition Revisited*, eds. B. Fekete and F. Gárdos-Orosz, Frankfurt am Main: Peter Lang 2018, p. 176 (Central and Eastern European Forum for Legal, Political, and Social Theory Yearbook, Vol. 7).

<sup>82</sup> N. Sitter, *op. cit.*, p. 258.

<sup>83</sup> R. Krupa-Dąbrowska, “Dekomunizacja ulic – co jest symbolem komunizmu”, 22.03.2019, *Rzeczpospolita*, <https://www.rp.pl/W-sadzie-i-urzedzie/303229943-Dekomunizacja-ulic---co-jest-symbolem-komunizmu.html> [accessed: 29.10.2019].

<sup>84</sup> P. Hajdu, “The memory of national literature in Budapest city centre”, *Neohelicon* 2014, Vol. 41, p. 44.

<sup>85</sup> S. Walker, “Hungarians remember Imre Nagy, hero of ‘56, as Orban tightens grip” 16.06.2019, *The Guardian*, <https://www.theguardian.com/world/2019/jun/16/hungarians-remember-imre-nagy-hero-of-56-as-orban-tightens-grip> [accessed: 29.10.2019].

<sup>86</sup> For an in-depth analysis of the second wave of decommunization in Poland and Hungary, as well as several other countries, see M.M. Sadowski, “City as a Locus of Collective Memory. Streets, Monuments and Human Rights”, *Zeitschrift für Rechtssoziologie – The German Journal of Law and Society* 2021, Vol. 40, No. 1–2, pp. 209–240.

<sup>87</sup> I. Krastev, *op. cit.*

possible to roll back history,<sup>88</sup> the large number of similarities between present day and interwar illiberal regimes in Poland and Hungary, Piłsudski's *sanacja*<sup>89</sup> and Miklós Horthy's regency,<sup>90</sup> respectively, are often remarked upon. They are brought to the forefront particularly in Hungary, with Fidesz "politically absolving individuals extolled during the Horthy regime by conferring new awards upon them"<sup>91</sup> and with Orbán's indirect invitations to revisit the 1920 Trianon Treaty (and thus European borders),<sup>92</sup> through, for example, declaring the anniversary of its signing the 'day of national unity'<sup>93</sup> and calls for a 'national unification' with Hungarians living in the pre-World War I parts of the country.<sup>94</sup>

Collective memories of the more recent past are also used to support the illiberal agenda. With many Poles and Hungarians feeling that the shortcomings of the post-communist transformation lie in the fact that "imitating the values, attitudes, institutions and practices of the West became imperative and obligatory,"<sup>95</sup> even though they do not necessarily fit Central European conditions, it seems only natural that "a nativist reaction in the region, a reassertion of 'authentic' national traditions allegedly suffocated by ill-fitting western forms"<sup>96</sup> took place. Thus, I agree with the recent observation that the 2015 refusal to cooperate with the Germany-led coalition of EU countries arguing for a division of refugees between all member states was the final tipping point, the Central Europe's illiberal "declaration of independence not only from Brussels but also, more dramatically, from western liberalism and its ethos of openness to the world."<sup>97</sup>

Playing on the centuries-old collective memories of both Poland and Hungary being the 'bulwark of Christianity', the illiberals turned the conflict about the interpretation of EU regulations into "one about ideals,"<sup>98</sup> promising to defend Christian values, which, as they argued, were under attack from 'Brussels and Africa'.<sup>99</sup> It has to be remembered that religion plays an important role in the illiberal regime, not for its ethics, but as a part of national identity, the "who we think we are"<sup>100</sup> – the 2011 Hungarian constitution, signed on Easter Monday,<sup>101</sup>

<sup>88</sup> A. Bozóki, "The Illusion of Inclusion...", *op. cit.*, p. 16.

<sup>89</sup> S. Zagórski, "Roman Giertych: PiS jest jak Sanacja", 1.09.2017, *Twoja Historia*, <https://twojahistoria.pl/2017/09/01/roman-giertych-pis-jest-jak-sanacja-analogie-sa-przerazajace> [accessed: 29.10.2019].

<sup>90</sup> J. Kornai, *op. cit.*, p. 45.

<sup>91</sup> A. Bozóki, "Occupy the State...", *op. cit.*, p. 656.

<sup>92</sup> M. Bánkuti, G. Halmai and K.L. Scheppele, *op. cit.*, p. 145.

<sup>93</sup> N. Sitter, *op. cit.*, p. 266.

<sup>94</sup> A. Bozóki, "Occupy the State...", *op. cit.*, pp. 649–650.

<sup>95</sup> I. Krastev, *op. cit.*

<sup>96</sup> I. Krastev, *op. cit.*

<sup>97</sup> I. Krastev, *op. cit.*

<sup>98</sup> J.-W. Müller, *op. cit.*

<sup>99</sup> I. Krastev, *op. cit.*

<sup>100</sup> J.-W. Müller, *op. cit.*

<sup>101</sup> A. Bozóki, "Occupy the State...", *op. cit.*, p. 661.

codifies “the nation’s Christian character in a preamble beginning with an appeal to God,”<sup>102</sup> stressing “the role of Christianity in gluing the nation together;”<sup>103</sup> PiS’ head, Jarosław Kaczyński, often speaks about family and religion being fundamental national values which have to be protected.<sup>104</sup>

In addition to these policies, the illiberal state began institutionalising collective memories in a number of ways: creating new institutions, such as Budapest’s Terror Háza (established during Fidesz’ first term), which presents a particular version of Hungarian history before and after the Second World War;<sup>105</sup> changing the already existing institutions, such as WWII Museum in Gdańsk, whose controversial exhibition presenting a variety points of view on the war was remodelled by PiS government in a way to fit the Polish war narrative;<sup>106</sup> changing the ways of funding of cultural projects by giving more power to institutions dependent on the government, such as the Hungarian Academy of Arts or the National Research, Development and Innovation Office (NRDIO), and undermining those independent from it, the Hungarian Academy of Sciences, for example;<sup>107</sup> and changing the personnel in various cultural institutions, for example in Hungarian theatres, whose directors were all replaced in a period of eighteen months.<sup>108</sup>

Law itself is also often used by the two illiberal regimes in order to directly shape collective memories: the new Hungarian constitution’s preamble provides a very distinctive narrative about the Hungarian history,<sup>109</sup> proclaiming that the legal document should “serve as a covenant between Hungarians of the past, the present, and the future;”<sup>110</sup> and the Polish government established a series of memory laws providing a certain viewpoint of Poland and Polish society during World War II, sparking internal and external tensions.<sup>111</sup>

Ultimately, as this and the previous chapter show, both law and collective memory (sometimes entangled together), once remodelled, enabled the passage

<sup>102</sup> J.-W. Müller, *op. cit.*

<sup>103</sup> A. Bozóki, “Occupy the State...”, *op. cit.*, p. 660.

<sup>104</sup> “Prezes PiS: naszym celem jest budowa polskiej wersji państwa dobrobytu”, 22.09.2019, Polskie Radio24, <https://www.polskieradio24.pl/5/1222/Artykul/2371707,Prezes-PiS-naszym-celem-jest-budowa-polskiej-wersji-panstwa-dobrobytu> [accessed: 29.10.2019].

<sup>105</sup> E. Palonen, “Millennial politics of architecture: myths and nationhood in Budapest”, *Nationalities Papers* 2013, Vol. 41, No. 4, p. 541.

<sup>106</sup> R. Zakrzewski, “PiS przerabia Muzeum II Wojny Światowej”, 1.11.2017, *Gazeta Wyborcza*, <http://wyborcza.pl/7,75968,22593766,pis-przerabia-muzeum-ii-wojny-swiatowej.html> [accessed: 29.10.2019].

<sup>107</sup> J. Kornai, *op. cit.*, p. 45.

<sup>108</sup> A. Bozóki, “Occupy the State...”, *op. cit.*, p. 658.

<sup>109</sup> L.Y. Tartakoff, *op. cit.*, p. 362.

<sup>110</sup> *Ibidem*, p. 363.

<sup>111</sup> “Sejm w ekspresowym tempie przegłosował nowelizację ustawy o IPN”, 27.06.2018, TVN24, <https://www.tvn24.pl/wiadomosci-z-kraju,3/nowelizacja-ustawy-o-ipn-przeglosowana,849046.html> [accessed: 29.10.2019].

to the illiberal side of the mirror, becoming instruments of the regime transformation. In the next, final part of the article I would like to establish whether this ‘walk through the looking-glass’ was a simple transition, another stop in the democratic journey, or a point of no return, a true revolution.

### **Conclusion: A walk through the looking-glass or a revolution**

“The reverse wave;”<sup>112</sup> “a sharp U-turn;”<sup>113</sup> “the ‘revolution in the polling booths’”<sup>114</sup> – these are just some of the expressions used to describe the illiberal changes in Central Europe. Viktor Orbán himself called his first electoral victory a “new social contract,”<sup>115</sup> comparing “2010 to 1956 and 1989”<sup>116</sup> – and his party “often refers to the ideas espoused in the 1848 Revolution led by Lajos Kossuth (i.e. ‘revolution and struggle for freedom’),”<sup>117</sup> which to this day remains the bedrock of Hungarian national identity.

It is easy to regard the changes which took place in Poland and Hungary as a revolution – a belated revolution some may say, because, to follow the words of Jürgen Habermas, those that happened in 1989 were not real revolutions, lacking ideas which would be “innovative or oriented towards the future,” being simply “rectifying revolutions” or “catch-up revolutions.”<sup>118</sup>

And, to continue this line of thought, when it turned out that there is simply too much to ‘catch up with’ and that there could never be enough ‘rectifying’ done to appease the Poles, the Hungarians (and in general all the other nations of the region), people blamed ‘Western liberalism’, demanding revenge. As Ivan Krastev argues in his 2019 piece for *The Guardian*, they are already having it, since Central Europe’s ‘ultimate revenge’

is not merely to reject the idea of imitating the west, but to invert it. We are the real Europeans, Orbán and Kaczyński repeatedly claim, and if the West will save itself, it will have to imitate the East. As Orbán said in a speech in July 2017: “Twenty-seven years ago here in Central Europe, we believed that Europe was our future; today we feel that we are the future of Europe.”<sup>119</sup>

The argument, while seemingly convincing, does not seem plausible to me. The idea of a reactionary revolution engulfing Central Europe, a will to return to the past so strong that it topples the principles of liberal democracy may be

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<sup>112</sup> A. Bozóki, “Occupy the State...”, *op. cit.*, p. 3.

<sup>113</sup> J. Kornai, *op. cit.*, p. 34.

<sup>114</sup> N. Sitter, *op. cit.*, p. 250.

<sup>115</sup> A. Bozóki, “The Illusion of Inclusion...”, *op. cit.*, p. 16

<sup>116</sup> N. Sitter, *op. cit.*, p. 249.

<sup>117</sup> A. Bozóki, “Occupy the State...”, *op. cit.*, p. 651.

<sup>118</sup> J. Habermas, cited in I. Krastev, *op. cit.*

<sup>119</sup> I. Krastev, *op. cit.*



a simple (and even romantic) explanation of a complex problem, but it ignores the fact that the changes in the region are part of a much longer and deeper process, and that they are in principle forward, not backward looking.

As this and my other paper regarding the transition<sup>120</sup> show, illiberalism was bound to take hold of Central Europe sooner or later; liberal democracy was just one point of the journey, illiberal is the other. I fully agree with András Bozóki's observation that "history does not end with the transition to democracy. Democracy is never a complete condition; rather, it is a dynamic process, full of tension."<sup>121</sup> Laura Y. Tartakoff remarks that in the case of Hungary "the new Constitution intends to close the book on the transition period."<sup>122</sup> After both Fidesz and PiS won consecutive elections in 2019, I would say that the period of transition is completed.

Where will the democratic journey take the region now? Through a different looking glass or back to the liberal one? The 2020 presidential elections in Poland showed that the pro-government president was re-elected only by a slim margin. The system which has been constructed over the past several years will most likely stay in place, however, as the country seems to be permanently anchored in the sea of illiberalism – it would take a legal revolution, one based on a new constitution, to make a meaningful change. The same is true for Hungary – even without Orbán at the helm, the system he constructed is bound to remain in place. But who knows – perhaps the region will surprise us yet again in 2020s? The April 2022 Hungarian elections are going to be a yet another test of the illiberal project's durability, giving researchers another chance to observe the inner details of its functioning.

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<sup>120</sup> M.M. Sadowski, "Central Europe in the Search of (Lost) Identity. The Illiberal Swerve", [in:] *Constitutional Identities in Central and Eastern Europe*, ed. A. Mercescu, Frankfurt am Main: Peter Lang 2020, p. 173 (Central and Eastern European Forum for Legal, Political, and Social Theory Yearbook, Vol. 8).

<sup>121</sup> A. Bozóki, "Occupy the State...", *op. cit.*, p. 662.

<sup>122</sup> L. Y. Tartakoff, *op. cit.*, p. 365.

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## **Law and Collective Memory in the Service of Illiberalism. Through the Looking-Glass: Transformation or a Reactionary Revolution?**

The past decade has seen profound changes take place in Central Europe, notably in Poland and Hungary. Countries once hailed as model liberal democracies have travelled through the looking glass, turning into their own illiberal reflections. Was it a transformation, or a revolution, a reactionary one, as some researchers argue? The purpose of this paper is to analyse these changes in the region, with a special focus on law and collective memory, which have been in a way turned into the instruments of the illiberal transition. In the introductory part of the paper the author provides the background of the transformation, briefly outlining the question of the rule of law in the region. The first part of the paper is devoted to the legal causes of the recent changes in Poland and Hungary, with the role played by their defective constitutions highlighted. In the second part of the paper the author focuses on the process of changes itself, showing how liberal legal mechanisms (e.g. constitutional tribunals, rules of parliamentary proceedings) were in a way hijacked and reemployed to serve the new illiberal system. The third part of the paper is devoted to the role played by collective memories in the current changes, with the author showing how the illiberal state uses a variety of methods, from renaming the streets to implementing memory laws, to foster certain version of the social perceptions of the past. Ultimately, in the concluding remarks the author poses the eponymous question pondering whether the journey through the looking glass was more of a transformation or a revolution for Poland and Hungary.

**Key words:** illiberalism, Poland, Hungary, collective memory, memory policies

## **Prawo oraz pamięć zbiorowa w służbie illiberalizmu. Po drugiej stronie lustra: transformacja czy reakcyjna rewolucja?**

Druga dekada dwudziestego pierwszego wieku to czas głębokich przemian w Europie Środkowej, w szczególności w Polsce i na Węgrzech. Państwa przedstawiane niegdyś jako modelowe demokracje liberalne przeszły na drugą stronę lustra, zmieniając się w swoje illiberalne odbicia. Czy był to proces transformacji, czy też może rewolucji – w tym wypadku reakcyjnej – jak twierdzą niektórzy badacze? Celem artykułu jest pochylenie się nad przemianami w regionie, ze zwróceniem

szczególnej uwagi na prawo oraz pamięć zbiorową, które zostały zmienione w narzędzia illiberalnych zmian. We wstępie autor przedstawia tło transformacji, krótko przybliżając kwestię praworządności w regionie. Pierwsza część artykułu poświęcona jest niedawnym zmianom w Polsce i na Węgrzech – koncentruje się na roli, jaką odegrały w nich konstytucyjne niedoskonałości. W drugiej części artykułu autor skupia się na samym procesie zmian, pokazując, w jaki sposób liberalne mechanizmy prawne (np. trybunały konstytucyjne, parlamentarne regulaminy i reguły postępowania) zostały przejęte, a następnie ponownie wykorzystane w illiberalnym systemie. Trzecia część artykułu dotyczy roli, jaką w procesie obecnych przemian odgrywa pamięć zbiorowa – autor pokazuje, w jaki sposób illiberalne państwa używają różnorodnych metod, od zmian nazw ulic po wprowadzanie tzw. praw pamięci (*memory laws*), w celu promowania konkretnej wizji przeszłości w społeczeństwie. Konkludując, autor stawia tytułowe pytanie, zastanawiając się, czy podróż na drugą stronę lustra była dla Polski i Węgier transformacją czy też rewolucją.

**Słowa kluczowe:** illiberalizm, Polska, Węgry, pamięć zbiorowa, polityka pamięci