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Illiberal Democracy in the European Union

The Case of Hungary

Master's thesis in European Studies

Supervisor: Lise Rye

May 2020

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Kunnskap for en bedre verden

ABSTRACT

The 21st century has witnessed a sharp decline of liberal democracy. Democracy that declared its victory after the fall of the Berlin Wall and the collapse of communist regimes are now being challenged by non-liberal and authoritarian regimes. This challenge is also taking place in Europe, especially with the rise of populist parties adopting Eurosceptic ideas. The European Union (EU), on the other hand, is founded upon liberal democratic values enshrined by Article 2 TEU and claims a firm commitment to liberal democracy today. However, the rise of illiberalism in Hungary as well as in some other East-Central European countries represents a major challenge to liberal democracy. In 2014, Hungarian Prime Minister Viktor Orbán indicated that democracy can be *illiberal*, and he rejected the liberal values advocated by the EU. By conducting a document analysis, the thesis examines the compatibility of liberal democracy as promoted by the EU and illiberal democracy as promoted by the Hungarian government. By means of an investigation of the EU's mechanisms against the Member States that violate Article 2 TEU, this thesis finds that illiberal democracy is not compatible with liberal democracy. Instead, the norms and values the EU is established upon are being eroded by Hungary since 2010 when the Fidesz party led by Viktor Orbán won the elections. Orbán is attacking core values of democracy, especially the rule of law, media and civil society to create a homogeneous society in Hungary. Therefore, the regime in Hungary should be considered as an authoritarian regime. This thesis further argues that the EU should find a more systemic solution to tackle the illiberal states within itself.

ACKNOWLEDGEMENTS

I wish to thank, first and foremost, my supervisor Lise Rye. I am grateful for your valuable feedback, comments and enormous support, especially during this difficult and strange period. Thank you for always finding a good solution, staying positive and encouraging me to keep going.

I would like to express my gratefulness to my professors Jennifer Leigh Bailey, Torbjørn Lindstrøm Knutsen for their productive and invaluable lectures in Theories of Democracy (POL3001) course, which inspired me to write this thesis.

I am also grateful to my beautiful family and my friends who unconditionally supported me from miles away.

Special thanks to my class at the European Studies program at NTNU. Thanks for two great years!

I would also like to thank Aksel Fenerci. Thank you not only for your proofreading and precious comments that let me better this thesis, but also for your love, immense support and patience that encouraged me to complete a master's degree and an MA thesis I can finally be proud of.

Last but not least, my little Køfte, writing this thesis when you are sitting next to me has been the greatest gift to me. Thank you for choosing me as your companion (and as your mother). You are always in my heart.

Medya Temelli

Trondheim, May 29th, 2020

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LIST OF ABBREVIATIONS

ALDE: Alliance of Liberals and Democrats for Europe group

CEEC: Central and Eastern European Countries

CEU: Central European University

CJEU: Court of Justice of the European Union

CSO: Civil Society Organization

EC: European Community

ECE: East-Central Europe

ECHR: European Court of Human Rights

ECJ: Court of Justice of the European Union

EEC: European Economic Community

EPA: European Parliamentary Assembly

EPP: European People's Party

ESCS: European Coal and Steel Community

EU: European Union

LIBE: Committee on Civil Liberties, Justice and Home Affairs

NGO: Non-governmental Organization

OSCE: Organization for Security and Co-operation in Europe

TEU: Treaty of the European Union

TFEU: Treaty on the Functioning of the European Union

All power comes from the people. But where does it go? —Bertolt Brecht

Chapter 1. INTRODUCTION

The 21st century has been marked by a sharp decline of liberal democracy all around the world. According to the Economist Intelligence Unit's Democracy Index (2019), global democracy has the worst score since 2006. One of the most striking points specified in the report is that the democratic values that have dominated the world since the end of the Cold War are now being challenged by new profiles, movements, and normative contestation all around the world. The European Union (EU) with 27 liberal democratic member states, is also witnessing this phenomenon, which poses substantial challenges to liberal democratic values.

When the Soviet Union collapsed in 1991, liberal democracy celebrated its victory as the sole sustainable system in the world. It was the liberal democracies that had beaten the fascists in 1945 and led the communist regimes to adopt liberal democratic capitalism. Liberal democracy appeared as the default political and economic system while all other alternatives failed (Clarke & Ramscar, 2020, p.60). The lack of any credible alternative to the market-based democratic system brought the unavoidable fact of life in "the end of history" (Fukuyama, 1989) thesis.

Today, on the other hand, we are witnessing a "democratic recession" (Diamond, 2015), which has become a significant phenomenon not only in new democracies but also in countries such as Britain and the USA where democratic revolution led and dispersed among most Western societies. Today, it is not only the authoritarian regimes such as Russia and China that are challenging the liberal democratic model. Populists and nationalists also attack this model within the West itself (Fukuyama, 2020, p.11).

The new movements and extreme parties that emerged in the European Union (EU) especially after the economic crisis of 2008 and that are contesting liberal democracy are creating great political volatility for the EU. Perhaps the most alarming change has been the political transformation in East-Central Europe (ECE) where the conservative parties which hold the majority votes weaken opposition parties, undermine checks and balances and scapegoat minorities (Krastev, 2018). Hungarian Prime Minister Viktor Orbán has been attacking liberal democracy since the 2010 elections victory. In 2019, Hungary became the first EU member state to be downgraded to the status of 'partly free' by Freedom House (Freedom House, 2019, p.13). Orbán's regime has managed to consolidate control over the judiciary and media and to stifle civil society, which are the essentials of liberal democracy. The EU, on the other hand, acknowledges a commitment to liberal democracy and the respect of rule of law, freedom of media and civil society. This thesis sets out to discuss whether the development in Hungary under Victor Orbán is compatible with the liberal values that the EU adheres to.

1.1. Research Question

In 2014, Hungarian Prime Minister Viktor Orbán gave a speech where he outlined his stance on liberal democracy: "A democracy is not necessarily liberal. Just because something is not liberal, it still can be a democracy" (Orbán, 2014). In the same speech, Orbán also declared that: "We have to abandon liberal methods and principles of organizing a society" (Orbán, 2014). Taking Orbán's speech as its point of departure, this thesis investigates the following question:

Is Victor Orbán's idea of democracy compatible with the liberal democracy promoted by the EU?

In the same speech, Viktor Orbán also claimed that it is possible to build an illiberal nation-state within the EU because Hungary's membership "does not rule out this option" (Orbán, 2014).

I approach the main research question through a set of sub-questions.

The purpose of the first sub-question is to clarify the essence of liberal democracy: 'What are the key aspects of liberal democracy?'

In order to establish the necessary groundwork for the comparison and subsequent discussion, a clarification of the key aspects of illiberal democracy is equally important. Therefore, the next sub-question asks: 'What are the key aspects of the illiberal state as promoted by Viktor Orbán?'

The third and fourth sub-questions subsequently shift the searchlight to the EU mechanisms to protect liberal democracy: 'What are the EU mechanisms to protect liberal democracy?' and 'Is the EU effective enough to contest illiberal regimes within itself?'

The overall idea of the research design is that the initial analyses of liberal and illiberal democracy respectively will provide a necessary basis for the subsequent analysis of the idea of democracy promoted by the EU and the EU's instruments to protect liberal democracy. Finally, by means of my examination of the four sub-questions, I will also be in a position to provide an informed answer to the question of whether liberal and illiberal democracy are compatible entities.

1.2. Previous Research

The literature covering the compatibility of liberal and illiberal democracy is not vast; however, when it comes to the interpretations of the term illiberal democracy and its background, the sources are abundant. The main reason is that Viktor Orbán sought to make a distinction between liberalism and democracy. He argued that Hungary will continue respect "freedom and democracy", but it rejects liberalism's emphasis on individual rights "the Hungarian nation is not a mere pile of individuals" (Orbán, 2014). Thus, he asserted that he wanted to build an illiberal state, a non-liberal state. The scholarship that I draw upon includes literature that interprets the concept of illiberalism, as well as literature on social motivations behind illiberalism. It is striking that most of the scholars accept that democratic backsliding is taking place in Hungary. Few sources support Orbán's approach.

Firstly, interpreting the new regime in Hungary, some scholars argue that to consider illiberal democracy as democracy is a conceptual mistake. Bozóki and Hegedűs (2018) define the system in Hungary as a *hybrid regime* that “stand between democratic and authoritarian regimes” (p.1175) whose features consist of “one-sided and unfair political competition as well as the formal existence of a liberal constitution but with serious deficiencies in its actual functioning” (p.1175).

Similarly, Muller (2016) argues that this misleading concept undermines the power of autocrats like Orbán since these autocrats might claim that democracy is the realm of national governments; however, they use their power to oppress minorities or violate the human rights. That’s why we should call the system “undemocratic” instead of “illiberal” because it is not only liberalism but democracy itself which is under attack. Furthermore, Diamond (2019) calls the system in Hungary ‘pseudo-democracy’. The concept of pseudo-democracy is mostly defined negatively in the literature. According to Bozóki (2010), former minister of culture in Hungary and a political scientist, only autocrat leaders may conceive this notion positively.

Although it is painstakingly difficult to find any literature supporting Orbán and the politics of the Fidesz party, in his book *Populism and the European Culture Wars*, Furedi (2017) argues that even though the 2011 Fundamental Law supports values that are traditional and conservative, it is not *anti-democratic* because “it is based on the separation of power and the protection of human rights” (p.14). He strongly criticizes the contemporary political culture, which is hostile toward populism. Using Hungary as a case study, the author discusses that European values degrade tradition, national sovereignty and thus the normative power of democracy. He also supports that Hungary and the Fidesz party has every right to define their own identity and values based on Hungary’s status as a sovereign nation and its traditions. He also contends that the Western media dominates a “powerful narrative” against the phenomenon of populism. The illiberal anti-populism of the EU is a threat to democracy since it ignores the customs and attitudes of ordinary people who have lost their faith in a liberal democracy, especially in Hungary. In response to this, Fidesz whose audience is made up of middle-class bourgeois citizens protects national customs and traditions. The EU *oligarchy* must, still according to Furedi, respect those values and stop “value-policing” its members.

Some scholars accept the fact that there is illiberal democracy. Isaac (2017) seeking semantic aspect of illiberal democracy, argues that ‘illiberal democracy’ is a “partial and vulnerable form of democracy whose defence requires chronic contestation, extension and deepening” (p.15). He also indicates that the term ‘illiberal democracy’ as presented in Viktor Orbán’s speech suffers from a ‘conceptual stretching’ that constrains careful investigation. He claims that illiberal democracy abridges two related and distinct questions. The first one is objectives of political agents that require analysis of how he uses the term, the prior uses and what Viktor Orbán fundamentally means. It means the unpacking of the term in the political arena that might have practical consequences such as consolidating power, the control on media, judiciary and civil society. The second question is the analytic acknowledgement of illiberal democracy, which is about the *regime type*. The implication of different formulations such as ‘rise of illiberal democracy’ indicates that it is a change of regime, meaning that the fundamental elements of liberal democracy are abandoned with that speech. His main aim is to remove ambiguities in literature and states that political scientists should contribute to ongoing contests by developing a careful

range of meanings connected to important terms like 'illiberal democracy' and of appropriate discourses.

Other scholars deal with the weakness of liberal democracy and its contestation mostly taking place on the terrain of "democracy". Not belonging to any region or country, this weakness is global in scope because of transitional challenges of economy and society. Krastev (2016) argues that the illiberal tendencies in East-Central Europe do not constitute a crisis of democratization, but the failure of liberal democracy because of economic failures, the declining role of the EU in world politics and the public's reactions against globalization. As such, the crisis in East-Central Europe is not different from the crisis in the United States or West Europe where populism is on the rise as well. Bíró-Nagy (2017) argues that the socio-economic transformation after 25 years of regime change caused the development of toward illiberal democracy. The main driver is the increase in inequality after the transition to democracy, especially among the citizens in Budapest and other urban cities and rural population. Thus, the interpretation of democracy was based on "financial advancement" rather than liberal philosophy. It has created a Eurosceptic attitude among citizens, especially among the ones who have become poorer, such as labourers and working-class, after the transition period. Therefore, EU membership is no longer associated with economic prosperity and social stability. This attitude has fostered the authoritarian system and enabled Viktor Orbán to implement his illiberal tendencies. Supporting the transition period thesis, Wilkin (2018) argues that Hungary's illiberal rise is predictable because of the neoliberalism in the modern world-system (MWS) that supports capital accumulation, nationalism, racism and so forth. This current neo-liberal system is linked to the 'corrupt privatization' that have created new economic elites who gained lots of wealth with liberalism. Therefore, illiberal tendencies are a problem not only in Hungary but a worldwide phenomenon.

Enyedi (2016) blames the politicians and argues that the role of political actors who give idiosyncratic strategic decisions cause democratic backsliding if these countries are weakly institutionalized with a low degree of accountability as in the case of Hungary.

As demonstrated by the survey of the literature on illiberal democracy, this literature is rich on perspectives. However, on the matter of compatibility between illiberal and liberal democracy, the existing scholarship has less to offer. Guided by Orbán's speech, scholars have mostly chosen to research the definition of illiberal democracy, on its social context and historical backdrop in their attempts to understand what it is that has driven populist leaders to use the illiberal narrative.

1.3. Justification of the Study

This thesis is justified on three grounds. Firstly, the thesis investigates extensively Western liberal democracy since its birth. It presents an elaborate analysis of democracy and liberalism to understand their historical developments. As Hacke (2019) suggests, it carries great importance to know what liberalism is and what it is not; because it was not common to question liberal principles for the past three decades (p.17). Analysing the core elements of liberal democracy and what it stands for will contribute us to recognise how it has been difficult in history to gain respect for human rights and certain freedoms that protect everybody's existence and how it is significant to fight for the future of liberal democracy, meaning our future.

Secondly, this thesis aims to expand the existing literature on the EU mechanisms on liberal democracy. There have been carried out numerous studies regarding the EU mechanisms on liberal democracy, especially Article 2 (promotion of democracy) and Article 7 (recommendation and sanction mechanism). Therefore, it is interesting to research to find out how established mechanisms are employed when certain violations occur because the exertion of mechanisms is relatively a new phenomenon in the EU. This thesis seeks to answer questions such as, "How did the EU start to promote the liberal democratic values?" and "Is the EU effective enough to protect liberal democratic values?". These questions are relevant because civil and human rights are protected only by liberal democracy. The leaders' decision on cultural, economic and legal systems affect and shape our lives enormously. It is also alarming that our freedom and rights defined and guarded with liberal democracy are fading today mostly because of the populist parties that adopt authoritarian principles. Therefore, it is motivating as well as necessary to understand how these mechanisms implemented by the EU work against the threats from within.

Thirdly, the existing literature lacks on the matter of compatibility between illiberal and liberal democracy. This thesis aims to fill this gap and seeks to complement the literature. It is stimulating to analyse a country that was a front-runner in the pro-democracy revolutions of 1989 is no longer willing to adopt liberal democratic values. This thesis seeks the driving forces of the illiberal democracy to show what motivates leaders to act against the established liberal democratic values in the EU. The research on the compatibility of illiberal and liberal democracy presents not only a good chance to compare these two complicated and misunderstood terms, but also a great advantage to understand the real use of *democracy* in today's modern world.

1.4. Thesis Approach and Sources

This thesis presents a qualitative analysis of Western liberal democracy and this system's compatibility with the illiberal democracy escalating especially in East-Central European countries. This thesis focuses on Hungary, especially Hungarian Prime Minister Viktor Orbán's goal to build an 'illiberal state'.

This thesis uses a single case study. The reason is that a case study is "a well-defined aspect of a historical episode that the investigator selects for analysis, rather than a historical event itself" (George & Bennett, 2005, p.51). Accordingly, this thesis uses Hungary as the case study and examines the main driving forces behind Viktor Orbán's 'illiberal' state.

The method used in this thesis is document analysis. Document analysis produces data organized into major themes, categories and case examples particularly through content analysis (Bowen, 2009, p.28). Content analysis is practised here to verify the main concepts, liberalism, democracy and illiberal democracy and their developments since it operates "directly on text or transcripts of human communications, [...] the investigator easily may search through the text to retrieve portions meeting specific criteria" (Weber, 1990, p.10). The thesis also presents an analysis of Hungarian Prime Minister Viktor Orbán's 2014 speech. This speech is selected because it was the first time Viktor Orbán openly came up with the concept of 'illiberal' state. The analysis of illiberal democracy will help make comparison with liberal democracy and ultimately find out their compatibility with one another. Therefore, the EU's commitment to liberal democracy will also be analysed since Hungary as a Member State is bounded by the EU law. The development in Hungary has been a huge concern among scholars and the EU since the Fidesz party led

by Viktor Orbán won the majority vote in 2010. In order to find out how the EU can tackle the development in Hungary, the thesis will focus on the EU's mechanisms and the EU's response to Hungary.

The main argument of this thesis is the compatibility of illiberal democracy with liberal democracy. Therefore, the thesis will discuss the activities of the government since 2010. The activities towards the core elements of democracy, i.e. the rule of law, media and civil society will be discussed to find out if illiberal democracy can be compatible with liberal democratic values. Because the EU has initiated a set of measures against Hungary's tendency toward 'illiberal' state, this thesis analyses these measures and aims to discuss whether the existing measures launched by the EU has effective enough to deter Hungary from building *illiberal* state.

There are two different consulted sources: Firstly, it works with primary sources such as the European Commission statements, European Parliament reports, Court of Justice of European Union (CJEU) cases. Secondly, the thesis is based on secondary scholarly literature published by prominent scholars. Using secondary sources is of significance to obtain a well-established overview of primary sources, such as CJEU cases, infringement procedures and European Commission decisions. The mentioned sources are also important when addressing the democratic backsliding, EU's commitment to democracy and Orbán's aim to dismantle liberal democracy. They also provide an understanding of how election-based *democracy* is used for political purposes by undermining the rule of law, which is one of the key points of this thesis. The relevant scientific articles have been located by using the databases Journal of Democracy, NTNU Oria and Google Scholar. Press coverage offers yet another beneficial source. The document analysis of this thesis also includes newspaper articles especially for the recent developments related to COVID-19 to illustrate how Orbán gets sweeping power and abuse executive branch to backlash minorities, LGBT+ and civil society.

1.5. Thesis Outline

This thesis is divided into six parts. Chapter two presents the key concepts of this thesis. It analyses Western liberal democracy and follows a historical approach. The chapter examines democracy, liberty and classical and modern liberalism. It clarifies the logic behind the terms and how it constitutes today's western liberal democracy.

Chapter three is an in-depth analysis of illiberal democracy. First, the chapter traces the origin of the term and how it is interpreted among scholars in today's sense. Then it follows an analysis Viktor Orbán's 2014 speech held in Romania where he first pronounced the term *illiberal* democracy. It analyses what Orbán means by the *illiberal* state. It also investigates the elements Orbán uses to rationalise his speech. Finally, it examines the common narratives used by illiberal leaders like Orbán to justify their claims on the way to turning into authoritarian powers.

Since chapter three concludes that illiberal democracy advocated by Orbán poses a threat to democracy and thus illiberal democracy is not compatible with liberal democracy, chapter four turns to the European perspective of liberal democracy to investigate the EU's systemic mechanism to protect liberal democratic principles. To achieve this goal, it starts with a historical approach to analyse the EU's adoption of Article 2 TEU, which are the values of respect for human dignity, freedom, democracy, equality, rule of law and respect for human rights. Next, the chapter moves to Article 7 TEU of the EU. After having set the

background, the chapter analyses how the EU has been responding to Hungary both on the political level and legal mechanisms.

Chapter five is divided into two parts to discuss the incompatibility of liberal and illiberal democracy. The first section is based on the national level of violations and how they run afoul of liberal democratic values. The second section constitutes discussions on the EU level. The chapter opens with the discussions on how Hungary dismantles liberal democratic values advocated by the EU. This chapter argues that Viktor Orbán destroys the core elements of liberal democracy, particularly by undermining checks and balances, controlling media and silencing the civil society. The chapter further discusses the legal mechanisms that the EU uses against Hungary's illiberal turn. It highlights in what ways the EU has been blamed to foster authoritarian regimes like Hungary. It accommodates the discussions of the inefficiency of legal mechanisms and the limitations of the EU. Next, it further argues that Orbán's goal poses an enormous threat to democracy both nationally and internationally; therefore, to preserve the EU ideals, the EU should find a more systemic solution to deal with threats within itself.

Chapter six constitutes the concluding remarks of this thesis. It summarizes the main ideas of each chapter. It reveals three more significant findings that this thesis has discovered. Finally, the chapter ends with a recommendation raised by prominent scholars.

Chapter 2. Liberal Democracy and Its Main Elements

Modern democracy is known as liberal democracy today. Liberalism and democracy are two concepts that have different historical developments. Liberalism deals with the reinforcement of liberties; on the other hand, democracy is about political power including institutions to rule, political competition and sharing power (Chan, 2002).

The purpose of this chapter is to analyse liberal democracy and its main elements. The chapter opens with an analysis of the birth and development of democracy. It highlights the procedural and substantive elements of democracy. Next, the chapter analyses two concepts of liberty, i.e. positive and negative liberty to understand the essence of liberalism. The analysis then turns to the historical development of liberal democracy since the 18th century. The analysis focuses on the development of classical liberalism and modern liberalism. The analysis shows that democracy does not only mean 'rule of the people' today. The main finding of this chapter is that modern democracy in the western world is a liberal democracy that manifests itself in fair and free elections, the rule of law, transparency, separation of powers, protection of liberties of speech, religion, property, accountability, minority rights and limitation of the government.

2.1. What is Democracy?

The second half of the twentieth century brought unprecedented political changes. These changes resulted in the rise of democracy across the world. This was mainly because the alternatives to democracy such as centralized monarchy, aristocracy and oligarchy either vanished or lost their legitimacy in the eyes of the humankind (Dahl, 2000, p.1). Even though this development was interrupted by coups and revolutions which were a reverse wave of democracy by Samuel Huntington (1991), democracy ended up in victory by being compatible with the socio-economic modernity. However, that does not indicate that democracy has won the competition for the support of the people since there have been anti-democratic movements driven by fanatical nationalism and religious fundamentalism. (Dahl, 2000, p.1).

There is no clear consensus on what democracy is although everyone claims to support democracy (Hague, Harrop, & McCormick, 2016; Hyland, 1995). Democracy is attached to so many meanings that some philosophers have called it 'an essentially contested concept' since the definition conveys different social, moral and political agenda (Crick, 2002, p.1). Etymologically, It is a term coined by Greeks or Athenians meaning "the rule of the people" from the words *demos*, the people and *Kratos*, to rule (Zakaria, 2004, p.13). Lijphart defines democracy as "government by the people or, in a representative democracy, government by representatives of the people that is, the government following the people's preferences" (2012).

Despite several basic definitions, democracy is still a complex and contested concept in theory and practice. Minimalist definitions of democracy descend from Joseph Schumpeter (1947) who defined democracy as a method that "institutional arrangement for arriving at political decisions in which individuals acquire the power to decide to employ a competitive struggle for the people's vote" (p.269). This minimal standard of democracy is also called the 'procedural democracy'. Samuel Huntington supports Schumpeter's emphasis on electoral competition as the core of democracy (1993, p.5-13). Huntington (1993) argues that the practice of democracy is possible when there are free, open, fair and competitive multiparty elections. However, he further claims that elections do not guarantee the

efficiency of the government. The government, instead, can be “inefficient, corrupt, short-sighted, irresponsible, dominated by special interests, and incapable of adopting policies demanded by the public good”, and these qualities do not make the government *undemocratic* (Huntington, 1993, p.26). Democracy, in this perspective, leads the government to be too strong than relatively weak, which finds its expression in the popular term, ‘the tyranny of the majority’ by Alexis de Tocqueville (1831). Democracy mostly depends on economic development and political leadership, which makes democracy real and possible without corruption (Huntington,1993, p.34).

Contemporary minimalist conceptions of democracy as Diamond terms *electoral democracy* recognises the need for minimal levels of civil freedoms to make competition and participation meaningful (Diamond, 1996, p.21). However, this minimalist definition of democracy (i.e. electoral democracy) suffers a sufficiently presented abridgement of political rights and civil liberties. Most contemporary representative models of democracy describe a system of government “in which people choose representatives who are accountable to them” (Spicker, 2008, p.252). Democracy is not only characterized by the elections, but also the system of accountability and the rule of law.

Recognising the deficiencies of minimalistic definitions, more extensive definitions of democracy were proposed. Another element of democracy called *substantive* democracy goes beyond the political sphere and extends to social life. According to Przeworski, (2010), the characteristics of substantive elements that create challenges to procedural democracy are :

1. *the capability of generating socio-economic equality,*
2. *promoting the participation of the greatest possible number of people in public questions,*
3. *creating a mechanism that makes the governments work for people and not for their personal interests or de facto powers,*
4. *promoting order without intervening in the private life of individuals (p.1-2)*

Robert A. Dahl, who was a prominent political scientist, presented one of the most influential elaborations that define democracy. Democracy means effective participation, voting equality, enlightened understanding, control of the agenda and inclusion of adults (2000, p.37-38). His concept of “polyarchy”, which means “rule by many” requires not only extensive political competition. Polyarchy but also sets a set of normative criteria for a political system to be counted democracy. The government should be accountable. Some of the necessary institutions are, according to Dahl are universal suffrage, free and fair elections, right to speech, free access to alternative information, the responsiveness of government to voters (Dahl, 1998) *Polyarchy* also enables people to form and express their political preferences in a meaningful way (Dahl, 1998, p.3).

Today, democracy requires free, fair elections that enable a polyphonic environment and different political parties that are opposed to the main government. The elected officials hold real power; however, the power (of the executive branch) is constrained with the introduction of liberalism. Today, democracy means that there should not be any discrimination of religion, sex and ethnicity while citizens express their ideology and political stance. There is a rule of law that guarantees all citizens are equal under the law. That is why, when using the term democracy in the following chapters, the thesis will refer

to the system where the right to vote, the freedom of speech, media, human rights, pluralism of the society and the rule of law are preserved and respected.

2.2 The Concepts of Liberty

'Liberalism' is a term that was not known before the 18th century, unlike democracy. The French Revolution brought forth the ideas of liberty (Sellers, 1998, p.101). Today, as Beetham (2004) argues, "without liberty, there can be no democracy (p.61).

The essential and original meaning of *Libertas* (Latin for Liberty) was status as a free, of liber, person. That person was not a slave. As a contemporary concept, Maurice Cranston says "a liberal is a man who believes in liberty (1967, p.459). Liberalism accords liberty as a political value. Liberals preserved that humans are naturally in a "state of perfect freedom to order their actions...without asking leave or depending on the will of any other Man" (Locke, 1960, p.27)¹. John Stuart Mill argues that "the burden of proof is supposed to be with those who are against liberty; who contend for any restriction or prohibition... The a priori assumption is in favour of freedom." (1967, p.262).

The central meaning of liberty as a new concept is that the government should serve the common good under the law. (Sellers, 1998, p.81). The last provision of liberty meant life without oppression unless the public expresses their reason using elections. This is the essence of liberalism as it was conceived in the 18th century. According to 'Old' (classical) liberals of 18th and 19th century, liberty and private property were closely related. John Locke, for example, argued that people have the rights of "life, liberty and property" (1689). However, liberty lost its meaning of "public or political liberty". Instead, it has later been understood as "a sense of personal or private liberty, the protection of rights against all governmental encroachments, particularly by the legislature" (Wood, 1969, p.608-609).

Liberals, however, disagree about the concept of liberty used today. The liberal ideal of protecting individual liberty can lead to different conceptions. Isaiah Berlin, for example, proposed *negative and positive liberty* (Berlin, 1969). Negative liberty is the freedom from hindrances, limitations and barriers. It means that a person is "left to do or be what he wants to do or be, without interference". (Berlin, 1969, p.177). Negative liberty includes a law to fight discrimination (Carter, 2008). Positive liberty, on the other hand, means "being able to do what one wants, or being made able to do so" (Sellers,1998, p.107). Positive liberty is the ability to achieve one's desire. Berlin suggested that human desire may run to inflicting some collective will on recalcitrant individuals. Instead of asking "What am I free to do or be" that defines negative liberty, "by whom am I ruled? Or "who is to say what I am, and what I am not, to be or do? (Berlin, 1969, p.177-178). Jean Jacques Rousseau (1762) for example, advocated a positive conception of liberty because Rousseau argued that one was free when acted according to one's true will (which is called the general will). While positive freedom demands more state intervention and role, negative liberty limits the power of the state (Carter, 2008). Berlin (1969) states that although negative and positive liberty is not the same thing, they "start at no great logical distance from each other" (p.36-42). As Berlin showed, negative and positive liberty are not only two distinct kinds of liberty; they can be rivals. Although it would be impossible to

¹ The original text is in 1689.

categorize countries according to which concept of liberty they favour, the political liberalism generally includes *negative liberty* that favours individual freedom.

2.3. Western Liberal Democracy

The western democratic political system is frequently described as a liberal democracy. As the number of free countries is increasing, the countries Huntington refers to as the “third-wave”² that have started to practice electoral democracies in a partly liberal way, include 197 countries (Economist & Unit, 2019). Today liberal democracies can be found in Africa, Asia and Latin America. However, the most well-known examples are the European Union Member States, Canada, Australia, Iceland, Norway, The United States, New Zealand and Switzerland (Roser, 2020). Even though the practices of political representation, electoral systems and government intervention in the private sphere in these countries differ, they all utilize some common features of liberal democracies.

The following sub-chapter offers an analysis of the development of liberal democracy in Europe as well as of the main characteristics of liberal democracy that constitutes today’s fundamental democratic norms.

2.3.1 The Development of Liberal Democracy in Europe

The origin of the word ‘liberalism’ is the Latin word *liber* which means *free* and which, in turn, constitutes the essence of this philosophy. Historically, the revival of the antiquity in the Renaissance also brought ‘self-government’ and it had a huge impact on America, Britain and France in the 17th and 18th centuries (Held, 2006, p.69). Absolutism, meaning the absolute power of the monarch paved the way for new political systems and constitutionalism. Protestant Reformation could be the most significant course of the event that lead to new ways of thinking (Held, 2006, p.72).

Two central and dominant political traditions appeared originally in the 18th century. The first group of liberals, now called classical liberals originated in France and Britain. *The liberal tradition* started with Thomas Hobbes, John Locke and Jean Jacques Rosseau (Ebenstein, 1956; Held, 2006). The Enlightenment in the 18th century Europe brought human nature forth as a key issue. The classical liberalists believed that freedom was requisite for man and a person can live to his full potential only in liberty (Haar, 2015, p.25). Thus, classical liberalism aimed to create an environment which was independent of both state and church. Locke proposed liberalism based on the right of ‘life, liberty and property’, which was called natural laws. This tradition became prevailing both in Europe and the USA. With the classical liberal philosophy that was allied with the scientific revolution led by Newton, Galileo, Kepler and others, the humanity was positioned at the centre of the universe and instead of church doctrines, there was an emergence of secular universal doctrine (Sternhell, 2010; Wilkin, 2018).

According to the classical liberalists, property and liberty are indispensably connected. They insist on the idea that the economic system based on property is consistent with individual

²Waves of democracy are major surges of democracy taking place in history. (Huntington, 1991) defines three waves. The first wave is in the early 19th century when white males were granted suffrage in the USA. The second wave began with the Allied victory in WWII. 20 years later, there were 36 recognised democracies in the world. Third wave began in 1974 with the Carnation Revolution in Portugal and followed by the historic democratic transitions in Latin America in the 1980s. It continued in Asia Pacific countries and Eastern Europe after the collapse of the Soviet Union, and finally sub-Saharan Africa.

liberty (Gerald, Courtland & Schmitz, 2018). It means that a 'free' person should have the freedom to cultivate the land and employ the labour and capital as he sees right, without the governments' aggressive violations. Since property rights also nurture the inequality of power, which was concentrated on hands of the elites who had the property, the classical liberalism reformed its concerns with "bettering a lot of the working class, women, blacks, immigrants and so on" (Gerald, Courtland & Schmitz, 2018, p.4) gradually.

The rise of the 'social question' of poverty led to the emergence of Social Liberalism. Social liberalism introduced a 'new perspective on the individual' and demanded a more active role for the state (Haar, 2015, p.47). Social liberalism and modern liberal tradition accept that property rights foster an unjust inequality of power. Instead of concentrating on property rights advocated by classical liberalism, modern liberal ideas are based on John Stuart Mill's philosophy of modern liberalism (Hamburger, 2001; Held, 2006). Mill's liberalism "limited individual freedom as a consequence of his high expectations of the intellectual development of people, the absence of restraints for government interference" (Haar, 2015, p.51). Modern liberalism as a political theory emphasizes the respect for freedom of speech and thought.

In his book *On Liberty*, Mill discusses elaborately a principle that establishes "the nature and limits of the power which can be legitimately exercised by society over the individual" (Mill, 1963). The individual was a master of his own body and mind, and 'freedom, individualism, and development' were the essentials. (Haar, 2015, p.49). Mill also came up with some key liberties that constitute today's liberal democratic government. The first one is the liberty of thought, feeling, discussion and publication; the second one is the liberty of tastes and pursuits. Lastly, there is the liberty of association as long as 'it causes no harm to others' (Held, 2006; Mill, 1859). Mill's main aim is to contribute to human knowledge and human well-being. In his own words, "Over himself, over his own body and mind, the individual is sovereign" (1963).

The end of the eighteenth century brought the idea of citizens' (only men) participation in the collective will use the medium of elected representatives (Bobbio, 1989). However, it was in the late twentieth century that representative democracy became a phenomenon because of the achievement of citizenship for all adult men and women (Held, 2006). Today, representative governments referred by Mill to be the 'grand discovery of modern times', are distinguished as being accountable and feasible (Dahl, 1989).

The main terms of the liberal Enlightenment are "personhood, autonomy, rights, dignity, self-respect (Nussbaum, 2000, p.56). In the twentieth century, the 'liberal' was represented by such as Bertrand Russel, Morris Cohen and John Dewey (Talissee, 2005, p.8). Taking into consideration of these representatives, a liberal in this sense a political progressive who is committed to "social democracy, self-realization and the free exercise of human intelligence in confronting social problem" (Talissee, 2005, p.8). John Rawls, Stanley Benn, and Joel Feinberg are representatives of recent liberal thinkers whose theories are frequently used to investigate modern liberal democracy and its values on universal principles.

2.4. Main Elements of Liberal Democracy

Democracy has been criticised by scholars since ancient times because the majority rule can marginalise the minority. Besides without any constraint mechanisms, the elected

authority or government can turn into a despotic, authoritarian regime. Democracy can answer who rules the society; on the other hand, liberalism proposes how the ruler is chosen and the constraint of the governance mechanism (Plattner, 2019, p.7). Therefore, liberalism has brought more freedoms and rights to all people and, most significantly, a limitation of state power to protect the individual from *the tyranny of the majority*. Today, liberal democracy is commensurate with a modern democracy which is based on liberal philosophy where the state's power is limited by the constitution (Hague & Harrop, 2016, p.38). Therefore, the governance franchised by liberal democracy is based on the rule of law rather than the majority of people.

Historically, since women could not vote on the same terms as men until 1919, and the black community until 1965 in the USA (with the Voting Rights Act), the full franchise of liberal democracy had to wait until the twentieth century (Dahl, 2000). It was only in the 1940s that most "Western countries become full-fledged democracies, with universal adult suffrage" (Bollen, 1993; Zakaria, 2004). After having competed with other systems of governance such as communism until the 1990s, the end of the Cold War reinforced and secured liberal democracy's position. Fukuyama promoted the idea the end of Cold war is not only a particular end of a period "but the end of history as such: that is, the endpoint of mankind's ideological evolution and the universalization of Western liberal democracy as the final form of human government" (Fukuyama, 1989, p.1). By questioning the sovereignty belonging to the state, "the promotion of democracy became a more explicit ideological objective for the West" (Hague et al., 2016).

Liberalism foster several philosophical claims about the legitimacy of the state. Even though there are disagreements among liberal theorists concerning the principles (Talissee, 2005 p.16), there is a central statement articulated by Martha Nussbaum (2000) in the following:

Liberalism holds that the flourishing of human beings taken one by one is both analytically and normatively prior to the flourishing of the state or the nation or the religious group: analytically because such unities do not really efface the separate reality of individual lives; normatively because the recognition of that separateness is held to be a fundamental fact for ethics, which should recognize each separate entity as an end, not as a means to the ends of others (p.62).³

As Nussbaum suggests, the *primacy of the individual* is one of the core elements to which liberalism is fundamentally attached. It can be defined as a term in political theory that an individual is the vital element of analysis. The individual has the right not only to be free from violence, coercion, but also no social relations or organizations can contain and consume the nature of the individual (Talissee, 2005, p.17). Although the individual can be identified as a part of social groups such as religious or political associations, these connections cannot "efface the separate reality of the individual rights" (Nussbaum, 2000, p.62). This suggests that the individuals are not required to be a part of organizations; besides, people should choose the organizations in their own will and be based on natural and voluntary adaptation, not the product of pressure.

Today, Western liberalism indicates a "political system marked not only by free and fair elections but also by the rule of law, separation of powers, and the protection of basic

³ Gaus (2003), chapter 1 talks individual liberty as the core element of liberalism, as well.

liberties of speech, assembly, religion and property" (Zakaria, 2004, p.17). Zakaria calls these packages of freedoms "constitutional liberalism", which is the origin of the rule of law. This term has related to democracy over the last century. Therefore, liberal democracy is sometimes termed constitutional democracy.

Historically, two important philosophers principally shaped the idea of constitutional liberalism. John Locke in *Two Treatises of Government* outlined the basic idea of a legitimate and non-absolutist constitution. He was completely against the 'divine rights of the king'. Absolute monarchy was according to Locke, *no form of civil government* (Ebenstein, 1956, p.433). Instead, he argued that there should be a limited constitutional government whose aim was to protect people's natural rights. The second philosopher, Charles Louis de Secondat, Baron de Montesquieu (1689-1755) argued that political power should be controlled to protect people's safety. Montesquieu believed that the representative government should have the necessary institutional organs to restrict the government (Held, 2006, p.82). Separation of powers should protect the people's natural right and safety. He indicated that there would be no liberty worth its name "were the same man or the same body, whether of the nobles or the people, to exercise those three powers, that of enacting laws, that of executing public resolutions, and of trying the causes individuals" (1748, p.70).

The modern idea of the separation of power relates to the separation of the legislative, executive and judiciary branch with checks and balances so that no institution and individual can consolidate power. The basic features of liberalism today is the protection of the individual's sovereignty and dignity against the coercion (Zakaria, 2004, p.19), which combines the classical liberal theory with constitutional ideas that constitute the rule of law at the main core of political environment.

Furthermore, the well-ordered constitutional democratic society emphasizes the independence of the executive and the legislative branch. Even though it could be argued that the idea that it is undemocratic for the courts to restrict the will of the governments that are chosen by the majority, the democracy that "cannot be equated with any particular measure of the elected government" secures and protects the basic freedom rights (Beetham, 2004, p.64).

Liberalism in this context protects the individual's freedom from arbitrary authority by making the government accountable as well as by constraints on the police, military and other institutions of the executive. Courts are the essential mechanisms to control the executive and prevent any misuse of powers. Therefore, the main aim of the state is to be impersonal, "legally circumscribed structure of power with a view of rights, obligations and duties of subjects" (Held, 2006, p.75).

One of the duties of the state is that it has to treat all citizens as politically equal and governments should reflect the will of its citizens (Dahl, 1998, p.92). Thus, the minority and dissidents are free to express their opinions because society is not subjugated to a single idea. On the contrary, it has a pluralistic nature that prevents people from "arbitrary arrest and imprisonment" (Beetham, 2004, p.61). Essentially, in a democratic political culture, all people should be included in public debates and/or contestation through opposition parties. There should be free and pluralistic media that enable the public to observe and get daily information accurately. The media should be exposed to censorship and manipulation. In a liberal democracy, there should be platforms where people can

associate with each other freely through assemble and demonstrations. The rights should be protected by the government. There also should a fair trial that prevents arbitrary imprisonment.

Picturing upon the significance of the individual and their rights, liberal democracy is also built on the accountability of government, as Fukuyama (2014) supports, with elections. Considering the EU as a social and economic association of democratic state, the basic characteristics that define liberal democracy is the free and fair elections with the political competition framework. Liberal democracy allows opposition parties and candidates to take part in fair political campaigning and elections. It is completely against the totalitarian power which is dominated by the one-party system. Diversity and competition establish the multi-party system that emphasizes multiple political parties adopting different interests, which prohibits any groups from dominating. The main political rights that democracy can secure are:

- 1) the right to campaign for elective public office in an unimpeded manner and on a level playing field;*
- 2) the right to elect the main political offices at each territorial level of government by universal and equal suffrage, at regular intervals, by secret ballot, and with an effective choice between candidates and parties; and*
- 3) the right to vote directly in a referendum on substantial changes to the constitution affecting the rights of electors or the reach and powers of the national elective office. (Beetham, 2004, p.69)*

Liberal democracy notions likewise change over time. In a nutshell, the main doctrines liberal democracy emphasises are transparency, civil liberty, rule of law, accountability, minority rights and limitation of the government (Coppedge et al., 2011, p.253; Maxwell, 1996). In addition, people have the right to hold a demonstration and peaceful assembly. Liberalism protects the individual from arbitrary arrest and imprisonment and unfair trial. In terms of political liberties, the 'Western liberal democracies' adopt the freedom of media, interest groups, elections and political parties (Chan, 2002, p. 200; Coppedge et al., 2011, p.254). In theory, the enlargement of the human rights and pluralistic environment unquestionably contributed to the enlargement of democracy throughout the world since the 1960s. However, in practice, liberal democracy has been challenged by especially 'left and right' parties with diverse claims by both sides throughout history (Kim, 2019).

Table 1. The Elements of Liberal Democracy*

Elements	Objectives	Features
Elections	Free and Fair	Regularity Competition Transparency Equality Separation of Powers
Rule of Law	Constitution	Fundamental Rights Free Trial Limited Government Open Government Freedom of Speech
Freedom	Civil Society	Freedom to Form Group and Assembly Pluralism Freedom of Media No Censorship

*This table contains the elements that form the summary of Chapter 2.4.

Chapter 3. Illiberal Democracy in Hungary

The year 1989 marked a pivotal turning point in the political trajectories with the “return of Central Europe” recuperating their liberty once leaving the Soviet Union (Rupnik, 2018, p.24). In the 1980s, the West witnessed the expansion of human rights and civil society, which paved the way for the end of the *ancien régime* (Rupnik, 2018, p.25). After it adopted liberal democracy, Hungary became a member of Western liberal institutions such as NATO and the EU, which suggests that Hungary accomplished a successful transition to democracy. The political system was characterized by a “multiparty system, free elections, representative government, strong opposition, free media, strong and respected institutions that protected the rule of law and independent courts” (Bozóki & Simon, 2019, p.225).

However, the global political system guaranteed by liberal democracy has begun gradually to transform, especially since the last decade with the rise of non-liberal countries such as China and Russia. The national populist parties are also on the rise in the West, especially in the EU. Hungary is one of the countries where this shift has taken place especially after the parliamentary elections in 2010 when the right-wing populist Fidesz party led by Viktor Orbán won a two-thirds majority in Hungary. During the leadership of Orbán, Hungary has moved away from the notions of liberal democracy to an authoritarian consolidation of power (Way & Levitsky, 2019), which Orbán refers to as ‘illiberal’ democracy.

This chapter presents an in-depth analysis of illiberal democracy focusing on the case of Hungary. The first part of the chapter investigates the definition of an illiberal democracy as well as the roots of Orbán’s anti-liberal approach. Then follows an analysis of Viktor Orbán’s 2014 speech where he first announced his intention to build an ‘illiberal’ state. The final part of the chapter investigates key aspects of illiberal democracy in Hungary, as well as how Viktor Orbán has used these aspects in his consolidation of power. The main finding is that Viktor Orbán has created national identity narratives as well as historical polarization to justify his notions on ‘illiberal’ democracy. This has led the government to introduce nationalistic policies that reject pluralism and pave the way for a homogeneous society.

3.1. On Illiberal Democracy

The concept of “illiberal democracy” is highly controversial, but it is not a new one. Today, there is clear evidence that this concept has been reborn with Viktor Orbán who has stated his intention to make Hungary an illiberal state since 2014. However, there is no scholarly consensus on how to categorize this new regime in Hungary. While some scholars use the term *hybrid régimes* (Bozóki & Hegedűs, 2018), others define it as an instance of *authoritarianism* (Muller, 2016).

The term illiberal democracy was first coined by Fareed Zakaria in 1997 in an article published in *Foreign Affairs* when the Cold War globalisation period was transforming Europe. Zakaria argues that democratically elected governments or regimes have begun to ignore the constitutional limits and use their power to restrict human rights and liberties enjoyed in a liberal democracy (Zakaria, 1997, p.22). Since restrictions on certain liberties are increasing, Zakaria points out that two components of democracy are coming apart today: “While democracy is flourishing; constitutional liberalism is not (Zakaria, 1997, p.23).

Zakaria further argues that the "third wave" of democratization going back to the 1970s failed to disperse the entire catalogue of liberal democratic values⁴. Even though this wave resulted in the introduction of free elections, the countries where this took place certainly lacked a liberal tradition. Consequently, what constitutes the problem is what happens after the elections. The noteworthy examples Zakaria presents are leaders like Boris Yeltsin in Russia and Carlos Menem in Argentina, who evade their parliaments and erode constitutional practices (Zakaria, 1997, p.23). Therefore, Zakaria coins the development in these countries "liberal autocracy", since it is a path leading to 'illiberal democracy', instead of the final goal of liberal democracy (Zakaria, 1997, p.26).

The violations of political rights, civil liberties and property rights, rights that form the basis of *constitutional liberalism*, is a comparatively new phenomenon in Europe. Broadly speaking, after the fall of communism, the rule of law, representative institutions and elections have worked relatively well. However, as Muller argues, newly elected governments used their power to violate human rights, and this was especially the case for minority rights (2016).

Undeniably, the anti-liberal approach of Hungary did not emerge unexpectedly. The lack of liberal tradition along with the global backdrop can be considered as the roots of Orbán's illiberal ideology.

Bozóki (2012) states that the democratization and stability projects in Hungary malformed after the second decade of democracy because party politics superseded all other aspects (p.4). Party politics determined public discourse, which resulted in the emergence of the phenomenon of *partocracy*: "What had once been the party-state was replaced by the state of democratic parties" (p.4). The claim suggests that the economic experts and market players were not independent and that it was the party politics eventually decided the affairs. "The state is a state of parties", together with its tax authority and security forces, according to Bozóki (2012, p.4). In the millennium, the intellectuals, who were the former dissidents and the first bearers of political liberalism, wanted to implement economic and social reforms. However, they failed to institutionalise pluralism (Rupnik, 2018, p.32). As a result, they lost their credibility in the society. They turned into a class which kept the wealth and where the gap between rich and poor widened. The people who associated democracy with social welfare, freedom and participation, general welfare and more equitable distribution of wealth (Bíró-Nagy, 2017, p.32) developed anger toward the Socialist Liberal parties (Wilkin, 2018, p.21). The Socialist left collapsed with the 2006 elections in Hungary and Fidesz, created by educated young people appealing to the educated urban middle class, seized the moral high ground as the sole party to rid Hungary of political elites, who were portrayed as a legacy of the Communist era (Lendvai, 2012).

The transition of 1989 required not only political transition but also economic reforms and new institutions. To accomplish this requires credible politicians or profiles devoted to democracy and transformation. As the credibility was already shaken in 2006, the Hungarian government wanted to go ahead with the reforms. At the time, Social Prime

⁴ The "third wave" is explained in Chapter '2.3. Western Liberal Democracy' as a footnote (2).

Minister Ferenc Gyurcsány's proposal of anti-corruption legislation could have garnered substantial popular support. However, this initiative failed to pass because coalition parties curtailed Gyurcsány's proposal (Bozóki, 2012, p.7)⁵. The poor design of the reforms led to severe debates in Hungary. The government had no vision regarding the improvement of health-care, transportation or education; the only plans were deregulation and pro-market economic policies inherited from the transition period (Bozóki, 2012, p.7). Krastev and Holms (2018) argue that the failure of the political and economic reforms must be seen in connection with the strategy that sought to imitate a foreign (Western) mode, which in turn, was widely understood to be the shortest path to freedom and prosperity (p.118). However, they further indicate that the imitation strategy produced "feelings of inadequacy, inferiority, dependency, lost identity, and involuntary insincerity", and eventually, a loss of sovereignty (Krastev & Holms, 2018, p.118). When combined with the catastrophic consequence of the Iraq war in 2003, the idea of democracy promotion discredited.

The global economic crisis of 2008 hit Hungary at a time when the government's political credibility was already in sharp decline. The crisis fostered deep disbelief of business elites and resulted in Central and Eastern Europeans turning against liberalism not only because it was failing at home but also because it was failing in the West (Krastev & Holms, 2018, p.119). Prime Minister Gyurcsány resigned in 2009, as a direct result of the economic crisis. Besides the fact that with the 2008 economic crisis, the market economy's reputation diminished, and along with the rise of China, the liberal demand was weakened (Plattner 2019, p.9), it became obvious that the Socialist and Liberal government would suffer losses during the 2010 general elections (Bozóki, 2012, p.8).

The counter-revolution that occurred with the 2010 elections in Hungary must be seen against this backdrop. The elections brought Viktor Orbán's coalition, established by the Hungarian Civic Alliance (Fidesz) and the Christian Democratic People's Party to power. The event has been described as a U-turn, which in turn refers to the "systematic destruction of the fundamental institutions of democracy" (Kornai, 2015, p.35)⁶. Csillag and Szelényi (2015) attribute illiberalism to a post-communist neo-conservative ideology, which "emphasizes the value of patriotism, religion and traditional family values like some of the socially conservative neo-cons in the USA do" regarding Hungary (p.13).

3.2. An Analysis of Orbán's 2014 Speech

In July 2014, Hungarian Prime Minister Viktor Orbán delivered a speech before an ethnic Hungarian audience in Băile Tuşnad, Romania, a region that belonged to Hungary until the post-WWI partition of the country. In the speech, Orbán stated his intention to make Hungary an "illiberal state" referring an illiberal democracy model. He borrowed the term from Zakaria who argued that post-1989 democratization (or expansion of electoral democracy) cannot blend with liberalism harmoniously since liberalism has both constitutional and institutional restrictions to democracy (Rupnik, 2018, p.26), which is perceived to be the *rule of the people* (majority rule).

⁵ Ferenc Gyurcsány represented the Hungarian Socialist Party.

⁶ *The Journal of Democracy* published a set of articles in which scholars analyse "Hungary's Illiberal Turn" in July 2012.

The main point of this speech is that liberal democracy has failed to function in Hungary because it doesn't give the government the constitutional power to preserve national interest. In the light of the location of the speech, it is no coincidence that Orbán talks about the "the authenticity membership of diasporic communities in Hungary" (Isaac, 2017, p.6), by emphasizing on the nation as an identity, strength and a character. Despite the fact that Orbán does not clearly criticise the liberal values such as "freedom", he does assert that they should not be "a central element of state organizations". (Isaac, 2017). This message indicates that liberalism based on individual rights and rule of law has become antagonistic to new Hungarian politics, as a result of which the proper form of state in Hungary will turn into 'illiberal democracy'.

Apart from national interests, there are two significant turning points in history that Orbán lists as reasons in the speech for the resolve to move away from liberal democracy. The first one is the 2008 financial crisis. He states that the crisis has led to substantial changes as significant as the WWI and WWII and the fall of communism. This severe experience has shown that "liberal democratic states cannot remain globally competitive" (Orbán, 2014). Therefore, he envisions a work-based society that will create job opportunities; however, he also implies that in that work-based society, those who cannot or do not work will be deprived of certain rights (Bíró-Nagy, 2017, p.36).

Orbán claims that the West is failing economically, socially and culturally, while non-liberal democracies have proved to be more successful. He substantiates his claim by referring to the economic success of countries that are not Western and/or liberal such as China, Turkey, India, Russia, and states that "democracy does not necessarily have to be liberal. Just because a state is not liberal, it can still be a democracy" (2014). Orbán's interpretation of democracy is most likely based on "high levels of social discipline" (in terms of economy), and "low levels of public dissent" in the political arena (Bíró-Nagy, 2017, p.36).

The second turning point that Orbán refers to is the civil liberties guaranteed by liberal democracy. His interpretation of "freedom" as a national perspective is related to national sovereignty. Individual freedom, on the other hand, is depicted as a negative aspect of liberal democracy and as something that should be controlled by the government. Instead of individual rights, he highlights the national interest of the Hungarian people as a community.

3.3. Main Elements of Illiberal Democracy

Viktor Orbán's intention to establish a new future for Hungary has some characteristics that authoritarian leaders share under the name of illiberal regime. This sub-chapter identifies and discusses the main elements of illiberal democracy.

In their reactions to liberalism, illiberalists often use Carl Schmitt's ideology to support and legitimize their claims (Halmay, 2019, p.5). Schmitt was a significant critic of liberalism and parliamentary democracy (Vinx, 2019). Being a prominent political scientist, Schmitt emphasized the concept of sovereignty and collective identity as a way to attack liberal democracy. Schmitt believed that a functioning legal order can only be achieved by sovereignty (Hoffman, 2002, p.49; Vinx, 2019). He also advocated the idea that democracy is a product of 'homogeneity'. Schmitt declared in 1926 that:

Every actual democracy rests on the principle that not only are equals equal but unequals will not be treated equally. Democracy requires, therefore, the first homogeneity and second—if the need arises—elimination or eradication of heterogeneity (1985, p.9).

This interpretation of democracy used today by 'authoritarian populist nationalists' such as Viktor Orbán has become an "unconstitutional topos" (Kumm, 2017 as cited in Halmi, 2019, p.6)⁷.

Today *populist* leaders tend to create narratives to increase their legitimacy as well as their incumbency. Rejecting pluralism, they claim a monopoly in the legitimate representation of the people (Rupnik, 2017, p.2). Besides the national narrative, historical politicization is a highly popular narrative among authoritarian leaders.

3.3.1. National and Religious Identity Narrative

Democratic backsliding has brought two important features. First, a departure from the rule of law, and the rise of nationalism as the chief source of legitimation (Rupnik, 2017, p.4). Backsliding has also brought back the notion of the "sovereignty of the people" and identity politics. Along with culture and language, Christianity has become the central elements of the nation-state in Hungary. Since the 2014 speech, Orbán has continuously stated his preference for an illiberal democracy in order to protect *national* Hungarian identity. 2015 major migrant crisis strengthened the notion of sovereignty of people and identity politics in Hungary. It was because the influx of immigrants- largely Muslim- and was interpreted as a threat to the state (Hijj, 2015, p.67).

In 2018, four years after the speech; however, Viktor Orbán also started to use Christian democracy as an illiberal approach (Orbán, 2018). According to Orbán, illiberal democracy originally means Christian democracy. He stated that:

"Let us confidently declare that Christian democracy is not liberal. Liberal democracy is liberal, while Christian democracy is, by definition, not liberal: it is, if you like, illiberal" (Orbán, 2018).

Victor Orbán continued to highlight Christian democracy as an integral part of illiberal democracy. The quote below is from the committee set up by EPP after the suspension of the Fidesz party from EPP in 2019.

We are Christian democrats and we are differing nowadays at least in three aspects from the liberals: The first one is the conviction that family is fundamental, and family is based on one man and one woman. We believe that this needs to be protected, which the liberals deny. Secondly, while the cultural life of every country is diverse, a Leitculture, a cultural tradition is present everywhere. In Hungary, this is Christian culture. We respect other cultures, but our own has a prominent role for us, and it is our responsibility to preserve it. Liberals refuse this concept. The third aspect is that liberal democrats are everywhere pro-immigration while we are

⁷ Kumm's text is originally in Hungarian and translated by Halmi (2019).

against immigration. So, whether one admits it or not: Christian democrats are illiberals by definition (Orbán, 2019).⁸

Christian democracy, on the other hand, was designed to strengthen families and protect traditional values by rewarding behaviour with the integration of Catholicism in the 19th century. (Mueller, 2020). Its main aim was to reconcile Catholics with modern democracy. To create a haven for religion and democracy, political parties that were committed to Christian interests had to be founded. Before WWII, the political parties were sceptical to representative democracy. However, Christians learned that it had been a “disastrous mistake” allying with the anti-democratic right by trusting fascists to rescue them from godless communism (Muller,2020). The parties built after the WWII became democratic, and they worked to preserve law-limited government in Western Europe, extend economic and social welfare, and keep the peace as part of the Atlantic community of nations (Bouscaren, 1949, p.59). Furthermore, the most significant political force behind European Integration has been Christian democracy (Mueller,2020). Christian Democratic parties started as socially and political heterogenous and further advocated that democracy is “government by and for the people”, and that freedom of speech, press, assembly and vote are integral elements of Christian democracy (Bouscaren,1949, p.60).

In contrast to what Orbán wants to build today, Christian Democratic parties criticized the nation-state claims of sovereignty. (Mueller, 2020). Christian Democrats wanted, unlike Orbán, to protect minority rights, and they played a crucial role in accelerating European integration, as well as recognising pluralism and checks and balances to limit the power of nation-states (Mueller, 2020). The values advocated by Christian democracy, on the other hand, contradicts with Orbán’s claim. Viktor Orbán wants to build a homogenous society rejecting pluralism, which challenges the foundation of Christian democrats. The Christianity he promotes is one that degrades liberal values, especially internationalism and global humanity.

3.3.2. Historical Politicization

The creation of new political identities and historical ‘truths’ that marked the periods of regime change in Hungary has always been coordinated with new government’s ideological perspective, which is an ongoing dynamic since the transition to democracy in the 1990s (Greskovits, 2012, p.751). Two important narratives and discourses have been shaping historical politicization between 2010 and 2015 in Hungary. The first one is Miklós Horthy who was Hungary’s interwar and wartime leader, and the latter is The Treaty of Trianon, the peace settlement signed between Hungary and Allies in WWI, which was one of the most significant events in Hungarian history (Toomey, 2018, p.88).

Orbán wants to reconnect with Hungary’s pre-communist past (Rupnik,2012, p.135). The main aim of this approach is to reconstruct the ‘urbanist-populist’ cleavage, a dynamic in the interwar period, which divided the country into two groups. One was based in Budapest and composed of liberal, socialist and Jewish elites, while the other was composed of the ‘true’ Hungarians of the countryside and peasantry (Gerner,2006, p.101; Toomey,2018, p.88).

⁸ This argument is taken from Halmai’s 2019 article called “Illiberalism in East-Central Europe, p.3. The entire committee questions can be checked from this address : <https://visegradpost.com/en/2019/06/18/orbans-answers-to-epp-letter/>

The Treaty of Trianon (1920) led to the creation of the modern borders of Hungary after World War I. Hungary lost two-thirds of its land to Czechoslovakia, Romania, Yugoslavia, Austria, and Italy. Trianon embodied the humiliation of the nation because it marked the end of the Kingdom of Hungary and it created a perception among nationalists that Hungary had been treated unfairly by the post-WWI treaty, and by the foreign powers that imposed it (Traub, 2015).

Horthy was Hungary's head of state between 1920 and 1944. Employing an intense propaganda campaign, he managed to establish an image of himself as a heroic military saviour of the nation who restored the nation's honour and glory by compensating the 'injustices' wrought upon the country at Trianon (Toomey, 2018, p.93). In Orbán's current discourse, Horthy becomes the predecessor of Orbán, who also seek to save the country from economic and political instability caused by liberal democracy.

Using these two historical events has helped Orbán and his government to present itself as the guardian of the Hungarian nation's interests (Toomey, 2018, p. 102). Using discourse as a tool for legitimizing and consolidating the power has also enabled the government to introduce nationalistic policies such as the Citizenship Law and the National Unity Day. Orbán's and Fidesz's successful approach constitute an important part of Hungary's 'illiberal turn' (Toomey, 2018, p.103).

Rejecting international democratic standards in favour of national interests benefits authoritarian powers and such behaviours break down the unity and solidarity of the democratic world (Puddington, 2017, p.3). Viktor Orbán explicitly indicates that illiberalism consists of wholesale rejection of liberal and democratic values. Consequently, illiberal democracy paves the way for authoritarianism and is not compatible with liberal democratic values advocated by the European Union.

Chapter 4. The EU Mechanism of Liberal Democracy

The European Union claims a firm commitment to liberal democracy. The first two conditions for EU membership listed in the 1993 Copenhagen Criteria are that the applicants must have institutions guaranteeing democracy and the rule of law. The Treaty on European Union (TEU) identifies democracy as a foundation of the Union. Article 2 TEU that was enforced in 2008 states that: 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights ...' (art.2 TEU). The TEU includes a mechanism (Article 7) to sanction states that engage in a 'serious and persistent breach' of Article 2 TEU values.

This chapter analyses the EU's development from economic cooperation to a community of values, and the EU's instruments to protect these values in the face of the challenge that Hungary constitutes. The chapter opens with an investigation into the development of liberal democracy in the EU. It analyses the Copenhagen Criteria that were adopted with the enlargement procedure of the Central and Eastern European countries. After establishing that democracy is the essence of the Union enshrined in Article 2 TEU, the chapter proceeds to an analysis of the EU's sanction mechanism Article 7 TEU in order to protect the EU as a community of values. The final part of the chapter is a thorough analysis of the EU's reactions to the developments in Hungary since 2011. The main finding is that the EU has been concerned about the developments in Hungary, and since the political warnings did not deter Hungary, the EU has also initiated legal mechanisms, most importantly infringement procedures against Hungary. However, the EU has not fully activated Article 7 against Hungary as of today.

4.1. The EU and Liberal Democracy

The European Union (EU) is a *sui generis* economic and social union consisting of 27 countries as of 2020. Historically, the EU was founded as an integration project aimed at promoting peace and reinforcing security among its members after the Second World War. The Union, which was initially founded as an economic realm, enhanced cooperation in political and social areas in order to maintain the stability in the region. Today, the EU is established upon collective and shared values such as democracy and the rule of law that guides the policies in various areas both internally and externally. The EU aspires to support democracy and peace in the world with external actions such as trade, democratization and enlargement, and political and diplomatic relations with third countries and multilateral institutions (Zamfir & Dobрева, 2019, p.1).

The *preservation of peace and liberty* under the norms of the EU integration initiated with the Rome Treaty of 1957. However, the European Community (EC), specifically the European Coal and Steel Community (ECSC) and the European Economic Community (EEC), was based on economic unity, which means that its main priority was not to protect specific liberal values such as individual rights but rather the free market and trade (Thomas, 2006, p.1194). Moreover, for a long time, the Member States did not consider necessary to mention fundamental rights as explicit rules in the Treaties because the Member States had already signed the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in 1950 (Marzocchi, 2019).

This begs the question of why the EU started to promote democracy using political means. Thomas (2006) claims that the interactions with outsiders led political actors in the EU to debate and then define how to distinguish 'us' from 'them' (p.1191). Article 237 of the EEC

Treaty declares that "Any European state may apply to become a member of the Community". However, it was only when the authoritarian and fascist regimes approached the EEC that the Community started to debate the political conditions for membership. In 1961 the Spanish ambassador to the EEC presented a letter to the Community, stating 'the desire of my government that Spain participates in the European Integration movement' (Thomas, 2006, p.1195-96). Franco's Spain gained enormous diplomatic support from some Member States, especially from France and Germany. The membership talks were, on the other hand, strongly criticised by the European Parliamentary Assembly (EPA). EPA aimed to *constitutionalize* democratic and human rights principles or to avoid a retreat from these principles in the EEC (Thomas, 2006, p.1197). A report prepared by the EPA political commission chaired by the German Socialist Willi Birkelbach initiated a debate among the Member States, which was also open to the public. The Birkelbach report became a crucial step in the *constitutionalization*⁹ of the EEC (Thomas, 2006, p.1198, Birkelbach,1962).¹⁰

Birkelbach and the other members of the EPA political commission asserted in the report that "the guaranteed existence of a democratic form of state, in the sense of free political order, is a condition for membership" (European Parliamentary Assembly, 1961, p.8)¹¹. The report presented the essential preconditions for joining the Community since it indicated that:

States whose governments do not have democratic legitimacy and whose people do not participate in the decisions of the government, neither directly nor indirectly by freely elected representatives, cannot expect to be admitted in the circle of peoples who form the European Communities (EPA, 1961, p.8).

Even though this report clearly rejected Spain was able to join the Union under Franco's authoritarian regime, the country went ahead requesting to start negotiations for full membership of the Union (Biriukov, 2015, p.122). Armed with the report, the interest groups including the European Union socialist trade union alliance Secretariat Syndical Europ\en, together with EPA's socialists advised the Council of Ministers and the European Commission to reject the request of accession (Thomas, 2006, p.1200). Upon internal and public discussions, the accession negotiations were put on hold as European parliamentarians and trade unions insisted that "doing otherwise was incompatible with respect for principles of democratic government and human rights (Thomas, 2006, p.1205). Thus, the membership negotiations were not considered until Spain transformed to democracy in the 1970s.

⁹Constitutionalization has been employed to express the process of European legal integration, which has led to an extraordinary transformation of the EU displacing "the traditional, state-centred, international organization of the diplomat and the "regime" of the international relations scholars" (Sweet, 2004, p.18) with a polity evolved from a set of arrangements "binding upon sovereign states into vertically integrated legal regime conferring judicially enforceable rights and obligations on all legal persons and entities, public and private, within the sphere of application of EC law" (Haltern, 2003, p.2; Rittberger & Schimmelfennig, 2006, p.1149).

¹⁰The report originally in French can be reached by this link:

https://www.cvce.eu/en/obj/report_by_willi_birkelbach_on_the_political_and_institutional_aspects_of_accession_to_or_association_with_the_community_19_december_1961-en-2d53201e-09db-43ee-9f80-552812d39c03.html

¹¹ These two translated sentences were taken from Daniel C. Thomas's article:
<https://doi.org/10.1080/13501760600999524>

Even though the EC was first conceived as an economic union, the Community soon adopted the democratic values as a result of pressure from both actors inside the EC and interest groups that carried the process to the media. With the Maastricht Treaty (1992) The EC adopted the name of the European Union (EU) and officially evolved into a political and social entity (Sadurski, 2010, p.2).

Placing rights and democracy on the EU's agenda, in 1993 the European Council decided to enlarge the EU to the Central and Eastern European countries (CEECs), which was the first time that such a promise was made to European states that had not applied for membership (Hillion, 2004, p.1). The concern was to constitutionalise the norms of liberal democracy to unite the post-communist countries. At a summit in Copenhagen, the European Council set economic and political conditions to be fulfilled before the accession negotiations could be initiated. Since 1993, countries that aspire to become members of the EU (candidate countries) have to guarantee the following criteria since 1993:

- ✓ *Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;*
- ✓ *The existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union;*
- ✓ *The ability to take on the obligations of membership including adherence to the aims of the political, economic and monetary union (European Commission, 2016)*

With the Copenhagen criteria, the European Council established, inter alia, political conditions for the membership to be fulfilled consisting of "respect for democracy, rule of law and the protection of fundamental rights" (Bárd et al., 2016, p.34). The Amsterdam Council of 1997 introduced the political conditions for accession into the text of Article 49 in the Treaty of Amsterdam. In doing so, The Council partially 'constitutionalised' the 'Copenhagen political conditionality' (Hillion, 2004, p.3).

The expansion of EU competences in several areas of social life accentuated the need for a comprehensible legal basis for liberal democratic values. With the enforcement of the Lisbon Treaty, the EU was able to obtain its *bill of rights* through the Charter of the Fundamental Rights (Bárd et al., 2016). The political key rules upon which the EU is established are enshrined in the Treaty on the European Union (TEU)'s Article 2:

The Union is founded by the values of respect for human dignity, freedom, democracy, equality, rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail (art.2 TEU, 2008).

In order to be a fully-fledged member of the EU, the candidate countries need to fulfil the requirements set by Copenhagen Criteria. All member states must be democratic and implement Article 2 TEU. The new Article 49 that was amended in the Treaty of Lisbon providing the legal basis for countries to join the EU states: "Any European State which respects the values referred to in Article 2 TEU and is committed to promoting them may apply to become a member of the Union (Art.49 TEU, 2008). With Article 49, the European

Union is explicitly founded as a union of democratic states that respect liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law.

4.1.2. Article 7

The EU has also a complementary legal mechanism when Member States violate Article 2 and Article 49 of TEU, which is called Article 7 TEU. Firstly, it is worth mentioning that there is no mechanism in the EU, which enables the Union to expel a Member State that violates the essential EU values. However, the TEU includes a sanction mechanism against the recalcitrant Member States that functions either as a warning or a recommendation. The birth of Article 7, as a complementary legal measure, is directly linked with the enlargement of the EU in order to ensure the values enshrined by Article 2 TEU. Originally, introduced by the Treaty of Amsterdam (1999), Article 7 TEU has a mechanism of warning the Member States to respect the values of the union (Fletcher, 2017).

The initial version of the provision of Article 7 contained only a sanctioning mechanism for a 'serious and persistent breach'. The Council could apply and suspend certain rights of the state that violated Article 2, such as the right to vote in the Council (Larion, 2018, p.162). This provision was unusable when the extreme-right party Freedom Party (FPÖ) with the coalition partner of the People Party (ÖVP) won the general elections in Austria in 1999¹². The result of this general elections was not welcomed by the Member States of the time. Member States reacted vehemently to this electoral result. The tension with the results led to 'bilateral sanctions', which was imposed on Austria by 14 Member States. Even though FPÖ and ÖVP had political views which idealised features of the National Socialist past, the Austrian government had not explicitly violated any EU rules (Bugarič, 2016, p.87). The 'bilateral sanctions' were invoked by Haider's political statements and 14 Member States used sanctions as a response to these statements (Sadurski, 2010, p.15). However, Article 7 was not activated against Austria because the Commission or any other EU Institution did not accuse Austria of violating any rules of the EU.

The Austrian story led to certain amendments of Article 7 by the Treaty of Nice in 2003. The preventive mechanism to deal with the 'serious and persistent threats of the breach of values' goes back to the Treaty of Nice (Kochenov, 2017, p.5). Today, with the Lisbon Treaty, Article 7 integrates three different procedures (Kochenov, 2017, p.5):

- 1. a procedure to declare the existence of a 'clear risk of a serious breach' of the values referred to in Article 2 TEU and the adoption of recommendations on how to remedy the situation addressed to the Member States in breach (Art. 7(1) TEU);*
- 2. a procedure to state the existence of a serious and persistent breach of values (Art. 7(2) TEU);*
- 3. and a sanctioning mechanism following the statement of a serious and persistent breach (Art. 7(3) TEU).¹³*

¹²FPÖ's victory brought the term 'Haider affair' because the party was led by the populist and allegedly racist Jörg Haider (1950-2008).

¹³For all procedures, this website can be used: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M007>

To activate the preventive mechanism, Article 7 requires a four-fifth majority of the Council and assent of the European Parliament. Article 7(1) states that the Council can act on a proposal from the European Parliament, the European Commission, or one-third of the Member States (Larion, 2018, p.164). According to Article 7 (2), "The European Council, acting by unanimity on a proposal by one-third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2, after inviting the Member State in question to submit its observations". Article 7 (3) sets forth the sanctions.

Article 7 mechanism establishes one of the most significant features of the EU and human rights essentially because the elements of sanctions allow the EU to be taken more seriously as a community of values (Sadurski, 2010, p.34). Moreover, this mechanism can be used against all Member States that do not respect the values enshrined by Article 2 TEU even though Article 7 TEU was first adopted to prepare to welcome newly established Central and Eastern European democracies to secure liberty, democracy and human rights. Having Article 7 into the Treaty has indicated that this sanction mechanism carries out a significant function in enhancing the supranationalism in the EU since it embodies an attempt to "guarantee the future respect for the EU 'constitutional' principles (De Witte & Toggenburg, 2004, p.73). Article 7 is of great importance for the constitutionalism of the entire EU.

4.2. The EU's Reactions to Hungary

The systemic function of the EU suggests that "it should not be considered as an environment in which its Member States' political system operates but rather as *a part* of those systems" (Bozóki & Hegedűs, 2018, p.1178). Using supranationalism, "multi-level constitutional system" (Pernice, 2009), the EU has the authority to perform as a systemic constraint to its Member States using both political and legal means. However, there is an agreement among many scholars that the EU fails to stand up effectively to prevent Hungary from becoming an authoritarian regime (Bozóki & Hegedűs, 2018; Halmai, 2018b; Müller, 2016).

In order to cope with illiberalism within its borders, the Union has been using its legal channels to act in times of violations of Rule of Law and the EU democratic values. The EU has also a legal authority to use when the Member States violate the values of constitutionalism (Halmai, 2018, p.313).

The political actions against Hungary go back to 2011 when Viktor Orbán had been Prime Minister only for seven months. The event that was raised concern was the passing of the was media laws (both private and public), which included the introduction of a media council that contained only members of the Fidesz party (Pech & Scheppele, 2017, p.6). The European Commission President at the time, José Manuel Barroso criticized Hungary for passing laws that violated the democratic values to which the Member States should be committed (Barroso, 2011; Pech & Scheppele, 2017, p.6).

However, the EU did not use any constraint mechanisms except political warnings until 2013. The first legal mechanism was initiated in 2013 when the Hungarian Parliament introduced the Fourth Amendment to the Fundamental Law. According to Halmai (2018a), the new Fourth Amendment "re-enacted the provisions which had been annulled by the

Constitutional Court" (313)¹⁴. Dismantling court decisions enacted before Fidesz had the majority in Parliament indicates that the government undermines the protection of the rule of law as legal security in Hungary. These actions have questioned Hungary's compliance with the Treaties of the EU and the European Conventions on Human rights (Halmai, 2018b, p.14). As a reaction to the new regulation adopted by Fidesz government, the Dutch, Finnish, Danish and German Foreign Affairs Ministers issued a *Joint Letter* and called for a new mechanism to guarantee the values of EU democracy, as well as requesting the Commission to take action against the violation of rule of law (Closa, 2016, p.25).

Following the letter, The European Parliament adopted the Tavares Report prepared by the Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) in July 2013 and alleged that the amendments to the Fundamental Law violate European Rule of Law, democracy and liberty¹⁵. The report was adopted in Parliament with 370 in favour and 248 against (European Parliament, 2013). The European Parliament acted for the first time by creating a new framework to enforce Article 2 by calling for the European Commission to implement a new system of monitoring (Halmai, 2018, p.314).

As a support to the report, Commission President Barroso proposed a mechanism that can be "activated as in situations where there is a serious, systemic risk to the rule of law" (Barroso, 2013). Viviane Reding, Vice-President of the Commission at the time, indicated that there was an unprecedented 'rule of law crises' that the EU was facing in Hungary and one that revealed problems of a *systemic* nature (Reding, 2013). In a speech from that year, she also announced that there would be a "formal notice" to the Member States with the systemic rule of crises. She stated that this could be laid down proceeding in "a new policy Communication of the Commission, which could be politically endorsed by the European Council and the European Parliament" (2013). The pressure led the Hungarian government to make small changes in the Fundamental Law by enacting the Fifth Amendment which aims to "finish the constitutional debates at the international forum" (Prime Minister's Office, 2013). The Office also stated that "the government wants to do away with those... problems which have served as an excuse for attacks on Hungary" (2013). The fifth amendment; however, did not address the concerns made by the European Union (Halmai, 2018, p.315).

Despite the pressure exerted by the EU, the Fidesz government continued to violate liberal democratic values, especially by attacking the rule of law. In 2012, the Hungarian government lowered the judicial retirement age from 70 to 62, which resulted in senior judges, court presidents and members of the Supreme Courts to be removed from their offices (Bánkuti, Halmai, & Scheppele, 2012, p.143). As a response, the European Commission launched an Article 258 infringement action against Hungary since the country violated EU law under Directive 2000/78/EC, by lowering the judicial retirement arbitrarily (Bánkuti et al., 2012, p.144). The Commission claimed that it gave "rise to aged-based discrimination between judges, prosecutors and notaries who may continue to work" (European Commission v. Hungary, 2012). Even though Hungary lost the case, the dismissed judges could not return their original positions and the decision did not stop

¹⁴The Hungarian Parliament added the Fourth Amendment to the country's 2011 constitution in March 2013. The Amendment re-enacted a set of controversial provisions that had been annulled by the Constitutional Court. Halmai (2018a) indicates that the most alarming change was the annulment of all Court decisions prior to when the Fundamental Law entered into force (p.313).

¹⁵<https://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-315>

Hungarian government from weakening checks and balances by dismantling the independence of the judiciary (Halmai, 2018, p.316).

Another violation that resulted in an infringement procedure (Article 258 TFEU) occurred when the data-protection ombudsman's office was eliminated and transferred to a new office that belongs to the government, with a result that it was no longer an independent body (Bánkuti et al., 2012, p.144). According to Scheppele (2014), the former data privacy ombudsman was replaced by a person appointed by the Fidesz-affiliated President of the Republic upon the nomination of Viktor Orbán. Taking Hungary to The Court of Justice of the European Union (ECJ), the European Commission claimed that Hungary violated the independence of its Data Protection Office. ECJ agreed on allegations and Hungary lost the case (European Commission v. Hungary, 2014).

Despite the infringement procedures, the Hungarian government has not been discouraged and the rule of law backsliding has continued to worsen in Hungary since 2013 (Pech & Scheppele, 2017, p.7). Furthermore, the violation of the rule of law and 'illiberal regime' affects not only citizens in Hungary but all citizens in the European Union because Hungary is a part of the decision-making process in the EU. As the violation of liberal democracy can have a huge influence on the other Member States, the EC proposed a new EU framework to the EP and the Council, which is called *the Rule of Law Framework*. Aiming at strengthening the EU Rule of Law in all Member States, the Commission asserts that:

The framework seeks to resolve future threats to the rule of law in the Member States before the conditions for activating the mechanisms foreseen in Article 7 TEU would be met. It is therefore meant to fill a gap. It is not an alternative to but rather precedes and complements Article 7 TEU mechanisms. It is also without prejudice to the Commission's powers to address specific situations falling within the scope of EU law by means of infringement procedures under Article 258 of the Treaty on the Functioning of the European Union (TFEU) (European Commission, 2014).

The new Rule of Framework also called *pre-Article 7* allowed the EU an instrument that could be used when a Member State poses a "systemic threat to the rule of law" (European Commission, 2014). The main reason for this new framework is that the infringement actions were finally perceived as being too narrow to address the problems to which Member States lead. (Halmai, 2018, p.316). This new *pre-Article 7 procedure* tackles the threats of Rule of Law involving three procedural stages based on *assessment, recommendation and follows up* by the Commission (Kochenov & Pech, 2015, p.524). In the assessment phase, the Commission collects information and assesses if there are any indications of the systemic threat to the rule of law in a Member State (Kochenov & Pech, 2015, p.524). Next, if a Member State poses a threat to rule of law, the Commission makes a recommendation about the measures to resolve the threat, and finally, the Commission monitors if the Member State can implement the recommendation (Halmai, 2018a; Kochenov & Pech, 2015).

In 2015, the Hungarian government inclined to reinstate the death penalty. Meanwhile, the Fidesz party run an anti-immigration campaign with the outbreak of the refugee crisis in Europe. The European Parliament passed a resolution concerning these violations. The MEPs requested the Commission to launch the Rule of Law Framework by establishing "an EU mechanism on democracy, rule of law and fundamental rights" (European Parliament, 2015). The intention to reinstate the death penalty was also strongly criticized by the

European Commission and Former President of the European Commission Jean-Claude Juncker made a well-known comment stating: "Mr Orbán must immediately make clear that this is not his intention. If it would be his intention, it would be a fight" (2014). Nonetheless, the Commission did not launch pre-article 7 by stating: "these concerns are being addressed by a range of infringement procedures, and since the Hungarian judiciary also has its role to play, the Commission found that conditions to start a rule of law framework procedure are not fulfilled" (European Commission, 2015). The decision was a sign that the court was reluctant to interfere in Hungary's internal affairs. The Hungarian government, eventually, withdrew the resolution that could reinstate the death penalty.

The Hungarian government did not stop enacting legislation in contradiction with the EU values during ongoing infringement procedures. During the refugee crisis in 2015, the Hungarian government enacted a series of laws, which were both anti-European and anti-immigration (Halmai, 2015). The first reaction was made by the EP by calling the Commission to launch the Rule of Law Framework (European Parliament, 2015). However, the Commission refused to activate the new Rule of Law framework and started another infringement procedure against Hungary claiming that the Hungarian legislation was not compatible with the EU law, especially the Asylum Procedure Directive (Directive 2013/32/EU) (Halmai, 2018, p.317). In order to tackle the refugee crisis, the Council (2015) adopted two decisions, one of which is "Council Decision (EU) 2015/1523 and the latter is Council Decision (EU) 2015/1601 (the Council, 2015). Since high numbers of people arrived in the EU from across the Mediterranean Sea or Southeast Europe mainly due to the Syrian War, this urgent scheme obliged all Member States to present safe places for the refugees that could be relocated so that the refugees in Italy and Greece could be dispersed across the entire European Union. However, Hungary did not adopt the relocation scheme, which led to another infringement procedure in 2017 for violating the Council Decision (European Commission, 2017). This time the Commission declared that Hungary failed to "fulfilled its relocation obligations" (European Commission v. Hungary, 2018).

The government's attack to the Central East University (CEU) is yet another violation of the EU law. In 2017, the Fidesz party introduced an amendment to higher education law that aims at shutting down the CEU in Budapest (Novak, 2017). This law practically means the educational activities will no longer depend on professional criteria, but the preferences of the government. It also restricts European universities' ability to collaborate with Hungarian universities (Enyedi, 2018, p.1067). The bill was quickly named "Lex CEU" since the criteria mentioned affected solely a single institution: The Central European University (CEU). As a reaction to the bill, Vice President Timmermans, in a 2017 speech, expressed that this amendment might damage academic freedom because the universities are the institutions where "free thinking and diversity of opinions are cherished and nourished" (Timmermans, 2017).¹⁶ According to the speech, the European Commission proposed "a broader political dialogue between Hungarian authorities" (Timmermans, 2017). Following this discussion, the European Commission initiated another infringement procedure for "Lex CEU" (European Commission, 2017). The Commission concluded, "the law is not compatible with the fundamental internal market freedoms, notably the freedom to provide services and the freedom of establishment but also with the right of academic freedom" (European Commission, 2017).

¹⁶ SPEECH-17-966

Furthermore, the European People's Party (EPP), the party alliance of Fidesz, warned Orbán to obey EU laws and the Commission's position stating that "we will not accept that any basic freedoms are restricted or rule of law is disregarded" (EPP, 2017). Nonetheless, CEU was forced to move to Vienna in 2019 but retained its research presence in Budapest. The Fidesz government also banned the gender studies programmes at universities and a spokesman for the prime minister commented: "the government's standpoint is that people are born either male or female, and we do not consider it acceptable for us to talk about socially constructed genders rather than biological sexes" (Oppenheim, 2018).

Besides infringement procedures, the court cases in ECHR concerning Hungary is 1,416 only in 2019 (ECHR, 2020), which is parallel with the decline of the rule of law. The court cases verify the claim that Hungarian citizens seek international justice against the judgements of the national judiciary (Bozóki & Hegedűs, 2018, p.1179).

Chapter 5. The EU and Illiberal Democracy

The aforementioned 2010 elections in Hungary led to sharp “political, economic and administrative” changes at a speed that the European Union had never witnessed before (Sitter, 2011). The Fidesz government managed to revise the constitutional and political order in Hungary. Even though the erosion of democracy in Hungary has been delineated by the European Parliament and the EU’s mechanisms, it has been claimed that the EU is not effective to fight against the violations of Article 2 in Hungary. The claims extend that the EU has also presented a hospitable environment for the emergence of autocratic Member States (Kelemen, 2020, p.481). According to Bozóki and Hegedűs, the EU also presents a *legitimizer* of the regime especially with the EU funds, the EU’s lack of sanctions (Article 7) and open criticism of the political developments in Hungary (2018, p.1178).

This final chapter aims to discuss the compatibility between the development in Hungary and the values of Article 2 and the effectiveness of the EU’s mechanisms. Accordingly, this chapter is divided into two parts. The first section discusses how Hungary dismantles liberal democratic values. It highlights the constant violations of core elements upon which liberal democracy is founded. Viktor Orbán targets first and foremost, the rule of law, freedom of media and the civil society. The main finding is that Hungary’s dismantling of democracy runs afoul of values of Article 2 TEU and thus that illiberal democracy is incompatible with liberal democratic values. Besides, the illiberal regime in Hungary follows an authoritarian attitude by undermining the rule of law, silencing media and demonizing civil society. Considering this finding, the second part of the chapter discusses whether the EU has an effective toolkit to enforce mechanisms against the violations of Article 2 TEU. It focuses on the infringement procedure and Article 7 as the existing mechanisms of the EU to protect liberal democratic values. The chief finding is that the existing toolkit of the EU is not effective enough to fight illiberal democracy in Hungary. Furthermore, the lack of political will prevents the EU from fighting Member States that violate Article 2 TEU. As a consequence, scholars suggest that the EU should come up with a more systemic mechanism to protect liberal democracy within the Member States.

5.1. How to Dismantle Liberal Democracy

Another crucial point that needs to be discussed is how illiberal leaders like Orbán destroy liberal democracy, while the EU’s systemic function is being inefficient to deter them.

In the illiberal *regime*, leaders seek to eradicate the checks and balance systems that liberal democracy promotes. They consolidate power in the hands of the government to centralize power within their part. Therefore, their first aim is to remove hindrances to their power to prevent them from being unelected in the future. The main obstacles are the judiciary, parliament and the media. They must also act in accordance with the law when removing these obstacles.

However, the leaders do not strengthen their legitimacy using openly authoritarian methods, especially in ECE countries where they are bound by EU laws. Krakovsky (2019) indicates that “no censorship is undertaken, there are no bans on demonstration, no open police interventionists, no pressure on the population to carry out acts displaying their allegiance to the new regime (p.11). In that perspective, the “illiberal democracy” remains democratic.

It is also true that the new understanding of society and individualism that was adopted by Hungary does not necessarily contradict democracy; however, having been able to write a new constitution that has led to serious changes in existing laws (Puddington, 2019, p.37) contradicts modern liberal democracy.

Illiberal democracy mainly attacks the rule of law, media independence and the politically neutral civil society (Rupnik, 2018, p.25) by changing the justice system (Krakovsy, 2019, p.11). This thesis argues that these three organs are fundamental to liberal democracy and the Fidesz government's attack on these values poses a great threat to liberal democracy. Therefore, illiberal democracy is incompatible to the European liberal democratic values protected the by EU constitution. Consequently, the Fidesz regime is leading to an authoritarian regime, using liberal democratic means and the EU funding to consolidate its power and legitimacy. The next sub-chapters will discuss how the Fidesz government has dismantled liberal democracy in detail.

5.1.1. Rule of Law

Liberal democracy, as defined in Chapter 2, is not only a limit on *majority* (public power) rule but an essential precondition for democracy because liberal democracy is composed of rule of law, checks and balances and guaranteed human rights. In that sense, Halmai (2019b) argues that there is nothing as "illiberal constitutionalism" because the *populist* understanding of constitutions opposes the fundamental component of constitutionalism, which are the unity of power, loyal to rule of law, protection of fundamental rights (p.2).

The first incompatibility between liberal democracy and illiberal democracy is Orbán's aim to dismantle the rule of law. In the ECE countries, the rule of law has been reshaped by the new rules on the judiciary. Research also argues that even though the main source of legitimacy in political rhetoric relies on the sovereignty of the people, rule of law determines the emerging form of the government, especially on the way to illiberal democracy (Sajó & Tuovinen, 2019, p.507).

After winning a two-thirds parliamentary majority, which was big enough to change the decisions and laws earlier, the Fidesz government has been changing political institutions by eliminating checks and balances. Constituting the two-thirds (formerly required four-fifth) majority in the Parliament has also allowed a bill to go from the first proposal to a final vote without any debate and consultation (Pap, 2017, p.16). The first action the government took was to adopt a new constitution by amending the old one. The Fundamental Law, which contradicts with the European requirements of democracy passed by the Parliament on 18 April 2011. Besides, between 2010 and 2014 the Fidesz government passed 859 laws, which is almost 150 per cent (214 laws) more than the 2006-2010 period (Kornai, 2015b, p.24). Therefore, the new constitution has been called "Unconstitutional Constitution" (Scheppelle, 2012), which "can no longer be described substantively as a republican state governed by the rule of law" (Bánkuti, Halmai, & Scheppelle, 2012a, p.268).

Removing the power of the Constitutional Court, which had been the main primary check on the government, to review acts of the Parliament for the evaluation of its compliance with the Constitution when it comes to budget concerns, has enabled the government to launch unconventional economic policies (Bánkuti et al., 2012, p.3; Sajó & Tuovinen, 2019, p.516). For example, nationalizing private pensions has resulted in "eight-thousand cases

on the issue to the European Court of Human Rights (Bánkuti et al., 2012, p.3), while the Constitutional Court remain silent.

Another collapse of the rule of law does have a particular pattern. Sajó and Tuovinen (2019) point out that the undoing of the rule of law follows: "change the personnel and/or limit institutional powers of control and even the scope of the judicial control institutions (by limiting, at a later stage of the illiberal development, access to courts and judicial review even in ordinary litigation)" (p.513). With the new Fundamental Law which came into force in 2012, Fidesz increased the number of judges from eight to fifteen, lowered the retirement age so that there could be more suitable judges to nominate without needing other parties solely under the control of Fidesz (Bánkuti et al., 2012, p.12). Furthermore, some pieces of legislation were particularly adjusted to acts of *favouritism* such as lowering the age requirements of ambassadors so that a government loyalist could be appointed (Pap, 2017, p.17). Last but not least, in order to check the executive branch, the president held imperative powers such as a suspensive veto for the parliament to revise and check the laws under the old constitution (Bánkuti et al., 2012b, p.141). What Fidesz did was to replace the person with the one who was committed to Fidesz, instead of changing the laws. Without no additional checks, the Fidesz government has been able to consolidate the power and "push a new constitution without any challenge" (Bánkuti et al., 2012b, p.141).

Therefore, it has been argued among scholars that Hungary slides into authoritarianism, totally through legal means (Bugaric, 2014, p.8), which is a two-thirds majority. It means that the *authoritarian* leaders undermine democracy because they subordinate the rule of law by transforming legal rules into their interests. In the case of Hungary, Fidesz built the new constitutional law only with its political bloc and the opposition did not seem to be involved in the decision process. As Bánkuti, Halmai and Scheppele argue, Hungary 'can no longer be described substantively as a republican state governed by the Rule of Law (2012b, p.144).

Furthermore, Sajó & Tuovinen (2019) argues that the illiberal democracies, especially in the ECE do not reject the rule of law; instead, it is constantly abused. There are two parts of the process to gradually undo checks and balances of the constitutional system: "The first is a legal complaint change, and the second is replacement by a process that while on its face acceptable, works in the government's favour or at least does not hinder it" (p.522). The Fidesz government's Fundamental Law is the consequence of this process because it has been enacted within the legal parameters of the rule of law although it has been amended several times. However, the amendments acted in opposition to Constitutional Court and were not consensual (Sajó & Tuovinen, 2019, p.522).

The Fundamental Law has guaranteed the future activities of the Fidesz government, which is still ongoing today. Fidesz without the checks and balances has been able to control the media. Fidesz also created an identity of a community, which is based on culture, not politics (Halmai, 2019, p.23). By cultural identity, it has been become easier to outcast and marginalize the minority.

5.1.2. Media

Mass media independence is one of the core elements of liberal democracy. Today, Orbán exerts sole control of a vast media that is bigger than 2014 when he took the first steps to reorganize the media empire (Győri, Nagy, & Sebők, 2019, p.65). Controlling the media,

the government aims to have a *hegemonic* position in the public by imposing its values and way of thinking as the legitimate ones (Krakovsky, 2019, p.12). What's more, Krakovsky (2019) also argues that although controlling the freedom of expression is a heritage from communism, what makes it different today is that the government does not instate censorship or imprison the opponents. Instead, the government supports the press groups and media to the detriment of others through policies as there is fierce competition in the market economy (Krakovsky, 2019, p.12). Consequently, the survival of certain media actors, especially opponent ones, turns out to be fatal.

The aforementioned new constitution (Fundamental Law) has seriously weakened independent institutions. It was also no longer necessary to have majority party input to the appointments to key offices, such as "Constitutional judgeship, ombudsmen, the head of the State Audit Office and the public prosecutor" (Halmai, 2019b, p.3). One of the most crucial institutions for democracy such as the media board does not ensure multiparty representation. The Fidesz government reorganized the state regulatory agency, the so-called the *Media Authority* and supplemented it with the Media Council, which has five 'independent' members, responsible for 'media balance'. The new chair of the Media Authority was a former Fidesz MP, while the Media Council constituted five Fidesz candidates; as a result, the government elected former Fidesz vice-chair Pal Schmitt as the new president of Hungary (Bánkuti et al., 2012a, p.139).

The government's control of freedom of printed and electronic media has enabled it to create a politically homogenous body. In European liberal democracy (mentioned in Chapter 2), it is stressed that all members of society have the equal right to access to and representation in media regardless of their socio-economic background so that they can gather and share information. In this sense, passing laws to consolidate media has two important results. The first one is that the opponents and civil society have lost their means to give utterance and share their opinions in society. The second is that it has created a domestic *oligarch* because it led a number of multinational investors to leave the Hungarian media. Bajomi-Lazar (2017) argues that Fidesz has turned into a 'cartel party' mainly because Hungarian media market are now owned by the *oligarchs* who are associated with the ruling Fidesz/Christian Democrat party association (p.162).

Another crucial point is that through legal transactions, the Fidesz party finances the establishment of private commercial outlets, which are already owned by Fidesz party's cronies (Bajomi-Lazar, 2017, p.166; Sajó & Tuovinen, 2019, p.521). The private ownership in addition to public media enables the government to command programming, as a result of which is used as a tool of government propaganda.

When civil society has unequal access to the media, as seen in Hungary, the captured media promotes views dominated by the government and marginalize the others. This leads to some wide-ranging political consequences. One critical example is the anti-immigration campaign launched by the government in 2016. According to Bajomi-Lazar (2017), the elderly people, especially those living in rural parts, who are exposed to hegemonic pro-government media and do not use the Internet as a news source have become more xenophobic (p.168).

Consequently, control over public and private media play a huge role in the manipulation of public opinion. The adoption of 'Coronavirus Adoption Act', which includes provisions

allowing sentencing of up to five years for 'distorting facts' is another clear target "what little remains of the independent media" (Rupnik, 2020, p.4).

The private ownership used by the Fidesz government could be legal. However, that does not make this practice legitimate. When the media resources are used both as an investment and brainwashing means, it is a form of "institutionalized corruption and party patronage" (Bajomi-Lazar, 2017, p.170). It has had a catastrophic impact on some of the key components of democracy, which includes the freedom of media and pluralism, and equal right to access to the media.

5.1.3. Civil Society

The attack on the rule of law and media are solely the tip of the iceberg. The elimination of efficient constitutional supervision by a constitutional court has also other consequences, especially in other social domains. When the government undermines checks and balances, it is also possible to undermine and eliminate the independent institutions, which contradicts the core of democracy.

Civil Society, which includes "all those voluntary and non-profit organizations which play an important role in giving voice to the concerns of citizens and in delivering services that meet people's needs" (Kohler-Koch & Quittkat, 2009, p.11-12), is a significant pillar of liberal democracy. Particularly, non-governmental organizations (NGOs) are essential organs to sustain the rule of law, implement fundamental rights and protect the environment. NGOs monitor the activities of the governments, and when the governments or public figures break the law, they can inform the public, or bring cases to court, which are key concepts to promote democracy and basic human rights.

As Sajó & Tuovinen (2019) discuss, illiberal regimes are suspicious of all autonomous social entities such as education (especially higher education and research), some churches, NGOs and cultural institutions which do not share the government's values (p.519).

As an *illiberal state*, on 11 March 2013, the Hungarian Parliament adopted the aforementioned "Fourth Amendment", which is a combination of various constitutional requirements seeking to:

*limit the independence of the judiciary, bringing universities under more governmental control, opening the door to political prosecution, criminalizing homelessness, making the recognition of religious dependent on their cooperation with the government and weakening human rights guarantees across the board*¹⁷ (Bugarcic, 2014, p.12).

The Fidesz government's main target on the way to the authoritarian regime has been the international NGOs, the Central European University, and the Open Foundation Society, funded by George Soros, a Hungarian born American philanthropist, who founded the Central European University and Open Society Foundation in Hungary. Soros and the organizations including feminism, and human right sector have been labelled as "foreign-

¹⁷the full text of the Amendment can be reached here:
<http://lapa.princeton.edu/hosteddocs/hungary/Fourth%20Amendment%20to%20the%20FL%20-Eng%20Corrected.pdf>

steered projects and agents, which are potentially dangerous for national interests (Grzebalska & Pető, 2018, p.3)

NGOs, as an example, are generally funded by volunteers, national or EU funds. The Hungarian government reformed the funding system by establishing a 'national cooperation fund' in 2011. The government aimed to bring funding into its control and had an attempt to bring EEA/Norway grants under its administration (Butler, 2017, p.7). Referring to the Norway Grants, Orbán in his 2014 'illiberal speech' repeatedly called civil society actors "political activist paid by foreigners" who "are seeking to meddle with Hungary's state affairs by trying to exert influence over specific issues" (Orbán, 2014). Subsequently, EEA/Norway NGO Grants Funds, which were unsettled by police raids, investigations carried out by the Government Control Office and suspension of tax numbers¹⁸ were suspended in Hungary.

The outbreak of refugee and migration crisis in 2015 introduced another turning point in civil society relations in Hungary. The government managed to take advantage of this crisis by creating the discourse that it poses a great threat which entails extraordinary measures, instead of being a socio-economic issue that can be resolved through normal processes (Grzebalska & Pető, 2018, p.3) or with the directions of the EU.

The mobilization of civil society organizations (CSOs) and NGOs to help the refugees has led the government to spread rumours that these groups were financed and instructed by George Soros (Botos, 2015). The active role of CSOs pushed the government to take a more repressive stance against them. The NGOs became the target of a *smear campaign* because the government claimed that immigrants supported by the NGOs have higher education and better employments than Hungarians (Enyedi, 2018, p.1070). Therefore, the government adopted law is called Lex-NGO (on foreign-funded organisations) in 2017.

According to Lex NGO, civil society organisations have to register as "foreign founded entities" if they receive more than HUF 7.2 (EUR 23k) in donations from abroad (Hegedüs, 2019). The civil society organizations have inherently right to seek, receive and use funding, which are fundamental to their existence. However, the Fidesz government is labelling NGOs, especially the ones receive foreign funding, and this hinders their ability to access and raise resources.

As a further attack, the Hungarian government passed two separate laws in 2018: The first is a bundle of laws referred to as the Stop Soros bills, and the second is a constitutional amendment decreeing that no foreign population can resettle in Hungary (The Hungarian Government, 2018).¹⁹

With the "Stop Soros Act", the government aimed to penalize the activists, CSOs and NGOs funded by Soros, which have supported of asylum seekers, and introduced an "extraordinary tax for the support of immigration" (Hegedüs, 2019) The government argued that assisting immigrants poses a national security threat and that CSOs that assist immigration should be punished by criminal sanctions (Sarokin, 2019, p.901).

¹⁸ For the news: https://www.regjeringen.no/en/aktuelt/raid_eea/id2000182/

¹⁹ Bill No. T/333

These laws, which limit the CSOs and NGOs, act as tools of silencing and intimidation of opposition in the public sector. They also create a division among civil society organizations where only government-friendly NGOs that follow clear political guidelines could benefit from the distribution of public grants, while the others would suffer and finally terminate their existence. It is also argued that even though the anti-Soros/anti-NGOs /anti-migration were used as campaign themes to energise the Fidesz voters, the backlash continued after winning the elections, which shows that the actual aim is to destroy civil society in Hungary (Győri et al., 2019, p.73). The attacks on NGOs, civil societies and migration issues are instruments on the way to consolidate the Fidesz's power in the society where dissent is scarcely present. As a result, these laws deconstruct the scope and role of civil society in Hungary. They also violate a series of rights including CSOs rights, freedom of expressions and freedom of association, especially in contravention of EU Institutional Law and ECHR (Sarokin, 2019, p.891). Therefore, xenophobia promoted by the state, should not be tolerated in any EU countries.

Furthermore, the new regime forced existential pressure to ensure political compliance with the NGOs and COSs activities. Therefore, the CSOs, which have remained critical to the policies of the government has been isolated because the companies, which have supported the Fidesz Government, and consequently avoided harsh tax authority, could not support those critical civil society organizations (Hegedűs, 2019).

Besides CSOs, the Fidesz's target on Central European University is also significant as the university is funded by George Soros. In many countries, the universities are the arenas where there is a regular political conflict. Academics and students can challenge and question governments. The conflict between the Hungarian government and CEU is not unanticipated but could be one of the most notable ones in Europe. It is also worth mentioning that almost 80% of the students in CEU are foreigners, which is opposite the national sovereignty and hierarchical government that Fidesz aims to build in Hungary (Enyedi, 2018, p.1069). With Lex CEU, the university had to be relocated in Vienna due to the government's aggressive approach to George Soros.

Soros has been under a violent campaign because he has been referred to as a symbol of *destructive liberalism* (Krekó & Enyedi, 2018, p.47). It is not difficult to observe how Soros's promotion of "open society" ideals might displease an illiberal regime, which slides toward authoritarianism. The Open Society Foundation has funded for transparency, human rights and pro-minority groups. Therefore, Soros can be built up as an " 'umbrella enemy' the puppet master allegedly pulling the strings of all the government's foes, including the NGOs, the critical media, the opposition parties, and the EU" (Krekó & Enyedi, 2018, p.48).

In a liberal society, academic freedom is of importance as everybody should have access to education and the right to choose their academic career. Therefore, the ban on 'gender studies' MA and PhD programme²⁰ should be intolerable in an EU Member State. The programme is degraded as "foreign ideology" and has become associated with insecurity and injustice promoted by liberalism, meaning that gender studies are supported by *foreign institutions*, therefore call into question gender biases and women's traditional role within the family (Krakovsky, 2019, p.14). The ban of gender studies is a symbolic strike against

²⁰For the news: <https://www.independent.co.uk/news/world/europe/hungary-bans-gender-studies-programmes-viktor-orban-central-european-university-budapest-a8599796.html>

a scientific field that is considered to be characteristic of the liberal impact on education. Thus, it constitutes an illustration of how the government subordinates the educational system to ideological goals (Győri et al., 2019, p.72).

The government is now planning to pass a new law that will end the legal recognition of trans people (Walker, 2020), which shows muscular statements by the government as a political motivation toward great power (Győri et al., 2019, p.72) will likely continue and construct a threat to dissents.

Attacking social activism, universities and their programmes, open society, minority rights as a cultural and moral existential threat have serious consequences to that society. As Grzebalska & Pető (2018) argue, this backlash can encourage fundamentalist or radical actors to introduce mainstream extreme ideas or policy solutions, as well as leading to ruling parties to adopt more radical steps and thus normalize them (p.4). Furthermore, it also makes human rights issues more depoliticized, which enables the government to dismantle checks and balances because there will be no monitoring system.

The European Union, on the other hand, recognizes CSOs essential tool for endorsing and protecting liberal democracy, transparent governance, social harmony and equality and state legitimacy (European Commission, 2012). The acts and immigration tax threaten freedom of expression and undermine the work of CSOs and NGOs in immigration and human rights. The laws also destabilize civic engagement and CSOs ability to check the government (Sarokin, 2019, p.916).

The adoption of bills and a new constitutional order serve what Fidesz wants to build: "they do not recognise the separation of powers and do not guarantee fundamental rights" (Halmai, 2019b, p.9). Besides, this also shows that the Hungarian government is embracing authoritarian development model to consolidate all the power in Orbán's hand. In that sense, the European Union should realize that what Orbán's ambition to reshape European politics is a threat to liberal democracy (Győri et al., 2019, p.80). The liberal heritage will depend on two reciprocal elements: "civil society and Europe" (Rupnik, 2018,p.36).

5.2. Discussions on Systemic Functions of the EU

5.2.1. Infringement Procedures

Even though the EU adopted the new Rule of Law Framework, which is also called Pre-Article 7 in 2014, it has not been fully activated against Hungary. Instead, the Commission chose to use infringement procedures to tackle *the illiberal turn* in Hungary.

The infringement process aims to guarantee compliance with the EU law and to identify underlying problems so that there could be a solution to the problem using the methods of "collaboration, communication, persuasion, negotiation and participation" (Varju, 2012, p.403).

On the one hand, infringement processes can be encouraging because the EU can protect personal freedoms through the judgements of ECHR or ECJ extensively. Since the EU does not have any institutional model to proceed against a Member State in violation of Article 2 TEU, ECHR and ECJ are the essential organs used in the EU to protect the liberal democratic values (Bozóki & Hegedűs, 2018, p.1178).

On the other hand, infringement procedures can only be launched when there is a specific violation of EU law (Kochenov & Pech, 2015, p.519). Hence, it is almost impossible for the Commission to initiate infringement proceedings concerning Article 2 when 'illiberal governments' like Fidesz act outside the scope of EU law or violate EU values (Gormley, 2017, p.78).

Therefore, some scholars claim that Member States do not implement the provisions of EU law as a result of infringement procedures because the Commission does not exert its power effectively (Pech & Scheppele, 2017, p.11). Scheppele (2014) argues that The European Commission lacks certain tools to fight efficiently after the Hungarian government has dismantled the liberal democracy and constitutionalism (p.1). Despite the fact that winning a case seems that the EU protects the liberal democratic values, the Commission uses its power solely to launch infringement procedures against the country and is losing the war to maintain independent institutions in Hungary. (Scheppele, 2014, p.2).

In an attempt to mend the insufficiencies of infringement procedures, Scheppele suggests that instead of singling out the cases in the case of Hungary, the Commission could have assessed the cases in a larger context so that it could have turned into a *systemic infringement action*. As a result, ECJ would be informed more systemically with the "relevant context of a case" (2014). The systemic infringement actions revised by the European Commission is likely to have a bigger effect on the Member States than the present piecemeal approach.

5.2.2. Hungary on Trial

Many scholars have argued that when Member States fail to implement core EU values, the possible solutions could be either a voluntary exit from the EU or financial sanctions by the EU (Halmai, 2018b, p.27). The serious curtailment of the structural fund can merely be possible with the activation of Article 7.

The *political* aspect of Article 7 mechanism has led some authors to argue that the use of Article 7 would be catastrophic and would deteriorate the fabric of the Union (Williams, 2006, p.31). Since the enforcement of Article 7 depends on a strong political consensus, other scholars argue that it would be impossible to enforce Article 7 due to procedural requirement of unanimity or super-majority (four-fifth) (Bogdandy, Kottmann, & Antpöhler, 2012).

On the other hand, some scholars argue that the main issue that prevents Article 7 from being an effective mechanism is a lack of political will (Bugarič, 2016, p.84). Bugarič also argues that lowering the required majority for the approval of the sanctions, Article 7 could be workable (2016, p.85). Hungary's new Constitutional Order brought Article 7 discussions on the surface again. Sadurski, for example, argues that since Hungary 'blatantly and clearly' violates principles of democracy and human rights, Article 7 could present a toolkit to deal with 'precisely such occasions' (2015).

The talks on activation of Article 7 TEU against Hungary started in 2017 when the European Parliament connected the monitoring of the EU funds in Hungary with the government's policies especially on migration and refugees (Halmai, 2018c, p.181). Nevertheless, because this action did not have the necessary two-thirds majority, Article 7 was not activated at this point in time.

On 12th September, the European Parliament achieved the majority to launch Article 7 TEU proceedings against Hungary (Plattner, 2019, p.13). The report produced by Judith Sargentini, who was a Dutch MEP from the GreenLeft Party, together with the LIBE committee was adopted by MEPs with 448 for and 197 against and with 48 abstentions. It is also worth mentioning that Fidesz failed to win the support from the EPP members who were present in Parliament (Plattner,2019, p.13).

The *Sargentini* report reveals many violations of EU values by the Fidesz government. Some of the allegations link directly with the basic principles of liberal democracy and human rights, which are all values pronounced in Article 2 TEU: 1) the functioning of the constitutional and the electoral system; 2) the independence of the judiciary and of other institutions and the rights of the judges; 3) corruption and conflicts of interests; 4) privacy and data protection; 5) freedom of expression; 6) academic freedom; 7) freedom of religion; 8) freedom of association; 9) the right to equal treatment; 10) the rights of persons belonging to minorities, including Roma and Jews, and protection against hateful statements against such minorities; 11) the fundamental rights of migrants, asylum seekers and refugees; 12) economic and social rights (European Parliament, 2018).

The process of this report principally could lead Hungary to have its voting rights suspended if the Council could act; however, unanimity will be required at a later stage and Poland has already announced that they will not sign its approval (Plattner, 2019, p.13).

While the Article 7 procedure is still ongoing, in another press release by the European Parliament on 16th January 2020, the EP alleges that the Rule of Law has worsened in Hungary and demands "more regular and structural hearings, followed by concrete recommendation" (European Parliament, 2020). The report calls for an "EU permanent mechanism on democracy, rule of law and fundamental rights" because "MEPs note that reports and statements by the Commission, the UN, OSCE and the Council of Europe indicate that "the situation in both Poland and Hungary has deteriorated since the triggering of Article 7(1)" (European Parliament, 2020). The EP (2020) also notes that the hearings orchestrated by the Council are "neither structured nor regular under the Article 7 TEU".

At the time of writing this chapter and when the outbreak of COVID-19 has resulted in a massive lockdown in all aspects of daily life as well as the closure of the international borders, the Hungarian parliament passed a bill, so-called the 'Coronavirus Protection Act', which gives Viktor Orbán extra sweeping power to *rule by decree* indefinitely to fight the virus in the name of emergency measures. (Simon & Delfs, 2020). In a digital meeting of the Conference of Presidents, European Parliament group leaders raised their concerns about the emergency measures and a majority of the groups requested Parliamentary President David Sassoli to pass on the concerns to the Commission asking them to assess and consider activating the Article 7 TEU (European Parliament, 2020b).

5.2.3. On the EU's Inefficiencies and Limitations

Although the European Parliament and scholars showed their concerns about the systemic deterioration of democracy in Hungary, the Commission did not approach the Hungarian case urgently (Pech & Scheppele, 2017, p.20). Moreover, the Commission has also been cautious about the pre-article 7 option (Rule of Law Framework) and has not considered activating it against Hungary. One of the most discussed reasons is that the Commission wanted to maintain its credibility (Halmai, 2018, p.328). Furthermore, the massive blow

of Brexit resulted in the EU leaders not wanting to reinforce the idea that the union was disintegrating, which has also led the Commission to be tolerant of Hungary (Müller, 2016).

Another crucial point is that the activation of Article 7 is not the most efficient tool for the new Member States, which are dependent on EU funding without the threat of economic sanctions (Bugarič & Ginsburg, 2016, p.79). As Halmai (2018b) discusses, Viktor Orbán made it clear that he does not want to leave the EU, but to reform the EU according to his illiberal fondness (p.27). The serious curtailment of the structural funds with Article 7 was put forward by ALDE-group but was rejected due to EPP's rejection. This rejection shows that party politics present an obstacle for the constraint mechanism of the EU to address democratic backsliding in Member States (Sedelmeier, 2017, p.4). Even though MEPs in EPP started to criticize Orbán severely because of his illiberal politics (Baume, 2017), they are not ready to take action against the Hungarian government (Halmai, 2018b, p.28).

Germany, on the other hand, considered linking the EU cohesion funds to respect for democratic principles (Eder, 2017). Germany together with Austria and Italy argued that conditionality should be used as a tool to discourage Member States to enact laws that is non-compliance with the EU laws, such as migration and asylum acquis, especially the Council's refugee relocation plan (Eder, 2017; Halmai, 2018a, p.333). However, the former Commissioner President Juncker pointed out that the proposal could "divide the European Union and that would be poison for the Continent" (Florian, 2017; Juncker, 2017).

Therefore, because of the funding from the centre, the EU even serves as a system where it contributes to the *illiberal* system (Bozóki & Hegedűs, 2018; Kelemen, 2020). The public resources committed to national development policy are funded by the EU; therefore, the resources are used by the national ruling elite for its purposes, which create an uneven political incentive (Bozóki & Hegedűs, 2018, p.1181).

Besides, Halmai (2018a) argues that although the EU's most serious tools like Article 7 against the new Member States are ineffective without the economic threats, he also argues that Article 7 (3) is not clear about the substance of sanctions (p.334). It means that economic sanctions, such as cutting the EU funds could require a total change in treaties, which makes it an almost "unbreakable obstacle" (Halmai, 2018a, p.334). On the other hand, the sanctions mentioned in Article 7 (3) could concern any "right deriving from the application of the Treaties' to the Member State concerned", which means the suspension of EU funding is possible without any change treaties (Besselink, 2016, p.8). Besides different ideas on Article 7, this "nuclear option" as referred to by former Commission President Barroso, has not been activated against Hungary, yet. The economic sanctions eventually rely on the political attitude of the EU institutions, together with the future of the EU (Halmai, 2018a, p.334).

Apart from being inefficient, the EU has certain limitations when it comes to dealing with illiberal tendencies of Member States. There are three major inabilities of the EU to address the violation of EU laws, as well as the illiberal discourse of the Member States. According to Pap (2017), the first one is *Institutional inability*, which means that the EU is not a human rights and a Rule of Law watchdog organization unlike the Council of Europe and the Organization for Security and Co-operation in Europe (OSCE). The EU's chief aim is to ensure economic cooperation and integration; therefore, the option of sanction is extremely limited (p.3). The second inability is *institutional-philosophical*, meaning that even though European Law enshrined by the Court of Justice of the European Union (CJEU)

is superior to the national laws of Member States, the EU avoids being referred to as an instance of real federalism and recognises the constitutional identity of Member States as sacrosanct (Pap,2017, p.3). The third one is an *inability to decipher legislative cynicism*, that is, the national government weakens fundamental rights and dismantles the democratic values; however, international bodies face enormous difficulty in finding out the real destructive structures of the national government (p.4).

On the other hand, some scholars have come up with certain proposals to deal with the violations of liberal democracy in the EU. Müller (2013), for example, argues that the EU needs to act more decisively to protect liberal democracy within the Member States. Müller (2013) indicates that although the EU is reluctant to interfere in the internal affairs of individual member states, it should be legitimate for the EU to interfere in domestic politics of member states to protect liberal democracy (p.139). Furthermore, he proposes the expulsion of a Member State from the EU only when violations of Article 2 take place. Such an option to sanction would apply only when "democracy is not just slowly undermined or partially dismantled, but where the entire edifice of democratic institutions is blown up or comes crashing down" (p.23). As a support to this argument, Bugarić (2014) also argues that adding the most extreme sanction i.e. expulsion to the existing EU toolkit helps to define the boundaries of the EU more clearly (p. 28). Müller further states that besides existing Union law, there should be a broader concept of the EU, which is not only an economic union but also political community of non-negotiable values (p.147). Thus, he suggests an entirely new institution, which could be called "Copenhagen Commission" (as a reminder of Copenhagen criteria) that will emphasize on democracy and the overall quality of a political system with a directive to offer comprehensive and consistent political judgements (2013, p.25). The proposal suggests that there is no place in the EU for a country where "liberal democracy and the rule of law cease to function" (Müller, 2013, p.26).

In a nutshell, the EU has been constantly criticised by scholars for not being capable of enforcing compliance with European values during the fight with Hungary over rule of law and democracy (Halmai, 2018a; Müller, 2016; Scheppele, 2014). Political considerations prevented the EU from activating Article 7 and it also undermined the legitimacy of the Commission (Halmai, 2018b, p.34). The EU needs to take more decisive actions to the countries that leave liberal democracy values advocated by Article 2. Since Article 7 is considered to be ineffective because of the allied states, the amendments of TEU and TFEU would provide procedural mechanisms to eliminate the effective veto power of allied states (Sarokin, 2019, p.916). When there is direct institutional changes and amendments, one can hope that the EU will be able to protect the European constitutional values in all Member States.

Chapter 6. CONCLUSION

This thesis set out to develop a detailed analysis of incompatibility of the illiberal democracy practised in Hungary with liberal democracy pursued in the Western world. To achieve this goal, this thesis has analysed the theory of liberal democracy and its main elements which are practised today. It has also devoted attention to the theory of illiberal democracy to investigate the main motivations behind Hungarian Prime Minister Viktor Orbán's tendency to build an 'illiberal' state. After finding out that illiberal democracy cannot be compatible with western liberal democracy, the thesis has proceeded to the analysis of the EU's development from economic cooperation to a community of values by adopting Article 2 TEU and the EU's instruments to defend these values when the EU has confronted with the challenge that Hungary constitutes. Finally, this thesis has argued that illiberal democracy is not compatible with liberal democracy advocated by the EU. This study presents three important findings.

The first finding is that when we talk about modern democracy in the West today, we consider not only the majority rule as a procedural element. Liberal democracy also includes freedom of speech, human rights, right to vote and the rule of law. Originally, while democracy, which is 'rule of the people', is originated in Ancient Greece, liberalism emerged in the 18th century, especially with the Enlightenment. Today, democracy and liberalism coalesced into a liberal democracy. Liberal democracy presents a constraint mechanism to the government's power.

The second finding is that although the EU is committed to liberal democracy and protects the community of values with Article 2, the systemic function of the EU is not efficient enough to deal with the Member States that are not committed to Article 2. It is shown that the EU reacted against Hungary's violations of Article 2 using political and legal mechanisms. The European Commission criticized Hungary's newly adopted laws. The Hungarian government had to amend some of these laws due to the harsh criticisms of the EU. Yet, it is also shown that these laws in many ways remain illiberal. The analysis of the EU's response demonstrates that the Union wants to keep its credibility, and thus is reluctant to take urgent and more concrete actions against Hungary. Orbán takes advantage of this situation, and benefits from the EU funding to reinforce his hostility toward liberal democracy. The thesis has revealed that if the EU does not adopt a more systemic function to deter the recalcitrant Member States, it might affect the other Member States where Eurosceptic parties are gaining more support among the public.

This thesis lastly revealed that illiberal democracy pronounced by Viktor Orbán is not compatible with liberal democracy. This study shows that Viktor Orbán attacks the core values of European liberal democratic values. Since he came to office in 2011, he has been able to write a new constitution (Fundamental Law) in order to undermine checks and balances that monitors the government's activities. Another key violation of democracy is the Media. Viktor Orbán did not support alternative media source in Hungary and now has the sole control of printed and digital media. This has helped Orbán to create a *hegemonic position* in the country that removes the dissidents from the mainstream media. This study further shows that Viktor Orbán targets civil society organizations that constitute a significant pillar of liberal democracy. Viktor Orbán aims to build a submissive homogeneous society and thus constantly attacks NGOs, CSOs and LGBT+ to silence and

threaten their existence. It is finally shown that Orbán uses illiberal democracy to dismantle liberal democratic values. Therefore, illiberal democracy practised in Hungary is not possible to be compatible with the norms of liberal democracy. The illiberal democracy in Hungary constitutes a great challenge to the EU in protecting its liberal democratic values. The investigation has also revealed that in the case of Hungary, Viktor Orbán swept to power and created narratives to protect his incumbency. As Ost (2016) argues, democracy “appears to be only a curtsy to the political corrections the authoritarians otherwise abhor”.

The rise of illiberal regime constitutes a fundamental weakness in democratic institutions, beyond the political domain. Although the existence of the EU makes the authoritarianism milder as Kelemen (2020) refers, the Orbán’s illiberal attacks jeopardize the existence of liberal democracy in the EU. Therefore, the EU should adopt more systemic actions to discourage the country. We should not forget the fact that: Where liberal democracy and the rule of law cease to function, there Europe ends (Müller, 2013, p.149).

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