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Council of Europe meets democratic backsliding

- Explaining Council of Europe's response to the democratic crisis in Hungary

Master's thesis in Master i statsvitenskap

Supervisor: Pieter de Wilde

May 2022

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Abstract in Norwegian:

Den demokratiske utviklingen i Ungarn har utfordret sentrale aspekter ved demokrati, menneskerettigheter og rettsstat, som er alle verdier som Europarådet har som hovedmandat å beskytte. Likevel har litteraturen om det multilaterale arbeidet med å bekjempe utviklingen i Ungarn stort sett fokusert på EU eller konkludert med at Europarådets arbeid har feilet. I et forsøk på å forstå motsetningen mellom Europarådets mandat og de tilsynelatende svake resultatene foreslår jeg tre teoretiske modeller som fokuserer på ulike analysenivåer, ulike aktører og ulike typer årsakssammenhenger.

Den første modellen fokuserer på Europarådets virkemidler og de mange måtene de kan omgås på av en stat som ikke ønsker å innfinne seg. Den andre modellen fokuserer på de rasjonelle kalkuleringene til Europarådets medlemstater som de fleste også er EU medlemmer og som av ulike årsaker kan ha valgt i å prioritere EU isteden. Den tredje modellen utforsker mulighetene for at enkeltstater kan ha forsøkt å undergrave Europarådets arbeid fra innsiden eller at medlemstatene som helhet ikke har gitt Europarådet den finansielle og økonomiske støtten som organisasjonen trengte for å lykkes.

For å finne ut om de tre modellene passer med forståelsen og erfaringene til de som har jobbet tett på temaet har jeg gjennomført seks ekspertintervjuer med sju individer som har fulgt ulike deler av Europarådet over tid. Materialet fra intervjuene indikerer at alle tre modellene kan gi nyttig innsikt for å forstå Europarådets respons. I konklusjonen argumenterer jeg likevel for at den tredje modellen kanskje er den mest utslagsgivende. Europarådets virkemidler er i stor grad avhengig av medlemsstatenes støtte for å fungere optimalt, samtidig som en nedprioritering av Europarådet over tid kan ha bidratt til at det ble rasjonelt for medlemsstatene å prioritere EU i det multilaterale arbeidet for å bekjempe den politiske utviklingen i Ungarn.

Abstract in English:

Democratic backsliding in Hungary has challenged core principles of democracy, human rights, and rule of law, which are all values that the Council of Europe (CoE) was deliberately set up to protect. Despite this, the literature on the multilateral work to combat democratic backsliding has either focused on the EU or it has concluded that CoE has failed to produce a strong and timely response. Seeking to explore this apparent puzzle, I propose three theoretical models that could explain CoE's seeming diminished role and lack of achievements. The models focus on different actors, different casual relationships, and different levels of analysis.

The first model suggests that CoE's tools were not strong enough to meet the challenge, as there are many ways in which they can be circumvented by an unwilling state. The second model suggests that rational member states, most of whom are also part of the EU, might have prioritized the EU in their response to democratic backsliding. The third model investigates the possibility that specific member states might have worked to obstruct CoE's work from the inside or that member states as a collective might have been unwilling to provide CoE with the political and financial support it needed to succeed.

To find out whether the three proposed models resonate with the perception and experiences of those working with the topic, I have conducted six expert interviews with seven individuals that have followed the response of different branches of CoE over time. The interviews seem to indicate that all three model can provide useful insight to help us understand CoE's response to democratic backsliding in Hungary. However, in the conclusion I argue that the last model might be the most decisive. Indeed, lacking member state support for CoE over time might have negatively impacted the effectiveness of CoE's tools and might also have made it more tempting to prioritize the EU instead.

Foreword:

This thesis has taken quite some time and sacrifices in the making, so there are thus many persons that I would like to thank.

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Content

- List of Abbreviations used more than once 6
- Introduction 8
 - On the concept of democratic backsliding..... 10
 - On the Hungarian experience 14
 - On the Council of Europe – its tools and structure 16
- Theoretical framework 21
 - I. The organizational tools model..... 23
 - On CoE’s political tools 24
 - On CoE’s judicial tools 28
 - On CoE’s tools and credible commitments 30
 - II - The rational principals model..... 31
 - On principal agent and regime complexes 32
 - On the relationship between CoE and the EU 33
 - On agency slack and other assigned tasks 35
 - III - The principals’ politics model..... 41
 - On the role of authoritarian and illiberal member states 41
 - On principals and their willingness to cooperate..... 45
 - On the impacts of changing norms 48
- Method 50
 - On expert interviews as a research method 50
 - My interviewees 52
 - Preparing for and experiences from the interviews 54
 - On the role of my previous experiences 56
- The interviews 58
 - I - The organizational tools model..... 58
 - On CoE’s Political tools 58
 - On CoE’s judicial tools 61
 - On democratic backsliding as a unique threat..... 63
 - II The rational principals model..... 65
 - On the different strengths of CoE and the EU..... 66
 - On the cooperation between CoE and the EU 67
 - On agency slack and alternative tasks for CoE 69
 - III The principals’ politics model..... 72
 - On the role of authoritarian member states 72
 - On principals’ willingness to provide political support..... 75

| | |
|--|----|
| On the consequences of the lacking support | 77 |
| Discussion | 80 |
| Sources | 86 |
| Appendix | 97 |
| Information on the interviewees and the interviews..... | 97 |
| Attachment: Global overview and monitoring backlog of Congress | 99 |

List of Abbreviations used more than once

CEE – Central Eastern Europe

CoE – Council of Europe

CM – Committee of Ministers

CM-DH – Committee of Ministers meetings dedicated to discussing the progress in implementation of the judgements of the European Court of Human Rights.

ECHR – the European Convention on Human Rights

ECJ - the European Court of Justice

ECtHR – the European Court of Human Rights

EPP – the European Peoples Party (The conservative party group in the EU).

EU – the European Union

IC – International Court

IO – International Organization

KS - the Norwegian Association of Local and Regional Authorities

NATO – North Atlantic Treaty Organization

NGO - Non-governmental organization

OAS – the Organization of the American States

OSCE - the Organization for Security and Co-operation in Europe

PA – Principal- Agent

PACE - the Parliamentary Assembly

SG – the Secretary General

VC – the Venice Commission, officially known as the European Commission for Democracy through Law

In addition, these words refer to the following:

The Assembly - the Parliamentary Assembly

The Charter - The European Charter of Local Self-Government

The Congress - The Congress of Local and Regional Authorities

The Convention – The European Convention on Human Rights

The Commissioner - The European Commissioner of Human Rights

The Court – The European Court of Human Rights

Introduction

For a long time, Hungary was perceived as sunshine story and poster child among the many former soviet satellite states that gained their independence in the late 1980s and early 1990s. Hungary was hailed for its rapid and clean democratization following the 1989 round table discussions, which culminated in the parliamentary elections of March 1990. The same year, Hungary became the first country in Central Eastern Europe (CEE) to join the ranks of members at the Council of Europe (CoE). Hungary also soon applied for membership in the European Union (EU), which it gained during the first CEE accession round in 2004. At the time, Hungary was perceived as a fully consolidated democracy that would remain so perceivably forever. The general atmosphere was still marked by the “end of history” euphoria of the 1990s, and democratization was largely seen as a one-way road where a U-turn back to autocracy would be a virtual impossibility (Foa and Mounk 2017). Yet this blind faith in democracy’s irreversibility soon faltered after the nationalist-conservative coalition led by the Fidesz party gained a two-third majority in the 2010 parliamentary elections. Soon thereafter, the new government embarked on a process of constitutional and legal reforms to remake the entire political system. The constitutional court was stripped of its prerogatives, whereas the bureaucracy, non-governmental organizations (NGOs), the independent media and even the integrity of the electoral system came under increasing political pressure (Kornai 2015, Bard and Pech 2019). These tendencies accelerated after the government’s reelections in 2014 and 2018. In 2020, Freedom House asserted that Hungary was no longer a democracy, but rather a transitional or hybrid regime (Csaky 2020).

During the fall of 2019, I was an intern at The Norwegian delegation to CoE. While there, I was surprised at how little attention developments in Hungary seemingly received from both member states and the organization itself, despite how it challenged the core principles of democracy, rule of law and human rights that CoE was deliberately set up to protect. Until recently, there has also been surprisingly little public or scholarly attention to CoE’s reaction to this threat¹. Instead, both experts, academics, and journalists have had their eyes firmly fixed on the EU, with the implicit assumption that this is the only international actor capable

¹ During the period when I’ve been writing this thesis, there has been some publications on the matter. This includes a 2021 special edition in the *European Convention on Human Rights Law Review*. See Çalı, B. and E. Demir-Gürsel (2021). "The Council of Europe’s Responses to the Decay of the Rule of Law and Human Rights Protections: A Comparative Appraisal." *European Convention on Human Rights Law Review* 2(2): 165-179.

of saving Hungarian democracy in its time of need. This lack of attention is vexing, as it prompts the question of whether anyone expected CoE to do anything about this type of threat to democracy in the first place. Though this type of gradual and structural threat to democracy has become increasingly emphasized in strategic documents, conferences and thematic work², it has not caused any large-scale organizational changes or fundamental organizational debates. The literature published on the matter has also tended to conclude that CoE has failed to produce a strong, timely and coordinated response (Çalı and Demir-Gürsel 2021). This gives reason to worry, as it has become clear that Hungary is part of larger trend of deteriorating democratic quality. This trend affects a large range of CoE's member states, many of whom are following the same path and tactics used by the Hungarian government a few years earlier. What the CoE does in the face of Hungary's departure from liberal democracy is thus of a larger importance than the case itself. It is revealing of CoE's capacity to sanction or halt what some perceive to be the defining threat to democracy of this century. This master thesis seeks to answer the following questions: **What could explain CoE's diminished role and lack of achievements with regards to countering democratic backsliding in Hungary?**

In answering this question, I will restrict myself to the period 2010 - 2020, which is the decade it took for Hungary to depart from the ranks of democracies according to Freedom House (Csaky 2020). With basis in varied literatures on international organizations (IOs), international law, principal agent and democratic backsliding, I suggest three theoretical models that could explain CoE's lack of strong achievements. The first model is termed the **organizational tools model**. Its main argument is that CoE's judicial and political tools are not strong enough to deal with a threat such as democratic backsliding. The second model is termed **the rational principals model**. It builds on the premise that rational member states, most of whom are also part of the EU, use the EU as their primary tool to fight democratic backsliding. The model suggests different potential explanations as for why this is the case.

² See for instance the then Secretary General Thorbjørn Jagland's annual reports from 2017 and 2018, which focused on the threat of populism and threats to democratic institutions. See: Jagland, T. (2018). State of democracy, human rights and the rule of law - Role of institutions - Threats to institutions. Report by the Secretary General Thorbjørn Jagland. Strasbourg, Council of Europe.

and: Jagland, T. (2017). State of democracy, human rights and rule of law. Populism - How strong are Europe's checks and balances? Report by the Secretary General Thorbjørn Jagland. Strasbourg, Council of Europe.

The focus on member states and their actions is also present in the third model, which has been termed **the principals' politics model**. Yet whereas the rational principals model regards states as a largely rational and unitary group, the principals' politics model opens up for the possibility that some member states may have worked to weaken CoE from the inside or that member states as a collective may have failed to provide sufficient funding and political backing for CoE to succeed in its mission. These three models need not be mutually exclusive, as they may be complementary with varying degrees of explanatory powers. However, they do rely on different conceptions of the problem at hand, who or what are the important actors or constraining structures, and what could potentially be done to improve the situation. Which account wins the general discourse thus matters both for how we perceive and judge CoE's response, but also for whether there is perceivably anything that could or should be done differently and by whom.

To find out whether any of the three proposed models resonate with the perception and experiences of those working with this topic, I have conducted six expert interviews with seven individuals that have followed the response of different branches of CoE over the period 2010 – 2020. The thesis is structured in the following way. I will start by exploring democratic backsliding as a phenomenon and briefly describe how it has occurred in Hungary, before providing an overview of CoE and its main organs. Then, I will elaborate on the overarching theoretical framework and the three theoretical models, followed up the methodology section where I will discuss methodological choices, introduce my seven interviewees, and elaborate on the interview situations and their potential impacts. Then, I will explore how the findings in the interviews fit with the proposed theoretical models. In the conclusion, I argue that one of them might have a larger explanatory power than the others, and why.

On the concept of democratic backsliding

Hungary's departure from democracy has been both multifaceted, complex and in many ways contrary to the general expectations at the time. Nonetheless, it appears today that Hungary's experience in many ways fits within a broader global trend of declining democratic quality that has been underway since the mid-2000s³. The current democratic setback affects both old

³ Freedom House already in their report from 2007 started reporting on "the emergence of a series of worrisome trends". See Arch Puddington, A. P., Camille Eiss, and Tyler Roylance (2007). "Freedom in the world

democracies, newer democracies, so-called hybrid regimes and those that were already quite authoritarian (Diamond 2015). The nature and trajectory of the democratic decline varies, with some states undergoing outright reversions to autocracy, whereas others are experiencing declining scores of democratic quality, democratic participation, or supports of democracy, while still remaining firmly democratic. Yet the overall mixture of democratic decline is changing, as certain types of democratic setbacks are becoming more prevalent (Bermeo 2016). In particular, there is a general agreement that democratic setback characterized by a sophisticated use of juridical tools and a democratic mandate to curtail democracy has been on the rise in recent years. In the European context, Hungary has become a poster child of this phenomenon, and much of the literature is indeed based on the Hungarian experience. However, the phenomenon has much longer historical precedence⁴, and it is evident in a range of countries on different continents⁵.

Different concepts are being used to describe this phenomenon, including but not limited to abusive constitutionalism (Landau 2013), democratic backsliding and executive aggrandizement (Bermeo 2016), democratic deconsolidation (Foa and Mounk 2017), autocratic legalism (Scheppele 2018), and constitutional retrogression (Huq and Ginsburg 2018). The choice of concept is not without consequences, as the setback tends to affect different parts and pillars of democracy simultaneously. Different concepts focus on different aspects of democracy, thus guiding the researcher to look for answers and evidence of setbacks in particular places and not in others. Following an overview of the research field by Daly (2019), a distinction can be made between concepts that focus mainly on the “structure” of democracy and those that focus on the “substance”. In this context, democratic structure refers to more tangible democratic institutions such as courts, human rights commissions, political parties, media and NGOs. Substance refers to more loosely defined and qualitative aspects such as norms of democratic governance, the quality of deliberation, faith in

2007. The Annual Survey of Political Rights & Civil Liberties." from https://freedomhouse.org/sites/default/files/2020-02/Freedom_in_the_World_2007_complete_book.pdf.

⁴ Those familiar with Roman history will for example recognize many of the features of the phenomenon from the period leading up to the fall of the republic. See Watts, E. J. (2018). Mortal Republic: How Rome Fell into Tyranny. New York, Basic Books.

⁵ See for example Turkey: Çınar, M. (2018). From moderation to de-moderation: Democratic backsliding of the AKP in Turkey. The politics of Islamism. J. Esposito and L. G. Zubaidah Rahim, N. Cham, Palgrave Macmillan: 127-157.

Paraguay and Venezuela: Zagorski, P. W. (2003). "Democratic breakdown in Paraguay and Venezuela: the shape of things to come for Latin America?" Armed Forces & Society **30**(1): 87-116.

democracy as a system, and the willingness of political actors to play by the rules of the game and to act in the public interest.

In this thesis, I use the concept of democratic backsliding as an umbrella term for concepts that focus primarily on institutions and structure-related aspects. Notwithstanding that the current democratic malaise in Hungary is a much broader and multifaceted phenomenon⁶, I have chosen this focus because much of CoE's work is geared towards protecting and monitoring the functioning of democratic institutions. The importance of protecting effective, transparent, accountable and responsive institutions was also particularly highlighted by member states in the Warsaw declaration from 2005, which provided guidelines for the organization's future work (CoE 2005). This is thus an area where we could have expected CoE to be particularly active, and the lack of a strong and visible impact is thus all the more surprising.

Following the influential article by Bermeo (2016), democratic backsliding is as a process where elected leaders undertake a series of institutional changes that gradually undermines checks on executive power and steadily deteriorates the opposition forces' abilities to challenge the incumbent executive. These institutional changes are either put to some sort of vote or legally decreed by a freely elected official and can thus easily be framed as resulting from a democratic mandate (Mounk 2018). The process is both complex and multifaceted, progressing in an incremental and cumulative manner. Viewed separately, each proposed reform or policy might appear inoffensive or even defensible, and it is only when added together in an interactive process that the true consequence of their reach is revealed. It thus becomes difficult to identify a clear tipping point where the existing regime ends and a new one begins, especially *in medias res* as the history is lived (Scheppelle 2018). The process is therefore often compared to a frog placed in a pot of slowly boiling water, which is a useful analogy for how the population might become gradually paralyzed and unable to perceive the true extent of danger until the situation has developed beyond redress (Huq and Ginsburg 2018). Even if some might be clear-sighted enough to see where the country is headed, the slowness of the slide also makes it harder for opposition forces to act decisively. In the words of Bermeo, the incremental nature of backsliding tends to mean that opposition forces lack

⁶ See for example Greskovits, B. (2015). "The Hollowing and Backsliding of Democracy in East Central Europe." *Global Policy* 6(S1): 28-37.

both “the bright spark that ignites an effective call to action and the opposition and movement leaders who can voice the clarion call” (Bermeo 2016, p. 14).

Despite being a gradual and multifaceted, democratic backsliding should not be confused with an impersonal general decline in democratic institutional quality, as intended by concepts such as constitutional rot or political decay⁷. As Sadurski writes with regards to Poland, the process is colored by both “energy, restlessness, zeal and purposefulness” (Sadurski 2018, p. 16). It involves elected leaders playing so-called hard ball politics, where legal loopholes and inconsistencies are deliberately used to the leaders’ own advantage, but without necessarily crossing the line into illegality (Levitsky and Ziblatt 2018).⁸ Central in this regard is how both judicial tools and a democratic mandate are used in a strategic and sophisticated manner by the leadership, even though the destruction of both democracy and the existing rule-based order appears to be their ultimate goal.

Backsliding is by many seen to be intrinsically linked to populism, in that populist rhetoric is used to ensure that all political questions are depicted as a Manichean zero-sum game where you are either for the nation or against it, thus making it both more personally costly and difficult to challenge the government (Mounk 2018, Sadurski 2018). The message of what constitutes a true democracy is deliberately changed, as liberal tenets such as the rights of minorities and the rule of law are sacrificed on the altar of the general “will of the majority”. A language of democracy and constitutionalism is thus kept on and deliberately fanned, at the same time as the actual liberal commitments that gave meaning to those words are dismantled (Scheppele 2018). This is very much in evidence in the way backsliding governments deal with democratic institutions such as courts, human rights commissions, the media, opposition parties, or the constitution. A central goal for a government engaged in backsliding is to monopolize and protect its own power into the future, and these institutions are important blockers in this regard (Levitsky and Ziblatt 2018). Despite being key targets for the government, these institutions are often not completely eradicated. On the surface, the situation might thus appear unchanged, with the same institutions, the same ceremonies, and

⁷ See for example Fukuyama, F. (2014). Political order and political decay. London, PROFILE BOOKS LTD.
, Balkin, J. M. (2017). "Constitutional crisis and constitutional rot." Maryland Law Review 77: 14 - 147.

⁸ This is true at least in the beginning. Yet having played hardball politics for a while, leaders often gradually resort to authoritarian softball strategies. See Scheppele, K. L. (2018). "Autocratic Legalism." The University of Chicago Law Review 85(2): 545-584.

an overall appearance of rights protection. Yet, as the integrity and independence of these crucial checks and balances are coming under attack, they gradually become but empty shells of their prior liberal states. Worst still, they may gradually be weaponized by the executive, which can strategically use them to strengthen its own grip on power and to kill off any nascent opposition or critical views that might develop (Scheppelle 2018).

On the Hungarian experience

In the early 2000s, Hungary was generally perceived as a sunshine story in the CEE region. However, problems had been building for some time, with economic difficulties (Martin 2017), political and party polarization (Enyedi 2016), a growing radicalization of subgroups of the population (Murer 2015), and growing discontent with the societal changes after the democratic transition and the EU accession, which many felt did not live up to what had been promised (Ágh 2013). The year 2010 nevertheless marked a clear rupture. That year, the nationalist-conservative coalition led by Fidesz won the parliamentary elections with 53 percent of the votes, which due to the design of the electoral system corresponded to over two thirds of the seats in parliament (Bard and Pech 2019, p. 6). Soon after, the government led by prime minister Victor Orbán⁹ embarked on program of reforms to remake the entire political system. Claiming to represent “the will of the people”, they rushed through legal changes that centralized and institutionalized their own power while systematically harassing and curtailing all kinds of possible opposition, be it from the parliament, the judiciary, the media, independent watch dog institutions, or NGOs.

The government’s first target was the Fundamental Law, Hungary’s constitution. The two third majority in parliament was used to lower the requirements needed to make amendments to the constitution, something which originally had required a four-fifth majority. Subsequent constitutional changes were then rushed through parliament at high speed¹⁰, while the views

⁹ This government was actually the second Orbán government, as Orbán was also prime minister between 1998 and 2002. According to Enyedi (2016), it was the experience of narrowly losing the 2002 parliamentary elections which first set Orbán and Fidesz on a new and more confrontational path where their goal became to consolidate and secure their power for the long term. See Enyedi, Z. (2016). "Populist polarization and party system institutionalization: The role of party politics in de-democratization." Problems of Post-communism 63(4): 210-220.

¹⁰ Members of parliament were given only a week to submit their views on the new draft constitution of March 2011, whereas only 9 days were set aside in parliament to discuss the large changes in the new constitutional text. See Bard, P. and L. Pech (2019). "How to Build and Consolidate a Partly Free Pseudo Democracy by Constitutional Means in Three Steps: The ‘Hungarian Model’." Reconnect Working paper(No 4.): 1 - 29.

of the opposition and the civil society were completely disregarded (Stanley 2019). Many of the amendments constitutionalized policies within fields such as culture, religion and the economy, thus inhibiting the opposition's ability to challenge these policies in the future and in many ways entrenching the government's ideological preference into the constitution (Stanley 2019). Further reducing any future government's possibility of reversing their policies, the government viciously passed so-called "cardinal laws", which are acts of parliament requiring two-thirds majority for adaptation and modification. The constitution prescribed what issue areas were to be regulated by cardinal laws, and the constitutional changes and the cardinal thus in many ways functioned in tandem (Kornai 2015). Controlling and manipulating both, the government was able to construct a constitutional order "of the ruling party, by the ruling party, and for the ruling party" (Bard and Pech 2019)

As they would have done in any democracy with functioning checks and balances, these changes did meet resistance from many holds. In the next step, the ruling party therefore set forth to dismantle or capture any institution that restrained the executive. An important first victim was the constitutional court, as the government passed cardinal laws and reforms aimed at restructuring its composition and functioning. Some of these provisions appeared to be directly designed to force out the then-President of the Supreme Court András Baka, who had been a vocal critic of the court reforms¹¹ (Bard and Pech 2019). Yet also the court system more in general as well as other institutions such as public and private media, the office of the prosecutor, independent monitoring agencies, tax authorities, and the electoral commission were either attacked or gradually packed with loyalists (Stanley 2019). Steadily able to exert more and more control over these key institutions, the government then set forth on strengthening them. Strategically using these institutions both as shields and as swords, they started to go after other opposing voices in society. By attacking those with oppositional views in the university sector, in NGOs, at the local or regional governance level, or among the opposition political parties, the Fidesz government further entrenched their control of the entire society (Bard and Pech 2019).

¹¹ Baka later lodged his case at the Court of Human Rights.

On the Council of Europe – its tools and structure

There is disagreement as to exactly when Hungary passed from being democratic to becoming something else¹², yet it is now become quite common to suggest that Hungary has now left the ranks of functioning democracies. Among the often-cited democracy indexes, neither Varieties of Democracy (V-dem), Freedom House, nor the Economist Intelligence Unit (EUI) categorized Hungary as a full democracy in 2020 (Csaky 2020, Lührmann, Maerz et al. 2020, EUI 2021)¹³. Since winning office in 2010, the Fidesz government's policies and behavior have breached central tenants of liberal democracy, which CoE was deliberately set up to protect. Established in 1949 by ten Western European democracies¹⁴, CoE was originally created with the goal to promote peace, greater unity and safeguard common values such as human rights and democracy on the European continent (Greer, Gerards et al. 2018). Since then, it has markedly grown in both the number of member states and the breadth of issue areas it covers. It now houses 46 (until recently 47¹⁵) member states and it oversees a dense network of conventions and treaties covering a vast variety of topics¹⁶. CoE's organizational structure is quite complicated, as its main chambers were deliberately designed to function as checks and balances against each other's powers. In addition, a range of new organs, expert committees and conventions have been added over the years. Not all of these different organs are relevant for this thesis, but some of those who are will be explored below.

The Committee of Ministers (CM)

CM is CoE's main policy-making and executive body. Officially, it consists of member states' foreign ministers, yet in the day-to-day matters it is presided over by their diplomatic

¹² Kornai already in 2015 argued that Hungary under Orbán had moved from the subset of democracies into the subset of autocracies. See Kornai, J. (2015). "Hungary's U-Turn: Retreating from Democracy." Journal of Democracy 26(3): 14.

¹³ V-dem classified Hungary as "an electoral authoritarian regime", Freedom House used the category "transitional/hybrid regime" whereas EUI classified Hungary as a "flawed democracy".

¹⁴ The ten signatory founding members included Belgium, France, Luxembourg, the Netherlands, the United Kingdom, Ireland, Italy, Denmark, Norway and Sweden. Shortly after, Greece (1949), Turkey (1950), Germany (1950), Iceland (1950), and Austria (1956) were also welcomed as members of CoE.

¹⁵ As Russia recently was expelled from CoE due to the war in Ukraine, CoE now has 46 members. However, as this thesis explores CoE's work in the period 2010 – 2020, I will from now on use the number 47 when relevant.

¹⁶ CoE' conventions and treaties cover a wide area of different topics, ranging from cinematographic co-production, the rights of animals kept for farming purposes, cybercrimes, and cooperation on tax matters. A full list can be found of CoE's webpage: CoE (2022). "Complete list of the Council of Europe's treaties." Retrieved 19.04.2022, from <https://www.coe.int/en/web/conventions/full-list>.

representatives (ambassadors) placed in Strasbourg, CoE's permanent residency. CM's responsibilities range from supervising the implementation of the organization's political work and mandate, admitting members and, if necessary, suspending or expelling members, discussing and drafting treaties to address pan-European challenges and crisis, as well as monitoring states' compliance with membership and treaty obligations. It also supervises the execution of the judgements of the European Court of Human Rights (ECtHR), decides on CoE's annual program of activities, and adopts the annual budget put forth by the Secretary General (SG) (Greer, Gerards et al. 2018).

The Parliamentary Assembly (PACE)

PACE (also referred to as the Assembly) is CoE's parliamentary branch consisting of 324 representatives and the same number of substitutes appointed or elected by national parliaments. The number of representatives from each member state is roughly proportionate to budgetary contributions and population size¹⁷, and each delegation is again required to roughly reflect the state of each national parliament in terms of party affiliations (Greer, Gerards et al. 2018). PACE convenes four times a year for a week-long session in Strasbourg. Debates on emerging European issues are an important component of these sessions, and representatives are divided into political groups that structure the debates. PACE also elects the SG, the European Commissioner for Human Rights as well as the judges to the ECtHR. On its own initiative, PACE also sends out delegations to monitor elections and the fulfillment of membership and treaty obligations. Where deemed necessary, it can withdraw the accreditation of national delegations and, as a last resort, recommend the suspension of a given state to the CM¹⁸.

The Secretary General (SG) and the Secretariat

With a staff of over 2 000 people, the secretariat is divided into separate bureaucracies that service CoE's different organs. The secretariat is led by the SG, who is the official spoke

¹⁷ The largest delegations have 18 delegates, which is the case for France, Germany, Italy, the United Kingdom, and Russia (until its recent expulsion). See Greer, S., et al. (2018). *Human rights in the Council of Europe and the European Union : achievements, trends and challenges*. Cambridge, Cambridge University Press.

¹⁸ In 2015, PACE voted to withhold the voting rights of the Russian delegation due to its invasion of Crimea. This caused an organizational crisis as it was not followed up by CM and Russia stopped paying its membership fee. See Dzehtsiarou, K. and D. Coffey (2019). "Suspension and expulsion of members of the Council of Europe: Difficult decisions in troubled times." *International and Comparative Law Quarterly* 68: 443-476.

person and the political head of the organization. During most of the period reviewed in this thesis, the SG has been Thorbjørn Jagland.¹⁹

The European Court of Human Rights (the ECtHR, hereafter also the Court)

The European Convention on Human Rights (ECHR, hereafter also the Convention) was adopted in 1950 and entered into force in 1953. Six years later, the ECtHR was set up and charged with authoritatively determining whether a state had violated the provisions of ECHR. Despite having little impact or influence until the mid-1970s, the Court and the Convention are now considered to be among CoE's most crucial achievements (Greer, Gerards et al. 2018). The Court consists of one judge from each member state elected for a non-renewable term of nine years. Cases can be brought either by individuals, organizations, or other affected states²⁰, but only after all domestic remedies have been exhausted.

The European Commissioner for Human Rights (the Commissioner)

The post of Commissioner was established in 1999 and functions as a form of international ombudsman elected for six years terms²¹. He or she thus has a more political role than the SG, and is quite free to structure the position as she or he sees fit (Greer, Gerards et al. 2018).

The Congress of Local and Regional Authorities (The Congress)

The Congress dates itself back to the 1950s, with the first session of the Conference of Local Authorities of Europe being held in 1957. It gained its current form in 1994, and has two chambers, one for local authorities and one for regions. The Congress, which has 324 representatives and the same number of substitute members, meets twice a year for one-week sessions to discuss common challenges (Congress 2022). The Congress also oversees the implementation of the European Charter of Local Self-Government (hereafter the Charter), which lays down standards for protecting the autonomy and rights of local and regional authorities.

¹⁹ Jagland was the SG between 2009 and 2019, serving for two periods. From autumn 2019, the post has been filled by Marija Pejčinović Burić from Croatia.

²⁰ By far, most cases are petitioned by individuals. Yet there has also been a rise in intra-state cases, most of which are related to territorial disputes between member states. These cases constitute a particular type of challenge for the court. See CoE (2021). Inter-state cases under the European Convention on human rights - experiences and current challenges., Berlin, Council of Europe.

²¹ From in 2018, the commissioner post has been filled by Dunja Mijatović. Other commissioner for the period under review are Nils Muižnieks (2012 – 2018) and Thomas Hammarberg (2006 – 2012).

The Commission for Democracy through Law (The Venice Commission, VC)

VC was created in 1990 with the aim to advise the newly established democracies on constitutional and institutional matters. Since then, it has grown both in its scope of work, its number of member states, and in its perceived authority. VC consists of non-remunerated experts appointed by states but serving in an individual capacity²². Having opened up to signatories from states outside of CoE as well as other IOs, it now has 62 members which includes 60 states from across the world, the EU and the Organization for Security and Co-operation in Europe (OSCE) (Cameron 2020). Most of VC's work consists of writing opinions in response to states' requests for advice on proposed judicial or constitutional amendments. All types of national state institutions can ask for an opinion, but requests can also come from other branches of CoE such as PACE, CM, or the SG.

Other expert, monitoring, and advisory bodies

CoE also oversees a dense network of different types of expert, monitoring, and advisory bodies. Many of them are tied to CoE's over 200 conventions and treaties, with a primary task to oversee their implementation. Others are freer in scope and structure, and instead give advice or monitor specific thematic areas. These different bodies differ widely in their scope, mandates, and working methods, yet a common trait is that they are often characterized by independence and expertise and that monitoring is often a core task (Wille 2011). For most of them, membership is not mandatory for CoE member states.

Hungary is a member of many of these expert bodies, many of whom work with issues related to norms and standards of democracy. A non-exhaustive list of relevant such bodies includes:

- The European Commission Against Racism and intolerance (ECRI)
- The Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC)
- Council of Europe European Commission for the efficiency of justice (CEPEJ)
- Consultative Council of European Judges (CCJE)

²² Many of them are well-known figures in their home countries: some are serving or past members of supreme courts, others are former prime ministers or ministers of justice, ombudsmen or professors in constitutional or administrative law. Cameron, I. T. (2020). "The Role of the Venice Commission in Strengthening the Rule of Law." Rule of Law in the EU: 30 Years After the Fall of the Berlin Wall (Forthcoming).

- Group of states against corruption (GRECO)

Theoretical framework

Theoretically, an underlying assumption of this thesis is that what an analyst sees and judges as important is affected not only by the strength of the evidence, but also by the analyst's theoretical predispositions or what Allison (1969) termed "conceptual lenses". Different theoretical traditions are attached to specific ontological, epistemological, and methodological assumptions about the world and how it functions, sensitizing the researcher the frame a puzzle in a specific way, to examine a problem using specific types of categories and to look for evidence in specific places (Allison 1969). This tells as much about what an analyst finds as what he or she doesn't, a point that is often exemplified with a Buddhist parable about several blind men that encounters an elephant for the first time and seeks to understand its true nature (Puchala 1971). Approaching the animal, each blind man touches only one part of the larger animal, and falsely concludes that the rest must be similar. As a result, no one arrives at a very accurate description, but all gain enough experience to disbelieve the others. A debate about the nature of the elephant is thus kept alive, but all participants end up attacking the others and the actual connection to the empirical elephant is lost.

The researcher's conceptual and theoretical starting points thus have consequences both for the eventual findings and for their framing, with real world consequences in terms of how a problem is understood, who or what are being blamed, and which solutions are being proposed. The knowledge produced is thus often not unrelated to larger patterns of interests and power dynamics within society, a point that has also been stressed by researchers and writers (Klein 2007, Oreskes and Conway 2010). The importance of conceptual lenses asserts to the fact that the world can be perceived in different and contrasting ways (Moses and Knutsen 2012). These different perceptions might appear both contradictory and unrelated, yet as was the case with the blind men and the elephant, they need not be conflicting when the phenomenon is understood as a whole. Indeed, different perspectives can often be complementary, yet with different degrees of explanatory power. This is also stressed by Allison (1969) in his famous account of the Cuban missile crisis in 1962. Allison proposes three theoretical models with accompanying explanatory accounts to explain the outcome of the crisis. Of these models, one focuses on how organizational branches simply follow their standard operating procedures (the organizational process model), another model focuses on the rational calculations of governments (the rational policy model), and the last model focuses on the practice of bargaining, thug of war and strategic alliances between individuals

with contrasting goals and priorities (the bureaucratic politics model)²³. They all draw the attention of the reader to different levels of analysis, different types of actors, and different types of causes, with the consequences that their account of the same event appear almost unrelated. Yet they all contribute to a more nuanced and comprehensive understanding of this key, historical juncture.

In this thesis, I will also use three theoretical models to examine a common topic, namely CoE's reaction to democratic backsliding in Hungary. My theoretical models are inspired by Allison's models, yet there are also important differences. Allison's models are geared towards explaining a specific event or crisis that lasts over a short period of time, whereas I am interested in a more long-term crisis management in an organization that has simultaneously also had to deal with a range of other crisis too. Also, even though two of Allison's models highlight how the state is not a unitary actor, this complexity is presumably much larger in CoE, an international organization (IO) with 47 members states and no vertical organizational leadership structure comparable to that of a state. In developing the models, I have also depended on a much broader range of literatures on topics such as IOs, international law, principal agent, and democratic backsliding. In addition, I have also relied on my own insights and experiences from being an intern at the Norwegian delegation to CoE and to some extent from my current position as a higher executive officer at PluriCourts²⁴, a research Centre of excellence based at the University of Oslo. These experiences have probably pushed me to look more closely at some aspects and potential explanatory factors and not at others. However, it has also given me the benefit of overview and an ability to fill in the dots. Arguably, this may have allowed me to place dispersed patterns and events in a broader and perhaps more cohesive context.

Following Allison's logic, I have termed my three models 1) the organizational tools model, 2) the rational principals model, and 3) the principals' politics model. The organizational tools model focuses on CoE's political and judicial tools and their inherent limitations when meeting a challenge such as democratic backsliding²⁵. Given these existing constraints, the

²³ In Allison's original text, the chronological order of these models is different. In this thesis, I have taken the liberty to change the for structural reasons.

²⁴ PluriCourts studies the legitimacy of international courts and tribunals (ICs) from legal, political science and philosophical perspectives. Some contributions from researchers at the Centre have been used in this thesis. However, note that I started in my current position in September 2021, so insights gained from this position has not impacted my early work and the early theory development.

²⁵ This is the model with the least similarity with Allison's equivalent model, which had a stronger focus on organizational response and standard operating procedures. However, the two models are similar in their focus on the existing organizational capabilities and in their tendency towards path dependency.

model suggests that there is little CoE actually *can* do when meeting a government that slyly uses legal loopholes and calls to a democratic mandate to justify its own power grab. The two other models are less deterministic in the sense that they investigate states as intentional actors, yet they also differ from each other in important ways. The rational principals model looks at member states as a largely rational and coherent entity that oversees several IOs with different strengths and mandates, among whom the EU is the most important. The model's main argument is that member states for various reasons may have chosen to empower the EU instead of CoE in their response to democratic backsliding. Less optimistically, the principals' politics model loosens up on assumptions of unity, goodwill and rationality, arguing that member states may not necessarily have behaved in ways that supported CoE's ability to succeed in its mission. The model investigates the possibilities that some states may have worked to obstruct CoE from the inside and that member states as collective may have been unwilling to provide CoE with the resources and support it needed to combat a threat such as democratic backsliding.

For the remaining part of the theory section, the theoretical foundation of these three models will be further explored.

I. The organizational tools model

The organizational tools model sheds light on the inherent constraints associated with CoE's organizational tools. Some of these constraints are relevant for other types of threats to democracy too, as they are linked to the limits of law and IO tools more in general. Yet arguably, some of them might be compounded by a threat such as democratic backsliding, which progresses gradually, is immersed in language of legality, and particularly targets the integrity of democratic institutions.

In the following paragraphs, I will explore these arguments further by elaborating on CoE's existing organizational tools and the many ways in which they can be circumvented by a government engaged in democratic backsliding. Following Muižnieks (2019), I distinguish between political and judicial tools where the latter category focus primarily on ECtHR²⁶. As

²⁶ This is not to disregard the large corpus of legally binding conventions and treaties overseen by CoE. However, most of them are lacking strong mechanisms to deal with non-compliance and have no authoritative, independent organ to decide controversies, and they thus differ from ECtHR in fundamental ways. These treaties and conventions and their corresponding expert organs will thus primarily be dealt with under CoE's

for the political tools, I have divided them into three subgroups with somewhat increasing severity: dialogue, naming and shaming activities, and sanctions²⁷. After having discussed limitations with the political and legal tools, I will link the discussion to the broader debate on credible commitments. In the literature, IO membership is often assumed to credibly lead to future compliance, as no state will wish to risk losing membership benefits once they are gained (von Borzyskowski and Vabulas 2019). Yet this argument crucially hinges on the IO's ability to sanction misbehavior, which as the next paragraphs show may not necessarily be the case.

On CoE's political tools

Dialogue

Constructed in the aftermath of the Second World War, CoE was in many ways built around a Kantian hope that dialogue and international cooperation among democratic societies would help prevent future blood baths (Kolb 2013). Fundamental in this respect was the belief in dialogue as a mean to create and uphold common values and shared world views²⁸. As a result, many of CoE's organs are structured around dialogue as a central activity and a goal in and off itself. Historically, dialogue conducted at CoE has been particularly influential during important historical junctures, with consequential debates on the future of Europe taking place as its premises in the 1950s and again before and after the collapse of the Soviet Union (Kolb 2013). Yet also during less "dramatic" historical periods, dialogue in CoE's various organs has been crucial for the diffusion of democratic norms, ideals, and values across the continent. However, the success of dialogue cannot be taken for granted, as it does not work when one

political tools. For an elaboration of this argument, see Wille, P. (2011). *The Council of Europe: A Champion in Monitoring Implementation of Human Rights Standards? Making Peoples Heard: Essays on Human Rights in Honour of Gudmundur Alfredsson*. Leiden, Martinus Nijhoff: 231 - 242.

²⁷However, A strict differentiation between them is somewhat artificial. For instance, dialogue may contain elements of shaming, as an offer of assistance through dialogue also implies acknowledging the existence of a problem or shortcoming. Similarly, 'dialogue' may be the working method of many of the monitoring bodies, whereas the end result will be a critical report or opinion. As for sanctions, even discussing their possible usage contains important elements of both dialogue and naming and shaming.

Muižnieks, N. (2019). The Council of Europe's Response to Recent Democratic Backsliding. *European Yearbook on Human Rights 2019*. P. Czech, L. Heschl, K. Lukas, M. Nowak and G. Oberleitner: 3 - 32. .

²⁸ In line with the broader literature on IOs, CoE was thus not only constructed and maintained to reduce transaction cost or achieve concrete policy missions, but also to serve broader ideational and ideological purposes. See Abbott, K. W. and D. Snidal (1998). "Why States Act through Formal International Organizations." *Journal of Conflict Resolution* **42**(1): 3-32.

of the parties is unwilling to engage in it sincerely. As an example, attempts at “socializing” Fidesz members of the EU parliament into more democratic ideas through the Christian democratic and conservative European People’s Party group (EPP), have proven largely futile (Margulies 2019). Moreover, it is not given that platforms for dialogue only work to the advantage of democratic ideals and ideas. Recently, some scholars have documented how illiberal or authoritarian actors have deliberately worked to hijack existing dialogue forums or epistemic communities by imposing their own ideas or simply by creating new ones to combat the existing ones (Morse and Keohane 2014, Walker 2016, Goetz 2020).

Naming and shaming strategies

When dialogue is not affecting states’ behavior in the wanted direction, CoE organs can resort to so-called “naming and shaming” activities (Hafner-Burton 2008). Such activities can take various forms, including releasing critical statements, publishing official declarations condemning a state’s actions or policies, or adopting monitoring reports that detail and expose the actions of the state. In the preceding paragraphs, I will retain a particular focus on monitoring, which a central tool for many CoE organs (Wille 2011). However, much of the arguments will also be relevant for the other above-mentioned activities. Overall, it is hoped that naming and shaming activities can contribute to increased awareness empowering networks working for change (Keck 1998), and make it more costly for the government to continue its policy (Barry, Chad Clay et al. 2013). Naming and shaming activities have proven useful on several occasions, yet there are also many ways in which they can be circumvented or politicized by an unwilling state.

As a first strategy, the government might seek to ride out the storm by dragging their feet and implementing only minor changes on a drip-by-drip basis. They may thus seek to drag out the process over time, knowing that the news value of abuses tends to be short-lived and that the process of conducting and adopting reports will often be time consuming. At PACE, it for instance commonly takes two years after a monitoring committee has been tasked with preparing a report until its adaptation in the Assembly (Donald and Speck 2021). As a second strategy, the government could decide to launch reforms that appears to follow general recommendations, while simultaneously and less openly enact other laws or policies that thwart their positive effects (Hafner-Burton 2008). This might allow the government to argue that it has responded satisfactorily to the complaint, while in reality buying it time to continue its agenda and abuses in other formats (Jenne and Mudde 2012).

The government might also decide to obstruct fact-finding and monitoring visits by refusing or delaying access for as long as possible, for instance by blaming a decision to be placed under various forms of enhanced monitoring procedures of being politicized or unjustly targeted (Soyaltin-Colella 2021). By using such arguments, Donald and Speck (2021) for instance argue that several member states have successfully managed to evade PACE's full monitoring procedure, which is used in situations deemed to be of particular concern. This includes Hungary, where the Assembly in 2013 voted against initiating the full monitoring procedure despite acknowledging the severe political situation in the country.

If unable to stop the monitoring from taking place, the government may attempt to change the way it is perceived by discrediting findings, disseminating their own competing versions of events, or deliberately sow doubt on the integrity of a particular committee.²⁹ They might also try to create an impression of CoE or one of its organs as a club of elites, perhaps using a populist or colonial frame to present themselves as victims. This strategy might serve several goals for the government, who can use it to weaken the authority of CoE for the future and to redirect domestic discontent towards CoE instead of themselves³⁰ (Soyaltin-Colella 2021). Whereas the above-mentioned strategies could be used in all types of member states, they are arguably particularly tempting for backsliding countries whose governments are masters of deception, hardball politics, and finding and using legal loopholes (Levitsky and Ziblatt 2018). Indeed, it was these types of tactics that fueled their way to power domestically, and they thus already know how to use them.

Sanctions

If the situation is dire enough and neither dialogue nor naming and shaming activities work, CoE might resort to sanctions. In contrast to the EU, CoE has no economic funds it can withhold, yet it does have other options at its disposal. According to article 8 in CoE's Statute, CM can decide to suspend or expel a member state based on its human rights record or its

²⁹These types of strategies have for instance been widely used by those opposing climate and environmental policies, see Oreskes, N. and E. M. Conway (2010). Merchant's of Doubt: How a Handful of Scientists Obscured the Truth on Issues Ranging from Tobacco Smoke to Global Warming. New York, Bloomsbury.

³⁰ Soyaltin-Colella argues that the Turkish government successfully used this strategy in response to PACE's decision to place Turkey under increased monitoring procedure in 2017. See Soyaltin-Colella, D. (2021). "(Un)Democratic change and use of social sanctions for domestic politics: Council of Europe monitoring in Turkey." International Political Science Review **42**(4): 484 - 500

failure to collaborate sincerely with CoE. PACE can also on its own initiative decide to withdraw the accreditation or other membership rights of national delegations such as for instance the right to vote³¹. In addition, the Court has its own infringement procedure based on ECHR's Article 46(4) which could culminate in the expulsion of a member state by CM (Dzehtsiarou and Coffey 2019). Yet except for the recent expulsion of Russia³² due the war in Ukraine and the almost-expulsion of Greece following its military coup in 1967³³, no member state has ever been expelled from CoE. There are some examples of CM or PACE withdrawing voting rights for shorter periods of time, but also this is quite uncommon³⁴. As for the infringement procedure, it was initiated for the first time³⁵ in 2017 in response to the case *Mammadov v Azerbaijan*, where Azerbaijan refused to liberate one of its key opposition politicians from jail. The process met with many administrative hurdles and interpretative difficulties that slowed the process, until Azerbaijan finally decided to comply by the requirements so that CM could officially close the case in 2020 (Collis 2021).

Complicated and demanding requirements, as well as a need for interpretation due to the lack of clear of guidelines, are probably important reasons as to why CoE has seen so few examples of expulsions or suspensions (Dzehtsiarou and Coffey 2019). Yet blaming the procedures alone would be too simple, as also other factors make them strategically challenging to use. Indeed, CoE's financial situation, the geopolitical importance of a particular member state, or overarching goals of keeping the continent together and continue dialogue, could make it difficult to obtain the needed votes to suspend or expel a member

³¹ This has sometimes created tensions between PACE and CM, see footnote 16.

³² More information on the expulsion process and Russia's response is available at CoE's webpage, see CoE (2022, 16.03.2022). "The Russian Federation is excluded from the Council of Europe." Retrieved 25.04.2022, from <https://www.coe.int/en/web/portal/-/the-russian-federation-is-excluded-from-the-council-of-europe>.

³³ In 1967, the legally elected government of Greece was overthrown in a state coup by the military junta. They officially withdrew from CoE only hours before the decision would have been made to exclude Greece from the organization. When democracy was restored in 1974, Greece resumed its membership. See CoE (2022). "About the Council of Europe - Overview." Retrieved 19.04.2022, from <https://www.coe.int/en/web/yerevan/the-coe/about-coe/overview>.

³⁴ One such instance occurred in 1981, when PACE withdrew the Turkish delegation's voting rights for three years following the military coup. See *ibid*.

³⁵ More recently, the procedure was launched for a second time, this time against Turkey for refusing to liberate the human rights activists and philanthropist Osman Kavala. See Mudge, R. (2022, 03.02.2022). "Osman Kavala case: Council of Europe launches proceedings against Turkey." *Deutsche Welle (DW)*. from <https://www.dw.com/en/osman-kavala-case-council-of-europe-launches-proceedings-against-turkey/a-60645377>.

state (Dzehtsiarou and Coffey 2019). Also, the fact that CM has not suspended members such as Turkey and Azerbaijan, and only recently done so with Russia, also makes it much less likely that it will do so with a country such as Hungary, where the human rights conditions after all are comparatively much better (Muižnieks 2019).

On CoE's judicial tools

Whereas political tools are sometimes snorted at as just “cheap talk” (Hafner-Burton 2008), expectations tend to be much higher with regards to judicial tools. At CoE, the ECtHR has a unique role and standing in this regard, as it has become not just a European, but indeed a global authority on questions related to human rights. Often celebrated as CoE's crown jewel, it has had a large impact on many national policies, laws and living conditions in the wider Europe (Føllesdal, Ulfstein et al. 2013). Notwithstanding its many major achievements, it ultimately relies on international law, which to a larger extent than what is often perceived is reliant on goodwill and cooperation from states themselves (Goldsmith and Posner 2007). Indeed, due to limits of the legal language and lawmakers' fallibility, a discrepancy can often develop between the law itself and the underlying norm it was meant to protect (Búzás 2018). Through what Búzás terms strategies of evasion, states may thus take advantage of legal loopholes and inconsistencies to undermine the underlying norm while at the same time keeping their hands clean in a legal sense. Whereas all states can use this strategy³⁶, it is arguably all the more likely for leaders of backsliding countries. They are used to constantly pushing the limits of what they are legally allowed to do, while loudly blaming either the adversary, the judge, or the rules themselves if they are criticized for their behavior. This has made democratic backsliding a particularly difficult challenge for the judiciary to tackle, as shown by the general experiences of both domestic and international courts (ICs) (Bugarcic 2019, Ginsburg 2019).

Some of these difficulties are procedural. By necessity of being a court, ECtHR can only deliver a judgment after a violation has occurred and other actors have brought a case to it. Its procedures further require that all domestic remedies have been exhausted prior to admittance. Adding to the delay is the Court's enormous backlog, which reached the record number of 151 600 pending cases in 2011 (Greer, Gerards et al. 2018, p. 35). Both the procedural requirements and the backlog risk contributing to a non-negligible time lag between when an

³⁶ Búzás for instance uses the example of French expulsion of Roma immigrants and Czech segregation of Roma school children.

event occurs and when the Court delivers its final judgment. This time lag and the Court's case-by-case enforcement might be particularly problematic when faced with democratic backsliding which progresses gradually and cumulatively (Blauberger and Kelemen 2017)³⁷. By the time the Court provides its judgment in an individual case, the process is likely to have developed further with other reforms and policies too. The Court thus risks always being one step behind, perhaps able to distinguish some of the local fires but unable to prevent the fire from spreading further.

Though also relevant for other ICs, these challenges are arguably particularly acute at ECtHR, which is more insulated from its mother IO than for instance the European Court of Justice (ECJ). At the EU level, the European Commission already in January 2012 launched an accelerated infringement procedure against Hungary based on three legal grounds, namely the independence of its national central bank, its judiciary, and the data protection supervisory authority (EU 2012, a). The Commission later brought the cases related to the two latter grounds to the ECJ, who gave its first judgment on the matter already in November 2012 (EU 2012, b). A similar fast-tracked and politically steered process would have been impossible for ECtHR, as neither it nor any other CoE organs can lodge cases on their own initiative. This means that ECtHR must wait for individuals to bring cases to it based on alleged violations of ECHR, which primarily guards the rights of individuals. As democratic backsliding especially in early phases tends to target institutions and their integrity, some parts of the process thus risks falling outside of the Court's jurisdiction. In other cases, it may imply that the Court's focus on individuals means that it has difficulties with taking account of the structural root causes that are underpinning particular reforms or policies (Kosař and Šípulová 2018).

The fact that that democratic backsliding particularly affects domestic institutions poses a further challenge for ECtHR, as many of these institutions are responsible for the interpretation and implementation of the Convention on a local level. Much of the day-to-day work with upholding the Convention is thus stored on those very same institutions that backsliding governments are so intent on destroying or high-jacking (Helfer 2020). When these institutions are either dismantled or weaponized for the governing party, it potentially has very dangerous consequences for the Court's influence and its impact domestically, but

³⁷ Blauberger and Kelemen discuss the challenges associated with a case-by-case enforcement in the context of the European Court of Justice's (ECJ) response to democratic backsliding.

also for its ability to actually perceive and understand the full scale of the backsliding process before it is arguably already too late.

Adding to the above-mentioned challenges is the crucial question of compliance. Indeed, ECtHR is struggling with a lack of full compliance with many of its judgments (de Londras and Dzehtsiarou 2017). Many of these cases are similar and repetitive, indicating that underlying structural causes of judgements are not properly dealt with. In response, the Court has developed a so-called pilot judgement procedure, which allows it to deal with groups of similar cases together and thus assist states in eliminating systemic problems (ECtHR 2011). Yet also for pilot judgments, many governments are dragging their feet. Hungary is a particularly troubling example in this regard, as it has failed to implement major pilot judgements related to its judicial system such as for instance its poor conditions of detention and excessive length of judicial proceedings (PACE 2020). Having foreseen that compliance might become a problem, the ECtHR system was deliberately designed so that it is CM that supervises the execution of the Court's judgments. As CM is a political organ, this allows for the usage of political pressure to expose and motivate unwilling states. Yet many of the judgments concerning Hungary have been discussed in CM over several years, without any apparent improvements³⁸. Ultimately, the effectiveness of the system crucially relies on that the affected member state actually *cares* about how it is perceived by others. When this condition is not present, the system struggles.

On CoE's tools and credible commitments

For a long time, organizational theorists have argued that membership in democracy oriented IOs such as CoE provides credible commitments ensuring democratic survival (von Borzyskowski and Vabulas 2019). Membership is argued to increase the cost of not complying by agreed upon laws and procedures, as no member will wish to relinquish the benefits of membership once it is gained (Ginsburg 2019). Central in this regard is the belief that CoE is able and willing to effectively punish deviant states. The above paragraphs

³⁸ For instance, with regards to the length of judicial proceedings, no concrete progress has been achieved concerning the structural problems, despite the topic having been examined since 2003. See p. 22 in PACE (2020, 15.07.2020). "The implementation of judgments of the European Court of Human Rights." Retrieved 30.04.2022, from <https://www.ecoi.net/en/file/local/2033883/document.pdf>.

provide troubling questions as to whether this is actually the case. During periods when democracy has been on the rise globally, CoE has played a central role helping states democratize, develop their human rights credentials, and anchoring democratic values (Kolb 2013). Encouraged by its own success, this has also tended to be periods when CoE has had the organizational energy and impetus to develop new political tools, judicial frameworks, or organizational branches to further its agenda (Çalı and Demir-Gürsel 2021). Still, the effectiveness of many of these new tools and frameworks rely on the assumption that states *want* to improve and protect their own democracies, which might not always be the case. The question thus becomes whether CoE is resilient enough to tackle the changing mood that has recently occurred on the international arena. As argued by Finnemore and Sikkink (1998), order and stability on the international arena is ensured by social norms sustained partly by habit and sense of appropriateness, but also by feelings of embarrassment, anxiety, guilt, and shame. When states are openly defying liberal values and the reflex to listen to international authorities is no longer there, the question is whether there is actually anything CoE *can* do to stop it and whether expecting it do so it indeed unjust.

II - The rational principals model

Yet blaming the existing tools for a suboptimal outcome is arguably overly deterministic. It neglects any dimension of agency, both on the part of the organization itself and on the part of member states. Such an analysis fits uneasy with accounts of how CoE has had a large impact on the course of history before, but also with the wider literature on IOs which tend to show that the actions and policies of IOs *do* matter for the success of their missions on the international arena (Eckhard and Ege 2016). Prominent in this regard is the literature relying on the principal-agent (PA) framework, which is often used to show that IOs are not always performing optimally or according to their full potential. Within this framework, the discrepancy between an IO's mandate and its performance is no longer blamed on the existing tools, but rather on the behavior of the IO itself or on other strategic considerations on the part of member states. Indeed, member states will often have several IOs at their disposal, and they can thus choose to empower the IO that they deem to be particularly well suited for a specific task.

This section on the rational principals model is structured as follows. First, I will elaborate on the theoretical assumptions of the PA framework in an international context where member states have several IOs at their disposal. Second, I will compare and explore the relationship between CoE and the EU, two IOs that are central cooperation partners but also potential substitutes. Lastly, I will propose two different potential explanations for why member states might have chosen to use the EU rather than CoE as their main multilateral instrument to fight democratic backsliding. The first explanation is concerns CoE itself, as member states for might have perceived CoE to be afflicted with various types of flaws. The second explanation is stemming from the external context, as member states might have chosen to prioritize other tasks already assigned to the CoE instead, leaving the task of democratic backsliding more firmly to the EU. In the end, I will give a short summary of this model.

On principal agent and regime complexes

A theoretical construct originally applied to firms, the PA framework has later traversed into the fields of IOs and international relations and has had a large impact on the literature. The framework relies on a few very basic assumptions. It assumes two types of actors, namely principals (in this case member states) and an agent (in this case CoE), that are bound together by a contract that empowers the latter to act on behalf of the former (Hawkins, Lake et al. 2006). For simplicity, the principals are generally assumed to be rational, welfare-maximizing, and unitary. The ensuing relationship is restricted and steered by the contract formed by the principals, yet some autonomy on the part of the agent is always designed into the agreement. This allows the agent to perform its task efficiently and to reap benefits of centralization and division of labour. Yet it also comes with certain risks for the principals. It incentivizes the agent to act opportunistically by following its own interests instead of that of its principals, leading to some unavoidable level of what in the literature is termed agency slack (Pollack 1997). This can either take the form of shirking, where the agent minimizes its efforts at reaching the principals' goals, or slippage, where the agent steers its policy towards its own preference instead of that of the principals. Principals will do what they can to minimize these risks by the use of supervision, sanctions in the form of reduced budgets, or other types of control mechanisms (Hawkins, Lake et al. 2006).

An important predicator of principals' relationship with the agent is the existence of other agents in the organizational landscape. Indeed, principals are seldom faithful to only one agent as they will often have similar types of contracts with other agents too. They will often master a complex institutional landscape dotted with IOs with similar or overlapping membership bases and mandates. In the literature, this is termed a regime complex, described as "an array of partially overlapping and nonhierarchical institutions governing a particular issue-area" (Raustiala and Victor 2004, p. 279). Scholars writing on regime complexes tend to highlight their perceived negative consequences, as there is a worry that duplication might constrain productivity, increase efficiency losses, and heighten the risks of regulatory arbitrage and forum shopping (Drezner 2009, Pratt 2018). Yet these risks also imply that member states have strong incentives to coordinate their activities by empowering the IO that they deem to be the best suited for a particular task. To do so, they can promote institutional deference understood as one IO's explicit acceptance of "the exercise of authority by another organization, despite the lack of a formal legal hierarchy to resolve jurisdictional conflicts" (Pratt 2018, p. 568). While flows of deference tend to lead to some IOs growing proportionally more than others, flows can run both ways and it indeed often does for separate issue areas.

On the relationship between CoE and the EU

CoE is part of several regime complexes, as it has partly overlapping mandates and membership basis with various IOs such as the EU, OSCE, the United Nations (UN), the North Atlantic Treaty Organization (NATO), and the Organization for Economic Cooperation and Development (OECD). However, the cooperation with the EU is by far the closest and most extensive, especially with regards to topics of interest to this thesis³⁹. All of the EU's 27 member states are also part of CoE, and EU members thus constitute a majority at CoE. The two IOs share a long and sometimes contentious history. Over time they have become closer and more entangled on many fronts, while at the same time also growing more different.

³⁹ Within many areas related to democracy, rule of law, and human rights, OSCE is also an important cooperation partner for CoE. However, due to word constraints, this cooperation will not be elaborated on in this thesis.

Established in 1949 and 1951, the two IOs were in many ways founded as alternatives embodying competing visions of European integration (Greer, Gerards et al. 2018)⁴⁰. Though they were soon charged with different aspects of the integration process, some tensions between them have persisted. The two IOs share similarities in their names, their organizational structure, and in their symbolic representations such as their flags, their commemoration days celebrated on different days in May, and their usage of the same hymn (Courcelle 2005). Even though CoE is the oldest, it did not take long before the EU's predecessors eclipsed CoE both in terms of financial resources and media and public attention (Kolb 2013). This became even clearer as the common market was exhausted as a vision for further integration, and the EU was allowed to expand into new fields such as human rights and good governance. By the early 2000s, what in the EU language was termed "fundamental rights" became a key priority for the EU, with policy consequences such as the adoption of the Charter of Fundamental Rights of the EU in 2000, the creation of the Fundamental Rights Agency (FRA) in 2007, and the establishment of a commissioner post for fundamental rights in 2009. These new initiatives were backed by substantial financial resources. Even though it only amounted to around 1,2 percent of the EU's overall 2009 budget, the EU still disposed 1 billion euros to the subject areas of freedom, security, and justice in its 27 member states that year (Kolb 2013, p. 43). It by far outperformed CoE's overall 2010 budget of 210 million euros, which was meant to cover a much larger portfolio of issue areas in CoE's 47 members states.

As the EU asserted itself into new areas, cooperation between EU and CoE grew closer and more extensive, a trend that was further accelerated by the collapse of the Soviet Union. Many of the newly independent states sought closer cooperation with Western Europe, and for these states CoE membership became seen as a first step to prove their commitment and democratic credentials. Together, CoE and the EU developed a range of joint programs to help these states fast-track institutional and democratic change (Kolb 2013). These programs were continued also after states were admitted to CoE, but mostly in states that also had prospects of joining the EU. In most cases, the EU provided most of the funding whereas the CoE participated with staff and expertise. Over time, these and other funds provided by the EU

⁴⁰ Championed by for instance France, some wanted tighter economic integration regulated by supranational institutions. Others, such as the UK government, preferred a looser set of intragovernmental institutions that would facilitate cooperation within fields such as politics, defense, human rights, rule of law, and democracy, but without altering the traditional conception of state sovereignty. When CoE was established in 1949, it was largely within the latter tradition and with a broad initial mandate.

came to constitute a non-negligible part of CoE's budget, amounting to about 20 percent of its total budget in 2013 (Kolb 2013, p. 38).

While increasing institutional cooperation and growing economic interdependence made the two IOs more entangled, the end of the cold war also impacted the two IOs in ways that arguably sharpened their differences. In 1990, Hungary became the first former Soviet state to join the ranks of CoE. This marked the beginning of CoE's eastward expansion which resulted in the admittance of 23 new member states by 2007. The internal variation within CoE grew on both a geographical, demographic, social, and economic level, as it welcomed new members such as the cold war antagonist Russia, states that had recently been at war such as Bosnia and Herzegovina and Serbia, and states geographically close to the Asian continent such as Georgia, Armenia and Azerbaijan. The admission requirements for these states were quite basic, as it was assumed that membership coupled with a genuine willingness to improve would create a momentum that could help these countries develop and consolidate their democracies further (Madsen 2021). In many ways, CoE thus became the outer frontier of European integration process and a testing ground for other IOs such as the EU, who applied much stricter admission requirements. Proportionally, the EU's membership expansion that occurred around the same period was bigger than that of CoE, as the EU grew from 12 to 28 members states between 1995 and 2013. Yet EU's enlargement process started later, was much more restrictive, and its geographical core remained centered around Western and Central Europe. Previously, the EU and CoE had been two IOs with many of the same member states, but different working areas and priorities (Kolb 2013). Now they increasingly worked with many of the same topics, yet their membership basis had grown more divergent.

On agency slack and other assigned tasks

There are reasons to suspect that this new reality might have impacted member states calculations on which IO to empower for different tasks, especially as the 2000s progressed and new types of concerns developed on the international arena. Arguably, this could help explain the discrepancy between member states' prior stated commitments and what appears to have been their actual actions. Indeed, at CoE's latest summit of heads of states in 2005, member states had agreed that CoE should remain the strongest actor with regards to preserving and promoting human rights, democracy, and the rule of law. CoE's prerogatives

within these fields were further stressed in the ensuing 2007 Memorandum of Understanding between CoE and the EU (Kolb 2013). However, principals' calculations are likely to be impacted by more than just pre-ascribed rules. When making their choice on deference, member states will also consider factors such as 1) risks of agency slack, and 2) the existence of other tasks assigned to the different IOs that member states might choose to prioritize instead (Pratt 2018). Below, I will briefly elaborate on these two possible explanations with regards to CoE. Of course, the same explanations might also be applied to the EU, but out of space constraints I will restrict myself to discuss only CoE.

Agency slack

As previously described, agency slack occurs when the agent behaves in ways that runs contrary to the wishes of the principals and which inhibits its ability to fulfil its mandate. In the literature, this behavior is often depicted as deliberate, as the agent may be tempted to further its own, private interest or may seek to find ways to minimize its own efforts at reaching the principals goals (Hawkins, Lake et al. 2006). However, the same outcome may occur also without the agent's intentional actions, as certain attributes of the secretariat's natural tendency towards rules and specialization might contribute to what Barnett and Finnemore (2004) term pathological behaviors. Such behaviors include a habit of tailoring missions to fit the existing rules and procedures, a tendency to create universal rules that are inattentive to variations, and a normalization of deviances where situations that would previously have caused harsh responses are gradually embedded into a new conception of normality. Due to an often-strong sense of professionalism and staff with often similar professional backgrounds, IO's might also become victims of group thinking. In such environments, a particular internal culture, specific ways to perceive a problem and a common understanding of goal that do not necessarily contribute to effective action, are allowed to persist, despite their negative impacts on the overall mission. As the IO grows, different sections and compartments may also develop separate interests or different ideological preferences that might lead to internal contestations or even institutional conflicts. According to Barnett and Finnemore (2004), these types of above-mentioned behaviors are stemming from definitional features of any bureaucracy. To some extent, they are thus likely to be an unavoidable part of any IO with permanent, bureaucratic entities. However, the prevalence of these behaviors will vary between different IOs. If allowed to fester, they might contribute to inefficiencies or even to the failure of missions.

Overall, principals are likely to avoid IOs whose behavior is seen to negatively affect the mission, be it in the form of overt agency slack or less intentional pathological behaviors. When faced with an errant agent, principals will often seek to regain control by reducing their budgetary contributions (Hawkins, Lake et al. 2006). And indeed, during the 2010s member states sustained a zero nominal growth policy at CoE, which meant that budgets were not adjusted for inflation or other increased costs⁴¹ and thus gradually declined in real terms. This had large consequences for CoE's activities and staff, as 230 of its positions or 12 percent of staff were suppressed between 2010 and 2019 (Jagland 2019, p. 41). A new contractual policy was also introduced in 2014, leading to a large increase in proportion of the workforce on flexible contracts. The budgetary constraints were coupled with member states' strong insistence on the need for wide scale organizational reforms, the initiation of which was a key priority for Jagland when took up his new office as SG in 2009 (CoE 2022, C). When member states in 2019 agreed on a new biannual budget that for the first time in several years allowed for a budgetary increase in line with expected inflation, it was with the explicit insistence on that the reform process had to be continued (CM 2019).

A separate reform process was also launched concerning the ECtHR. Starting with the Interlaken Conference in 2010, five reform conferences were organized between 2010 and 2019 with the aim to reduce the Court's enormous backlog and increase member states' compliance with the Convention and the Court's judgments (Glas 2020). The reform process was also infused with a discourse suggesting the need to curb some of the Court's perceived excessive expansionism (Madsen 2021). The UK and several other member states such Switzerland, Netherland, Belgium and Denmark, claimed that the Court had over time grown overly interventionist. They urged for more subsidiarity, where domestic institutional authorities would be given more responsibility in interpreting and upholding the Convention.

Overall, the budgetary reductions, the insistence on reforms, and the criticism of the Court's perceived expansionism, may indicate that member states were critical of at least some

⁴¹ Parts of the increased overall costs were due to rising pension expenses, as CoE does not have its own pension fund. Between 1974 – 2003, member states only paid for running pension costs. Even though they in 2003 established a pension reserve there is still "a historic deficit" that contributes to CoE's relatively high, yearly pension expenses. From 2022, member states' expected annual future contributions to pensions were expected to grow by close to 43% percent due to new calculations of life expectancy and interest rates. More information is also available in the 2019 pension reserve fund actuarial study. See Hardy, A. and M. Mancebo (2019). "2022 Global Contribution Rate Considerations. Prepared for: Council of Europe." Retrieved 24.04.2022, from https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168096b032#_Toc14352333.

aspects of CoE's behavior. This might have prompted them to avoid assigning a task such as democratic backsliding to CoE and to prioritize the EU instead.

Other tasks assigned to CoE

When making decisions on deference, member states will also consider whether other tasks already assigned to the different IOs ought to be prioritized instead. In the 2010s, CoE was faced with a range of other crises that might have had such a potential (see Benedek 2020). Some of these crises were also acutely felt by the EU, such as the financial crises and its aftermath, the migration crisis, and the more general growing discontent and increasing criticism of IOs led by states such as the UK⁴². Yet some of the crises were more specific to CoE, such as the enormous backlog of cases and lack of compliance with ECtHR's judgments, the fast-deteriorating human rights conditions in strategic member states such as Russia, Turkey, and Azerbaijan, and the eruption of deadly conflicts among CoE's own member states (Benedek 2020, Gauthier 2020). In addition, it also became apparent that for many of CoE's new Eastern member states, democratic consolidation was not as easily achievable as first expected. Many struggled with deep-rooted and pervasive structural problems related to rule of law, human rights, and democracy (Çali 2018). From the perspective of member states, remedying some of these problems might have been considered more urgent than the democratic crisis in Hungary, whose democracy after all was considered much healthier than in many of the other member states.

On a more strategic level, what Madsen (2021) terms the post-post-cold war transformation of Europe could also have engendered new types of priorities for member states. In an international environment that grew increasingly hostile and polarized, security imperatives and the retaining of ties with strategic regional powers such as Russia and Turkey may have gradually become perceived as overriding goals for the organization (Demir-Gürsel 2021).

⁴² In the early 2000s, ECtHR ruled against the UK on several domestically controversial matters such as the right to vote for prisoners and the deportation of individuals argued to pose a threat to national security. See Çali, B. (2018). "Coping with Crisis: Whither the Variable Geometry in the Jurisprudence of the European Court of Human Rights." *Wisconsin International Law Journal* 35(2): 237 - 276.

In response, several UK politicians openly argued that the UK ought to leave not only the EU, but also CoE and ECHR. Among these politicians was the then Home Secretary Theresa May. See Asthana, A. and R. Mason (25.04.2016). "UK must leave European convention on human rights, says Theresa May." Retrieved 21.04.2022, from <https://www.theguardian.com/politics/2016/apr/25/uk-must-leave-european-convention-on-human-rights-theresa-may-eu-referendum>.

But member states might also have discerned that CoE after its Eastward expansion had developed both the experience and the tools to become a useful foreign policy instrument to promote and spread the liberal democratic model to new areas (Madsen 2021). Built on the assumption that the spread of democracy was also a security imperative, this had become an important foreign policy goal for many Western states in the aftermath of the cold war⁴³. In light of this, member states may have sought to refine and cultivate CoE's role as an institution and democracy builder, potentially to the detriment of other task such as its ability to sustain democratic quality over time⁴⁴. To summarize, the 2010s was marked by many new challenges and crisis, some of which CoE's due to its unique membership basis and organizational structure might have been viewed as particularly well-placed to handling. While prioritizing some of these tasks with regards to CoE, this might have prompted member states to assign the task of combatting democratic backsliding more firmly to the EU.

Short summary

In the rational principals model, it is the member states' point of view that is put central stage. The model explores how they might have rationally chosen to prioritize the EU and not CoE as their main multilateral instrument to combat democratic backsliding. It suggests two different potential reasons as to why this might be the case. The first explanation concerns CoE itself, as member states might have deemed CoE to be afflicted with agency slack or other types of inefficiencies. The second explanation is external, as a changing geopolitical context might have impacted member states priorities of which tasks to assign to the different IOs. However, there might also have been other reasons for member states' choice. The 2010s were marked by growing authoritarianism in some of CoE's larger member states. For CoE's 27 EU members, this might have impacted their ability to steer and pass their preferred policies within CoE, thus prompting them to empower the EU instead where they would be more in control. The possible impacts of CoE's authoritarian member states on CoE's ability

⁴³ This argument is very much present in Jagland's annual report from 2015, which starts with the following sentences: "Few things unite political scientists. Almost all agree, however, that democracies rarely go to war with each other". See Jagland, T. (2015). State of democracy, human rights and the rule of law in Europe. A shared responsibility of democratic security in Europe. Report by Secretary General Thorbjørn Jagland. Strasbourg, Council of Europe.

⁴⁴ With regards to the Court and the European convention regime, Ginsburg for instance argues that it is better at inducing up-front changes to deepen democracy than it is at enforcing commitments backend. See Ginsburg, T. (2019). "International Courts and Democratic Backsliding." *Ecology Law Quarterly* 46(111): 111 - 134.

to tackle a threat such as democratic backsliding are further explored in my third and last model, namely the principals' politics model.

III - The principals' politics model

Like the rational principals model, also the principals' politics focuses on member states and their actions. Yet whereas the rational principals model saw member states as a largely uniform group of rational and well-intended states, the principals' politics model makes no assumptions in this regard. This allows it to differentiate between different types of member states, thus opening up for the possibility that some of them might have sought to obstruct the working of CoE from the inside. It also permits the investigation of whether member states as a collective have behaved in ways supportive to CoE's mission or whether there is anything they could or should have done differently. Indeed, there is much to suggest that also member states may sometimes make poor decisions, may fail to comprehend the full implications of their actions, or may fail to provide helpful guidance or adequate support for the IO to fulfill its mission (Gutner 2005). This might have large negative impacts on CoE's ability to succeed, as many of its tools crucially rely on either political backing, active member state initiation, or sufficient financial support to function according to intention.

This section on the principals' politics model is divided into three. First, I will elaborate on the ways in which authoritarian and illiberal member states may seek to obstruct the IO from the inside. Secondly, I will explore the possibility that member states as a collective may not have been willing to provide CoE with the financial and political support it needed to succeed in its mission. Lastly, I will link the above discussions up the broader debate on changing norms on the international arena.

On the role of authoritarian and illiberal member states

At the end of the cold war, CoE's membership expansion was brought forth by a prevailing sense of the inevitable spread of democracy across Europe (Madsen 2021). Yet already then, one knew that this strategy posed the risk of admitting states that either from the beginning or more gradually started to act as wolves in sheep clothes or even as black knights⁴⁵ within the

⁴⁵ Use of the term "black knight" has become quite widespread in the literature on autocracy promotion. It refers to states that provide alternative types of economic, diplomatic, or political support to counter the effects of pressures from other actors (often from Western states) to democratize or improve human rights conditions. See Way, L. A. and S. Levitsky (2007). "Linkage, leverage, and the post-communist divide." *East European Politics and Societies* 21(1): 48-66.

organization⁴⁶. Arguably, these risks appear to have proven warranted, as CoE in the 2010s housed members such as Russia, Azerbaijan and Turkey which have all shown blatant disregard for CoE's work and its fundamental values (Dzehtsiarou and Coffey 2019). Yet also many of CoE's other member states from Caucasus, Eastern or Central Europe still struggled with pervasive democracy and human rights problems (Çali 2018). On top of this came democratic backsliding, were also states previously though off as democratic frontrunners such as Hungary and Poland started to depart from democratic ideals. As of 2016, this meant that 23 percent of CoE's member states were classified as either partly free or non-free by Freedom House (Gawrich 2015, p. 134).

For many of these states, a strong, vibrant, and outgoing CoE is not necessarily in their interest (when judging from the perspective of their leadership, that is). To make their membership less burdensome, they may in various ways have attempted to weaken or obstruct CoE's work (Gawrich 2017). Some of these tactics are visible and aimed at preventing particular policies. As discussed in the organizational tools model, member states might use various tactics to slow down or hinder the initiation of special procedures or CoE's tools more in general. States may use these strategies to protect themselves, but also to help each other. Taking advantage of their combined strength, they might thus seek to block policies and generally make it more difficult to get the votes needed to initiate certain policies or procedures (Ginsburg 2020, Holesch and Kyriazi 2022)⁴⁷.

Other tactics might be used with a view of the long term, as member states might seek to erode CoE's organizational capacity over time. One way to do this could be by supporting the broadening of CoE's work and priorities (Gawrich 2017). As mentioned, CoE's member states have officially agreed that CoE should recenter itself around the core areas of human rights, democracy, and rule of law (CoE 2005). However, with its over 200 conventions and vast variety of expert organs, CoE has a large organizational breadth. There are thus a range of other topics that member states could support, potentially at the expense of the core areas when budgets are limited. Indeed, Russia has often been accused of seeking to readjust CoE

⁴⁶While acknowledging these risks, the argument was that if a new member state started to develop in a more authoritarian direction, one could always just expel them. With hindsight, this has proven more difficult to achieve than what was perhaps expected. Dzehtsiarou, K. and D. Coffey (2019). "Suspension and expulsion of members of the Council of Europe: Difficult decisions in troubled times." International and Comparative Law Quarterly **68**: 443-476.

⁴⁷ Holesch and kyriazi discuss these strategies with regard to the Hungarian-Polish coalition in the EU, whereas many of Ginsburg's examples are stemming from the UN security council.

away from human rights, and towards less sensitive areas such as education, culture, illegal migration, or transnational criminality (Massias 2007). Another strategy to weaken CoE's ability to act decisively could be to complain that its work is unbalanced and that some states are unproportionally targeted. At OSCE, these types of arguments arguably contributed to the decision to expand its election observations to include Western democratic countries, thus reducing the resources available for such activities in non-democratic states (Gawrich 2017). A state may also seek to broaden or "water out" existing conceptions of key concepts such as democracy and human rights or even promulgate their own competing versions (Ginsburg 2020). Through promoting laws and texts that makes the common understanding of these concepts vaguer, broader, and less concrete, they risk becoming seen to incorporate nothing and anything at the same time. For some states, this might be beneficial as it may increase their ability to escape harsher actions from the CoE.

Authoritarian member states may also seek to affect general policies by attempting to control the appointment of key officers such as judges, committee members, or committee chairs (Elsig and Pollack 2014). This is arguably a relatively tempting strategy at CoE, as most of its organs and expert committees award equal amount of committee members to all signatory states. Not least, all member states are allotted one judge at ECtHR on equal footing. The judges are elected by the parliamentarians in PACE, the very same Assembly where it in 2018 was revealed that Azerbaijan had successfully lobbied representatives to obtain beneficial reports (Dzehtsiarou and Coffey 2019). Yet as CoE has recently implemented several reforms, CoE does have quite stringent procedures to ensure the quality and integrity of elected judges⁴⁸. The election of judges that are manifestly unfit is thus unlikely, yet smaller variations and tendencies among new appointed judges may over time impact the Court's jurisprudence. Indeed, some suggest that the Court is currently developing in a more restrictive direction, where more emphasis is placed on governments' arguments (Helfer and Voeten 2020)⁴⁹. Since 2010, Stiansen and Voeten (2020) also finds that there has been a weak trend towards electing more restrictive judges. These trends are not necessarily fueled by

⁴⁸ The selection process has undergone quite a few changes in the 2000s to ensure the quality of judges and the national selection process. For an overview of some of these changes in a comparative context, see Larsson, O., et al. (2019). [Selection and appointment in international adjudication: insights from political science](#). Academic Forum on ISDS Concept Paper.

⁴⁹ Not all agree on this description, see Stone Sweet, A., et al. (2021). "Dissenting Opinions and Rights Protection in the European Court: A Reply to Laurence Helfer and Erik Voeten." [European Journal of International Law](#) **32**(3): 897-906.

authoritarian states in particular⁵⁰, but they are nevertheless indicative of that there in a more long-term perspective might be a potential for attempting to steer the Court's jurisprudence in a particular direction.

Alternatively, authoritarian member states could attempt to dilute CoE's policies through influencing and controlling key networks. With regards to the spread of human rights and democracy, scholars have long highlighted the role played by networks of activists cooperating across borders and using international fora to learn, build support, and further their agenda (Keck 1998). Epistemic communities consisting of specific well-placed and similar-minded individuals are also known to have had large impacts on international developments within areas such environmental protection (Haas 1989) and minority rights (Galbreath and McEvoy 2013). However, as briefly discussed in the organizational tools model, it cannot be guaranteed that these forums remain in control of democracy-oriented networks forever. Indeed, examples are now emerging of how the same forums that were once crucial in promoting democracy and human rights may be weakened or at worst even hijacked by networks and individuals with completely different agendas (Cupać and Ebetürk 2020, Goetz 2020).

Arguably, an example of this might be Fidesz's behavior in EU's EPP. Critics claim that Fidesz far from being socialized back into good behavior managed to falsely convince some of the other parliamentarians of their good intentions, thus contributing to EU's overall delay in taking harsher actions against backsliding (Margulies 2019). Also in PACE, there are examples of how Hungarian delegates have gained considerable support in the form of legitimizing rhetoric, call for good will, and favorable votes from other delegates from the conservative and right wing political groups (Donald and Speck 2021)⁵¹. The Hungarian delegates' influence appears to have born fruits. When PACE in 2013 discussed a draft resolution to place Hungary under its full monitoring procedure, 20 of the 22 proposed amendments by delegates from several different nationalities sought to weaken the resolution.

⁵⁰An important finding in this literature is that the more restrictive judgments have tended to particularly concern Western states such as the UK that has publicly criticized the Court for being overly interventionist. See Stiansen, Ø. and E. Voeten (2020). "Backlash and Judicial Restraint: Evidence from the European Court of Human Rights." *International Studies Quarterly* 64(4): 770-784.

⁵¹ Donald and Speck found these types of behaviors to be prevalent among representatives from the European Conservative Group and Democratic Alliance (EC/AD) and to some extent also the group of the European People's Party (EPP/CD).

14 of these amendments passed, including the crucial amendment that ensured that Hungary escaped the full monitoring procedure (Donald and Speck 2021, p. 19).

The above paragraphs should caution us that specific member states through the use of various tactics may attempt and even succeed in weakening CoE's organization capacity. Though not necessarily directly linked to CoE's response to democratic backsliding, these tactics may nevertheless over time weaken CoE's organizational competencies and abilities to such an extent that it becomes unable to act decisively or perceive the full consequences of the threat as it develops.

On principals and their willingness to cooperate

The above mentioned strategies might be most prevalent among either authoritarian member states or those with a poor democratic record. However, current trends shows that the number of such countries on the rise⁵². Yet as stressed by many observers, a drop in democratic quality is also evident in a range of other countries, including in Western Europe (Puddington and Roylance 2017). This is visible in the prevalence of illiberal ideas and political parties and in the apparent faltering faith in democratic institutions or even, by some accounts, democracy as a system (Foa and Mounk 2017, Przeworski 2019). However, in some places it has also expressed itself in pressures towards press freedom and freedom of expression, challenges to the integrity of independent institutions and the judiciary, and in new restrictions on freedom of assembly and association. As has been expressly pointed out in the annual reports of the former SG, these trends are visible in a broad range of CoE's member states (Jagland 2017, Jagland 2018, Jagland 2019). Most of the concerned states are not necessarily undergoing democratic backsliding or democratic reversions, yet they are experiencing mounting democratic stresses.

⁵² See for instance the 2020 reports by V-dem and Freedom House. Csaky, Z. (2020). "Nations in transit 2020." *Nations in Transit*. Retrieved 18.04.2022, from https://freedomhouse.org/sites/default/files/2020-04/05062020_FH_NIT2020_vfinal.pdf

, Lührmann, A., et al. (2020). "Autocratization Surges—Resistance Grows. DEMOCRACY REPORT 2020." Retrieved 25.04.2022, from https://v-dem.net/static/website/files/dr/dr_2020.pdf.

Apart from domestic consequences felt by their own constituencies, these trends might also impact how these states behave on the international arena, especially with regards to their willingness to criticize human rights abuses in other countries or their support of IOs that are supporting democracy and human rights elsewhere (Helfer 2020). Studies indicate that a lower average democracy score in an IO means that member states will be less likely to suspend other members over democratic backsliding (von Borzyskowski and Vabulas 2019) and less willing to criticize others following flawed elections (Donno 2010). One potential reason for this might be that states that themselves oversee democracies with their own underlying flaws might be conscious that sanctions and criticism targeted towards others might also someday affect themselves (Arceneaux and Pion-Berlin 2007). Compared to states with stronger democracies, those that have more flawed democracies might also have different conceptions of international politics and of their own strategic place within it (Helfer 2020). Normatively, they might regard the promotion of democracy and human rights in other states to be less important, whereas strategically, they might perceive the regime type of other states to be less connected to their own safety and the fulfilment of other strategic interests. This might prompt them to be less willing engage in politically or economically risky activities such as sanctions or “naming and shaming”. It may also lead them to prioritize their foreign policy differently by using their money and energy on other goals and projects instead. As will be explored below, this type of thinking is potentially very harmful for IOs such as CoE, who fundamentally relies on principals’ support and cooperation for most of its activities.

I will now use the PA framework from the rational principals model to show how this could potentially affect CoE and its ability to succeed. As described in the rational principals model, the relationship between CoE (the agent) and its member states (the principals) is structured and steered by member states, who have empowered CoE to perform certain tasks on their behalf. However, this relationship is very asymmetric, as CoE is completely dependent on member states for many of the resources that it needs to fulfill its mission (Perrow 1986). An obvious example is the member states’ control of the purse, which in the classical PA literature is argued to be a tool that principals can use to rein in a disobedient agent (Hawkins, Lake et al. 2006). However, a lack of sufficient funding or adverse staffing decisions might also result in the undermining of the work of agent, even in cases where it is actually engaged in productive behavior (Gutner and Thompson 2010). This type of behavior, which Thompson (2007) terms principal shirking, could result in the failure of the IO’s short-term missions, but

also in the gradual demise of its vitality and authority. Indeed, as work conditions in the IO become more demanding and precarious with fewer opportunities for promotion and employee autonomy, the IO is less able to attract and motivate talented staff (Gray 2018). In particular, the IO might end up having to cut or struggle to fill middle range positions. As a result, turnover on lower levels might increase to such an extent that few are around long enough to cater to the IO's long-term needs. In a vicious cycle, this might gradually undermine both the quality and perceived relevancy of the IO and its work (Gray 2018).

Yet CoE's dependency on the member states exceeds their financial contributions, as it is also reliant on them for supporting, initiating, and implementing many of its key tools and policies. Starting with implementation, it is member states themselves that are responsible for the actual execution of the policies and decisions stemming from CoE. This shows how member states may act as principals in one set of the PA relationship while at the same time paying the role of agents in the other (Gutner 2005). An obvious example is the ECtHR court system, where the implementations of the Court's judgments crucially rely on the cooperation of affected states (de Londras and Dzehtsiarou 2017). Yet the same also applies to other CoE organs, who to a large extent make decisions on domestic matters that require or recommend states to act in certain ways. However, member states might be reluctant to do so, as they might perceive implementation as being overly costly and complicated, being contrary to their own national interests, or as being an impediment to the domestic interests of the ruling party. Just like the IO is argued to not always do its utmost to fulfill its master's wishes in the original PA framework, the same might thus apply to the member states in the implementation phase (Gutner 2005).

CoE also relies on principals to provide different types of political support (Gutner and Thompson 2010). This includes making use of CoE's reports, its expert opinions, and its diplomacy arenas in ways that build up under CoE's authority and its perceived relevancy. But it also includes a willingness to approve different types of sanctioning tools and special procedures that require active member state initiation. However, these types of support often come at a political cost for the member states that they might not always be willing to pay. Indeed, performing public criticism or initiating sanctions might be costly both economically and diplomatically, as it may lead to the loss of or termination of beneficial contracts or the failure of other foreign policy objectives requiring that particular state's cooperation (Hafner-Burton 2008). Yet the reluctance towards using certain IO tools might also be linked to other less tangible concerns. Arceneaux and Pion-Berlin (2007) studied the response of the

Organization of American States (OAS), CoE's Latin American equivalent, to democratic backsliding in the early 2000s. They suggest that certain preferences among member states prevented them from taking stronger actions. This included a wish to avoid being overly strict on questions related to democratic quality, as they themselves oversaw democracies with flaws and problems. But member states' reluctance might also have been influenced by a more general desire to promote values such as state sovereignty, the acceptance of differences, as well as a general risk aversion pushing them to avoid initiating strict procedures when faced with imperfect information on the severity of the situation⁵³ or the consequences of possible sanctions.

On the impacts of changing norms

Some argue that the perceived importance of the above mentioned types of concerns is linked to the reigning norms on the international arena. According to Finnemore and Sikkink (1998), norms are upheld by shared impressions within a community of states of what constitutes morally necessary, normatively justified, or simply just "appropriate" state behavior. They are linked to negative perceptions of what not to do and what to avoid, but also to positive perceptions of what to do and what to strive for. Affecting states' calculations of costs and benefits associated with a particular option, norms are intimately linked to any definition of state interest (Keck 1998). They are ingrained into the very core of states' mindset and habits, thus contributing to stability and predictability on the international arena (Finnemore 1996). Yet over time, underlying perceptions and norms might change, leading to alterations in their utility calculations and thus to changes in patterns of states' behavior (Panke and Petersohn 2016). As norms rely on shared expectations, such shifts are argued to occur simultaneously within a community of states.

Both scholars and practitioners are now arguing that the world is currently undergoing a shift in norms, and that this shift has manifested itself in the form of changing state behavior on the

⁵³ As we have seen earlier, it is exactly a lack of understanding of the true reach and consequences of the backsliding process as well as an absence of clear thresholds that everyone can agree on, that makes democratic backsliding so notoriously difficult to tackle also domestically. See Bermeo, N. (2016). "On democratic backsliding." *Journal of Democracy* 27(1): 5 -19. .

international arena (Helfer 2020). Often referred to as a backlash, this change has been documented within various fields ranging from the support of various aspects of globalization (Mansfield, Milner et al. 2021), the prospects of international judicialization (Abebe and Ginsburg 2019), and the perceived legitimacy and authority of international courts and international organizations (Madsen, Cebulak et al. 2018, Seiderman 2019). It is arguably also visible in the general level of support of less tangible values such as multilateralism, human rights, rule of law, and democracy, all values central to CoE's mandate. CoE is not the only IO faced with these pressures. Yet question remains whether CoE is strong enough to deal with them and whether member states have enough faith and belief in CoE to provide it with adequate resources to adopt.

Method

In order to find out whether any of the three proposed models are relevant for understanding CoE's reaction to democratic backsliding in Hungary, I have conducted six expert interviews with seven individuals that have followed different sections of CoE's work overtime. As a research method, expert interviews come with benefits but also certain risks. I will therefore start by exploring the strengths, the limitations, and important factors to be aware of when using expert interviews as a research method. After that, I will introduce my seven interviewees and then explain how I prepared for the interviews and how the interview situations might have affected the outcome. In the end, I will also comment on how my previous experiences might have impacted my methodological work and perhaps also my analysis.

On expert interviews as a research method

In the literature, experts are often broadly understood to incorporate individuals that hold or have held powerful positions with privileged access to information of public interest (Littig 2009). As such, expert interviews might provide vital insight into the technical details of political processes and the inner working of the political machinery that might otherwise not have been publicly available. Indeed, many would argue that it is the wealth of information provided that is the research methods' largest advantage (Richards 1996). Yet expert interviews can also serve other purposes, as they may provide insight into the experts' subjective points of views, their frames of understanding, and their interpretations stemming from being close to the material and the actual processes under study (Bogner and Menz 2009). Making use of these interpretations is often a key goal for the researcher, which has also been the case for me. Indeed, my main intention has not been to uncover all the technical details of CoE's response, but rather to gauge which one, if any, of the three proposed theoretical explanations for CoE's response that has the largest explanatory power. For this purpose, I have found my interviews very useful.

However, expert interviews also come with certain challenges related to validity, reliability, and generalizability that needs to be considered (Bogner and Menz 2009). On a general level, personal interviews only provide a partly and subjective account of particular events or issues.

As with everyone else's, experts' versions may be afflicted by different types of biases and faulty memory which might affect the reliability and accuracy of the answers that are given. Such effects might even be exacerbated during expert interviews, as such interviews often focus on events of the past which were sometimes also widely covered in the media. The interviewees might thus also have read about the events in the news, which might potentially have confused their memory (Richards 1996). As with other interviews, different types of interaction effects during the interview situation itself might also affect the outcome. Both the quality and reliability of the information provided are likely to be affected by factors such as level of trust, personal chemistry, as well as power asymmetries stemming from factors such as gender, age, social background, and access to information (Abels and Behrens 2009). Some of these effects might even be heightened when interviewing experts, as experts tend to be well used to argue their positions and steer a conversation in a favorable direction for themselves.

Indeed, a characteristic feature of experts is not only their privileged access to information, but also that they tend to have some sort of perceived responsibility for problem definition and problem-solving decisions, if not in a practical sense than at least on an ideational level or in the public discourse. Either explicitly or more unconsciously, they tend to have some sort of personal or strategic stakes in a retaining or supporting a particular perception of important events and processes. Indeed, during interviews, an expert will often be present both as an individual, a representative, and a strategist (Abels and Behrens 2009). The information provided might therefore depict either the interviewee's personal opinion, the official opinion of the organization he or she is or was representing, or more instrumental purposes such as providing information meant to affect public discourse without revealing underlying strategic interests. This poses specific challenges for the researcher, who might not always be able to tell the difference (Bogner and Menz 2009).

Lastly, it is important to be aware that the quality and availability of interviewees are likely to have large effects on the eventual findings and their reliability and generalizability (Richards 1996). As experts tend to be busy people that are difficult to access and get hold off, the selection process is likely to be steered by external factors such as chance, personal connections, access to relevant networks, as well as the researcher's own persistence and persuasion skills. The researcher very rarely ends up with the sample that was aimed for. While doing the best out of the interviews one does get, it is therefore also important to be aware of the information and perspectives that are lacking when doing the final analysis.

My interviewees

Access to interviewees was a challenge for me as well, as most of those I tried to call or to contact by mail or phone either declined or never responded. In the end, I ended up relying on the snowball effect, where I asked those that had already agreed to participate to recommend others that would perhaps be willing to participate, thus to some extent leaving it a bit up to chance which interviewees I would get. However, the selection process was not completely random, as I also had some goals set out from the beginning. CoE is a large and complex IO consisting of many units with various tasks and fields of work. As I was interested in CoE's overall response to democratic backsliding, and not just that of specific sections, it was therefore important for me that my interviewees in totality had experience from a variety of CoE's organs. Democratic backsliding is a multifaceted process where many CoE' organs might be deemed relevant, so exactly which expert committees I covered was not that important. However, I specifically wanted at least one interviewee from CM, PACE, and the Court respectively. In addition, I also wished to have interviewees with different types of roles within the overall CoE machinery. Thus, I sought to interview at least one diplomat from CM, one politician from PACE or Congress, one representative from an expert organ, and one person with an administrative background.

To a large extent, I managed to keep this goal. I will now give a short overview of my interviewees but note that more information on their names and background are available in the appendix. Among my interviewees are two former Norwegian ambassadors to CoE who served as ambassadors from 2003 to 2008 (interviewee one) and from 2008 to 2013 (interviewee two). From 2008 to 2017, interviewee was CoE's first ambassador to the EU with residency in Brussels. As for interviewees with background from the Court and expert organs, I managed to get interviewees with interviewee three who held the position as the Norwegian judge to ECtHR between 2011 and 2018 and interviewee four who has served as Norway's meeting substitute member to VC since 2016.

I struggled some more with finding willing interviewees with a political background. In the end, I managed to get a short interview with interviewee five who was a Norwegian representative to PACE and wanted to remain anonymous. All my other interviewees agreed to stand forth by name in the appendix, and this respondent might thus arguably lose some of its credibility and relevancy. I didn't get any positive responses when I tried to approach CoE's Strasbourg secretariat, and that perspective is thus still lacking. However, I did manage

to get an interview with two members of the secretariat of the Norwegian Association of Local and Regional Authorities (KS). Referred to as interviewee six and seven, they were interviewed at the same time. They have followed the work of the Norwegian delegation to Congress over several years, and the interview thus provided perspectives on CoE's response from the point of view of one of many sections of the Norwegian bureaucracy that follows CoE's work extensively.

Though I originally sought out interviewees more broadly, a unifying feature of my seven interviewees is that they are all Norwegians. This might make it easier to analyze and compare their different responses, as all the respondents have at least some common backgrounds which I am also myself familiar with. Yet this commonality might also affect the interviewees' perceptions of and preferences for the different theoretical models proposed in this thesis. Indeed, Norway is in a rather unique position at CoE. It is not an EU member, yet its ties with the EU is much stronger than for most of the other non-EU CoE member states. It is reasonable to expect that my interviewees would be somewhat more reluctant than those from EU member states to leave the multilateral response to Hungary's democratic backsliding entirely to the EU. Yet at the same time, they might also be expected to be more positive towards coordinating activities across CoE and the EU than other non-EU member states. Norway is also a small country with the protection of multilateralism, democracy, and human rights as key foreign policy objectives (Meld. St. 27, Utenriksdepartementet 2019), which might perhaps lead interviewees to be more benign and positive towards CoE than those of other nationalities. Norway is also a founding member, a major voluntary economic contributor⁵⁴, and has recently had the SG for ten years, which would also point in the same direction. Compared to other member states, Norway's domestic relationship with CoE is also relatively uncomplicated and friction free⁵⁵, which again might impact the interviewees' overall perception of the organization and its work.

⁵⁴ In both 2017 and 2018, Norway was by far the largest donor of voluntary contributions. See CoE (2019). "Voluntary Contributions 2018." Retrieved 22.04.2022, from <https://rm.coe.int/voluntary-contributions-2018-web-en-final/168096e0dd>.

⁵⁵ Interestingly, Norway's relationship with CoE is for instance much more tension free than that of the Scandinavian neighbor Denmark where open critique has been more prevalent. See Hartmann, J. (2017). "A Danish Crusade for the Reform of the European Court of Human Rights." <https://www.ejiltalk.org/a-danish-crusade-for-the-reform-of-the-european-court-of-human-rights/> Accessed 23.04.2022.

Preparing for and experiences from the interviews

The six interviews were conducted over zoom and lasted between 30 minutes (interviewee five) and two and a half hours (interviewee one). They took place between April and June 2021. The time span between them meant that I could adopt my strategy according to my general work progress and my experiences from previous interviews. However, prior to the first interview I did a lot of research into how to conduct expert interviews and prepared myself accordingly.

In the literature, one advice is always recurring: be well prepared and do enough research in advance. More than for other types of interviewees, experts' willingness to bring forth knowledge and viewpoints is likely to be affected by his or her impression of the professionalism and knowledge of the interviewer (Meuser and Nagel 2009). Prior to the interviews, I therefore made sure to read extensively on the work and composition of the interviewees' various organizational branches. I also prepared individual interview guides that contained some common questions, and some questions adopted to the individual person. Some of the questions in the latter category were very specific and were included partly to show my knowledge of the field. In order to build trust and create a more relaxed atmosphere, the interview guides were structured so that they started with some general background questions, before moving into more personal or difficult areas later on. I also tried to avoid closed-end questions, as experts tend to prefer to articulate themselves freely and to explain their views properly (Harvey 2011).

Though it is advised to prepare an interview guide, it is also often stressed that it is crucial to remain flexible and to stick with it as a thematic guideline and not as a standard questionnaire (Meuser and Nagel 2009). Indeed, there is no "standard" expert interview, as each interview requires the researcher to gauge the atmosphere and to adjust behavior, reactions, and the phrasing of questions accordingly (Harvey 2011). In my case, I noticed that the more theoretical questions annoyed some, whereas they turned out to be great conversation starters for others. The amount and phrasing of such questions were thus something that I had to adopt along the way. In the literature, it is also highlighted that interviewees will often seek to steer the interview in a particular direction, either by intention or unconsciously. This might for instance take the form of being very talkative or dwindling of into anecdotal stories and narratives that are off topic. While some such stories might provide valuable insight into tacit aspects of experts' knowledge (Meuser and Nagel 2009), it is the interviewers responsibility

to make sure that the interview does not go too far off and to firmly and politely draw the interviewee back to the topic under investigation (Richards 1996). When faced with such behavior, I tried to stick to this advice, though I sometimes also had to be even stricter and interrupt the interviewees outright to get the interview back on track. A firmer response was also needed for those that were more reluctant with providing information. Many experts will have received extensive media training, and when asked difficult questions they will resort to specific strategies to avoid answering in a clear manner. In such cases, it is recommended to restate the question, and if that doesn't work try to ask a few easier questions first and then recircle the conversation back to the issue once more (Harvey 2011). This was a strategy I tried to follow, though with varied results. Especially with regards to interviewee five, the politician from PACE, it was difficult to receive definite answers to some of my questions, and this did impact the general quality of that interview.

In the literature, it is also highlighted that structural factors such as power, interests, hierarchy, age, and gender are likely to affect the outcome and interaction during the interview. This is arguably particularly relevant in my case, as I interviewed only or almost only men, many of whom were retired after busy careers where they had held several high-ranking positions both domestically and internationally (see appendix). Being a female master's student in my twenties, such interaction effects should not be downplayed. Whereas they are often perceived as a risk affecting the interview negatively, Abels and Behrens (2009) suggest that they can also sometimes be used to the advantage of the researcher. Based on their own work as female researchers, they contend that paternalistic and profiling behavior from male interviewees might sometimes increase the chances of getting detailed and insightful material from the interviews. Whether due to this effect or not is difficult to say, but I did experience that some of my interviewees took the time to explain their work and basic facts of CoE in a thorough and sometimes simplified manner. On several occasions, I had to remind them that this was not new information to me, as I had myself been an intern in Strasbourg for half a year. Though using up more of the valuable time during the interviews, this tendency to explain was also sometimes useful as it allowed me to avoid asking too many stupid questions and helped me getting all the details right.

Avoiding leading questions is another often recurring advice in the literature. According to Pfadenhauer (2009), the researcher should avoid imposing a specific relevance system upon the respondent and rather let the interviewee develop and formulate his or her own account and meaning, uncontaminated by the researcher's prior predispositions. Arguably, this is

especially relevant in my case, as I prior to the interviews had already developed three potential explanatory models. Whereas not mutually exclusive, my motivation for conducting the interviews was to find out which one of them had the largest explanatory power. In order not to predispose the interviewees to the theoretical models, I did not mention them when I first contacted the interviewees. During the interviews, I mixed the ordering of the questions so that it would not be overly clear what kind of theoretical theories they were stemming from. However, at the end of the interviews, I explained my three models and asked which one they felt had the largest explanatory power, if any of them. By then, the interviewees had been talking and reflecting on the topic for quite some time already, and this question opened up for new reflections and for the reappearance of new memories and specific episodes. Personally, I also found it very useful to discuss the three models with the experts, as they alerted me to some holes and inconsistencies within them.

On the role of my previous experiences

Before exploring the findings from the interviews, I will briefly comment on how my previous experiences might have impacted my methodological work and the final analysis. As described in the section on theory development, I to some extent relied on insights from my internship at the Norwegian delegation to CoE and my current position at PluriCourts when I developed my theoretical models. Much in the same vein, my previous experiences have probably also impacted the questions that I asked my interviewees and how I interpreted the answers⁵⁶. This might have prompted me to see specific aspects or factors clearer than others, and perhaps also to overlook others. However, being able to rely on information from multiple types of sources may also have been an advantage, especially when using expert interviews as the research method (Natow 2020). As expert interviews tend to rely on only a limited number of interviewees, insight from multiple sources may increase validity by allowing for “corroboration” of initial findings, while also increasing the researcher’s ability to see broader patterns (Natow 2020). As previously discussed, prior knowledge might also be particularly useful during the interviews themselves, as experts perhaps to a larger extent than others interviewees may attempt to “test” the knowledge of the researcher (Meuser and Nagel 2009). This fits with my experience, as I found that relying on my own prior knowledge

⁵⁶ Note that I conducted the interviews before I started at PluriCourts, so experiences from this position thus did not impact the interviews themselves.

allowed me to fill in the dots and perhaps also to ask better questions and be a better interviewer. That said, it is important to note that it is expert interviewing which has been my research method and that I have not used concrete examples from my own time at the Norwegian delegation in this thesis.

The interviews

Overall, the interviewees provided information and insight which appear to give at least some support to all three models. I will now provide an overview of the main findings from the interviews.

I - The organizational tools model

Central to the organizational tools model is the claim that even if member states had wanted to rely on CoE as their main organizational instrument to tackle democratic backsliding, its tools are simply not strong enough to meet the challenge. My interviewees gave some support to this claim, as they all appeared to be very conscious of some of the inherent limitations associated with CoE's tools. Yet as will appear below, they also stressed that CoE's tools had many strengths, something which also applied when facing a threat such as democratic backsliding.

On CoE's Political tools

Starting with the reporting and monitoring activities, the interviewees described the reports of CoE's various organs as being of very good quality. Interviewee two pointed out that CoE organs regularly conducted their own state visits where they met and discussed with several types of actors. This made CoE's monitoring scheme much more thorough and authoritative than that of for instance the UN where they to a larger extent relied on second-hand information, he argued⁵⁷. Discussing PACE's reports, interviewee one praised the way dozens of experts dived into the details and wrote reports with a richness of dates, footnotes, and sources. As to VC's opinions, interviewee four stressed that they were marked by their ability to take the entire national political and judicial context into account. This was particularly useful in cases of backsliding, where reforms and policies tended to work in a cumulative and structural manner across the entire political system, he argued. Interviewee four also

⁵⁷ S1: Interviewee two had wide experience from working with the UN and was thus well placed to know. See appendix.

highlighted that VC managed to move around very quickly to respond to urgent crises, and that it was also able to remain persistent. Recommendations that were not implemented were never forgotten, but rather included in report after report, he argued. Several of the interviewees also highlighted how different CoE organs relied on and used each other's' work by cross-referencing it in their own reports and statements, thus contributing to a more authoritative and coherent overall response to threats such as backsliding.

At the same time, the interviewees were also aware of the limitations associated with CoE's reporting and monitoring activities, especially when they were met by a government that attempted to diffuse and hide the reach and consequences of its actions or to politicize its critics. Interviewee five highlighted that PACE's reports were primarily political and were also largely perceived that way, something which limited the pressure states felt to comply with recommendations. As for the Congress, interviewee six and seven explained that Congress' reports only functioned as a foundation to begin a dialogue and hopefully also to start an improvement process. When a state had no willingness to engage in this process, there was little Congress could do on its own. According to them, Hungary appeared to have become one of those states where Congress had little influence. In Congress' reports, it had regularly been stressed that Hungary was not only lacking procedures to comply with the European Charter of Local Self-Government but that it had also passed new domestic laws that floundered basic Charter requirements. Despite this, the two interviewees did not see any prospects of improvements in Hungary.

Although not necessarily this blatant, interviewee four stressed that states could and also did use different strategies to ignore or dodge critical opinions by VC. Some states would make certain amendments in line with recommendations so that they could claim that they engaged in dialogue, while at the same time disregarding the most central criticism. Sometimes, they would avoid doing what was specifically mentioned in the VC opinion, while at the same time finding new and innovate ways to achieve the same endpoint by making amendments and engaging in policies not specifically mentioned. Another often used tactic was to point out how the same procedures that that they were criticized for already existed in other member states, while completely ignoring the political context or the existence of other counterbalancing institutional checks and balances that existed in those other member states. According to interviewee four, Hungary was one the countries that would sometimes engage in the above mentioned strategies to circumvent or bypass VC's opinions. In the literature, it was suggested that that some of these strategies were also prevalently used in PACE. I

therefore also asked interviewee five whether he or she had experienced that Hungary or other states attempted to delay, policies or ignore PACE monitoring, but without receiving any further comments.

Despite how reports and opinions could sometimes be disregarded or circumvented, the interviewees did not seem to think that CoE's opinions, reporting, and monitoring activities were useless. Indeed, it appeared quite the opposite, with for instance interviewee two arguing that CoE's vast monitoring activities and the ensuing written reports with plenary debates were among CoE's key strengths. Several of the interviewees stressed that reports were written for and also used by different audiences, which meant that they could have a societal impact even if the state's government ignored or refused them. With regards to Congress, interviewee six and seven claimed that many organizations and interest groups equivalent to KS successfully used Congress' reports and references to the Charter in their domestic work. The Congress' reports were also useful for other IO's such as the EU and states such as Norway in the implementation of their foreign policies. Interviewee four expressed many of the same sentiments with regards to VC's opinions, which he argued were perceived as both clarifying, professional, and neutral. This meant that they were often an effective tool for actors opposing a government engaged in backsliding. In these states, it was often not the government which had requested the opinion by VC, but rather other domestic or international actors for whom the ensuing opinion tended to be very effective in their work to oppose a particular reform or policy. Yet from several of the interviews, it also appeared that VC was in a very special position in this regard and that its authority did not necessarily correspond to that of other CoE organs'.

The interviewees were also asked about CoE's sanctioning possibilities⁵⁸, which they seemed to agree were extremely difficult to use and largely irrelevant for a member such as Hungary. Interviewee one compared CM's expulsion procedure with a nuclear option, arguing that it was well known to be extremely difficult to get a majority for using nuclear weapons in Europe. Interviewee two described the threat of expulsion as nothing but empty words. He explained that Denmark several years prior to the initiation of the infringement procedure against Azerbaijan had investigated the possibility of suspending Azerbaijan over the lack of compliance in the Mammadov case⁵⁹. However, they had concluded that this would be very

⁵⁸ Note that these interviewees were conducted prior to CoE's recent expulsion of Russia.

⁵⁹ The case *Mammadov v Azerbaijan* concerned the jailing of one of Azerbaijan's leading opposition politicians. In the theory section, I explained that this case in 2017 led to the initiation of CoE's infringement procedure for the very first time. See Collis, T. (2021). "The impact of infringement proceeding in the Mammadov/Mammadli

challenging not only with regards to procedural requirements but also in terms of gaining enough political support. Many members states had seemed to believe that it would after all be better to have Azerbaijan in the fold than outside, an argument which was also often been heard with regards to Russia.

On CoE's judicial tools

The interviewees thus seemed to agree that whereas CoE's political tools had many strengths, they were also vulnerable to some of the tactics used by a government engaged in democratic backsliding. As discussed in the theory section, expectations tend to be higher with regards to the "hard and binding" judicial tools. At CoE, ECtHR is often celebrated as its strongest and most consequential achievement. Yet none of the interviewees seemed to think that the Court was the most important tool with regards to combatting democratic backsliding. With the words of interviewee four, democratic backsliding is such a complex challenge, that no quick fix such as a court judgment could realistically be expected to stop it.

When I asked interviewee three, who himself had recently been judge at ECtHR, about the Court's handling of democratic backsliding, he stressed that the issue had to be considered in view of the Court's competence under the Convention. As no state had lodged interstate applications in connection with democratic backsliding, the Court's task had been to consider applications from persons claiming to be victims of violations. In many cases concerning aspects related to democratic backsliding, the Court had found a violation and the legal reasoning had contained clear criticism of national developments, he argued. One such judgment was the high-profile grand chamber judgment *Baka v. Hungary*, which concerned the ousting of the Hungarian Supreme Court President Andr as Baka in 2011 because of his public statements. Baka had been a strong critic of Fidesz' judicial reforms and had spoken in parliament on how they would strangle the independence of the judiciary. Interviewee three had himself been one of the judges in the 2016 grand chamber judgement. According to him, this judgment was a good illustration of how the Court could react against worrying tendencies, as the judgment resulted in a violation of article 10 on the freedom of expression

group of cases: a missed opportunity." <https://strasbourgothers.com/2021/05/28/the-impact-of-infringement-proceedings-in-the-mammadov-mammadli-group-of-cases-a-missed-opportunity/> Accessed 26.03.2022.

and clarified the principles of this right in such situations. In view of the Court's backlog and the general pace of the Strasbourg proceedings, he also did not think the Court had responded too slowly. He detailed the many procedural requirements that the case had to pass before being admitted to the Court and the grand chamber in particular.

In light of the regrettable development in some countries, interviewee three also pointed out ways in which the Court was adapting. The Court had made increasing use of Article 18 of the Convention, which states that the "restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed". Consequently, in addition to the specific violation complained of, for instance a deprivation of liberty under article 5, the Court could find violations of article 18 which placed an extra stigma on the state concerned. Interviewee three also referred to the introduction of the pilot judgment procedure, which as described in the theory section permits the Court to deal with groups of identical cases deriving from the same root cause. This was a way to assist states to eliminate systemic and structural problems and to respond faster when faced with a large number of similar cases, he argued.

Interviewee three was also asked about the problem of lacking compliance, which also affects Hungary. Here, he stressed that a large majority of judgments are complied with, and that improvements in human rights conditions often come in small steps at the time. Over ECtHR's over 70-years of history, it had outlived several periods with difficulties and problems with compliance. Yet over time, the Court had always pulled the longest straw. Resonating with a similar point made by other interviewees concerning the effects of reporting and monitoring, interviewee three also highlighted that a judgment could be consequential even if it was not immediately accepted or implemented by the government. Each member state consists of many different groups, and for those opposing a government engaged in backsliding, ECtHR judgments could provide important ammunition in their battle. Interviewee three also stressed that states were legally bound to execute the Court's judgments, and that it would not be fair to blame the Court for the lack of domestic implementation.

As previously discussed, the ECHR Convention system is set up so that it is CM, a political organ, that supervises the Court's execution of judgments. This supervision takes place during the so-called CM-DH meetings, which occurs approximately six times a year. Over three intensive days, they discuss progress and developments in some sensitive, preselected cases that have been put under CM's enhanced supervisory procedures. Interviewee one had himself

been sitting at these meetings and had also chaired it for a while. He explained that for these meetings, affected countries would often send in high-ranking officials and their very best lawyers from the capital. On the other end of the table, only a few of the delegations would raise their voice. For the most time, ambassadors did not even bother to meet up, as these types of meetings were often handled by the embassies' number second. Interviewee two, who also had experience from these meetings, also shared this impression. He pointed out that it was often just a few delegates, mostly from Western Europe, that participated in the discussions, whereas most others remained silent. Both interviewees also highlighted the large workload associated with these meetings for the delegations. During the meetings, delegates discussed a wide range of judgments with often long preceding. Keeping track of the details was extremely time-consuming for the delegations. As a possible improvement, interviewee one argued that the system could have been more efficient if other member states also had sent representatives from their foreign ministries that had more knowledge of the different cases. This would also have been a way to prove their commitments and increase the political pressure for compliance, he suggested.

On democratic backsliding as a unique threat

While praising many of CoE tools, the interviewees were thus also much aware of their limitations. Yet they disagreed as to whether democratic backsliding made these limitations more or less important and consequential. Interviewee one argued that democratic backsliding was not a unique type of threat and that it was not particularly difficult to tackle compared to other threats CoE is and has been faced with. Interviewee two was off the opposite view, and expressly underlined that democratic backsliding constitutes something new and different. In particular, he worried that CoE lacks strong tools to ensure the integrity and functioning of democratic institutions, which is a key target of a backsliding government. This worry was also shared by interviewee four, who lamented that CoE had few credible legal sanctioning tools to deal with system-wide attacks against democratic institutions. He argued that to be able to fight democratic backsliding, different reforms and policies had to be understood but also reacted to in cross-organizational and coherent manner, something which CoE's current legal toolbox was not designed to do. According to him, this had meant that countries such as Hungary and Poland had been able to gradually change their entire regime form, without

receiving any strong actions from CoE. Here he pointed out that CoE was not alone in this regard, as that the same criticism could also easily be applied to the EU as well.

Some of the interviewees suggested that the lack of stronger reactions could be partly explained by the threat of democratic backsliding not being foreseen or properly understood until it was arguably already too late. According to interviewee four, CoE as a whole appeared to have “been sleeping in class” during Fidesz’s first years in government, and they only woke up to threat when the same reforms started appearing in Poland as well. By that time, their marge de maneuver had become markedly smaller, with several member states showing the same signs of risks and distress. This perception also appeared to be shared by interviewee two, who himself chaired GR-H, CM’s rapporteur group on human rights, in the crucial first years of Fidesz’ rule. He explained that the new government was met with criticism from the beginning of their rule, but that CM in the beginning primarily focused on the conditions of national minorities in Hungary, which was a topic of great concern after the election. The new constitution, the court reforms, or the new media laws appeared to have received less attention from CM or the political leadership of CoE in the beginning, he argued. Around the same time, Hungary’s liberal leaning ambassador was also called home. The new one held a much lower profile, and both he and his delegation suddenly seemed to disappear into the shadows. Interviewee two remembered it as though this did stir some worry in parts of the organization, but nothing which was discussed openly.

According to interviewee two, this lacking ability to sound the alarm or to perceive the holistic and deliberate nature of the assault on democracy that was underway might have been linked to the reigning perceptions of democratization and democracy at the time, but also to CoE’s organizational structure and priorities. He suggested that CoE was primarily constructed as a club for democracies and that its tools and structure had largely also remained that way. It was simply not built or equipped to handle the type of gross and serious human rights breaches that it is currently experiencing in many of its member states. Before CoE’s eastern enlargement, there had been discussions on the risks of admitting states that would later revert back to autocracy. However, the general perception had been that if you introduced strong and stringent enough admittance requirements, new member states would keep living up to these standards presumably forever. Therefore, the focus had been on how to build up democratic institutions and not on how to ensure their survival or on building a self-sustaining democratic culture. When some states showed clear signs of democratic decline

and refused to cooperate, CoE neither had the organizational focus to perceive the early warning signs, nor the right toolkit ready to fight it, interviewee two argued.

To sum up, the interviews appear to give support to some of the central propositions in the organizational tools model. The interviewees pointed out different ways in which CoE's tools could be bypassed and circumvented by a government engaged in democratic backsliding. These limitations concerned both CoE's political and judicial tools, who all struggled when meeting a government that with zeal and legal arguments sought the long-term capture of the democratic system. The conclusion thus seems to be quite pessimistic, in the sense that CoE's tools simply weren't up for the task. Yet at the same time, the interviewees also stressed that CoE's tools also had important strengths and that their total effects should not be judged prematurely. Some of the interviewees suggested that CoE's difficulties with handling democratic backsliding in Hungary were perhaps compounded by an overly rosy perception of democracy and democratization, which might have contributed to CoE's tools being poorly equipped to deal with the threat. Yet ultimately, it is member states that have set up the current tools, and it is thus also member states who have the power to change them. However, they might have had other goals and priorities for CoE which they may have chosen to prioritize instead, a possibility that is further explored in the rational principals model.

II The rational principals model

Whereas the organizational tools model focuses on problems and structural difficulties, CoE's response appears less problematic from the point of view of the rational principals model. With basis in the literatures on the PA relationship and regime complexes, the model assumes that close to all CoE member states want the same thing, namely to safeguard the rule of law and democracy in Hungary. Yet member states oversee a regime complex with different IOs at their disposal, among whom the EU is particularly important. For various reason, member states might have chosen to prioritize the EU, so that it could lead the way in the European response to democratic backsliding.

On the different strengths of CoE and the EU

Indeed, it is the observation that the EU appears to have been assigned the leading role in the European response to democratic backsliding that constitute the starting point of the rational principals model. By and large, my interviewees agreed with this description, yet they did not seem to think that it was necessarily something wrong about it. Interviewee two argued that the EU has economic sanctioning possibilities that CoE simply does not possess, whereas interviewee four stressed that the EU as a more politically driven organization simply had to be much tougher and outgoing in its response. Interviewee five more soberly noted that “member states were likely to be well aware of some of the inherent limitations associated with CoE”, and that this surely impacted how they chose to use their resources. Despite this somewhat inferior depiction of CoE, the interviewees also argued that CoE *did* have an important role to play with regards to combatting democratic backsliding. Yet this role was different than that of the EU, with the overall response working best if the two IOs managed to coordinate their activities and play on each other’s strengths. By and large, the interviewees also believed that the two IOs did manage to coordinate their activities and responses to democratic backsliding in an efficient and appropriate manner.

Indeed, several of the interviewees put forth ways in which CoE benefitted from relying on the EU. Interviewee four argued that with similar-sounding names, logos, and overlapping fields of work, many of the actors CoE met with did not know the difference between the two IOs. This could often be a good thing for CoE, who either directly or through association could make use of EU’s reputation and recognition to make its arguments and recommendations heard and listened to. Yet also for actors who well knew the difference, a close association with the EU could strengthen the pressure to comply with CoE organs’ recommendations and opinions, he argued. EU has large political muscles as well a more credible ability to sanction misbehavior, which meant that states felt a much stronger pressure to comply if also the EU put its political force behind a CoE organ’s recommendations. Interviewee two on the other hand highlighted the importance of the EU’s economic capabilities and the many ways in which closer economic cooperation between the two IOs was crucial for CoE’s ability to continue its large range of monitoring activities, which he argued was a key strength of the organization.

The closer association between the two IO’s was also argued to benefit the EU, with several of the interviewees stressing the high recognition and unique authority that CoE possessed.

For interviewee four, this authority was primarily linked to the perceived neutrality and professionalism of CoE's reports and of some of its expert organs in particular. He argued that CoE and its organs were also perceived to be less politically controversial in many member states and in certain political environments, which meant that they were sometimes listened to in another way than what the EU would. For interviewee six and seven, CoE's special authority was primarily linked to the moral values it represented, as it in many ways played the role of the "moral compass" in the European organizational landscape. They stressed the many occasions on which different EU organs referenced and used reports, findings, and opinions origination from CoE in their response to democratic backsliding. Even though the EU could have done much of what they were currently doing also without referencing CoE and its work, doing so made their arguments much stronger and legitimate, they argued.

A similar point was also made by interviewee one, who stressed that the EU's reliance on CoE was not only beneficial but indeed a necessity if one wished to combat democratic backsliding. He highlighted that the judicial obligations to uphold the principles of rule of law, human rights, and democracy were enshrined into CoE's statute as well as ECHR. As all EU members were already part of CoE and had also passed the EU's additional stringent accession requirements, it had never been perceived as necessary to legally establish these same values once more. The dominant perception had been that the EU consisted of what interviewee one termed "only good and well-behaved boys". When this perception now had started to shatter, the EU had few judicially binding obligations on its own to rely on. This meant that the two IOs needed to take on this challenge together, which interviewee one argued they indeed had.

On the cooperation between CoE and the EU

Interviewee one was well placed to know, as he as CoE's ambassador to the EU had coordinated much of the response of the two IOs in the early years of the Fidesz government's rule. Interestingly, he indicated that the scale of the problems was brought to the notice of the leadership of the two IOs through CoE's monitoring activities and its expert organs. The political developments in Hungary soon became a priority on interviewee one's agenda, with a range of meetings with high-ranking officials from both IOs. He argued that the EU had been very attentive to CoE's knowledge and opinions on the matter, with an especially strong

interest stored on the opinions of VC. As a result, CoE had been able to influence the EU's response in several ways, with the European Commission's infringement procedure from 2012 as a telling example. Here, the EU had heavily relied on CoE with regards to the soft and hard law frameworks that were used to back its legal claims, interviewee one argued⁶⁰.

Yet despite the many examples and accounts of how CoE and the EU worked together to coordinate the response to democratic backsliding, it was also clear that the cooperation was largely steered by the EU. In the early and mid-2000s, CoE's political leadership made it a key priority to improve the relationship with the EU and to deepen their cooperation. The CoE ambassador post in Brussels was made permanent, and under the leadership of interviewee one, the delegation quickly grew to become a key middle-sized diplomatic station. Most of the coordination of the two IOs' vast cooperation portfolios were conducted from this delegation. After some time, the EU also established a permanent delegation in Strasbourg, yet this delegation was much smaller, received less attention from its mother organization, and spent much of its time just getting an overview of CoE's activities and coordinating the response of EU member states in the debates taking place within CoE. The EU leadership was also more difficult to get hold of, as it was also constantly busy with other topics and other partners they needed to coordinate with as well, interviewee one explained. Getting acceptance for CoE's own priorities in the relationship turned out to be difficult. For a long time, a central goal for CoE had been the EU's accession to ECHR, and this had also been a key priority for interviewee one from day one in his new office. Yet despite countless meetings and assurances, the EU has as of 2022 not yet exceeded to the ECtHR and the authority between ECtHR and ECJ has not yet finally been decided.

The issue fits within the broader picture of CoE and EU's cooperation, which appears to have been heavily influenced by EU's foreign policy interests with regards to CoE's non-EU member states. In 2012, which was also the year developments in Hungary started to appear regularly on interviewee one's meeting agenda, developments in Ukraine, Russia, Georgia, and Turkey were also important topics for the delegation. The EU was also interested in the more general political developments in other eastern CoE member states that were either actual or potential EU candidates. Together, the two IOs oversaw an enormous portfolio of

⁶⁰ As described in the theory section, the European Commission's infringement procedure against Hungary was based on three legal grounds, namely the independence of its national central bank, its judiciary, and the data protection supervisory authority. According to interviewee one, the EU had relied on CoE for the second and third of these three legal grounds.

projects related to democracy, rule of law, and human rights that were implemented in these states. Interviewee one's office was central in overseeing this portfolio, and according to him, his office ended up becoming responsible for large parts of the EU's neighborhood policy on these topics in these countries.

On agency slack and alternative tasks for CoE

The above paragraphs paint a picture of a European organizational response to democratic backsliding characterized by cooperation, but also by a strong dominance of the EU. Despite how member states had pledged that CoE would remain the central European IO with regards to questions concerning democracy, rule of law, and human rights, it thus appears that it was the EU which was given the reins with regards to combating democratic backsliding.

Following the logic of the rational principals model, a division of work this consequential must have been deliberately maintained by member states. The model suggests two different potential reasons as to why member states might have chosen such a tactic: either 1) CoE was perceived as flawed and afflicted with agency slack, or 2) member states had other tasks for CoE that they chose to prioritize instead.

In the theory section, I outlined some situational factors indicating that member states were not content with CoE's achievements and functioning. Member states had refused to increase CoE's budget in line with inflation, had over several years urged for wide scale organizational reforms, and had openly criticized the Court for acting out of mandate. This would suggest that member states could have chosen to prioritize the EU out of dissatisfaction with CoE as an agent. However, this was not the impression I got from the interviews, where most appeared to be impressed by CoE and especially by its permanent secretariat. According to interviewee four, VC's secretariat was "extremely professional", "extremely skilled" and an important reason as to why VC was able to work the way it did despite being only around 25 staff⁶¹. Interview three described the Court's secretariat as "excellent", whereas PACE's secretariat according to interviewee five was "solid and professional", even when handling politically sensitive cases. These remarks were not occasional, as many of the interviewees

⁶¹ This is also the number that appears in Cameron's overview of VC's role in combating democratic backsliding. See Cameron, I. T. (2020). "The Role of the Venice Commission in Strengthening the Rule of Law." Rule of Law in the EU: 30 Years After the Fall of the Berlin Wall (Forthcoming).

would come back to these descriptions on several occasions. The only interviewees that appeared more lukewarm were interviewee six and seven, who nevertheless blamed an apparent lower quality of the Congress' secretariat over the last few years on the difficult economic situations which had led to regular downsizing of the number of higher-level positions. It is also worth noting that though interviewee two praised the professional and sector specific expertise of the secretariat, he also argued that they would sometimes be a bit too "overprotective" of their own fields of work.

As all my interviewees had close personal ties with CoE, the above paragraph might very well be overly rosy. Yet with some caution, it does seem to indicate that it was not necessarily the perceived agency slack which was the reason for the lesser important role assigned to CoE. This leaves us with the other explanation proposed in the theory section, namely that member states had other tasks for CoE that they chose to prioritize instead. From interview one's account of the relationship between EU and CoE, it appears that while the cooperation between the two IO's grew closer and more extensive, they also appears to gradually have taken up different roles. While the most important reactions such as the EU's infringement procedure were conducted at the EU level, also CoE's special expertise and competencies had turned out to be very useful. Indeed, CoE's legal frameworks were used to find ways of holding member states accountable, whereas CoE's "knowledge of the field" stemming from its vast monitoring activities and the work of its expert organs were important to understand the threat as it developed. But CoE's expertise and competencies might also have been valuable for other tasks unrelated to democratic backsliding. Indeed, CoE's broad membership basis might have allowed the EU to gain better information and a much more comprehensive understanding of political developments in EU's neighborhood, a geographical region that grew increasingly strategic as the 2010s developed.

Some of the other comments of interviewee one also seems to indicate that CoE gradually came to be perceived as an IO with its expertise and knowledge centered around Eastern Europe. At the same time, it appears that the EU was more firmly taking root as the prime arena for "European" issues. Interviewee one pointed out that as the political developments in Hungary developed, many Western European states started to worry that the European organizational response was not strong enough. The foreign ministers of Germany, Netherland, Denmark, and Finland therefore sent an open letter stating their concern and urging for tougher actions. However, the letter was sent to the president of the European

Commission and not to CoE⁶². As the same time, CoE seems to have become more closely associated with issues related to security and Western Europe's close neighborhood, a tendency that is arguably also visible in a non-EU member such as Norway. Traditionally, it was the Norwegian Ministry of Foreign Affairs' department for European politics which had handled matters related to CoE. However, during interviewee one's term as CoE ambassador to the EU, CoE's portfolio was moved to the department for security, where it was dealt with together with affairs related to NATO, OSCE, and the political developments in Russia. According to interviewee one, Norway was not the only member state where CoE affairs were handled by a separate foreign ministry department from the one handling its foreign policy towards other EU member states. Interviewee one lamented this tendency, which he argued made coordination between the two IOs more difficult. Yet the trend might also tell us something broader about what member states perceived to be the main role and tasks of CoE in the broader European organizational landscape.

Short summary

In this model, we have seen that CoE and the EU cooperated on the multilateral response to democratic backsliding, but also that the EU appears to have taken the leading role. Following the logic of rational principals' model, this might have been a rational course of action for member states. Through promoting cooperation between the two IOs on democratic backsliding, member states could make use of CoE's monitoring activities and its specific expertise. Yet by allowing EU to take the lead on democratic backsliding, member states also had more room to use CoE for other purposes unrelated to democratic backsliding too. However, there might also have been other reasons for this outcome. Indeed, CoE's membership expansion might have impacted not just its strategic role, but also its internal political environment. Indeed, several of my interviewees suggested that CoE was experiencing a growing heterogeneity among member states, with especially some of the newer member states being less willing to prioritize matters related to human rights and democracy. The possible impacts of the internal political environment of CoE will be highlighted in the next model.

⁶² For a full version of the letter, see Westerwelle, G., et al. (2013, 06.03.2013). "Open letter to the European Commissioner." from [https://www.eerstekamer.nl/eu/documenteu/_brief_nederl and _duitsland/f=/vji8oh6slx9o.pdf](https://www.eerstekamer.nl/eu/documenteu/_brief_nederland_duitsland/f=/vji8oh6slx9o.pdf), *ibid*.

III The principals' politics model

The principals' politics model is built on the premise that member states are not necessarily a unitary group of states, and that their goals and intentions are not necessarily stable or "well-intended". Indeed, some member states might deliberately seek to obstruct CoE and its ability to tackle a challenge such as democratic backsliding. Yet it is also possible that changing priorities among a broader group of member states may have meant that they had become less willing to stand up for the CoE and provide it with the political and financial support it needed to combat a challenge such as democratic backsliding.

On the role of authoritarian member states

Starting with the more general political context, several of the interviewees highlighted how the growing polarization and geopolitical tensions in the 2010s had negatively affected the decision-making environment within CoE. As argued by interviewee two, the divergence in conditions, opinions and priorities of the different member states markedly grew, making it more difficult to pass policies, especially of the more progressive and critical kind. Though there were various reasons for this trend, interviewee two argued that it appeared to be particularly fueled by some of CoE's larger authoritarian member states. He suggested that states such as Russia would strongly oppose any policies or institutional attempts that could be argued to infringe on states' sovereignty. This would have made it extremely difficult for CoE to propose or initiate any stronger reactions to democratic backsliding than what it had already done. Interviewee two also argued that authoritarian member states such as Russia and Azerbaijan were among the most vocal supporters of increasing the organizational breadth of CoE. They were also highly critical of any attempts at redirecting organizational funding towards CoE's core work on human rights and democracy.

Though not expressed as clearly, also several of the other interviewees argued that authoritarian leaning member states did not contribute to making CoE's work better and stronger, especially not with regards to its work on human rights protection. However, they provided few concrete examples of authoritarian member states visibly being able to delay or obstruct important political decisions. Yet one possible such example came from interviewee

three, who pointed out that Russia for a long time was able to block the introduction of an important court reform. Particularly important in this regard was the proposed protocol 14, which introduced measures to increase the Court's capacity to deal with cases faster and to bar clearly inadmissible cases. It was widely seen as crucial for the functioning and authority of the Court, which in the early 2000s was in deep crisis due to its enormous backlog of cases. Yet the protocol required amending the Convention text, which usually meant that all member states had to agree. Russia was thus able to block the protocol for six years, despite considerable political pressure.

As described in the theory section, authoritarian member states might also seek to steer CoE in their wanted direction by controlling key officers such as judges, committee members or committee chairs. The Court with its unique authority and standing would be a tempting place to start. As previously explained, the Court consists of one judge from each member state. The selection process starts with the member state in question proposing three candidates, among whom PACE is responsible for selecting one. Some of the interviewees pointed out that the system had certain vulnerabilities. Interviewee two suggested that PACE representatives appeared to not always be fully informed when casting their ballots as they appeared to sometimes use heuristics such as the gender to make decisions rather than more substantive qualities. Interviewee four emphasized that the system largely depended on member states and their willingness to provide good candidates, without which PACE's election would not actually be a real one.

I also asked interviewee three, who himself had recently been a judge at ECtHR, about the election process. He stressed that important steps had been taken to ensure a better and more transparent election process of judges to the Court. These improvements included stricter requirements on openness into the national selection process, interviews of the three proposed candidates by a PACE sub-committee, as well as the introduction of an independent expert panel consisting of former judges to review the background and qualities of the proposed candidates. According to interviewee three, such stricter requirements had on some occasions led to the postponements of the election of a judge, as a new list of three candidates had been requested. As for the quality of the judges, interviewee three's impression was that most of the judges were very qualified and highly professional in their roles, and that this also applied to judges from CoE's more authoritarian member states.

The Court with its authority and special standing might be particularly challenging to infiltrate. Yet CoE also provides other openings for such behavior in organs with less outside

scrutiny or less elaborate selection requirements. One particularly tempting such organ would be VC, which after the Court is probably the CoE organ with the largest independent standing and authority. After VC opened up for signatories outside of CoE, its list of members includes states such as Kazakhstan, Israel and Brazil, which arguably could be suspected to increase the chances of success in tactics of authoritarian obstruction. Yet according to interviewee four, himself a VC member, most VC members were highly professional. He also argued that VC's secretariat played a crucial role in ensuring that members were only given tasks where there would be no conflicts of interest. This ensured that for instance the Hungarian member would never be given a case related to Polish constitutional reform and vice versa. Yet from the interview, it was also clear that VC was not completely free of internal tensions.

VC members represent themselves as individuals, yet they are nominated by their respective governments. As VC is the central European authority on questions of legality and constitutionality, it was not uncommon or even against VC's procedures to nominate a former politician or political leader with hands-on experience, interviewee four explained. Yet when some states nominated current ministers, the situation became much more problematic. As a worst-case example, interviewee four pointed to Poland where the sitting member was also the deputy minister of justice and thus also responsible for many of the reforms that VC so heavily criticized. This member had not contributed constructively and had not been part of any reports. Indeed, since 2016 Poland had simply stopped meeting in VC due to disagreements over VC's opinions. Before that, the Polish member had been one of four candidates behind a proposition to amend VC's Statue by allowing members to add dissenting opinions in the final reports. According to interviewee four, this would have destroyed the authority of VC, as states would have been enabled to cherry-pick opinions. He stressed that the proposal had been duly processed and thoroughly debunked by VC. Interestingly, the other members that had supported the proposal came from Hungary, Serbia, and North Makedonia, while none of the members from states regularly thought of as authoritarian did so. Though interviewee four did indicate that he would sometimes disagree with for instance the Russian member, he argued that it was always within the boundaries of acceptable and legitimate professional disagreements over the reach of international law. Though attempts at politicizing VC thus had occurred, it was not necessarily the usual suspects from authoritarian states that were behind it.

The above paragraphs paint a picture of authoritarian member states that were not necessarily supportive of CoE and its work. These states would argue for organizational breadth and were

critical of policies that would have strengthened the CoE, especially with regards to its work on human rights. Yet at the same time, it also appears that some of the tactics that the authoritarian member states used, were also prevalent among a much broader range of member states.

On principals' willingness to provide political support

Indeed, during the interviews, several of the interviewees expressed a certain level of disappointment with member states more in general. This disappointment was linked to member states' lacking usage of the tools CoE provided, but also to their reduced willingness to support the IO politically and financially. To make full advantage of CoE's tools, member states needed to actively use CoE's reports, statements, and diplomatic forums to help each other improve, but also to make it clear that blatant disregard for human rights and democratic values would not be tolerated. However, being outspoken and criticizing others often came at a cost that many states now appeared unwilling to pay, interviewee two suggested. According to him, a growing and widespread reluctance of criticizing others had been visible in CM debates on human rights, which appeared to have been increasingly dominated by a limited number of member states. Others remained silent, in discussion after discussion. Though this trend was widespread, but it was particularly problematic at the CM-DH meetings, where implementation of ECtHR's were discussed. Interviewee two argued that the supervision system had large potentials for being effective, as it included judicially binding judgments, a skilled secretariat, through action plans, and the ability to actively use CM to keep up the political pressure to ensure compliance. Yet it all crucially relied on member states and their willingness to invest both their time and resources in it, something which many now appeared to have become less willing to do, he argued.

Though not expressed as clearly, also interviewee one suggested that many member states appeared have been unwilling to provide CoE with the political support it needed to live up to its potential. Like interviewee two, he suggested that many delegations did not participate actively in CM-DH meetings. He particularly deplored that member states rarely sent their ambassadors to the CM-DH meetings and that their foreign ministries didn't seem to provide enough support to help the local delegations either. Both interviewees also pointed out that the same broad patterns of seeming lacking support was also visible in member states willingness provide CoE with the financial resources it needed to fulfill its most crucial tasks related to

democracy, human rights, and rule of law. This was apparent in member states' willingness to provide additional voluntary contributions to CoE's work on democracy and human rights, but also in their readiness to cut CoE's budget in other places so that it could restructure itself around its core mandate. Some contributed, but others, perhaps a growing number, did not. Not coincidentally, the same member states that were silent at CM's meetings, supported organizational breadth, and did not contribute more than they had to financially, also tended to be states with their own pervasive, domestic human rights problems, the two interviewees pointed out.

In some of his comments, interviewee two explicitly linked some of the above mentioned problems to CoE's recent membership expansion. He argued that CoE had used to consist of a small group of mostly like-minded states, with Turkey as the only special case. Yet after the latest membership expansion, internal fragmentation and tensions among member states had markedly grown. Some of these disagreements followed an East-West divide, as many Eastern European member states in particular appeared to show little interest in human rights conditions elsewhere, which they appeared to perceive as not directly relevant for themselves. Yet other disagreements pitted even founding members against each other. Interviewee six and seven for instance pointed out how the funding of translation and of Congress created bitterness also between older member states such as Germany, Italy and the UK.

A commonality of many of these disagreements were that they were related to funding and resource allocation, as CoE's budget gradually stagnated in real terms from the mid-2000s onwards. As discussed in the theory section, CoE had to cut 12 percent of its employees between 2010 and 2019 and also had to do major changes to its employment policies due the financial constraints. Both interviewee one and two stressed that member states' reduced willingness to contribute financially to CoE's multilateral work was part of a global trend, as also other IOs such as the EU and the UN experienced increasing financial constraints. Yet for CoE, the stagnating budgets came at a difficult time with several external and internal crises. For many of CoE's organs, these difficulties were compounded by the decision approved by member states to restructure its work around its core mandates of human rights, democracy, and rule of law. In sum, this meant that some organizational branches had to be drastically reduced, and member states strongly disagreed about how to achieve this.

Comments made by interviewee two suggest that in a vicious cycle, the growing conflict level might have contributed to further lowering member states' willingness to contribute financially. According to him, conflicts and increased heterogeneity implied that each

member state felt that they had less ownership and a lower ability to influence where their financial contributions went. He argued that this might have contributed to member states' reluctance to increase the budget and the obligatory membership contributions in particular. To regain some of their control, many states chose to provide voluntary economic contributions to their own preferred and earmarked projects, which they would then pay in addition to the obligatory membership contribution. While this did provide some crucial solace for CoE financially, it also meant that CoE gradually lost some of its autonomy and stability. This tendency came on top of CoE's growing dependency on EU funding, which was also attached to strict requirements. According to interviewee one, this had contributed to that whereas CoE earlier had some available funding for their own projects and to adapt to changing environments, this had almost completely disappeared. In line with the theoretical arguments made in the principals' politics model, this may have contributed to a lack of predictability for CoE and lowered its ability to plan for the future, as it increasingly became dependent on the financial contributions of funders that could change their priorities and contributions on a short term notice.

On the consequences of the lacking support

Based on the interviews, the above mentioned tendencies of lacking support appear to over time have impacted CoE's organizational capacity, and arguably also its ability to meet a threat such as democratic backsliding. As discussed in the rational principals model, my interviewees were quite in a unison in their description of CoE's secretariat as being highly professional, highly skilled, and an important reason as to why CoE functioned as well as it did. In the interviews, the interviewees particularly highlighted the thorough and sector specific expertise that many of the staff in the secretariat had, which by many were seen as a comparative strength of this particular IO. Yet at the same time, as good as all of the interviewees also indicated different ways in which CoE's organs and their secretariats now struggled under increasing financial pressure and top-down policies that reduced their autonomy. This impacted their capacity to conduct regular tasks, but also their ability to retain and hire the experts and skilled staff they so much depended on.

In their remarks, interviewee one described a continual and incessant pressure on budgets, whereas interviewee five suggested that budgetary restrictions sometimes made PACE's work more difficult and challenging. Interviewee four explained that VC had been forced to reduce

their activities, and that the economic situation worried the secretariat and was often discussed at plenary sessions. In lunch breaks, the members of the secretariat would talk of how working conditions had grown increasingly difficult. Staff were also worried over the effects of a new human resources requirement, which stated that CoE employees would only be allowed to stay in one post for five years, after which they would have to switch to another department. The same requirements also applied to the Court's secretariat. Interviewee three was critical of this decision, as he argued it could reduce the Court secretariat's specific expertise and long-standing experience. He hastened to add that some transfer of experience across branches of course also was beneficial.

It was nevertheless interviewee six and seven that were the clearest with regards to how budget cuts and a top-down employment policies restricted a CoE organ and its work. They argued that economic difficulties had contributed to the growing backlog on Congress' regular monitoring visits, a backlog which stood at 16 countries in February 2021 (see attachment). To put this number in proportions, Congress's average yearly number of monitoring visits for the period 2017 – 2019 had been 11. The backlog stood at 6 (or half a year of their planned activities) prior to 2020, and most of the backlog thus developed during the pandemic. Overall, Congress thus appears to have tackled the pandemic quite poorly. Whereas interviewee six did point out that technical expertise had for a long time been a weak spot for the organization, they both emphasized that Congress' working conditions had grown increasingly difficult over time, something which might have impacted its ability to deal with and plan for a sudden crisis such as Covid. Over the years, Congress' part of CoE's overall budget had gradually dwindled, something which meant that CoE's general budget reductions were acutely felt. The number of employees had been drastically cut, especially in the higher ranking and middle management levels. This had visibly impacted the quality of the secretariat's work, they argued. Within CoE, Congress had also lost much of its autonomy, with as good as all important decisions being decided centrally by CoE's political leadership. The top-heavy management meant that Congress had few possibilities to develop its own strategy and priorities. One can thus suspect that they had little spare resources to respond to crises, be it in the form of a global pandemic or a new type of strategic challenge such as democratic backsliding. This is worrisome, as Hungary's local democracy and local autonomy is known to have suffered extensively under Orbán's rule.

Short summary

In contrast to the rational principals model, the principals' politics model sought to differentiate between different types of member states, thus opening up for the possibility that some states were deliberately working to obstruct CoE's work from the inside. The interviewees did give some support to the proposition that CoE's authoritarian member states were not CoE's best friends, as they had sought to broaden its program and hinder its ability to function as a critical watchdog institution. However, it is also appear that many of the strategies used by these states were also prevalent among a broader base of CoE member states, who appears to have been unwilling to contribute with the political and economic support CoE needed in order to tackle a threat such as democratic backsliding. From the interviews, this lack of support appears to have, at least to some extent, reduced CoE's ability to tackle a threat such as democratic backsliding. Whether what might appear to be a gradual institutional deconstruction has been willing or unintentional, rational or ill-founded, is an open question. However, some of the comments from the interviews seems to suggest that it might have been linked to changing norms, values and priorities among a growing group of member states that no longer see multilateralism their preferred go-to option.

Discussion

As a theoretical background, this master thesis started out by exploring how what an analyst sees and judges as important is affected not only by the strength of the evidence, but also by his or her theoretical predispositions. Pushing the analyst to look for evidence in particular places and to focus on particular types of actors, structures, and casual relationships, these predispositions end up steering and to some extent also predicting the results that are being found and how they are framed. This asserts to the fact that the world can be perceived in different and contrasting ways, which means that the same event or process can yield various explanatory accounts that might differ so much that they appear almost unrelated. While the explanatory power of these accounts may vary, they need not necessarily be mutually exclusive. Yet which one of them ends up winning the public discourse matter, as it affects how a problem is understood, who or what are being blamed, and which solutions are being proposed to remedy the situation.

In line with this research tradition, I developed three theoretical models to explore the seeming paradox of CoE's inability to tackle democratic backsliding in Hungary. These three models focus on different levels of analysis, different types of actors and different casual relationships, by investigating factors such as CoE's organizational tools (the organizational tools model), member states' rational calculations (the rational principals model), and the possibility that member states in different ways might have failed to be good and supportive guardians for CoE (the principals' politics model). Through my interviews with seven experts that have followed different parts of CoE over time, I have found material which seem to support that all three models yield at least some useful insight into CoE's response. As my goal was to find out which one of them had the largest explanatory power, I at the end of the interviews asked the interviewees which one they thought to be the most decisive. However, here they all pointed to different models. Indeed, all of the three models were the preferred candidate of at least one of the interviewees. This seems to support a more pluralistic argument for that all three models are equally necessary to explain the apparent puzzle of CoE's reaction. However, I will nevertheless argue that there is also an argument to be made for that while they all matter, the principals' politics models may be the most decisive. Before explaining why, I will give a short overview of the three models, the main findings from the interviews, and the remaining questions that they raise.

Starting with the organizational tools model, the interviews did seem to support to the claim that CoE's existing tools were vulnerable when meeting a threat such as democratic backsliding. Indeed, for a government that is already an expert at using judicial tools and an alleged democratic mandate to entrench its power, there are many strategies available that they can use to circumvent the power of dialogue, the effects of naming and shaming activities, and even ECtHR's judgements. The interviewees provided several examples of such behavior, and though not all of them directly concerned Hungary, they nevertheless paint a picture of the possibilities available to the Fidesz government. Whereas some of CoE's difficulties are perhaps compounded by a threat such as democratic backsliding, others are inherent to the fact that it is an IO, with the limitations that entails. Indeed, when meeting a sovereign state that rejects to implement ECtHR judgements, refuses to engage in sincere dialogue, and seemingly doesn't care about CoE's various naming and shaming activities, there is a limit to what an IO such as CoE actually *can* do. As seen in the theory section, this has also been the experience of other IOs such as the EU and OAS which have been struggling with the same types of challenges⁶³. Following this logic, it thus appears that there was little CoE could have done other than what it already has done, and that to blame it for an apparent lack of stronger response would be unjust.

That said, this somewhat pessimistic and deterministic conclusion may be premature. As stressed on several occasions in the interviews, the effect of IO tools might sometimes require time before their impacts become visible. Sometimes, their effect will be in the negative form of what *didn't* happen, which makes it more difficult to judge their effectiveness. Thus, it might very well be that CoE's tools have had a larger impact on developments in Hungary than what would appear now, both in the form of what it has perhaps prevented, and in the form of possible future improvements. In addition, to live up to their full potential, most of CoE's tools are completely dependent not just on the particular member state itself, but also on other member states and their actions. Indeed, the effects of CoE organs' statements, opinions, and monitoring activities crucially rely on member states and their willingness to use and quote them to ensure that both domestic and international audiences receive the

⁶³ See Arceneaux, C. and D. Pion-Berlin (2007). "Issues, Threats, and Institutions: Explaining OAS Responses to Democratic Dilemmas in Latin America." Latin American Politics and Society 49(2): 1-31.

, Margulies, B. (2019). "Falling in with the wrong crowd: linkage in the age of populism." Canadian Foreign Policy Journal 25(1): 54-71.

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message. Similarly, CoE's various forums for dialogue and diplomatic activities crucially rely on member states investing time and energy on them, but also on their willingness to risk potential political or economic costs associated with criticizing others. CoE's capacity also crucially relies on member states providing sufficient funding, without which CoE's organs cannot engage in their regular activities, respond to new crises as they develop, or hire and maintain the skilled staff they need.

Lastly, it is also important to remember that CoE's current organizational structure is designed and set up by member states themselves. If the current tools are not well-targeted or strong enough to meet a challenge such as democratic backsliding, it is in many ways up to them to harness or improve CoE's tools. Some of the interviewees mentioned that CoE's lack of tools were linked to what had turned out to be an overly rosy understanding of democracy and democratization in the aftermath of the cold war. Yet when this became apparent, it should have been up to member states to ensure that the situation was remedied. As we have seen, member states have actively urged for the improvement of EU's tools with regards to democratic backsliding, while they have appeared less willing to do so for CoE.

Member states reliance on the EU with regards to combating democratic backsliding was the topic of the rational principals model. The interviews suggest that the current cooperation between the EU and CoE is working quite well in the sense that the two IOs manage to rely on and use each other's strengths and expertise to harness the European response to democratic backsliding. Yet the pattern of cooperation between them suggest that it is the EU that has been empowered as captain of the mission, whereas CoE has only been assigned the role as second violin. This appears to go against the decision from the most recent high level member state meeting, where member states pledged that CoE would remain the central European authority with regards to questions of human rights, rule of law, and democracy.

Despite being seemingly contradictory, the rational principals model suggested that this outcome may nevertheless have been ushered by rational calculations on the part of member states. They oversee a regime complex consisting of several IOs and must juggle different foreign policy objectives. In the theory section, I outlined some situational factors indicating that member states might have deemed CoE to be afflicted with agency which might have prompted them to empower the EU instead of CoE in their response to democratic backsliding. Yet this was not the impression I got from the interviews, where it appeared that most interviewees were rather impressed by CoE's secretariat. That said, this possibility should nevertheless not be completely ruled out, as all the interviewees had strong personal

ties with CoE. The interviewees were also conducted by me, who also have my own personal experiences and feelings associated with CoE which might have impacted my framing of questions or my analysis.

The rational principals model also suggested that member states might have had other priorities for CoE which they chose to prioritize instead. Indeed, following growing geopolitical tensions and the entrenched human rights and rule of law problems in many of CoE's Eastern member states, it may have been rational for those states that are members of both IOs to target CoE's work towards Eastern Europe and security concerns, and then leave the task of combatting democratic backsliding more firmly to the EU. Yet it is also possible that a gradual decline in CoE's budgets and lacking political support for its work contributed to a gradual deconstruction of CoE's capacity and authority over time, which might again have made it a less attractive tool for combatting a threat such as democratic backsliding. In a more tautological argument, it is thus possible to suggest that it was member states' own prior (in)actions which prepared the ground for them to convincingly claim that the EU and not CoE should be given the reins in the European response to democratic backsliding. What prompted this drop in financial and political support for CoE thus becomes an intriguing question. Though this was not the impression I got from my interviews, it might have been motivated by a general dissatisfaction with the quality of CoE's work. Yet another possibility is that it may also have been partly caused by member states' unwillingness to have CoE and especially the ECtHR's interfere in their domestic policies.

The role of CoE's authoritarian and illiberal member states was scrutinized in the principals' politics model. From the interviews, it appears that some of these states occasionally had engaged in tactics that had appeared to have been aimed at weakening or obstructing CoE's work and organizational capacity. However, from the interviews, direct attempts at obstruction do not appear to have been very widespread. Also, perhaps apart from the Polish VC member's attempt at changing VC's statute to allow for dissenting opinions, few of these examples appears to have been specifically linked to CoE's response to democratic backsliding. As the example from VC shows, some of these attempts at obstruction also seem to have been launched and supported by illiberal states rather than those more commonly thought of as authoritarian.

It also appears that while authoritarian member states may have indulged in different strategies that have weakened CoE's capacity over time, they were not alone in doing so. Indeed, lack of support of ECtHR and CoE's watch dog functions, attempts at diluting CoE's

organizational capacity by supporting organizational breadth, and a lack of willingness to provide CoE with the financial resources it needed to perform its tasks, also appears to have been prevalent among a much broader range of member states. This is vexing, as the European continent in the 2010s was faced with an almost incessant line of crises, many of whom required international cooperation and multilateral responses. During this period, CoE had to deal with the refugee crisis and the aftermath of the financial crisis, rising xenophobia, intolerance, and increased social tensions, as well as frozen and even “hot” wars between CoE’s own member states (Benedek 2020, Gauthier 2020). On top of that came democratic backsliding, where it soon became clear that the illiberal ideas and leadership strategies used by Fidesz in Hungary had the potential of spreading to other CoE member states too. The fact that CoE’s budgets and the political support for its work over this period decreased rather than increase, seems to suggest that certain norms, values, and priorities among member states are no longer the same as what they were in the 1990s and early 2000s. As discussed in the theory section, norms are upheld by shared impressions within a community of states of what constitutes morally necessary, normatively justified, or simply just “appropriate” state behavior (Finnemore and Sikkink 1998). They are sustained partly by habit and sense of appropriateness, but also by “feelings” of pride and integrity as well as of embarrassment, anxiety, guilt, and shame. The prevalence of these types of motivating feelings might now be changing, perhaps leading to new patterns of state behavior.

Indeed, when CoE was constructed in the aftermath of the Second World War, it was in an international environment where multilateralism was seen as essential for building a better future for humanity. This faith in multilateralism got a further impetus at the end of the cold war, and became an important force that contributed to CoE opening its doors to the many new and independent states that sought closer ties with Europe (Madsen 2021). Yet as 2000s progressed, some of these beliefs gradually started to waver. Arguably, this tendency has also been visible in some of the Western European states that themselves have been crucial in designing and developing the current organizational architecture. Indeed, the focus on IOs as a drain for money and the seemingly faltering faith in IOs as solutions and platform to solve problems seems to suggest that at least some states have started to question the utility of multilateralism and of an IO such as CoE in particular.

Over the last decade, also other IOs have experienced sustained pressures on budgets⁶⁴. Many have also been faced with calls for reforms and increased criticism of either acting out of mandate or of failing in their missions. In a world where states are increasingly strengthening their grip on the pursue and reclaiming their right to sovereignty, it is no wonder that life as an IO becomes harsher and more difficult. Yet compared to other IOs on the European continent, CoE is much smaller in budgetary terms and has a stronger attachment to norms and values that are currently increasingly being questioned, reframed, or even openly challenged. Crucially; multilateralism, the utility of dialogue, and the building of open and sustainable democratic culture are at the core of both its work, its functioning and its mission. In an international context where liberal democracy is increasingly under pressure and new norms and priorities concerning how to solve problems are festering, CoE is not an unlikely first victim of the climate change that is currently making itself felt also on the European international arena.

⁶⁴ Examples in the last ten years include both the UN and the EU. See Mungcal, I. (31.10.2012). "Council seeks \$64.8B in EU budget cuts." Devex. Retrieved 29.04.2022, from <https://www.devex.com/news/council-seeks-64-8b-in-eu-budget-cuts-79609>.

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Appendix

Information on the interviewees and the interviews

Interviewee 1: Thorbjørn Frøysnes

- Interview conducted on Zoom 27. Mai 2021.
- Duration: Two hours.

Frøysnes served as CoE's ambassador to the EU between 2008 and 2016. Before that, he was the Norwegian ambassador to CoE between 2003 and 2008. While ambassador to Norway, he for a period chaired the CM-DH meetings and was head of the liaison office between the CM and ECtHR.

During his career, Frøysnes has also had various other positions at Norwegian Foreign Ministry both abroad and in Norway.

Interviewee 2: Petter Wille

- Interview conducted on Zoom 10. May 2021.
- Duration: Almost 1,5 hours.

Wille served as CoE's ambassador to CoE between 2008 and 2013. While being ambassador, Wille also for a time chaired GR-H, CM's rapporteur group on human rights.

Between 2015 and 2018, Wille was the director of the Norwegian National Human Rights Institution (NIM) where he now works as a special advisor. He also serves as the Norwegian member to CoE's Framework Convention on the Protection of National Minorities (FCNM).

During his career, Wille has also had various other positions at the Norwegian Foreign Ministry, including as Deputy Director General of the United Nations Department and as ambassador for Human Rights.

Interviewee 3: Erik Møse

- Interview conducted on Zoom 24. May 2021.
- Duration: 1 hour

Møse served the Norwegian judge to ECtHR between 2011 and 2018.

Wille has wide-ranging experience in the fields of international human rights law and international criminal law. He has previously served as Justice in the Supreme Court of Norway, President of the International Criminal Tribunal for Rwanda, and chair of Council of Europe's Steering Committee for Human Rights (CDDH), the expert committee drafting the European Convention for the Prevention of Torture.

In 2022, Møse was appointed chair of the UN commission for Inquiry on Ukraine.

Interviewee 4: Eirik Holmøyvik

- Interview conducted on Zoom 5. May 2021.
- Duration: 1,5 hours

Holmøyvik currently serves as the meeting substitute member to VC, where he has been elected for the period 2016 – 2022. He has been the rapporteur on 19 country specific opinions, one amicus curiae brief to the ECtHR and one report on general guidelines and standards. Apart from his work at VC, Holmøyvik is also Professor of Law at the University of Bergen.

Interviewee 5 - Anonymous representative from PACE

- Interview conducted on Zoom 15. June 2021.
- Duration: 30 minutes

Interviewee 6: Knut Hjorth-Johansen

- Interview conducted on Zoom 19. May 2021.
- Duration: 1 hour
- Interviewed together with interviewee six (Rognevær).

Hjorth-Johansen is the thematic leader for European political coordination at The Norwegian Association of Local and Regional Authorities (KS).

Interviewee 7: Bjørn Rognevær

- Interview conducted on Zoom 19. May 2021.
- Duration: 1 hour
- Interviewed together with interviewee five (Hjorth-Johansen).

Rognevær is a special adviser on international projects at KS.

Attachment: Global overview and monitoring backlog of Congress

Document provided by Knut Hjort-Johansen per email the 19. May 2021.



