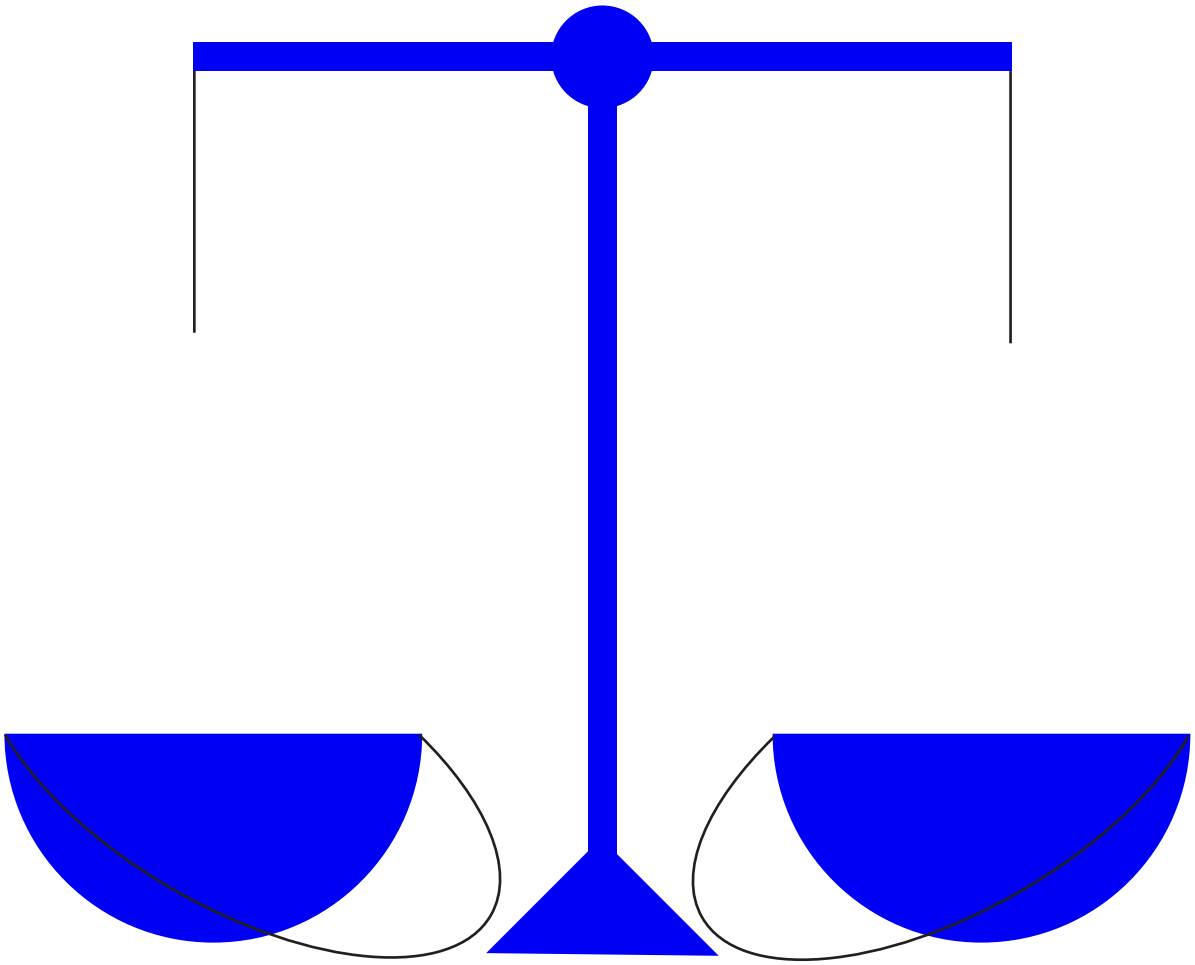
When the European Moral Vacuum Meets the Hungarian Autocratic Regime



by Tamas Dezso Ziegler

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Recently, democrats all over the world have felt compelled to somehow deal with Hungary's shift towards autocracy. The situation is highly interesting, even from a theoretical viewpoint, since the country is a Member State of the European Union as well as of the Council of Europe, yet the framework of an anti-democratic regime has already been created. Thus, the government has been continuing on the path it started in 2010, unstintingly introducing anti-democratic measures and destroying basic checks and balances in the country.

However, I personally disagree with authors who claim that the country is already a dictatorship and I also disagree with calling the system despotic, even if these phrases do sound good and are useful for rallying European public opinion. We must understand that this Government receives strong support from its country's citizens. Moreover, I also believe that most Hungarian voters support a number of its anti-democratic measures. Therefore this is not a completely illegitimate Government.

The Present Situation In Hungary

When discussing issues of democracy, it is necessary to highlight some important points that were crucial in re-shaping the foundations of the Hungarian legal system. I hereby only underline the most salient since there have been so many measures which are anti-democratic that they cannot all be mentioned here:

- First, we must discuss the system of checks and balances. Crucially, a new constitution with some dubious content was adopted without any public debate. Moreover, nearly all of the most important pieces of legislation (Civil Code, Penal Code, etc.) were replaced. Electoral law was also rewritten. After heavy gerrymandering and with substantial media support, the incumbent party Fidesz received 43% of the vote, yet was rewarded with 67% of seats in the National Assembly, permitting it to continue enacting constitutional change.

- The Government had allowed national citizenship to be granted to Hungarians living outside Hungary (e.g. in Romania). As a result, 95% of such foreign electors voted for the anti-democratic regime (in most cases those who had applied for citizenship tend to be more nationalistic, so this was a logical development, with voters also having been mobilized by activists).

- Several powers of the Constitutional Court were curtailed. The new constitution abolished the formerly available *actio popularis* in Hungary. According to the preceding law, any citizen had the right to turn to the Constitutional Court if they found a constitutional problem with the existing legal system. Under the new laws, only a restricted list of people (including the Government, Ombudsman, President of the Supreme Court, etc.) may turn to the Constitutional Court after the adoption of

new legislation by the Parliament. On the other hand, a new institution, the constitutional complaint was introduced, which can be used in an individual case. The change from *actio popularis* to constitutional complaint was a great error and a serious setback for democratic rights. It resulted in a situation where the Constitutional Court does not rule on the majority of cases because it says these complaints do not raise constitutional problems or that the applicants are not personally affected.

- Furthermore, all members of the Constitutional Court are now appointed by the Government, in contrast with the past twenty years, when the opposition also used to delegate members. There are also serious claims that the public prosecutor is not acting independently: several members of the opposition were kept in prison for years without a formal charge against them, and later, even if such charges were made by the prosecutors, courts turned them down as unfounded.

- Courts are also under substantial pressure: new officials were appointed to the top of the judicial system and older judges were retired in order to break the independence of the courts. The Central Bank is headed by the former government minister for economics, and the bank's governing council is not independent, consisting exclusively of governing party delegates.

- Several rulings of the European Court of Human Rights have not been properly enforced and legislation has not been amended in order to conform to the European Convention of Human Rights.

The situation is the same concerning a number of important social and economic issues. Since the formal frameworks of democracy have remained in place, creating an economic group that completely supports the Government is indeed very useful. Thus, agricultural land leased by the Government has been restructured, with former lessees being denied access in favour of select groups.

Tobacco products may now only be sold in special tobacco shops requiring strict permits, the allocation procedures for which have not at all been transparent. Businessmen loyal to the government receive billions of euros from the state for their services, partly out of EU money intended to support development.

Academia is also infected: some university professors were fired or openly discriminated against because of their political opinions. A university loyal to the government was created for public services in which certain programmes will be partly taught by the ministries, and the Central Bank also plans to start a university because it is "not satisfied with the liberal agenda of other institutions". The Central Bank is spending far more on this project than the state does on the whole educational system.

Several research institutions have been founded for no-name scholars with dubious backgrounds in order to spread nationalist propaganda. A government-appointed Chancellor will be in charge of the financial affairs of universities. Teachers from lower level schools have had to register themselves, create an online profile and become directly employed by a centralized state agency instead of their schools or local authorities.

Appointments of theatre directors are also made politically, with some putting on highly chauvinistic plays. Most of the media is loyal to the government, most TV news programmes only contain completely biased propaganda without proper information alongside absolutely trivial news items. A new media windfall tax of 40% (on income, not profit) has been introduced, especially targeting the largest independent commercial TV broadcaster in order to ease it out of Hungary.

Leading journalists have been fired from independent newspapers following government pressure, while government-friendly publications receive lavish funding and state advertising revenue.

The government has abolished the official designation of hundreds of former churches, which resulted in financial ruin for some of these communities. Independent NGOs who criticized the government have been attacked by government agencies and the tax authority, who have instigated tax audits into their operations with the aim of intimidation.

The government also wants to cut off foreign funding for NGOs and has started to investigate funds received from the Norwegian NGO Fund in order to step up pressure on these organizations. Moreover, police also raided the offices of some independent NGOs and seized their computers and servers.

In Eastern Europe, this unfortunate government intrusion into the non-governmental domain has always been present, even if relegated to the background. Today, however, someone with good ties to the government can achieve practically anything, even up against established independent institutions or NGOs. The government's purpose is clearly the creation of a "soft dictatorship" as was in place in the country from the 1970s onwards. PM Orbán has recently declared that he desires an "illiberal state", one that is "maybe not even a democracy", and that he finds Russia and China good examples of such a system.

This is in line with his moves to open up towards Russia: by 2018, one third of the country's exports are due to go to Russia and that country has also been granted the gigantic project of expanding Hungary's sole nuclear plant near the city of Paks. To fund this contract, Russia will lend Hungary 3000 billion Forints (approx. 10 billion euros).

The EU's Moral Dilemma: Profit And Politics Vs. European Values

With all this taking place in Hungary, the European Union has faced a number of moral dilemmas it could not resolve at all. The lack of clear, moral answers has shown the EU up as an opportunistic community, one that places economic and political interests ahead of morality. Most of these problems have occurred in connection with foreign policy, and have shown how weak the Common Foreign and Security Policy (CFSP) really is, lacking any central control.

Firstly, there was no proper answer given to the questions raised by Eastern Europe. While Russian-backed forces go as far as shooting down civil airplanes with hundreds of European travellers and Russia simply occupies part of a sovereign country, Angela Merkel talks about allowing Ukraine to join Russia's proposed Eurasian Union.

The sanctions introduced against Russia have not been effective, nor severe enough. We have not heard any frank statements from EU leaders. Europe is acting like a powerless child against a giant, even though Russian economic power is dwarfed by the influence of the EU. Not talking straight, accepting Russian lies concerning Ukraine and not introducing strict punitive measures has effectively been a selling out of our basic common values. Of course, behind the situation we also find state politics: we could ask ourselves how shameful it is that France in such a moment still plans to support Russia with warships, and what nonsensical money-grubbing attitude is it that induces the EU to think about buying these ships using taxpayers' money.

It is also important to mention that PM Orbán does not support sanctions against Russia, currently his model country, even though a couple of years ago, Russia was one of the greatest enemies of Hungary's nationalists. Hungarians have traditionally kept a distance from Russians (Hungarians have had two revolutions and in both of them were subjugated by the Russians). This may sound paranoid, but knowing that the Russians allegedly paid for a Hungarian Member of the European Parliament to spy for them, and lent 10 billion euros for the development of an atomic plant alone, now they have become the Hungarian Government's model state. Only consider the additional fact that other eastern European countries mostly support lobbying in Brussels through eurosceptic officials and EP members, and personally I would not be surprised if behind the Government of PM Orbán there was also strong Russian support. In the context of Russia's intentions regarding Ukraine, this could be very rational.

Secondly, the EU's stance towards North Africa and the Middle East is also highly problematic. While the EU labels and bans some products made in the West Bank, it has excellent relations with actual terror-funding states (which also happen to be dictatorships) such as Saudi Arabia, Qatar, and more recently Iran, etc. When Christians (including children), representing our cultural values were massacred and persecuted in Iraq or when Coptic Christian churches were burnt down in Egypt, no measures were introduced

either. When 200,000 people died in Syria and 3 million had to flee, everybody remained silent. Furthermore, we do not see appropriate responses when in Europe fundamentalists stage a Nazi march in London, try to burn down synagogues in France, when imams incite the killing of Jews in Berlin, when rabbis are beaten, shops are blown up, etc. Europe has seemingly accepted some of the values of fundamentalist Islam. And in a naïve way, the EU is not doing anything to strengthen European values, integrate migrants, support secularists and moderates, ease the pressure caused by migration on some states, etc. What is going on now is a senseless selling out of our basic values for money: for money stemming from oil rich states and for money coming from people used like slaves for extremely low wages in western Europe.

Thirdly, important questions are being raised by the UK, where even PM Cameron has indulged in xenophobic talk against eastern European migrants. Such migrants represent nearly the same values as citizens of the UK and are highly useful when working for low salaries, which has boosted the economy. Obviously, 240 thousand immigrants a year is a huge number, and the UK may act to stop migration (even within the framework of EU rules it has a right to do so regarding third states, but populist British politicians do not like to mention this fact to their voters). However, the borderline racist talk of PM Cameron towards economic migrants from eastern Europe who use the welfare system is quite shocking. Furthermore, there is a possibility that the UK will leave the European Union entirely. Even if it remains in the Union, we can presume that PM Cameron will want to re-negotiate several areas and opt outs from certain EU rules, for example in the field of justice and home affairs. The unresolved attitude of the UK towards Europe makes the whole EU uncertain.

The answers given by the EU to the abovementioned three questions have not been satisfactory. We are right to feel that the EU has reverted to a mode of economic cooperation with diminished focus on values, human rights and sub-political issues. It is also reasonable to conclude that the European public would not bear economic hardship in exchange for maintaining moral values. Following the financial crisis a few years ago, extremist parties have sprung up and received mass support in countries all over Europe. People have tended to move in this direction and would not like to be worse off “only” because it would be morally correct to do so. PM Orbán of Hungary has been shaping his autocratic regime in just such a moral vacuum, with the assistance of a weak European Union and a weak European demos.

Back To Hungary: Future Scenarios For The Application Of Article 7 – Would It Do The Job?

As a consequence of the Hungarian political situation and of the underperforming economy, about 200 to 600 thousand Hungarians have already left the country, with heavy migration towards western European countries such as Germany and the UK. Europe should keep in mind that a major chunk of the elite has left the country and the process continues. However, it is useful to note that half of the population still supports the government: this is why it recently received 43% of the vote in national elections.

Moreover, Jobbik, the far-right party also received about one-quarter of the votes. This means that about 70% of the electorate voted for anti-democratic parties. One explanation of this is that the current opposition is simply unable to present a viable proposition for voters as well as being unable to shake off its reputation for being highly corrupt. Knowing these numbers, what is presently going on in the country is merely making the legal system conform to the will of the people – or at least, to that of the majority, and thereby, interestingly, the country has become more democratic: its people simply do not want proper democracy.

Hungary's elite was able to prevent the country's shift in this direction for twenty years but evidently not forever. For example, the elite resisted the reintroduction of the death penalty, while about 80% of the people would bring it back – I wonder when it will indeed happen. Slowly but surely everyday morality has succeeded and the democratically thinking 20% to 30% of society stands defeated. Thus, I consider PM Orbán a rational populist with strong social support, not the madman he is perceived to be throughout Europe. His strongman image is also a device to make people accept him, and it seems to be working. Many groups of society have been hurt by his government, yet there are no serious protests against his system. People have simply accepted the present situation.

It is obvious that the EU could and should start proceedings against Hungary. Even newspapers such as the *New York Times* have proposed that the EU do so. Article 7 of the Treaty on the European Union states that proceedings may be initiated if there is a clear risk of serious breaches of fundamental rights being committed by a member state.

In addition, if the harm has already occurred, the European Council may determine the existence of a serious and persistent breach: as we have seen, several such breaches have occurred. In this case, the rights emanating from EU membership of the country may be suspended, including its right to vote. However, there is no mechanism within the current set of rules for excluding a member state from the EU: in order to achieve this, the founding treaties would have to be modified, requiring the approval of all member states.

Besides existing tools, some scholars also propose the creation of an independent human rights tool that would separate politics from human rights. It is obvious that PM Orbán

would never accept or support any related modification of the founding treaties, because it would create a new, independent forum for discussing human rights. On the other hand, there is a chance a tool could be created via secondary law, e.g. through regulations, which seems to be a possible (if unfortunate) way forward for the future.

From the point of view of the European Union, it is a moral obligation to start proceedings against Hungary. Especially the TEU Art. 7 procedure seems to be suited for such issues. However, I am neither convinced that such proceedings would achieve anything, nor would I be sure that the potential result for European politics would not end in disaster. If proceedings were initiated, then in the end, human rights would have to be enforced in Hungary. Obviously, its current government would not allow such pressure to affect its policies.

Capital is held by supporters of the government, therefore financial sanctions against the country (e.g. stopping transfers of funds from Brussels) would mostly affect the development of infrastructure and poorer people. Agriculture could of course be subjected to great harm, but I am not certain that this would change people's attitudes – just as EU actions didn't in Austria during the days of Jörg Haider. If external EU pressure were to be used, people would be inclined to shift in an even more eurosceptic direction.

Furthermore, businessmen loyal to the government are unquestionably prepared to move on with the money they possess. Thus, I disagree with the assumption that financial sanctions could completely break the country's economy, and even if they were effective, they would not affect the leading elite. The country would become even poorer but politicians could play their games over people's heads. Moreover, there is a chance that such sanctions would eventually lead Hungary to leave the EU. Under such circumstances, other EU members (such as the UK) could start to pursue their own interests, since all founding documents would be up for renegotiation.

At this time, it seems certain that some member states would blackmail the EU in order to gain more power and influence, while some others could leave it completely. This could lead to the whole Union falling apart, meaning that one of the smallest states ends up destroying the whole project. All this notwithstanding, I still believe that the EU should begin proceedings because it is legally nonsensical to have common laws for human rights when they simply do not get applied.

We could ask what other measures would be useful for strengthening democratic ideas in Hungary. The key to how a state develops is the propagation of democratic values and the slow transformation of society, and in the case of Hungary this could also be the key to moving back to democracy. Some scholars in Hungary claim that the key to all cultural development is people's income and that minimum wages should be raised in order to make society healthier. I disagree with this view and believe that it stems from communist-era false thinking that everything can be changed through central government.

This view does not accept the fact that the market does not function this way. When there is a lack of innovative thinking, but widespread and institutionalized corruption, significant administrative barriers including a flawed tax system, there will be no economic development. This is why there are different societies existing in the world. People form societies, and what people accept becomes a part of their legal system – this is not a neoliberal agenda differentiating "rogue" from "better" states, this is reality.

On the other hand I tend to accept that poverty in Eastern Europe makes these societies unhealthy. Considering that in several western European countries extremist parties have become stronger as a result of the crisis even though people were only a little bit worse off than before, this seems to confirm this thesis. In Hungary, most people earn 300 to 400 euros a month on average, while western European salaries for the same jobs are 5 to 10 times higher. 4 million people in Hungary do not vote, because they feel they are so poor, their voice will change nothing: so they are completely excluded from public affairs. Thus, poverty is a crucial factor, even if not the only factor, in democratic development.

From this perspective, the EU should change the allocation of funds and spend more on helping smaller businesses in poorer regions than supporting infrastructure development. There are many cities and villages in which huge amounts of EU money have been spent for nearly useless developments, while facilitating functioning businesses should receive a higher priority. I do accept that infrastructure is the foundation for any significant change, but spending should be far better organized in areas where businesses could receive a boost to create employment for people. We do not need more fountains, but jobs for people. Billions of euros are spent on useless projects carried out by huge construction companies loyal to government.

Additionally, assisting civil society in these countries is also fundamental, even if the notion that NGOs should be helped by the EU is a strange one. The EU could support far more action in this regard than it currently does. There can also be no democratic development if people do not know about reality due to the media being completely devoid of real news. Consequently, I can envisage the EU spending more money on bringing the basics of democracy much closer to people, especially in those places that are completely cut off from the world. However, the two latter options carry the great disadvantage of helping NGOs from outside against the government. An anti-democratic government can scarcely be defeated using democratic tools, especially if it has organized its economic underpinning to maintain its popularity with the people, or to exclude parts of society from the elections.

Concerning the new EU rule of law initiative, it seems obvious that the EU should only support states that respect human rights, and that when those are breached, EU funding should be stopped until the problems have been fixed. I also agree with the final sentence of the related press report stating that "while banks and budgets are certainly very important for our economy, Europe is much more than simply banks and budgets".

However, only the future will prove whether we were naïve, and the EU will overcome its moral vacuum or sink back into a kind of nullity.

Tamas Dezso Ziegler *is a Research Fellow at the Institute for Legal Studies of the Center for Social Sciences, Hungarian Academy of Sciences (Budapest) and an adjunct professor of the Faculty of Social Sciences, Eötvös Loránd University (ELTE).*

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