

# THE ANATOMY OF ILLIBERAL STATES: ASSESSING AND RESPONDING TO DEMOCRATIC DECLINE IN TURKEY AND CENTRAL EUROPE

ALINA POLYAKOVA  
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## EXECUTIVE SUMMARY

After decades of expansion, democracy—its consolidation, promotion, and global appeal—is entering a period of retrenchment. *Liberal principles*—political ideas that espouse the importance of individual liberties, minority rights, and the separation of power across levers of government—and *democratic institutions*—processes that translate popular will into public policy through legitimate elections—are being pulled apart.

The emergence of illiberal states within the European Union and NATO presents a challenge to Western collective action in an era of great power competition. This report analyzes the illiberal toolkit—a set of tools, tactics, and practices used by forces in power to roll back checks and balances. In particular, illiberal leaders and political parties are threatening democracy by targeting judicial oversight, pluralistic and fair political systems, independent media, and open civil society.

The report features case studies on Turkey, Hungary, and Poland, as their democratic recession has drawn the most attention and concern. It also considers Slovakia and the Czech Republic, two states that are exhibiting warning signs. The report offers recommendations for policymakers and other actors in Europe and the United States to secure and re-energize democratic institutions and norms in the trans-Atlantic space. The report argues that NATO must make adherence to democratic principles a core strategic priority as it marks its 70th anniversary in 2019, that the EU should adopt rule of law conditionality for structural funds for member states, that the U.S. Congress should hold regular hearings on the state of democracy in Central and Eastern Europe and Turkey, and that the U.S. government should increase support for civil society and independent investigative media in countries of concern.

## **PART 1: DEFINING THE ILLIBERAL TOOLKIT**

*Alina Polyakova, Torrey Taussig, and Ted Reinert*

### **INTRODUCTION**

After decades of democratic expansion, democracy—its consolidation, promotion, and global appeal—is entering a period of retrenchment. This “democratic sag” is global: authoritarian regimes in China and Russia are gaining confidence as nationalist populist parties are on the rise in the political West, weakening its cohesion. The emergence of self-styled illiberal states within NATO and the European Union presents a challenge to Western collective action in an era of great power competition. Hungary, Poland, and Turkey are driving the trend, but warning signs are flashing in the Czech Republic and Slovakia. Backsliding in Central and Eastern Europe is particularly surprising, because these nations were once the bright spots of liberal democratic transformation.

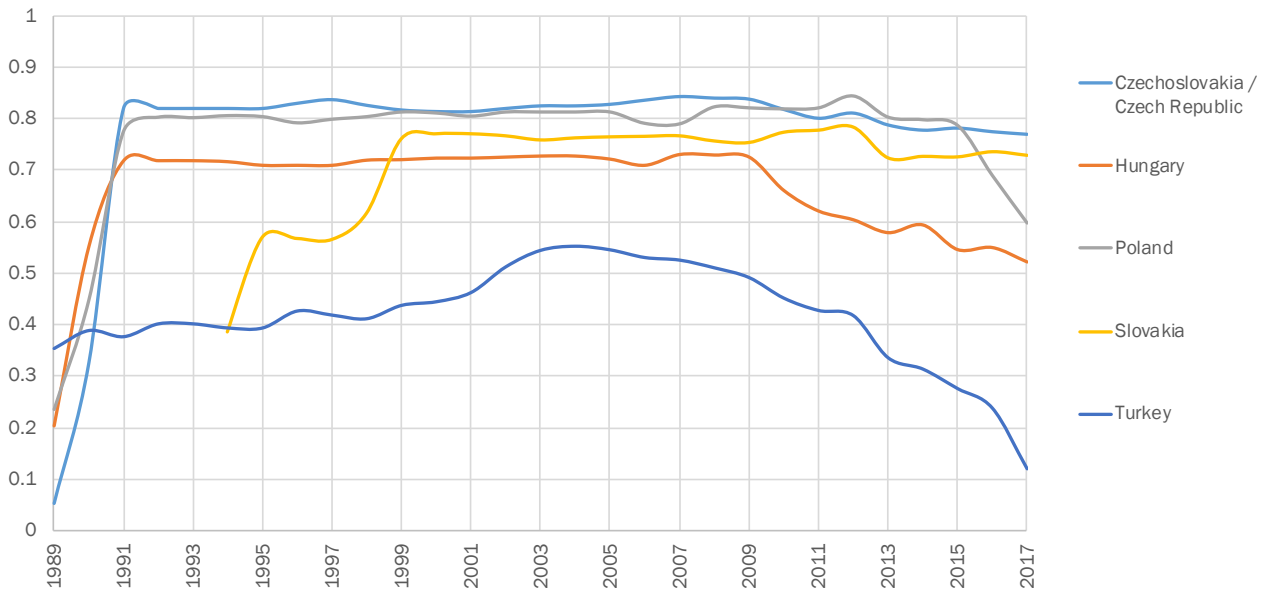
Many illiberal forces today are gaining power through democratic and electoral means. Once in government, they use the levers of democratic institutions to consolidate control, all while claiming popular support from the people to protect the nation from foreign or domestic threats. The rise of illiberal political parties and leaders within electoral democratic systems illustrates the schism between the foundational principles and institutions of liberal democracies. *Liberal principles*—political ideas that espouse the importance of individual liberties, minority rights, and the separation of power across levers of government—and *democratic institutions*—processes that translate popular will into public policy through legitimate elections—are being pulled apart. Even more than a setback in democracy, we are witnessing a crisis of liberalism.

In this context, this report analyzes the emergence of the *illiberal toolkit*—a set of tools, tactics, and practices used by individuals and groups in power to roll back checks and balances, free media, and judicial independence, and undermine fair economic competition. Political parties and leaders in Turkey, Hungary, and Poland have refined the techniques of authoritarian consolidation, though on different timelines and with varying degrees of success. In the Czech Republic and Slovakia, similarly oriented political forces seem to be taking note and considering how to adapt the toolkit to their own societies. Three case studies focus on the actions of the current governments since arriving in power: Turkey under Recep Tayyip Erdoğan and the Justice and Development Party (AKP) since 2002; Hungary under Viktor Orbán and Fidesz since 2010; and Poland under Jarosław Kaczyński’s Law and Justice Party (PiS) since 2015. The Czech Republic and Slovakia case studies examine illiberal and populist activities and trends in both countries over the past decade as warning signs of democratic decline potentially denoting *authoritarian learning*. After identifying the toolkit, the report looks at the steps that domestic actors (political opposition, the judiciary, civil society, and media) and international entities (civil society and media, the European Union, other multilateral institutions, and powerful third countries like the United States or Germany) might take to shore up democratic institutions. As such, this report aims to document, in an objective manner, the specific ways through which democracies decline.

## ASSESSING DEMOCRATIC DECLINE

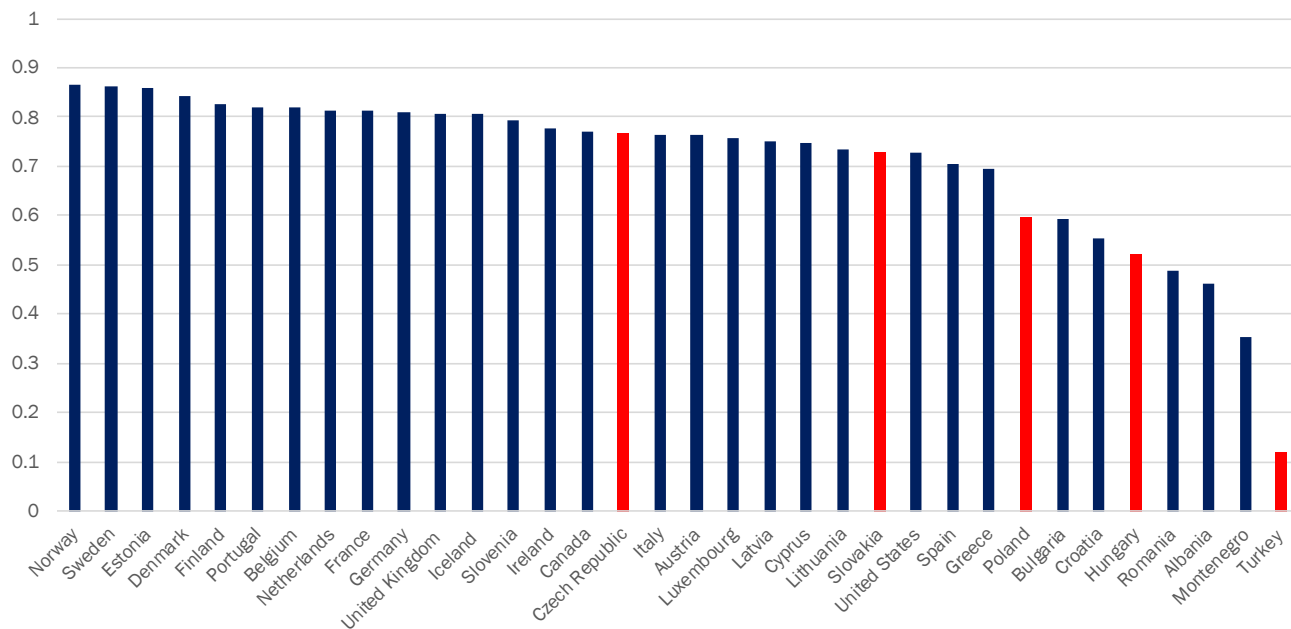
Conventional wisdom has long held that democratic consolidation is a one-way street<sup>1</sup> and that democratic states, once reaching a certain level of GDP per capita, are immune to democratic breakdown.<sup>2</sup> This may no longer be the case, and trends over the last decade show that even wealthy and established democracies are not safe from retrenchment. In established democracies, this trend can be gradual; backsliding has not occurred through overt coups d'état or authoritarian takeovers. Rather, the primary challenge to democracies in the West is a weakening of their *liberal* character. On the more concerning end of the spectrum, each of the current governments in Turkey, Hungary, and Poland has moved its country away from liberal democratic ideals and toward authoritarian rule. The Czech Republic and Slovakia have seen slower but still clear declines, as can be seen in Figure 1, which charts the countries' paths according to the Variety of Democracies Project (or V-Dem) Liberal Democracy Index.<sup>3</sup> Turkey scores lowest among EU and NATO member states on the index by a clear margin (see Figure 2).<sup>4</sup>

**Figure 1. V-Dem Liberal Democracy Index, 1989-2017**



Source: V-Dem Institute, "Democracy for All? V-Dem Annual Democracy Report 2018," 2018, [https://www.v-dem.net/media/filer\\_public/3f/19/3f19efc9-e25f-4356-b159-b5c0ec894115/v-dem\\_democracy\\_report\\_2018.pdf](https://www.v-dem.net/media/filer_public/3f/19/3f19efc9-e25f-4356-b159-b5c0ec894115/v-dem_democracy_report_2018.pdf).

Figure 2. V-Dem Liberal Democracy Index (2017) for EU and NATO Member States



Source: V-Dem Institute, “Democracy for All? V-Dem Annual Democracy Report 2018,” 2018, [https://www.v-dem.net/media/filer\\_public/3f/19/3f19efc9-e25f-4356-b159-b5c0ec894115/v-dem\\_democracy\\_report\\_2018.pdf](https://www.v-dem.net/media/filer_public/3f/19/3f19efc9-e25f-4356-b159-b5c0ec894115/v-dem_democracy_report_2018.pdf).

Recent trends of democratic backsliding may have confounded assumptions from policymakers, political scientists, and citizens alike, but warning signs of discontent with democratic political institutions have been gradually building over the last three decades. Trust in institutions such as mainstream political parties, elected officials, policy experts, and the media has steadily waned in several established democracies.<sup>5</sup>

Declining trust has occurred alongside globalization and rapid technological changes, which have led to economic uncertainty among many segments of society. Anxieties around the world but particularly in wider Europe have been compounded in recent years by the 2008 global financial crisis, the subsequent eurozone debt crisis, and significant migration flows into and across Europe. Centrist political parties continue to struggle to address the economic and cultural angst brought about by these shifts, providing a political opening for insurgent populist forces to exploit.<sup>6</sup>

In this context of economic uncertainty, demographic changes, and the growing salience of identity politics, “antidemocratic parties are moving in from the margins because they are prioritizing the questions of basic material security that used to be the preserve of the postwar mainstream.”<sup>7</sup> In Hungary and Poland, Fidesz and PiS purport to stand for “the people,” defending their states’ Christian identities from Muslim refugees, despite the low numbers of Muslims in either country.<sup>8</sup> They also speak of taking back control from unelected bureaucrats in Brussels, despite being recipients of significant EU funds. Similar to Erdoğan in Turkey, they maintain strong support in rural areas, appealing to strands of society that feel left behind economically and culturally by elites in the prosperous capitals.

## THE ILLIBERAL TOOLKIT

Once in power, illiberal leaders and political parties employ a distinct toolkit to exploit discontent in their societies to their own advantage. The toolkit involves consistent efforts to weaken several democratic institutions, including three in particular:

1. Judicial oversight
2. A pluralistic and fair political system
3. Independent media and open civil society

To *restrain judicial oversight*, illiberal actors use constitutional referendums and amendments to control nominations to high courts. To *minimize viable political opposition*, they use state resources to slant the playing field toward incumbents, harass opposition figures, and abuse anti-corruption measures as a façade to remove political challengers. They also install loyalists in positions of power to ensure that their flanks are covered. To *weaken independent press*, illiberal actors consolidate the media landscape by purchasing communications platforms outright, abusing the tax system, or by legislating censorship laws in the name of national security. Using affiliated or friendly media outlets, they *demonize civil society groups* including NGOs as foreign actors. These tactics are rarely used in isolation, and illiberal leaders also empower loyal oligarchic classes and business elites through financial incentives and cronyism.

The insidious nature of the challenge is that no single move in isolation appears to be an existential threat to democracy; it is only when these actions are viewed in their entirety that the full anatomy of the illiberal state begins to appear.

### ***Co-optation of “the people” and liberalism***

Illiberal and autocratic-leaning leaders subvert key tenets of liberalism including an expansive vision of national identity that encompasses all citizens, regardless of ethnic, religious, or political identity. Such leaders are also co-opting the very notion of “liberalism,” by linking liberal policies to so-called out-of-touch elites, globalists, or bureaucrats.

First, leaders including Erdoğan, Orbán, and Kaczyński have narrowed the definition of “the people” down to those who support the government and its actions, while ostracizing foreigners and stoking nationalism. Their anti-pluralism instrumentalizes the powerful force of nationalism as an exclusive sentiment based on ethnic, cultural, and religious identity (“ethnic nationalism”) rather than a concept based on citizenship rights (“civic nationalism”). Meanwhile, those who oppose the leader or ruling party are increasingly identified as enemies of the state, and their diversity of opinion portrayed as illegitimate.

Second, illiberal actors are co-opting the concept of liberal democracy. As Ivan Krastev notes, “[populist parties] attract those who view the separation of powers (the institution perhaps most beloved by liberals) not as a way to keep those in power accountable but as a way for elites to evade their electoral promises.”<sup>9</sup> In other words, the populist challenge is an “illiberal democratic response to undemocratic liberalism.”<sup>10</sup> But the concept of “illiberal democracy” may be a foil. Some leaders, including Orbán, celebrate the term illiberal democracy; it allows them to argue that they are protecting democracy and the peoples’ interests from liberal and out-of-touch elites. Orbán’s anti-EU platform

and illiberal policies on contentious issues such as immigration are conflated with his government's efforts to minimize checks and balances and dilute judicial independence, making it easier for him to get away with the latter.

### ***Illiberal sequencing and authoritarian learning***

To what extent is there an identifiable sequence to this illiberal toolkit? And what does the timing of certain actions tell us about external triggers and authoritarian learning between states? Illiberal leaders often first go after the constitutional, political, and judicial constraints that are most capable of holding them accountable or potentially removing them from power. This was critical to the current governments in Hungary and Poland, as being voted out of power was still a recent memory for both. In Hungary, Fidesz returned to power in 2010 after losing its parliamentary majority in 2002, and Poland's PiS was voted out of office in 2007 before regaining its majority in 2015. Turkey's AKP, first elected in 2002, was checked in its early terms by the threat of losing power at the hands of the country's Kemalist military and judiciary, given a history of coups. Over time, Prime Minister and later President Erdoğan and his party used their popular and parliamentarian support to implement several laws that undercut media freedoms and judicial autonomy. Following the failed coup of July 2016, Erdoğan purged tens of thousands of civil servants and members of the military to weed out coup sympathizers, extending the purges to those critical of the government's actions. Erdoğan strengthened presidential powers through a constitutional reform in April 2017 that was narrowly approved in a referendum held under unfair conditions.

There is also the possibility that like-minded illiberal governments are assessing each other's moves to consolidate control. Poland's PiS party is not far behind Orbán's illiberal turn, and in fact may be learning from his ability to remove constraints. In 2011, Kaczyński reportedly said that "the day will come when ... we will have Budapest in Warsaw."<sup>11</sup> Since coming to power in 2015, Kaczyński and PiS have charted a similar path to Fidesz in Hungary by removing the autonomy of the constitutional court and turning independent media into government propaganda. Fidesz passed a series of constitutional amendments in 2013 limiting the power of the constitutional court and weakening judicial independence.<sup>12</sup> Similarly, Poland's PiS after coming to power in 2015 passed laws to limit the power and autonomy of the nation's highest court, the Constitutional Tribunal.

While Turkey, Hungary, and Poland each serve as a model of democratic backsliding in the West, these trends are not unique to them. For example, actions by Romanian Prime Minister Victor Ponta from 2012 to 2015, and particularly his attempts to remove the country's president, drew EU intervention, and rule of law in Romania remains a concern.<sup>13</sup> Ukraine's democracy eroded under the 2010-14 presidency of Viktor Yanukovich, culminating in the "Revolution of Dignity." Serbia has suffered steep liberal democratic declines under the Serbian Progressive Party government since 2012, according to V-Dem.<sup>14</sup> Illiberal and populist actions and statements from Czech President Miloš Zeman, Czech Prime Minister Andrej Babiš, longtime Slovak Prime Minister Robert Fico, and others in both nations have also raised concerns domestically and internationally. Though illiberal trends in the Czech Republic and Slovakia are less severe than in their Visegrád Group counterparts Hungary and Poland, they serve as a useful comparison given the endurance of that political and cultural bloc.

In sum, illiberal political parties and leaders across the West are implementing institutional reforms that curtail the protection of minority and human rights, freedom of the press, judicial independence, and open civil society. They are defining national identities that stand in opposition to “dangerous outgroups,” most notably immigrants. And they are reasserting national sovereignty rights counter to multilateral institutions, such as the European Union. To enhance their own legitimacy, illiberal leaders rely on narratives that emphasize historical grievances and paint their nations and citizens as victims of injustices carried out by foreign powers and subversive, Western-inspired domestic actors. The rise of these forces through democratic institutions illustrates that such institutions can be wielded to delink liberalism from democracy at the service of populist sentiments. The “democratizing edge” of their illiberal actions also makes it difficult to ascertain how to respond effectively.<sup>15</sup>

This report takes up the task of recommending policy options for responding to the illiberal toolkit. It asserts that all policy activities should be rooted in clarity of strategic vision embedded in trans-Atlantic principles and values. That vision must prioritize open societies while re-energizing the core building blocks of a free Europe: freedom of expression, independent civil society, commitment to basic human rights, free and fair elections, and a system of checks and balances. As NATO prepares to celebrate its 70th anniversary in 2019, members should recall that “democracy, individual liberty and the rule of law” are the founding principles of the alliance.<sup>16</sup> To join the EU, countries must meet the Copenhagen Criteria of “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.”<sup>17</sup> At a time when democratic norms and values face internal and external threats, the United States and Europe—particularly by leveraging EU institutions and mechanisms,<sup>18</sup> but also by using other tools—must fully engage in reversing democratic decline where it is taking place and shoring up democratic institutions elsewhere. A lack of commitment to liberal democratic principles must have consequences.





Photo: By Alan Hilditch from Cleethorpes, North East Lincolnshire – İstiklâl Caddesi, Taksim Square – Gezi Park Protests, İstanbul, CC BY 2.0, <https://commons.wikimedia.org/w/index.php?curid=26615751>

*Demonstrators on İstiklâl Caddesi in central Istanbul during the Gezi Park protests, June 2013.*

## **PART 2: CASE STUDIES**

### **TURKEY**

*Kemal Kirişçi and Amanda Sloat*

There were high hopes in the West about governance and economic reforms when Recep Tayyip Erdoğan and his Justice and Development Party (AKP) came to power in Turkey in late 2002. Despite early promise, Turkey’s politics have grown increasingly authoritarian amid crackdowns on civil society and independent media, excessive purges following a 2016 coup attempt, and constitutional reforms that centralized power in the presidency. This backsliding led Freedom House to classify Turkey as “not free” for the first time in its “Freedom in the World 2018” report.<sup>19</sup>

### **HISTORICAL FITS AND STARTS**

Democracy in Turkey has proceeded in fits and starts. In 1950, Turkey transitioned from an authoritarian, one-party state to a relatively democratic one; yet the Cold War period was marked by periodic military intervention in domestic politics in the name of protecting the secular state from Islamist influence.<sup>20</sup> The 1990s saw a series of short-lived coalition governments that were too weak to resist the military’s influence, which

eventually forced the coalition government of Necmettin Erbakan to resign in 1997.<sup>21</sup> The following year, Erdoğan, then-mayor of Istanbul and a disciple of Erbakan, was banned from office and imprisoned for reciting a poem deemed threatening to secularism. A new government with a partly reformist agenda pursued deeper integration with the European Union, which led the EU to grant Turkey candidate status for membership in 1999. This slow and contested reform process quickened once Erdoğan took office and the EU opened accession talks with Turkey in 2005. Yet as the EU dragged its feet on accession, Ankara lost enthusiasm for further reforms.<sup>22</sup>

## FETHULLAH GÜLEN: A SHARED AGENDA TO WEAKEN SECULARISM

After becoming prime minister in March 2003, Erdoğan began working with Fethullah Gülen—an Islamic cleric and spiritual leader of a transnational religious movement—on their shared desire to rid the government and military of the hardline secularists whom they believed operated a “deep state.”<sup>23</sup> The secular nature of Turkish governance had traditionally distinguished it from other Muslim countries and created opportunities for democratic reform. The Erdoğan-Gülen alliance peaked during judicial proceedings in 2010-12 against hundreds of police, judicial officials, military members, academics, and journalists on charges of plotting against the government, with over 250 defendants receiving draconian sentences.<sup>24</sup> Many observers, including the EU, initially viewed the trials as a legitimate effort by the government to strengthen its democracy.<sup>25</sup> Yet the trials—subsequently discovered to have been based largely on fabricated evidence—destroyed centers of secular resistance, as many government positions were vacated by establishment officials and filled by Gülenists sympathetic to the AKP government.

Following their successful joint effort to weaken bureaucratic resistance to a more Islamist agenda, Erdoğan and Gülen then drifted into a power struggle. Erdoğan refused to include dozens of Gülenists on AKP lists for parliamentary elections and closed Gülenist prep schools (used for fundraising and recruitment); Gülenist police and prosecutors launched corruption investigations that implicated government ministers and Erdoğan’s family members; the government closed Gülenist newspapers and television stations, seized companies belonging to Gülen’s supporters, and purged hundreds of government officials.<sup>26</sup> These reciprocal measures (and the flawed trials) had the effect of weakening civil society, although that was not the primary goal.

## GEZI PARK PROTESTS: A TURNING POINT

The Gezi Park protests in May 2013 marked a critical turning point for Turkish democracy. The protests began as peaceful opposition to urban development plans for an Istanbul park. Additional protests developed in response to the violent crackdown by police as well as concerns about the government’s increasing limits on civil liberties. Amid differences within his cabinet, Erdoğan used the opportunity to purge more liberal members and blocked then-President Abdullah Gül from returning to the party ranks after his term ended.<sup>27</sup> Erdoğan put himself forward as a candidate for Turkey’s first direct presidential election (previously, the parliament elected the president) and articulated a clear agenda to shift Turkey’s parliamentary system to a presidential one.<sup>28</sup> By winning the 2014 election with 52 percent of the votes, Erdoğan believed he represented the will of the electorate.

## COUP ATTEMPT

The July 2016 coup attempt was widely blamed on military officers and civilians associated with the Gülenist movement.<sup>29</sup> Despite frustrations with Erdoğan's increasingly authoritarian rule, all political parties and the majority of Turkish civil society rejected the coup as an assault on Turkey's democracy.<sup>30</sup> Although the government understandably needed to introduce security measures, Erdoğan described the failed putsch as a "gift from God" because it would allow him to "cleanse the army."<sup>31</sup> He then widened the coup response to crush remaining opposition. The government largely disregarded the rule of law and sacked an unprecedented number of public sector employers believed to be Gülenists. It also declared and repeatedly extended a state of emergency, which narrowed space for dissent, reduced press freedom, and diminished confidence in state institutions. Although the state of emergency was lifted in July 2018, the AKP introduced a new "anti-terror" bill that bolsters government authority and is equally oppressive.<sup>32</sup>

## CONSTITUTIONAL REFORMS

The formal consolidation of Erdoğan's *de facto* presidential rule began on April 16, 2017, when Turkish citizens voted in a contested constitutional referendum (with 51.4 percent support) on a package of measures that shifted the political system to a presidential one.<sup>33</sup> These reforms eliminated the office of prime minister and enabled the president to serve as head of the ruling party. They gave new powers to the president, including the right to issue decrees, propose the national budget, appoint cabinet ministers and senior officials, and appoint over half the members of the high courts. Experts at the Venice Commission expressed concern about insufficient checks and balances.<sup>34</sup> Erdoğan became the first head of this new system in July 2018, after he decisively won snap elections.

The Turkish military has been severely weakened, including by post-coup purges of its senior leadership, and lost its traditional influence. Erdoğan appointed his former chief of staff as the defense minister in the first presidential cabinet, a previously unheard of practice. The new system empowers Erdoğan to manage military promotions.<sup>35</sup> The police have been equipped with heavy arms, brought under closer government control, and required to adopt religious practices.<sup>36</sup> In addition, the Ministry of Foreign Affairs has lost its influence in the formulation and implementation of policy, as Erdoğan has formed his own team at the presidential palace and gained the power to appoint personnel.<sup>37</sup>

## ATTACKS ON MEDIA FREEDOM

Restrictions on media freedom are not a new phenomenon in Turkey, as previous governments also imposed limits.<sup>38</sup> There was a marked improvement after the AKP came to power in 2002 and introduced EU-mandated reforms. This changed in 2007 when the AKP's Gülenist allies in the police and judiciary detained journalists on fabricated charges. Somewhat ironically, Gülenist media outlets then became targets of AKP officials in 2013 when they fell out of favor with Erdoğan and the ruling AKP. Amid the post-coup state of emergency, the government further cracked down on

opposition outlets. With few exceptions, pro-government establishments now dominate the media scene.<sup>39</sup> The government has periodically blocked social media websites, including Wikipedia and Twitter, and prosecuted people for their postings.<sup>40</sup> Turkey has the dubious distinction of being the world's top jailer of journalists,<sup>41</sup> with the government penalizing reporting of activities related to government security measures and to the Kurdistan Workers' Party (PKK), which is classified as a terrorist group by Turkey, the EU, and the United States.

## **WEAK OPPOSITION**

The AKP has remained genuinely popular, especially among conservative and nationalist voters (as well as a dwindling number of voters motivated by pocketbook politics), due in part to unprecedented improvements in public services and economic growth. Turkish political culture has long accepted authoritarian rule, as a significant proportion of the electorate prefers stability over civil liberties.<sup>42</sup> Erdoğan presented himself as a leader representing the national will and adopted an identity-driven narrative that emphasized Islam and Turkish nationalism. He portrayed his opponents as traitors and collaborators of external forces seeking to undermine Turkey's prosperity and stability. This further deepened Turkey's societal polarization along conservative-religious and secular-modern lines, complicating efforts to defend shared democratic values.

Opposition parties have struggled to provide a compelling alternative, further hindered by government control of the media. The main opposition party, the People's Republican Party (CHP), has been out of government since 1995, riddled by internal divisions and unable to develop a platform that is attractive beyond its base. The ultra-right Nationalist Movement Party (MHP) supported the legislative process leading to the adoption of the constitutional amendments; it then backed Erdoğan in the presidential election. It performed better than expected in recent elections, especially compared to the new İyi (Good) Party that split from it.

The most interesting case is the pro-Kurdish People's Democratic Party (HDP). It achieved electoral success in June 2015 after running a campaign that challenged Erdoğan's authoritarianism. As its election denied the AKP a parliamentary majority, Erdoğan dragged his feet on coalition formation; in the meantime, fighting resumed between government forces and the PKK. When new elections were held in November 2015, Erdoğan's campaign promising stability and blaming the HDP for the violence helped the AKP resume its majority while the HDP saw its votes fall.<sup>43</sup> Under expansive definitions of terrorism under emergency rule, the HDP's co-leaders, many parliamentarians, and dozens of elected mayors were arrested on spurious terrorism charges. The party leader campaigned for president from prison in the most recent elections, and the party gained seats in the parliament.

## **FLAWED ELECTIONS**

Although Turkey had a record since 1950 of holding free and fair elections, the conduct of recent polls has been questionable. Prior to the June and November 2015 general

elections, opposition parties accused Erdoğan of breaching constitutional rules against partisan activity and complained about limited access to state media. In the April 2017 referendum, the Organization for Security and Co-Operation in Europe (OSCE) criticized the government's use of state resources to slant coverage in its favor and deny the opposition a level field.<sup>44</sup> Given the tight results, some argued the Supreme Electoral Council's (YSK) reinterpretation of election bylaws to allow the inclusion of ballots without authenticating stamps enabled ballot stuffing.<sup>45</sup> Before June 2018 presidential and parliamentary elections, the YSK ruling was incorporated into the electoral law, making it harder to monitor ballot boxes. The snap elections were held under emergency rule, raising concerns by the OSCE and others about opposition parties' ability to campaign freely.<sup>46</sup>



Photo: European People's Party,  
<https://www.flickr.com/photos/eppofficial/albums/72157673198960747>

*Hungarian Prime Minister Viktor Orbán at European People's Party's Helsinki Congress, November 2018.*

## **HUNGARY**

*James Kirchick*

Since returning to power with a constitutional two-thirds majority in 2010—renewed in 2014 and 2018—Hungarian Prime Minister Viktor Orbán and his conservative-nationalist Fidesz party have gradually undermined Hungary's hard-won democracy. Beginning with a partisan rewriting of the country's constitution and a consolidation of power into the executive, followed by efforts to undermine judicial independence, media freedom, and political pluralism, as well as attacks on nongovernmental organizations, the Orbán government has transformed the country into a quasi-authoritarian state with democratic trappings. Hungary has regular elections, genuine opposition parties, critical media, and independent civil society organizations, but political power lies fully, and unaccountably, within the hands of the ruling party.

According to Freedom House's 2018 "Nations in Transit" report, which monitors the quality of democracy across the former Soviet bloc, "Hungary has registered the largest cumulative decline in Nations in Transit history, after its score has fallen for 10 consecutive years," and the organization has downgraded the country's status from "Consolidated Democracy" to "Semi-Consolidated Democracy."<sup>47</sup> Prime Minister Orbán has been explicit in his desire to transform Hungary into what he described in 2014 as an "illiberal democracy."<sup>48</sup> Despite frequent criticism from nongovernmental

rights monitoring groups, national governments, the United States, and EU institutions, Hungary has been able to maintain its membership in the European People's Party, the transnational grouping of center-right and Christian Democratic parties. A booming economy has also enabled Orbán to distract public attention from the withering of democratic institutions.<sup>49</sup>

The first step in the Hungarian illiberal toolkit involved a hasty, unilateral rewriting of the country's constitution, substantial changes to the judiciary, and the politicization of formerly non-political offices. Soon after taking power in 2010, Fidesz-friendly officials were placed in charge of such prominent institutions as the Prosecutor-General's Office, Electoral Commission, State Audit Office, Fiscal Council, state media, and Constitutional Court, often with nine-year terms, long enough to last well beyond any possible Fidesz loss of parliament. As for the judiciary, the government forced the retirement of about 10 percent of all judges by reducing the retirement age from 70 to 62 and moved the administration of courts to a newly created National Judicial Office, whose head is appointed by a two-thirds parliamentary majority. (Though this measure was declared illegal by Hungary's Constitutional Court and the EU Court of Justice, most of the forcibly retired judges had left their posts by the time those rulings came down.) The new constitution, promulgated in April 2011, radically expanded the definition of what constituted "cardinal laws," which require a two-thirds majority in parliament to change, to include matters like tax and fiscal policy. The goal, Orbán admitted at the time, was "tying the hands of the next government, and not only the next one but the following 10."<sup>50</sup> (A 2013 amendment prohibits speech that would violate the dignity of the "Hungarian nation" or "any national, ethnic, or religious minority group."<sup>51</sup>) The latest move to undermine judicial independence took place in December 2018, when the Hungarian parliament instituted a new "parallel" court system to try politically sensitive cases.

Next, Fidesz went about weakening media and political pluralism. The 2010 establishment of a media council, whose members are appointed via a two-thirds parliamentary vote, and which has the power to fine outlets for vague offenses like "inciting hatred," has created a chilling effect over the free press. State advertising dollars, traditionally crucial to print media outlets in Hungary, have been directed almost entirely to publications that can be relied upon to do Fidesz's bidding.<sup>52</sup> The public broadcasting and state news agency, nominally independent, have essentially become government mouthpieces. The strategic acquisition of private media outlets by government-friendly cronies over the past eight years has left the country's media landscape bereft of critical voices.

A 2011 electoral law radically gerrymandered the country's electoral districts to Fidesz's advantage, such that, while in 2010 the ruling coalition won 69 percent of the seats in parliament with 53 percent of the vote,<sup>53</sup> four years later it won roughly the same proportion of seats but with only 45 percent of the vote.<sup>54</sup> Hungary's last two national elections, therefore, can best be described as flawed, or perhaps "free but not fair." Fidesz has adopted the behavior of authoritarian regimes in its use of government resources for electioneering activity; an OSCE report on the 2018 parliamentary election found it to be "characterized by a pervasive overlap between state and ruling party resources, undermining contestants' ability to compete on an equal basis."<sup>55</sup>

The lengthiest and most thoroughgoing aspect of the Hungarian government's illiberal toolkit has been its attack on civil society. In 2013, government-friendly media initiated attacks on civil society organizations in receipt of funding from the Norwegian government's international NGO fund. The following year, police special forces raided the offices of the Hungarian organization that disbursed the Norwegian funds, stating that the money was being improperly given to local groups with "leftist political ties."<sup>56</sup> That summer, Orbán delivered what has since proven to be a prophetic speech in which he praised the concept of "illiberal democracy" and cited Singapore, China, India, Turkey, and Russia as "stars of international analysts."<sup>57</sup> This model entails a simulacrum of democracy, one in which opposition parties and a handful of independent civil society and media outlets exist, but only to mask what is in effect a one-party state.

A 2017 "foreign agent" law modeled on a Russian measure passed in 2012 was faulted by the EU's Venice Commission for its "disproportionate and unnecessary interference with the freedoms of association and expression, the right to privacy, and the prohibition of discrimination, including due to the absence of comparable transparency obligations which apply to domestic financing of NGOs."<sup>58</sup> That same year, the government passed a law setting stricter conditions for accrediting foreign universities, a measure seemingly aimed at a single institution: Budapest's Central European University (CEU). One of the top academic institutions in all of Central and Eastern Europe, it was founded by Orbán's *bête noir*, George Soros, whom the government targeted in the 2018 parliamentary election with anti-Semitic rhetoric and imagery. The law forced CEU to open a branch in the United States, which it effectively did by entering into an agreement with Bard College in New York state. Despite the good faith efforts of the CEU to meet these new hurdles, the government refused to sign a new agreement that would permit the school to admit new students, so in December 2018, the university announced that it would relocate most of its academic operations to Vienna.

The European Union has been entirely unsuccessful at arresting Hungary's democratic erosion. Repeated calls for the European People's Party (EPP), the European Parliament's main center-right grouping, to disaffiliate with Fidesz have been brushed off by the EPP leadership; Orbán recently delivered a particularly brazen speech in which he threatened to start *his own* populist parliamentary grouping should the EPP not move closer to his position on migration.<sup>59</sup>

In addition to representing an attack on European values, Hungary's democratic decline may also pose a trans-Atlantic security risk by creating space for Russian influence-peddling. Orbán is not just modeling his new, "illiberal" regime on that of Vladimir Putin's "sovereign democracy," he is actively collaborating with it in the form of tangible initiatives (the opaque Paks nuclear power plant deal),<sup>60</sup> political narratives (defense of Western Christendom from an apocalyptic Muslim migrant threat), and through undermining alliance solidarity (Hungary's stubborn opposition to advancing NATO cooperation with Ukraine over the latter's language law).<sup>61</sup>





Photo: Grzegorz Żukowski,  
<https://ccsearch.creativecommons.org/photos/9eff135a-d0e8-4b19-b9b6-fbfb3752b45f>

*Protest in Warsaw against judicial law, July 2017. The projected phrase translates as “This is our court.”*

## **POLAND**

*Melissa Hooper*

In October 2015, the Polish Law and Justice party (PiS) won an outright majority in parliament with 37.6 percent of the vote, avoiding the need to form a coalition government.<sup>62</sup> This is the first time that a single Polish party has won an outright majority since the fall of communist rule.<sup>63</sup> The PiS candidate for president, Andrzej Duda, won election in May of the same year. The party ran a moderate though populist campaign, but after the election took a decidedly nationalist turn. Party leader Jarosław Kaczyński (who is a member of parliament but holds no other public office) crafted a motto of “good change” as a revolt against what he deemed the privileged establishment: elites that had turned toward the EU and the liberal world order and, according to him, against the interests of Poland.<sup>64</sup>

Poles turned to Law and Justice out of a combination of fatigue with the center-right Civic Platform party which had governed for the past eight years and responsiveness to Kaczyński’s exploitation of anti-migrant fears in a homogeneous society.<sup>65</sup> The party

also tapped into feelings of economic inequality as Polish voters compared themselves to European and domestic elites.

The opposition to Law and Justice, now made up of Civic Platform, Nowoczesna (Modern), and Robert Biedroń's nascent movement, suffers from a lack of strong leadership, a lack of leadership that is viewed favorably by the public, and a failure to offer a coherent message and platform other than opposition to Law and Justice. The two figures associated with the opposition that are viewed most favorably by the Polish public are Donald Tusk, the former prime minister and Civic Platform leader who is now the president of the European Council and no longer formally associated with the party, and Biedroń, a politician who was the country's first openly gay parliamentarian and mayor, who recently founded a new party, Wiosna (Spring).<sup>66</sup> Biedroń's party is more likely to draw votes from Civic Platform than from Law and Justice. Grzegorz Schetyna, current head of Civic Platform, has the distinction of being the only politician in Poland perceived as less trustworthy than Kaczyński.<sup>67</sup>

The Law and Justice party's philosophy is grounded in the belief that when domestic and other European elites created a post-communist constitution in 1997, they did not represent the interests of "real Poles."<sup>68</sup> Interpreting its election victory as a broad mandate from the people, PiS believes that it alone may define rights and obligations under the constitution, and that courts should therefore have no power to defy or criticize the executive and legislative branches.<sup>69</sup> Kaczyński's disdain for constitutional checks and balances was solidified during the prior period of Law and Justice government, from 2005 to 2007, when he served as prime minister and the Constitutional Tribunal repeatedly blocked his policies.<sup>70</sup>

Law and Justice also made changes to its policy platform between 2007 and 2015, when it was in the minority, to garner more support from disgruntled voters. In its earlier time in government, Law and Justice had implemented neoliberal economic policies, for example eliminating the highest income tax bracket and the estate tax. In 2015, the party instead engineered one of the largest social transfers in contemporary Poland, giving monthly payments of roughly \$130 to any family with two or more children, and raised the minimum wage for workers to roughly \$3 an hour.<sup>71</sup> The party seemed to have realized that in order to appeal more broadly to conservative, rural Poles, including those dissatisfied with Civic Platform's business-focused policies, it needed to offer policies that promised concrete positive effects for these voters.<sup>72</sup> Combined with xenophobic rhetoric to exploit the refugee crisis, this new approach proved to be an overwhelming political success and carried Law and Justice back to power.<sup>73</sup>

The Law and Justice campaign against democratic institutions began in November 2015 with an effort to undermine the Constitutional Tribunal, but then went on to deconstruct step-by-step the entire judicial system, independent media, electoral systems at every level, and civil society—basically, any institution that could challenge its power. Many of the government's methods violated the constitution and accepted legal procedures. Employing a new method of expedited legislating, Law and Justice uses "private member bills" so that expert consultation is not required and votes can be fast-tracked.<sup>74</sup> When the Constitutional Tribunal ruled such actions unconstitutional or mandated stays, the government ignored the rulings. In addition, shortly after taking power, Law and Justice purged the public administration and civil service, keeping

only loyalists.<sup>75</sup> This focus on loyalty above legality, and on centralization of control, has earned the government comparisons to a neo-Soviet leadership.<sup>76</sup> While legislated changes have been incremental, the cumulative effect has resulted in structural transformation, likened by some to boiling a frog.<sup>77</sup>

## UNDERMINING JUDICIAL INDEPENDENCE

### *The Constitutional Tribunal*

On November 12, 2015, the new Sejm (the lower house of the Polish parliament) had its first sitting. Within a week, the government imposed term limits on the Constitutional Tribunal's leadership. It then cancelled five nominations for the Tribunal proposed by the outgoing Civic Platform government (two of which were later found by the Tribunal to be improper). Despite a formal petition to stay its actions as possibly unconstitutional, the Sejm nominated five new judges and confirmed them in rapid-fire proceedings, late at night on December 2, 2015. Four took their oaths in the early hours of December 3, the last on December 9.<sup>78</sup>

When the Tribunal ruled three of the judicial appointments unconstitutional, and found several other constitutional violations, then-Prime Minister Beata Szydło, in an unprecedented action, prohibited publication of the rulings so as to prevent them from taking effect.<sup>79</sup>

On December 22, 2015, Law and Justice passed additional legislation radically overhauling the Tribunal's functions. The legislation, which took effect immediately, gave the unconstitutionally appointed judges the power to veto key decisions.<sup>80</sup> One key provision required the Tribunal to hear cases only in the order in which they were filed.<sup>81</sup> In March 2016, the Tribunal (under its old rules) struck down the legislation as intended to paralyze the Tribunal in violation of separation of powers.<sup>82</sup> The government again refused to publish or recognize the ruling.

In February 2016, the government consolidated the offices of the general prosecutor and the minister of justice, making the head prosecutor a political position subordinate to the executive.<sup>83</sup> Under the terms of the new Law on the Prosecutor's Office, a recent report established that over 6,000 prosecutors were forced out for perceived disagreements with the ruling party on policy, including 1,000 officers, the managing prosecutors in charge of most major departments, and six of seven deputy prosecutors general.<sup>84</sup>

To complete the takeover of the Tribunal, in late 2016, the pro-government judges colluded with parliament to ensure that a vote for head judge occurred when only pro-government judges were present. Despite the lack of a quorum present for the vote, President Duda honored the outcome.<sup>85</sup> The new head judge put the deputy on indefinite leave. Another judge resigned. These changes, plus the illegal seating of judges, gave Law and Justice a majority on the Tribunal. Without further protests from the (newly reconstituted) Constitutional Tribunal, decisions striking down recent laws were taken off the Tribunal's website and were no longer considered binding. Suddenly, the government's caustic criticisms of the Tribunal stopped.

### ***The Supreme Court and ordinary courts***

In January 2017, after completing its takeover of the Constitutional Tribunal, the government mounted a large-scale overhaul of the Supreme Court,<sup>86</sup> the lower (ordinary) courts, and the body charged with selecting judges and ensuring judicial independence, the National Council of the Judiciary. New laws, which gave the president and justice minister more control over the judiciary, were signed by President Duda in July and December 2017. Duda signed the new legislation despite street protests by tens of thousands of Poles nationwide starting in mid-July 2017, sharp criticism from multilateral bodies and the international community, and the European Commission's threat to immediately activate the Rule of Law Mechanism in Article 7 of the Treaty on European Union, which allows the EU to sanction a state if the Council of the European Union determines unanimously that a country's policies present a clear risk of a serious breach of EU values.<sup>87</sup>

The 2017 laws gave the president power to force the retirement of Supreme Court judges over 65 years old by July 2018.<sup>88</sup> The reforms also expanded the Supreme Court to 120 judges, increasing party control with the appointment of new judges.<sup>89</sup> They created two new political bodies: one empowered to re-decide any court ruling since October 1997, and another charged with disciplining judges. Both bodies include lay persons, essentially political appointees, lacking any legal experience.<sup>90</sup> New judges are now appointed by a body whose members are elected by the Sejm instead of being selected by judges, and selection is no longer transparent.<sup>91</sup>

The laws also gave the minister of justice/general prosecutor, now the same person, the power to force the retirement of regional court heads and deputies. By February 28, 2018, 149 of them were forced out with no opportunity to appeal the decision.<sup>92</sup> The minister of justice was given the power to establish temporary rules governing courts.<sup>93</sup>

On July 3, 2018, President Duda told 15 Supreme Court judges that they were to be "retired" under the new law. However, the president of the Court, Małgorzata Gersdorf, and the other "retired" judges have continued to insist they remain on the bench.<sup>94</sup> In hearings to confirm new Supreme Court judges, candidates were asked whether Gersdorf remained president of the Court. Only those that answered "no" were allowed to move forward. A new National Council of the Judiciary was established and began choosing judges using a non-transparent process; it created a blacklist of pro-democracy judges.<sup>95</sup>

On July 24, the president signed new legislation easing requirements for new appointments to the Supreme Court that were proposed and passed through extremely expedited procedures.<sup>96</sup> Their aim was to quicken new appointments and refill the Supreme Court ahead of judicial review of the recent legislation by the European Court of Justice (ECJ), in both an independent action and under the auspices of the Article 7 procedure. However, in a surprise move, the pre-Law and Justice Supreme Court fought back, and issued a request to the ECJ for an expedited ruling.<sup>97</sup> The ECJ invalidated the retirements and ordered reappointment of the retired judges.<sup>98</sup> While the government eventually complied, it then began using the newly created disciplinary body to discipline judges for charges that amounted to disagreeing with the government. As of December 2018, at least a dozen of the judges are on track to lose their positions due to politicized disciplinary charges.<sup>99</sup>

In January 2018, the government passed a law politicizing appointments to the National Electoral Commission, formerly populated by judges appointed by independent judicial bodies. Now it is made up of one member of the party-controlled Constitutional Tribunal, one member of the party-controlled Supreme Court, and seven members elected by the Sejm.<sup>100</sup>

## REPRESSING MEDIA AND CIVIL SOCIETY

One of PiS' early purges of non-loyalists focused on public media. In January 2016, new legislation terminated broadcasters' supervisory boards and empowered the treasury minister to hire and fire broadcasting chiefs, formerly selected through a competitive process. More than 225 journalists and managers were fired or quit in protest.<sup>101</sup> In December 2016, the Constitutional Tribunal deemed the law unconstitutional, but the ruling was ignored.<sup>102</sup>

As a result, the main public television station, Telewizja Polska, was transformed into a government mouthpiece. Broadcasts slather compliments on the government and call critics and NGOs corrupt traitors.<sup>103</sup> All government-associated support for independent media was halted and has been shifted to pro-government outlets.<sup>104</sup> Concerns remain that private media will be targeted.<sup>105</sup>

In its quest to stamp out opposition, in 2016, the government abolished or defunded numerous organizations focused on human rights and combating xenophobia.<sup>106</sup> It legislated an education reform that terminated programs on tolerance and equality in favor of increased discussions of religion and patriotism.<sup>107</sup>

The government created government-organized nongovernmental organizations (GONGOs) to steer government-controlled funding from the EU and Norway toward favored groups, *de facto* defunding independent NGOs such as the Helsinki Foundation for Human Rights' and the Association for Legal Intervention's programs that assist refugees, as well as the Center for Women's Rights and BABA Lubuskie Association for Women, which assists victims of domestic violence.<sup>108</sup> In September 2017, the government created two new entities to govern NGOs. Unlike prior independent oversight entities, the new bodies are controlled by the Sejm and the prime minister.

## PURGING INTELLIGENCE SERVICES AND THE MILITARY

In addition to targeting core democratic institutions, between 2015 and 2017, Law and Justice systematically purged the military leadership and the intelligence community, targeting individual leaders and staff perceived to be insufficiently loyal to the party.<sup>109</sup> During this time, 36 generals in the Polish armed forces were either dismissed or demoted, including a quarter of Poland's general staff.<sup>110</sup> Over the same period, Law and Justice dismissed and replaced all top officials in Poland's counterintelligence agency, and 200 colonels resigned from the military to protest the purges (though many resignations seem to have occurred under pressure and in response to threat of dismissal).<sup>111</sup> The purge of military intelligence included a raid by Ministry of Defense officials on a NATO-affiliated intelligence training center in Warsaw, during which officers working at the center were dismissed.<sup>112</sup> As of 2018, the Polish security apparatus has been described by a Polish general as in "disarray" due to the purges.<sup>113</sup>



Peter Tkac  
[https://www.flickr.com/photos/peter\\_tkac/40946351452/](https://www.flickr.com/photos/peter_tkac/40946351452/)

*Protest in Bratislava after murder of investigative journalist Jan Kuciak and his fiancée Martina Kušnírová, March 2018.*

## SLOVAKIA

*Norman Eisen and Andrew Kenealy*

Recent protests in Slovakia have marked a flashpoint after nearly three decades of alternating democratic advancement and backsliding. The February 2018 murder of a Slovak journalist, Ján Kuciak, who had been investigating possible connections between Slovak politicians and an Italian crime network prompted massive, nationwide protests that led to the March 2018 resignation of Prime Minister Robert Fico, the leader of the Direction-Social Democracy (SMER) party.<sup>114</sup> Fico had served on and off as head of the government since 2006, and his time in office was marked by democratic retrenchment, principally in the form of attacks on judicial independence and on the media. However, Fico's ouster has not guaranteed an improvement in democratic practices, and worrisome trends from the later years of his tenure have continued unabated, including an aggressive governmental stance toward migrants and increasing right-wing, extremist advocacy for Russia (which Russia then exploits). Meanwhile, an openly neo-fascist party called Kotleba-People's Party Our Slovakia (ĽSNS) gains a more vocal and consequential presence in the country's politics.

Although Slovakia is widely considered a successful example of post-communist transition to democracy, its beginnings were inauspicious.<sup>115</sup> Immediately following the dissolution of Czechoslovakia in 1993, Slovakia's newly formed parliamentary coalition

led by Prime Minister Vladimír Mečiar's People's Party—the Movement for a Democratic Slovakia (HZDS)—actively eroded the nation's nascent democratic processes and institutions. During its rule from 1994 to 1998, the Mečiar government excluded political opposition from parliamentary committees, ignored Constitutional Court decisions, co-opted security services and public media, attempted to reduce the independence and powers of the office of the president (a potential political rival), and severely limited transparency.<sup>116</sup> Thanks in part to Western efforts to bolster Slovak civil society and domestic political opposition pressure on Mečiar, a pro-democracy coalition defeated HZDS in the 1998 Slovak parliamentary election.<sup>117</sup> This paved the way for nearly a decade of Slovak democratic renewal, including membership in NATO and the EU.

But democratic deterioration began anew under Fico's tenure as prime minister, which lasted from 2006 to 2010 and then again from 2012 to 2018.<sup>118</sup> (Fico, like Mečiar in 1998, won the most votes of any single party in 2010 but was ousted by a broad based coalition.<sup>119</sup>) Fico's second government (2012-16) was somewhat less problematic than his first due to the 2014 departure of a controversial Judicial Council head, the absence from parliament of the nationalist Slovak National Party (SNS) and of the disgraced HZDS (still led by Mečiar) that Fico had brought into the ruling coalition in 2006,<sup>120</sup> and pushback from the newly elected president, among other factors.<sup>121</sup> In both cases, however, Fico's playbook included a focus on restricting the independence of the judiciary and the media.

In the second half of 2006, Fico eliminated members of the new political opposition from certain parliamentary committees, thereby reducing their influence, and appointed loyalists (often unqualified or with ties to special interest groups) to key administration posts.<sup>122</sup> Meanwhile, Štefan Harabin, the Fico-appointed minister of justice, began to use his legal authority to bring Slovakia's judicial system to heel. In late 2006, Harabin pushed to abolish the Slovak Special Court and the Office of the Special Attorney (both tasked with combatting corruption and organized crime), and fired multiple court chairmen without providing satisfactory explanations.<sup>123</sup> Parliament filled the newly vacant seats with more loyalists, while simultaneously overlooking qualified candidates in their push to install a Constitutional Court favorable to the ruling coalition.<sup>124</sup> In May 2013, Harabin—then serving as Supreme Court president and head of the Judicial Council—pushed to introduce judicial bonuses, which critics felt would help him consolidate loyalist networks within the judiciary.<sup>125</sup>

Throughout Fico's tenure, various state actors, often aligned with the governing coalition, have attempted to use the judiciary both as a shield to defend loyalists and as a weapon to attack the opposition.<sup>126</sup> In May 2009, the Constitutional Court ruled that the Special Court violated the constitution and disbanded it, prompting fears that Harabin had influenced the decision.<sup>127</sup> And in October 2013, the Constitutional Court dismissed a case accusing Harabin of manipulating the courts' random electronic case-assignment system.<sup>128</sup> Under Harabin, the Judicial Council reportedly used its power to initiate disciplinary proceedings as a tool to remove or harass judges critical of the state of the judiciary.<sup>129</sup>

The press has also faced threats. As prime minister, Fico pursued defamation lawsuits against media organizations and passed a 2008 law designed to restrict freedom of the press.<sup>130</sup> His nationalist allies in the SNS party have sought to secure positions

of influence over public radio and television.<sup>131</sup> Fico also regularly verbally attacked journalists: In 2007, he reportedly called members of the press “dirty scumbags;”<sup>132</sup> in a December 2009 news conference, he compared journalists to the mafia;<sup>133</sup> in late 2016, he called them “dirty anti-Slovak prostitutes;”<sup>134</sup> and in November 2018 he addressed a video message to “the clowns in the media. ... We will win the general elections again and I hope it hits ... you really hard.”<sup>135</sup> In Slovak, “hit” connotes “impact,” but it can also mean “shoot.”

Since 2016, other worrying trends have emerged. As Fico and SMER’s public popularity waned over the course of their second government, Fico allowed SNS to play a greater role—officially bringing the party back into the ruling coalition in 2016 in order to save it.<sup>136</sup> This has resulted in increased government alignment with Russia, as SNS is overtly Russia-leaning. For instance, SNS recently blocked Slovakia from joining an EU-wide expulsion of Russian diplomats over the nerve-agent poisoning of ex-spy Sergei Skripal in the U.K., and SNS officials have stated that Russia is not an aggressor and is necessary for a stable Europe.<sup>137</sup> Russia, for its part, has pursued vigorous anti-Western, pro-Slavic identity propaganda efforts in attempts to weaken Slovakia’s ties with NATO.<sup>138</sup> In July 2018, the Putin-linked Night Wolves biker gang, which was involved in the Russian annexation of Crimea, set up a military-style camp in a Slovak village near the capital of Bratislava.<sup>139</sup> As of November 2018, the SMER-led parliament has yet to respond; some suspect it is intentionally stalling.<sup>140</sup>

Discrimination against immigrants and minorities, in particular Muslims and the Roma people, also appears to be on the rise. While Fico is no friend of either group, having adopted populist stances on migration and ethnic minority issues,<sup>141</sup> anti-Muslim and anti-Roma sentiment has been amplified by the increasing influence of SNS, along with the rise of the neo-fascist L’SNS. The latter is vehemently anti-U.S./EU, has railed against “corrupt elites” and “Gypsy parasites,” and managed to win 8 percent of the vote and 14 parliamentary seats in 2016 by presenting itself as the only political option willing to take effective action against “hoards [*sic*] of Muslim immigrants.”<sup>142</sup>

Although Fico himself resigned in the midst of the March 2018 upheaval, he and his government have resisted other demands from the protestors who drove him out. The government refused to call new elections or make substantial personnel changes, the same three-party coalition formed after the 2016 election and led by SMER will remain in power, and the new prime minister, Peter Pellegrini, is Fico’s close associate and hand-picked successor.<sup>143</sup> Fico, still the chairman of the ruling SMER party, has indicated that he will continue to seek influence in Slovak politics despite his resignation,<sup>144</sup> and has disputed the legitimacy of the protests as expressions of actual Slovak discontent, claiming that they were instigated by foreign actors such as George Soros.<sup>145</sup> However, few expect the ruling coalition to survive long. This may present a catch-22 for democracy in Slovakia, as other illiberal forces like SNS currently appear best positioned to increase their power should Fico’s and SMER’s influence decrease.<sup>146</sup> SNS party chair Andrej Danko, currently the speaker of parliament, said in October 2018 that he wished to take Slovakia down the path of Viktor Orbán’s Hungary, and pursue “a program of tough centralization of state that installs discipline and order.”<sup>147</sup>

Yet, for all of the danger signs for democracy, there are also reasons for optimism. The public outrage in the months following the death of the journalist Kuciak and his fiancé,



Martina Kušnírová, suggests that many Slovaks remain committed to democracy and are willing to push back against illiberal leaders to defend it. The nonpartisan “For a Decent Slovakia” movement that emerged in the wake of the murders retains strong public support. On November 16, 2018—the day before the anniversary of the 1989 student protest that toppled the Czechoslovak communist regime—over 18,000 participated in a protest organized by For a Decent Slovakia in Bratislava. Marchers called upon Pellegrini to prevent Fico from following Orbán’s example.<sup>148</sup> For a Decent Slovakia also continues to push for investigations into instances of alleged public corruption.<sup>149</sup> While some lament the current absence of Western support for Slovak democracy,<sup>150</sup> President Andrej Kiska appears to be an internal champion of liberal-democratic causes.<sup>151</sup> Although domestic political opposition is fragmented, newly formed pro-democracy political parties and independents have indicated that they may collaborate, and performed well in November 2018 regional elections for town mayors while Fico’s SMER sagged.<sup>152</sup> (However, results were not entirely positive as the nationalist SNS showed advances as well.<sup>153</sup>) Whether Slovakia’s pro-democracy forces can continue to mobilize in the wake of the crisis to hold illiberal politicians accountable and usher in political renewal remains to be seen.



Photo: REUTERS/David W Cerny

*Czech President Miloš Zeman (R) smiles after appointing Andrej Babiš as the country's prime minister at Prague Castle, June 2018.*

## **CZECH REPUBLIC**

*Norman Eisen and Andrew Kenealy*

Democracy in the Czech Republic is perhaps the healthiest among the Visegrád Four countries. Almost three decades after the fall of communism, political, personal, and economic freedom remain vibrant. There have been few institutional or legal changes that benefited ruling parties, there are ample independent press outlets, and the space for civil society is open.<sup>154</sup> Yet that is not to say that all is well. There are unmistakable warning signs of democratic deterioration as a controversial president and prime minister with strong public support display illiberal views and work in concert to push against constitutional constraints.

The prime minister since December 2017, Andrej Babiš, worked for a state-owned enterprise in the pre-1989 communist nation and was listed in secret police files as a collaborator (a role that he vehemently denies).<sup>155</sup> He gained wealth by acquiring valuable state assets—including trade and petrochemical corporations—during the Czech Republic's period of privatization in the 1990s and early 2000s, and merging them into the massive fertilizer conglomerate Agrofert.<sup>156</sup> Babiš has recently sought to translate that wealth into political influence. In 2011, he founded the political party Action of Dissatisfied Citizens (ANO), which positioned itself as anti-establishment

and anti-corruption. ANO won a second-place showing in the 2013 parliamentary elections, earning 47 of the 200 seats in parliament and membership in the ruling coalition as a junior partner, with Babiš taking the post of finance minister (which he held from January 2014 to May 2017).<sup>157</sup> After the election, Babiš followed through on his campaign statements by supporting needed anti-corruption reforms.<sup>158</sup> However, he has since himself come under investigation in a major corruption scandal involving allegedly illegal EU subsidies to his businesses.<sup>159</sup> He strongly denies any impropriety, though the scandal has recently intensified. In November 2018, Babiš' son claimed that Babiš facilitated his abduction to Ukraine, where he was held against his will in an effort to hide him from the investigation. In an attempt to oust Babiš, opposition parties organized an unsuccessful no-confidence vote on November 24.<sup>160</sup>

Babiš catapulted ANO to the top of the ballot in the 2017 parliamentary elections—winning nearly 20 percent more of the vote than the second-place Civic Democrats—partly by adopting populist anti-migrant rhetoric and policies. (As just one example, Babiš wrote on his Facebook page in the summer of 2016: “I have stopped believing in successful integration and multiculturalism. ... We must do our utmost to reject migrants ... even at the cost of sanctions.”<sup>161</sup>) Nevertheless, Babiš has made many pro-European, pro-Western statements as well, and does not seem to be a Russophile. Some observers have argued that his negative campaign rhetoric should be excused as for transient political gain only.<sup>162</sup> However, strands of his illiberal rhetoric have carried forward into his term in office. Babiš recently denied that democracy in Hungary, Poland, and the Czech Republic faced any threats whatsoever, claimed that press coverage of the criminal investigations into his business holdings was “bullshit,” and continues to oppose immigrant quotas.<sup>163</sup>

In addition, Babiš has posed risks to the independence of the media. In June 2013, he purchased MAFRA, a Czech media company that publishes some of the nation's most influential newspapers, and subsequently acquired Radio Impuls, which boasts the country's largest radio audience. These acquisitions prompted numerous resignations at the outlets and stoked fears that Babiš would seek to influence coverage to his benefit. These concerns were heightened in 2014, when Babiš fired a journalist who wrote critically of Agrofert,<sup>164</sup> and again three years later, when leaked recordings revealed Babiš informing upper management about when and how his newspapers should report on his political rivals.<sup>165</sup>

In the wake of ANO's strong performance in the 2017 election—winning 78 of 200 seats in the Chamber of Deputies—Babiš was tasked with forming a governing parliamentary coalition. However, his proposed government failed to secure the necessary coalition partners and lost a January 2018 parliamentary vote of confidence, primarily because opposition parties refused to associate with ANO while Babiš remained under police investigation.<sup>166</sup> Babiš' ultimate solution, in July 2018, was to rely upon the votes of the Czech Communist Party, the same one that controlled the nation during the Cold War (and the sole such unreformed entity left in Central and Eastern Europe). The result is the first democratically elected Czech government to so rely on the Communists.<sup>167</sup> On the other hand, although Babiš acceded to some Communists' policy demands (such as taxing church property),<sup>168</sup> none serve in his cabinet, and he has thus far succeeded in resisting Communist demands to lessen Czech commitments to NATO.<sup>169</sup> However, the Communists' ability to bring down Babiš' coalition gives them leverage over the minority government.<sup>170</sup>

In his ascent, Babiš has found an ally in the unabashedly illiberal Czech president, Miloš Zeman, who assumed the office in 2013. Some even argue that Zeman is abusing his limited constitutional powers to favor Babiš.<sup>171</sup> For example, Zeman prevented Babiš' ouster as finance minister by misinterpreting the May 2017 resignation of former Prime Minister Bohuslav Sobotka. The resignation mandated the dissolution of the whole of government, yet Zeman treated it as merely a personal one, allowing Babiš to remain as a minister.<sup>172</sup> And when Babiš' proposed government failed to pass a parliamentary vote of no confidence in January 2018, Zeman allowed Babiš to continue to rule in a caretaker capacity, reappointing him as prime minister in June when it became clear that Babiš could finally secure majority support.<sup>173</sup> Most recently, Zeman announced that he would again reappoint Babiš as prime minister, even if he lost the November 2018 vote of no confidence.<sup>174</sup> It appears that the relationship is a two-way street: ANO did not field a challenger and threw its support behind Zeman in his successful 2018 re-election bid.<sup>175</sup>

Zeman's illiberal sentiments are pronounced. He has embraced Russia and has been sharply critical of the EU, NATO, journalists, Muslims, and migrants. In office, Zeman has, among other statements, insisted that democracy in Russia is alive and well; suggested that conflict in Ukraine was primarily due to a civil war over the rights of native Russian speakers, rather than Russian aggression; ridiculed the findings of Czech intelligence agencies that have accused Russia of committing cyberattacks against the Czech Foreign Ministry; lobbied for Russian energy interests domestically; and has paid multiple visits to Moscow.<sup>176</sup> Throughout 2016 and 2017, Zeman spoke in favor of scheduling a Czech referendum on membership in the EU and NATO, criticized sanctions targeting Russia,<sup>177</sup> and joked with Putin of a "need to liquidate" journalists.<sup>178</sup>

Another reported tie between Zeman and Russia came through a key presidential advisor, Martin Nejedlý, the head of the Czech branch of Lukoil, a Russian energy company, and key advisor to Zeman. Nejedlý, who has received millions of dollars in financial assistance from Moscow, provided critical support for Zeman's successful 2013 presidential campaign, and stayed on as Zeman's unpaid economic adviser despite lacking a government security clearance.<sup>179</sup> Many of Zeman's Moscow visits involved Nejedlý, who participated in closed-door meetings.<sup>180</sup> Moreover, Russian companies with strong ties to Putin reportedly financed a portion of Zeman's campaign.<sup>181</sup> Some have assessed that this is evidence of a corrupt relationship.<sup>182</sup>

Current populist trends in the Czech Republic are not without precedent. Václav Klaus, Zeman's arch-conservative predecessor who succeeded Václav Havel as president in 2003, was famous for his anti-EU and pro-Russian sentiments.<sup>183</sup> Nor are Zeman and Babiš the only populist political actors today; the far-right, anti-immigrant, and anti-EU Freedom and Direct Democracy party (SPD) won a startling 22 seats in the 2017 parliamentary election.<sup>184</sup> However, despite these new and old challenges, democratic energy in the Czech Republic endures. Zeman's 2018 victory over a pro-democracy candidate came by a narrow margin of just 3 percentage points, suggesting that about half the nation rejects Zeman's views.<sup>185</sup> The Czech Senate remains dominated by moderate parties with ample votes to block any constitutional changes should illiberals seek them.

The media and judiciary remain independent,<sup>186</sup> and the ruling government has seen vibrant pushback from opposition political parties and the traditionally robust community of Czech civil society groups.<sup>187</sup> For example, when Babiš suggested he might “provisionally” lead the Ministry of Justice in the wake of the ANO-appointed justice minister’s resignation in July 2018, the Czech Social Democratic party threatened to collapse Babiš’ proposed coalition.<sup>188</sup> Thousands protested against Babiš’ decision to form a government relying on the Communists.<sup>189</sup> And popular singer Tomáš Klus announced a “Babiš boycott” in July 2018, which several other singers and actors have joined.<sup>190</sup> It remains to be seen whether Babiš, in concert with Zeman, will prove willing to take further executive action to repress democratic processes over his tenure, and how the nation will respond.

## **PART 3: RESPONDING TO THE ILLIBERAL TOOLKIT**

How can the United States, European Union institutions and member states, NATO, civil society, and private sector entities support democracy and rule of law in the EU and NATO where they are under threat? The following recommendations are targeted at European and American policymakers in national executives and legislatures as well as in multilateral organizations, and at other concerned actors within trans-Atlantic societies. They are based on the authors' research and conversations with policy experts, researchers, civil society groups, and former and current government officials in the United States and Europe, including at two workshops in Washington and one in Prague.

### **STRATEGIC VISION**

First and foremost, concrete policy solutions should stem from a broader strategic vision to secure and re-energize liberal democratic institutions and norms in the trans-Atlantic space.

- The trans-Atlantic community is rooted in shared liberal democratic values, institutions, and principles. This values-based foundation is being challenged from within by antidemocratic forces and from without by new authoritarians. Today's central political conflict is between advocates of open, free societies versus closed, illiberal ones.<sup>191</sup> As we enter the era of renewed geopolitical competition, supporters of open societies on both sides of the Atlantic must collectively articulate a compelling open society narrative for the 21st century and actively advocate for its ongoing implementation.
- Freedom of expression, independent civil society, commitment to basic human rights, free and fair elections, and a system of check and balances—the core building blocks of a free world—did not emerge spontaneously. A new generation of leaders must take up the reins of democratic renewal at a time when institutions underpinning the free world are under increasing pressure from strong geopolitical competitors and illiberal actors within the West.
- The democratic regression unfolding across NATO is unprecedented in its history. As such, this trend has profound consequences for the foundational principles of the alliance. NATO must make adherence to democratic principles a core strategic priority as it marks its 70th anniversary in 2019.
- Authoritarian political forces are actively weaponizing the digital domain. Authoritarian states outside the West—China and Russia, most notably—are developing and deploying tools of digital authoritarianism to undermine liberal democracies and control domestic populations. The digital space is the battleground where the war for the 21st century will be fought. Trans-Atlantic partners must work to ensure that this space is not co-opted by authoritarians and remains an integral part of open societies.

## GENERAL RECOMMENDATIONS FOR EUROPE

- The European Union should increase funding for pro-democratic civil society organizations and for independent, investigative media organizations. More funding should be allocated to countries where checks and balances are under attack, and particularly to civil society and media organizations operating outside national capitals.
- The European Union should adopt rule of law conditionality for member states to receive structural funds. The European Commission's proposal to do so was backed by the European Parliament in January 2019 and now goes to the Council of the EU for decision by member state governments.<sup>192</sup> Conditionality should be imposed fairly across the EU, including in long-tenured member states as well as those that joined in the 2004 and subsequent enlargements. An alternative way to structure such measures to protect rule of law via the EU budget would be to link overall levels of EU funds provided to a member state to a rule of law index, whereby states that score higher on the index have greater access to funds. This would employ an incentive process rather than a punitive approach. The definitions and measurements of such a rule of law index could be established according to rulings of the European Court of Human Rights and with reference to the opinions of the Council of Europe's Venice Commission, which has already conducted reviews of a number of problematic policies in Hungary and Poland.
- National courts of states within the EU should refrain from honoring the decisions of courts that are not independent (such as the Constitutional Tribunal of Poland and the Constitutional Court of Hungary).<sup>193</sup> The EU should formally define this as a consequence for states that do not retain judicial independence.
- The European Parliament and European Commission should push for stronger and more uniform voting rights within the EU. Freedom of movement has allowed millions of Europeans to live and work across the EU in large numbers. When leaders can choose their electorates, for example by making it more difficult for citizens living abroad to vote, elections are less fair.

## GENERAL RECOMMENDATIONS FOR NATO

- "Democracy, individual liberty and the rule of law" are founding principles of NATO.<sup>194</sup> Democratic backsliding and corruption within member states pose threats to shared security and alliance cohesion. For the alliance's 70th anniversary this year, NATO members should issue a high-profile statement that allies must endeavor to retain and strengthen democratic institutions as a condition of NATO membership in good standing.<sup>195</sup> Allies should also create a commission or special ombudsman's office that is responsible for identifying violations of those principles. At a minimum, NATO should continue to bolster its communiqué language regarding the importance of democracy to the strength of the alliance and should not hold summits or meetings in countries that have seen significant regression on rule of law.

- NATO should develop a new strategic concept, given changes in the security environment since the approval of the last one in 2010.<sup>196</sup> The document should reassess the elevated challenge that Russia presents to the alliance, address the challenges of democratic backsliding within the alliance, and give NATO International Staff guidance on how to respond.
- NATO should revise its consensus voting rule in favor of a procedure that requires a qualified majority of states to agree in order for a proposal to pass (the most widely used voting method in the Council of the EU).<sup>197</sup> This would prevent a bloc of illiberal states within NATO from shielding one another from attempts by other member states to use NATO mechanisms to apply pressure for anti-democratic practices.

## GENERAL RECOMMENDATIONS FOR THE U.S. GOVERNMENT

- Congress, especially the Senate Foreign Relations Committee and the House Foreign Affairs Committee, should hold regular hearings on the state of democracy in Central and Eastern Europe and Turkey. The purpose of such hearings should be to raise awareness of the economic, political, and defense concerns posed by illiberal regimes to U.S. national security interests in Europe, and to press the executive branch on its policies for countering democratic decline in these countries and their efficacy.
- The State Department and USAID should increase support for independent civil society and investigative independent media in Central Europe, with Hungary and Poland as priorities. This funding program should prioritize projects that will demonstrate to communities outside of national capitals (by providing services, education, etc.) the benefits of democratic institutions and improve government accountability and transparency through in-depth investigative reporting on, for example, misuse of public resources.
- The U.S. government should link future financial support to allied governments to a rule of law index, such that more funding will be provided if all aspects of rule of law are clearly met. The benchmarks could be established with reference to American Bar Association Rule of Law Initiative models.<sup>198</sup>
- The U.S. government should use sanctions under the Global Magnitsky Act against specific corrupt actors in Turkey, Hungary, and possibly Poland to communicate that corruption is a transgression that Washington takes seriously. The sanctions should not be removed based on political grounds.
- The State Department and U.S. Agency for Global Media should reopen Radio Free Europe/Radio Liberty operations in Poland and Hungary.
- The Trump administration should act immediately to fill with qualified individuals key vacant positions at the State Department, including assistant secretary of state for democracy, human rights, and labor; special envoy to monitor and combat anti-Semitism; and the recently vacated position of assistant secretary of state for



European and Eurasian affairs. Congress should pressure the administration to submit nominees and work to quickly confirm those who are qualified and fit to serve.

- The State Department’s Bureau of European and Eurasian Affairs and the U.S. embassies in countries of concern should engage in ongoing dialogue with ruling political forces. This engagement, however, should have a clear purpose: to send a message that the United States will not tolerate democratic rollbacks and is willing to impose consequences for specific government actions that infringe on human rights, censor independent media, target universities and NGOs, and reduce the independence and efficacy of the judiciary.

## COUNTRY-SPECIFIC RECOMMENDATIONS

### *Turkey*

Despite high hopes for political and economic reforms under Erdoğan and the AKP, Turkey has become the United States’ most challenging NATO ally and a complicated partner for the EU. Although Turkey retains political pluralism and electoral democracy, opposition parties compete under deeply unfair conditions and the government has severely curtailed the freedoms of expression and assembly. As these trends are unlikely to change in the near future, the focus of the trans-Atlantic community should be helping Turkey’s democracy survive in the longer term. The degree of existing political, socio-economic, and cultural integration between Turkey and the West also requires balanced and constructive engagement.

The U.S. government should:

- Keep human rights on the bilateral agenda—including the continued detention on spurious charges of U.S. citizens and Turkish employees of U.S. consulates, as well as Turkish journalists, activists, and politicians—through private discussions and frank public statements.
- Continue discussions about both U.S. and Turkish security concerns, including pressing Turkey on its planned acquisition of Russian S-400 missile systems that are incompatible with NATO and addressing Turkey’s worries about Gülenist operations in the United States and the YPG’s future position in Syria.
- Widen the aperture of engagement beyond security issues, including efforts to expand economic cooperation and improve public diplomacy through more people-to-people interactions.
- *Congress should:* Conduct constructive oversight of administration policies on Turkey and continue to press Ankara on human rights and democratic governance.

The European Union should:

- Launch negotiations after the May 2019 European Parliament elections to upgrade the EU-Turkey customs union (to include service industries, agriculture, and public procurement), which would provide mutual economic benefits while helping to improve Turkey's governance by requiring its compliance with a regulatory framework supported by enforcement rules.
- Grant visa liberalization for Turkish nationals, if Turkey meets the remaining requirements.
- Continue providing support for Turkish civil society organizations and refugee-related activities.

Other actors:

- *The OSCE should:* Continue to monitor Turkish elections, including local polls in March 2019.
- *The Council of Europe should:* Continue to address abuses against journalists, opposition politicians, and government critics in Turkey. It should press Ankara to implement European Court of Human Rights rulings on gross miscarriages of justice. The monitoring process introduced by its Parliamentary Assembly, which was lifted in 2004 and reopened in 2017, should continue in order to encourage democratic improvements.
- *NATO should:* Seek to integrate newly appointed Turkish military personnel into the alliance, following the post-coup purges of senior officers. It should also continue to provide security for the alliance's southern flank, including protection of Turkey's border with Syria.
- *The international community should:* Increase humanitarian support for civil society organizations and municipalities struggling to house the large number of Syrian and other refugees in Turkey.

## **Hungary**

Hungary's democratic decline is advanced, with Viktor Orbán approaching nine years in power as a dominant prime minister. The EU and United States should toughen their approach to Budapest while seeking to invest in a more democratic future for this country of nearly 10 million people in the center of Europe. However, the Orbán government's attacks on the checks and balances at the core of democracy should not be conflated with its legitimate political and policy differences with others in the EU over social issues and migration. Orbán's hardline approach to migration is not outside the broad European mainstream of public opinion, and European efforts to check democratic decline in Hungary require the support of the European political right.

The U.S. government should:

- Penalize Hungary for forcing Central European University (CEU), a U.S.-accredited institution, to leave the country by targeting the institution in a law on higher education and refusing to conclude an agreement certifying CEU for continued operation despite U.S. government efforts.
- Downgrade military cooperation with Hungary in light of several moves taken by the Hungarian government that put its reliability as a NATO ally into question.<sup>199</sup>
- Develop a strategic plan that clearly links specific actions by the Hungarian government to economic consequences by the U.S. government, including but not limited to individual-level Magnitsky sanctions and changes in U.S. aid and political support for specific business projects. To that end, the State Department should reinforce this message through working-level meetings and communications between American and Hungarian diplomats.

The European Union should:

- Audit all cohesion funding sent to Hungary over the past decade in response to credible claims of corruption on the part of the Hungarian government. In addition, the EU should explore ways of making the further transmission of cohesion funds conditional to adherence with democratic standards.
- *Member states should:* Follow the lead set by the United States, which in 2014 slapped visa bans on several Hungarian citizens alleged to have engaged in or benefited from corruption. The EU should more aggressively pursue and expose cases of corruption at the highest levels of the Hungarian government.
- *Leaders within the European People's Party should:* Exploit their leverage to exert more pressure on Fidesz to reverse its authoritarian course and, should Budapest prove unresponsive, work to expel Fidesz from the party group.

Other actors:

- *Democratic civil society groups should:* Continue and enhance support, cooperation, and exchange with Hungarian counterparts, both to learn lessons to better protect democracy in their own countries and to support what is now a long-term struggle to return democracy and rule of law to Hungary.

### **Poland**

Political pressure from the EU and United States can still be effective in Poland, where illiberal governance is less consolidated than in Turkey or Hungary. The government recently reversed itself on the forced retirements of Polish Supreme Court judges following an order from the European Court of Justice.<sup>200</sup> U.S. Ambassador Georgette Mosbacher's pressure against the government prosecution of journalists has seemingly been effective.<sup>201</sup>

The U.S. government should:

- Require that rule of law review be part of the feasibility study on the potential permanent stationing of U.S. troops and the potential establishment of a permanent U.S. military base in Poland. The Defense Department should recognize the importance of rule of law and judicial independence not only to the ability of the military to function within Poland, but also to the protection of the rights of individual American service members stationed there (including members of racial, ethnic, religious, and sexual minorities). The benchmarks used for a rule of law review in this instance should include not only an examination of the independence of the judiciary, but the independence of the military and other relevant bodies from political party pressure.<sup>202</sup> Congress should conduct its own evaluation of rule of law in Poland as part of its oversight of “the feasibility and advisability of permanently stationing United States forces in the Republic of Poland.”<sup>203</sup>
- Use the inclusion of Poland in the Visa Waiver Program (a long-running sore point in the relationship as Poland is one of few EU and NATO members not included) as a carrot for rule of law improvements.
- *The U.S. Embassy in Warsaw should:* Speak out publicly when the Polish government acts to limit free media, curtail an independent judiciary, or stoke anti-Semitism and anti-migrant xenophobia, reminding its Polish allies of the democratic principles upon which the U.S. partnership with Poland, and Poland’s membership in NATO, are based.

The European Union should:

- Continue monitoring rule of law in Poland and pressuring Warsaw on rule of law via infringement procedures and dialogue, with credible penalties on the table.
- *The European Parliament should:* Hold additional hearings on the threats to Poland’s democratic institutions, following the example of the Committee on Civil Liberties, Justice, and Home Affairs hearing held in November 2018.<sup>204</sup> These hearings should outline the specific policies instituted by the Polish government that threaten democratic governance, including the disciplinary proceedings recently instituted against judges, and the purges of large numbers of prosecutors, civil servant members of government ministries, and members of the military—all of which seem to be tied to perceived disagreements with government policy or lack of sufficient loyalty to Law and Justice.

Other actors:

- *Chambers of commerce and other international business associations with a stake in the U.S.-Polish business relationship should:* Issue a statement of concern on Poland’s ability to protect private investment without an independent judiciary, or state that the climate for business is “of concern” in the country.
- *Educational institutions that engage in exchanges with Polish universities should:* Issue statements of concern for students going to Poland, noting the lack of

an independent judiciary and the correlative inability of Poland to guarantee protection of individual rights.

### ***Slovakia and the Czech Republic***

Because democracy in Slovakia and the Czech Republic is relatively healthier than in other countries examined in this report, domestic pro-democracy actors still have significant room to maneuver. Given profound warning signs, however, opposition parties (whether inside or outside of government) must act with the same urgency as if democracy were in crisis, in order to prevent that crisis from occurring. That entails prioritizing messaging about democratic decay, unifying around these issues even where other issues may separate them, and from time to time even engaging in peaceful disruptive activities more commonly associated with dissidents and civil disobedience (perhaps by joining protests and strikes) outside the legislature, or even within it. Though domestic actors should lead, democratic renewal in Slovakia and the Czech Republic can be bolstered by support for those actors from a range of international players.

The U.S. government should:

- Incentivize pro-democracy steps with the promise of more favorable economic relations, high-level political visits, and public praise, and conversely warn of consequences if further backsliding occurs. The United States should counter Russian influence by strongly advocating fair U.S. business offers in sectors, such as energy, where Russia is a prime competitor and a strategic threat.
- *The State Department should:* Continue and intensify its diplomatic engagement around democracy issues in the Czech Republic and Slovakia. This includes expressing in blunt terms the strong U.S. interests in democratic institutions in private meetings with Czech and Slovak government officials, and making firm public statements as well. In particular, diplomats and visiting executive branch officials should emphasize challenges posed to the independence of the courts in Slovakia, the freedom of the press in the Czech Republic, and in both nations, anti-migrant rhetoric, Russian influences, and corruption.
- *Congress should:* Use its power of the purse to support Czech and Slovak democracy, for example by providing grants for civil society groups in both countries and for programs that bring democracy leaders to the United States for visits and training.
- *The U.S. Embassies in Bratislava and Prague should:* Brief congressional delegations on democracy-related policy priorities and ask them to include or even emphasize these issues in meetings with local government officials and in public statements.
- *The U.S. Helsinki Commission should:* Consider devoting resources to monitoring warning signs in Slovakia and the Czech Republic and keeping members of Congress abreast of those worrying developments.

The European Union should:

- Address the warning signs for Slovak and Czech democracy informally, in engagement with Czech and Slovak representatives, and, if warranted, through formal channels. *Other pan-European institutions should do the same.*

Other actors:

- *Businesses and multinational corporations headquartered in the Czech Republic and Slovakia should:* Recognize that a vibrant democracy is in their long-term interest and engage with the governments to voice that preference. A natural emphasis for businesses is on issues of corruption; accordingly business leaders should state in meetings with Czech and Slovak officials that they prize free, fair, and transparent markets. Visiting business leaders are often accorded the same treatment as high-level government officials and should utilize the opportunity to advocate for the democracy upon which prosperity rests. Foreign and domestic business leaders should emphasize, in meetings and public statements, that the components of a strong democratic society are interrelated (including impartial courts—a necessity for the dispute resolution that business requires) and should be promoted and preserved. Businesses should pursue action both individually and, to the extent doing so is uncomfortable or lacks weight, collectively through business associations.

## ENDNOTES

- 1 Roberto Stefan Foa and Yascha Mounk, "The End of the Consolidation Paradigm, A Response to Our Critics," *Journal of Democracy*, April 28, 2017, [https://www.journalofdemocracy.org/sites/default/files/media/Journal%20of%20Democracy%20Web%20Exchange%20-%20Foa%20and%20Mounk%20reply-2\\_0.pdf](https://www.journalofdemocracy.org/sites/default/files/media/Journal%20of%20Democracy%20Web%20Exchange%20-%20Foa%20and%20Mounk%20reply-2_0.pdf).
- 2 Adam Przeworski et al., *Democracy and Development: Political Institutions and Well-Being in the World, 1950-1990* (New York: Cambridge University Press, 2000). Przeworski's research found that no consolidated democracy with a GDP per capita of over \$6000 in 1985 international prices has ever collapsed.
- 3 Varieties of Democracy or V-Dem is an expansive dataset project based at the University of Gothenburg in Sweden that tracks democracy across regions and time, "enabl[ing] new ways to study the nature, causes, and consequences of democracy embracing its multiple meanings." V-Dem measures liberal democracy "as the existence of electoral democracy in combination with three additional components: rule of law ensuring respect for civil liberties, and constraints on the executive by the judiciary, as well as by the legislature." "Democracy for All? V-Dem Annual Democracy Report 2018," (Gothenburg, Sweden: University of Gothenburg, 2018), 4, 16, [https://www.v-dem.net/media/filer\\_public/3f/19/3f19efc9-e25f-4356-b159-b5c0ec894115/v-dem\\_democracy\\_report\\_2018.pdf](https://www.v-dem.net/media/filer_public/3f/19/3f19efc9-e25f-4356-b159-b5c0ec894115/v-dem_democracy_report_2018.pdf).
- 4 The V-Dem dataset does not include Malta.
- 5 Roberto Stefan Foa and Yascha Mounk, "The Danger of Deconsolidation," *Journal of Democracy* 27, no. 3 (July 2016): 5-17, <https://www.journalofdemocracy.org/article/danger-deconsolidation-democratic-disconnect>; "2018 Edelman Trust Barometer Reveals Record-Breaking Drop in Trust in the U.S," *Edelman*, February 12, 2018, <https://www.edelman.com/news-awards/2018-edelman-trust-barometer-reveals-record-breaking-drop-trust-in-the-us>; Bruce Stokes, Richard Wike, and Dorothy Manevich, "Few political parties in Europe have widespread appeal," *Pew Research Center*, June 15, 2017, <http://www.pewglobal.org/2017/06/15/few-political-parties-in-europe-have-widespread-appeal/>.
- 6 See Alina Polyakova, *The Dark Side of European Integration: Social Foundations and Cultural Determinants of the Rise of Radical Right Movements in Contemporary Europe*, (Ibidem and Columbia University Press, 2015).
- 7 Abby Innes, "Hungary's Illiberal Democracy," *Current History* 114, no. 770 (March 2015): 95-100. Innes argues that in Poland and Hungary, the social democratic left became "the most Blairite, pro-market center-left parties in the region ... appear[ing], programmatically, to vacate the leftist socioeconomic space entirely," before seeing their electoral support shattered and being replaced in the polls by the authoritarian conservative nationalists of PiS and Fidesz.
- 8 Hungary admittedly saw major flows of refugees through the country in the summer of 2015 as it was on the land transit route from Turkey and the Levant to the biggest European magnet country, Germany.
- 9 Ivan Krastev, *After Europe*, (Philadelphia: University of Pennsylvania Press, 2017), 75.
- 10 Cas Mudde, "The Problem with Populism," *The Guardian*, February 17, 2015, <https://www.theguardian.com/commentisfree/2015/feb/17/problem-populism-syriza-podemos-dark-side-europe>.
- 11 Neil Buckley and Henry Foy, "Poland's new government finds a model in Orbán's Hungary," *Financial Times*, January 6, 2016, <https://www.ft.com/content/0a3c7d44-b48e-11e5-8358-9a82b43f6b2f>.
- 12 Keno Verseck, "Hungary Steps Away from European Democracy," *Der Spiegel*, March 11, 2013, <http://www.spiegel.de/international/europe/hungary-constitutional-reforms-signal-drift-away-from-democracy-a-888064.html>.
- 13 "Romania's government assaults the rule of law," *Financial Times*, November 19, 2018, <https://www.ft.com/content/7352ec7a-e981-11e8-a34c-663b3f553b35>.
- 14 V-Dem indices over time can be charted at "Country Graph," V-Dem Institute, <https://www.v-dem.net/en/analysis/CountryGraph/>.
- 15 Nancy Bermeo, "On Democratic Backsliding," *Journal of Democracy* 27, no. 1 (January 2016): 5-19.
- 16 "North Atlantic Treaty," NATO, April 4, 1949, [https://www.nato.int/cps/ie/natohq/official\\_texts\\_17120.htm](https://www.nato.int/cps/ie/natohq/official_texts_17120.htm).
- 17 "Accession criteria," European Commission, [https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/accession-criteria\\_en](https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/accession-criteria_en).
- 18 Article 7 of the Treaty on European Union, long considered a "nuclear option," is the EU's strongest tool for dealing with a threat to liberal democratic values. It can be triggered by various EU institutions when there is a "clear risk of a serious breach" by a member state of the EU's "founding values" of "respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities." If the Council of the EU "determine[s] the existence of a serious and persistent breach," a member state can be sanctioned or lose its voting rights in the Council; however, this determination can be blocked by any other member state. See "Consolidated version of the Treaty on European Union," EUR-Lex, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT>. The European Commission triggered Article 7 against Poland in

December 2017 and the European Parliament triggered Article 7 against Hungary in September 2018. The outcome of these procedures remains uncertain, a reality that has informed alternative tactics.

19 “Freedom in the World 2018: Turkey,” Freedom House, 2018, <https://freedomhouse.org/report/freedom-world/2018/turkey>. In the 2019 edition of the report released earlier this month, Turkey remains “not free” and its score has worsened further. “Freedom in the World 2019: Turkey,” Freedom House, 2019, <https://freedomhouse.org/report/freedom-world/2019/turkey>.

20 The military, judiciary, and state bureaucracy saw themselves as the guardians of the secular and unitary nature of the Turkish republic, and particularly of an ideology known as Kemalism based on ideas and policies associated with the republic’s founder, Mustafa Kemal Atatürk. They vigorously resisted communism, political Islam, and Kurdish nationalism, often at the cost of undermining civil liberties and human rights. Their capacity to operate without accountability earned them the label “deep state.”

21 Kerem Öktem, *Turkey Since 1989: Angry Nation* (London: Zed Books, 2011).

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broadcasting council, which would have enabled the government to appoint the council chair, pass new provisions to laws on public assembly according to which local lawmakers could have refused permission for gay pride parades, and enact provisions of a “lustration” law that would have opened up access to the archives of the secret police. Unable to move forward on their major policy proposals, Law and Justice politicians made clear that they considered the Tribunal an enemy. Jarosław Kaczyński coined the term “impossibilism” to describe the Tribunal’s doctrine, meaning that it made reforms impossible under its interpretation of the constitution. In 2007, the party began to consider changes to the system of judicial appointments, but it was voted out of office that year. However, having begun to develop a process for taking down its judicial adversaries, the party was ready to immediately spring into action upon regaining power in 2015. See Wojciech Sadurski, *Rights Before Courts: A Study of Constitutional Courts in Postcommunist States of Central and Eastern Europe*, second edition (Dordrecht: Springer, 2014), 8-9; see also Emily Tamkin, “Polish Ruling Party Passed Unconstitutional Laws, Now Controls Constitutional Tribunal,” *Foreign Policy*, December 19, 2016, <https://foreignpolicy.com/2016/12/19/polish-ruling-party-passed-unconstitutional-laws-now-controls-constitutional-tribunal-trump-law-justice/>.

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87 Once this unanimous vote determines that a state is at risk of breaching EU values as set forth in Article 2 and Article 6 of the Treaty on European Union as well as the European Charter of Fundamental Rights, the Council can suspend certain membership rights of the violating member state, including voting rights in the Council. This second step must be agreed to by a qualified majority of Council members. Sanctions include limitation of the state’s voting rights in the EU. This provision had never been used before it was applied to Poland. Prior to 2014, the EU had no framework for engaging in preventive action once a member state had begun to violate principles of rule of law; it had only the sanctions mechanism set forth in Article 7. However, in 2014, via the Treaty of Nice, it added Article 7.1, a preventive mechanism that set forth a framework for a structured dialogue for negotiating with a state at risk of sanction under Article 7. This mechanism was applied to Poland beginning in December 2017. See “Briefing: Understanding the EU Rule of Law mechanisms,” (Brussels: European Parliament, January 2016), <http://www.europarl.europa.eu/EPRS/EPRS-Briefing-573922-Understanding-EU-rule-of-law-mechanisms-FINAL.pdf>.

88 Initially the law had different retirement ages for men and women, but in September 2017, after pressure from the international community, the forced retirement age was unified.

89 Prior to this, the Supreme Court was made up of 83 judges. The increase allows Law and Justice to appoint over 50 new judges that are loyal to the party. See the speech of Adam Bodnar, Poland’s parliament-appointed ombudsman leading the Commission for Human Rights of Republic of Poland. Adam Bodnar, “Speech to be delivered at the 38<sup>th</sup> Session of the Human Rights Council, after presentation of the report by the UN Special Rapporteur on Judicial Independence Diego Garcia-Sayan,” (speech, Geneva, June 25, 2018), <https://www.rpo.gov.pl/sites/default/files/Gewena%20wystapienie%20RPO%20przedstawione%20przez%20zast%C4%99pczyni%C4%99%20RPO%20Hann%C4%99%20Machi%C5%84sk%C4%85%20%28tekst%20angelski%29.pdf>.

90 The new extraordinary appeal body threatens legal certainty in the justice system, given that it includes lay persons without legal training. The new disciplinary body is better funded than the Supreme Court itself, and its members receive salaries 40 percent higher than Supreme Court judges. In addition to the new disciplinary body, the prosecutor’s office has begun instituting criminal proceedings against judges that rule against the prosecution. See Dariusz Mazur and Waldemar Zurek, “So-called ‘Good change’ in the Polish system of the administration of justice.” In June 2018, the government began naming these lay persons and made clear that even individuals with absolutely no knowledge of the law would be considered, as long as they were party loyalists. Maciej Nowicki, board member of Helsinki Foundation for Human Rights, in interview with author Melissa Hooper, Warsaw, June 27, 2018.

91 The body was formerly made up entirely of judges elected by judges. Now, in addition to judges, it will include six parliamentarians and four additional members appointed by the president. See, “Opinion No. 904/2017: Poland Opinion On the Draft Act Amending the Act on the National Council of the Judiciary, On the Draft Act Amending the Act on the Supreme Court, Proposed by the President of Poland, and On the Act On the Organisation of Ordinary Courts.”

92 This was the number that had been forced out between the time the Law on Ordinary Courts was signed in July 2017 and the conclusion of a Helsinki Foundation for Human Rights study. Barbara Grabowska-Moroz and Małgorzata Szuleka, “It Starts with the Personnel: Replacement of common court presidents and vice presidents from August 2017 to February 2018,” (Warsaw: Helsinki Foundation for Human Rights, April 16, 2018), <http://www.hfhr.pl/wp-content/uploads/2018/04/It-starts-with-the-personnel.pdf>. It represents about one-third of all court presidents and deputy presidents in Poland, according to Adam Bodnar of the Office of the Commissioner for Human Rights of the Republic of Poland (interview by author Melissa Hooper, Warsaw, June 8, 2018).

93 This is concerning because the minister of justice/general prosecutor can create new laws that only apply during the pendency of certain cases, such as cases against judges and opposition members. This possibility was pointed out by the Venice Commission when it reviewed the draft law. “Opinion 892/2017, Poland On the Act On the Public Prosecutor’s Office As Amended.”

94 Judge Gersdorf had at first said on July 4 that she would go on “vacation,” and appointed a Judge Józef Iwulski to act in her place while she was unable to carry out her duties. Christian Davies, “Head of Polish supreme court defies ruling party’s retirement law,” *The Guardian*, July 4, 2018, <https://www.theguardian.com/world/2018/jul/04/poland-supreme-court-head-malgorzata-gersdorf-defies-retirement-law>. She then attempted to return to work on July 17, 2018, “Statement of the Press Spokesman of the Supreme Court,” Supreme Court, July 17, 2018, <http://www.sn.pl/aktualnosci/SitePages/Wydarzenia.aspx?ItemSID=430-292d9931-9fa5-4b04-8516-5c932ff6bdf2&ListName=Wydarzenia>. Gersdorf replied to Duda in writing on July 19, arguing that her term of office was directly regulated by the constitution and that she was obligated to continue until its end on April 30, 2020. For Duda and Gersdorf’s letter exchange in English translation, see Patryk Wachowiec (@PatrykWachowiec), Twitter, July 20, 2018, <https://twitter.com/PatrykWachowiec/status/1020604560530960384>.

95 IUSTICIA Polish Judges Association (@JudgesSsp), Twitter, July 14, 2018, <https://twitter.com/JudgesSsp/status/1017811397030432769>.

96 On July 19, Law and Justice introduced, via a private member bill, new legislation to reduce the number of judicial votes necessary to replace the head of the Supreme Court and relax the requirements that must be met by a judge in order to be named to the Supreme Court. Maria Ejchart-Dubois, Sylwia Gregorczyk-Abram, Paulina Kieskowska-Knapik, and Michał Wawrykiewicz, “Devastation of Poland’s Supreme Court and judicial independence: the situation now,” (Warsaw: Stefan Batory Foundation IdeaForum, July 24, 2018), <http://www.batory.org.pl/upload/files/Programy%20operacyjne/Forum%20Idei/Devastation%20of%20PL%20Supreme%20Court.pdf>. On July 16, 2018, Law and Justice also introduced legislation to guarantee lifetime employment as law professors in state universities to all members of the Constitutional Tribunal and Supreme Court; this would include those judges illegally appointed by Law and Justice. Laurent Pech (@ProfPech), Twitter, June 16, 2018, <https://twitter.com/ProfPech/status/101876077237397504>.

97 A translation of the request into English can be found here: “Ref. No. III UZP 4/18,” <https://www.docdroid.net/jZAxWJO/iii-uzp-4-18doc.pdf>.

98 “Poland must immediately suspend the application of the provisions of national legislation relating to the lowering of the retirement age for Supreme Court judges,” (Luxembourg: Court of Justice of the European Union, October 19, 2018), <https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-10/cp180159en.pdf>.

99 Adam Bodnar, “Adam Bodnar at the Public Hearing on ‘The situation of the Rule of Law in Poland, in particular as regards the independence of the judiciary,’” (speech, Brussels, November 20, 2018), <https://www.rpo.gov.pl/en/content/adam-bodnar-public-hearing-%E2%80%9C-situation-rule-law-poland-particular-regards-independence-judiciary%E2%80%9D>. See also Mateusz Marchwicki, “Będzie postępowanie dyscyplinarne wobec prof. Matczaka. Ziobro znalazł powód,” *NaTemat*, January 1, 2019, <https://natemat.pl/259357.ziobro-zdecydowal-bedzie-postepowanie-dyscyplinarne-wobec-prof-matczaka>. Disciplinary proceedings were launched against a well-known constitutional scholar for telling a controversial blogger on Twitter that his remarks were an example of hate speech.

100 Kamil Marcinkiewicz and Mary Stegmaier, “Democratic elections in Poland face a new threat,” *The Washington Post*, January 11, 2018, [https://www.washingtonpost.com/news/monkey-cage/wp/2018/01/11/free-elections-in-poland-face-new-threats-from-a-new-electoral-reform-bill/?utm\\_term=.80834aa5cc7d](https://www.washingtonpost.com/news/monkey-cage/wp/2018/01/11/free-elections-in-poland-face-new-threats-from-a-new-electoral-reform-bill/?utm_term=.80834aa5cc7d).

101 Annabelle Chapman, “Pluralism Under Attack: The Assault on Press Freedom in Poland,” (Washington: Freedom House, June 2017), <https://freedomhouse.org/report/special-reports/assault-press-freedom-poland>; Wojciech Sadurski, “How Democracy Dies (in Poland).”

102 This occurred before retirement of the former head judge, Rzepliński, and before the takeover of the Tribunal was complete. Annabelle Chapman, “Pluralism Under Attack.”

103 In November 2016, numerous broadcasts included attacks against NGOs as having links to “leftist” George Soros, “corrupt ties” to the prior government, and nefarious anti-Polish interests. See “Information on the recent challenges faced by human rights defenders and civil society in Poland,” (Warsaw: Helsinki Foundation for Human Rights, November 2016), <http://www.hfhr.pl/wp-content/uploads/2016/11/HRD-report-30112016-FIN.pdf>; see also Annabelle Chapman, “Pluralism Under Attack.”

104 This included government’s advertising funding—a major source of revenue for press in the country—as well as funding from state-owned companies. Critical media, such as *Gazeta Wyborcza*, also have had their distribution limited. Annabelle Chapman, “Pluralism Under Attack.”

105 The government has called for a “re-Polonization” of private media, but this has not been legislated. Outlets believe that private media will be attacked through the extraordinary appeal law. See “Justice Purged: Poland Politicizes its Judiciary,” (New York: Human Rights First, June 2018), 6-8, <https://www.humanrightsfirst.org/sites/default/files/Poland-Justice-Purged.pdf>. In December 2017, the media regulator fined U.S.-owned TVN24 for “encourag[ing] behavior threatening security” by showing anti-government protests without criticizing them. The fine of \$415,000 and the infraction were withdrawn after the U.S. embassy intervened. Attila Mong, “Mission Journal: In Poland, some journalists fear worst is yet to come,” *Committee to Protect Journalists*, March 12, 2018, <https://cpj.org/blog/2018/03/mission-journal-in-poland-some-journalists-fear-wo.php>.

106 In May it abolished the anti-racism council, called the Council for Counteracting Racial Discrimination, Xenophobia and Related Intolerance. Zoya Sheftalovich, “Polish PiS abolishes anti-racism body,” *Politico*, May 5, 2016, <https://www.politico.eu/article/polands-pis-lae-and-justice-party-abolishes-anti-racism-body/>. In November, it merged into a larger body (and therefore abolished) the Interior Ministry’s Human Rights Protection Team. Christian Davies, “Polish PM angers human rights campaigners with plan to shake up NGOs,” *The Guardian*, November 28, 2016, <https://www.theguardian.com/world/2016/nov/28/polish-pm-beata-szydoa-angers-human-rights-campaigners-ngos>. It withheld migration-related funds for NGOs provided by the European Commission and cut the Commissioner for Human Rights’ budget by \$1.9 million. “Poland’s New Front: A Government War Against Civil Society,” (New York: Human Rights First, August 2017), 10-12, <http://www.humanrightsfirst.org/sites/default/files/Poland-Report-August-2017.pdf>.

107 New programs focus on “strengthening the process of identifying with one’s own gender,” and producing “a new patriotic Pole.” See Natalia Bet, “Ludzie Zalewskiej przygotowali program dla szkół. Czego uczeń dowie się o seksie?” *Gazeta.pl*, July 4, 2017, <http://wiadomosci.gazeta.pl/wiadomosci/7,114871,22048046,seks-sluz-y-jedynie-prokreacji-powinien-odbywac-sie-jedynie.html>; Christian Borys, “Poles Are Taking to the Streets in Massive Numbers to Protest the Country’s Shift to the Right,” *Huffington Post*, May 7, 2017, [http://www.huffingtonpost.com/christian-borys/poland-protest-shift-right\\_b\\_9862570.html](http://www.huffingtonpost.com/christian-borys/poland-protest-shift-right_b_9862570.html). Students now begin school at age seven, and receive more education on religion, with fewer hours spent on science. The government has also attempted to regulate the way historical events are discussed. On January 26, 2018, the eve of Holocaust Remembrance Day, it introduced amendments to the Act on the Institute of National Remembrance that made it a crime punishable by fine or imprisonment to accuse Poland of responsibility or complicity in Nazi atrocities during World War II. It also gave the institute power to bring civil charges against anyone who “tarnishes” the reputation of Poland or the Polish people. Uladzislau Belavusau and Anna Wójcik, “Polish Memory Law: When history becomes a source of mistrust,” *New Eastern Europe*, February 19, 2018, <http://neweasterneurope.eu/2018/02/19/polish-memory-law-history-becomes-source-mistrust/>; “Fact Sheet: Poland’s ‘Holocaust Law’ and the Complexity of Holocaust Revisionism in Europe,” Human Rights First, February 2018, <https://www.humanrightsfirst.org/sites/default/files/Poland-Holocaust-Law-Factsheet.pdf>. These severe limitations on speech were decryd by the Israeli and U.S. governments and international Jewish organizations. In June 2018 the government repealed the criminal provisions of the law. Adam Easton, “Poland Holocaust law: Government U-turn on jail threat,” *BBC*, June 27, 2018, <https://www.bbc.com/news/world-europe-44627129>.

108 In spring 2017, the government initiated surprise audits of NGOs it disfavored, and then suspiciously ordered them to repay funds, defunding many. Those that were audited and defunded served refugees, LGBT groups, and battered women. An auditor in one case was told to find a violation for each NGO, regardless of the facts. The new GONGOs serve only communities the government favors: Christian refugees, family-focused NGOs (instead of battered women’s groups), and far-right and xenophobic Father Tadeusz Rydzyk’s projects. They also include fringe groups that support the government’s Smolensk conspiracy theories. Sometimes grant competitions were stalled until a GONGO could be created to accept the grant. “Poland’s New Front,” Human Rights First.

109 Henry Foy, “Poland raids NATO office in Warsaw,” *Financial Times*, December 8, 2015, <https://www.ft.com/content/0dd663d7-de3c-30f5-a81a-29dcc59c4b6a>. Regarding purges of the civil service, see also Hubert Tworzecki and Radosław Markowski, “Why is Poland’s Law and Justice Party trying to rein in the judiciary?”

110 Paweł Wroński, “Antoni Macierewicz’s purge: The minister wants to have his generals,” *Gazeta Wyborcza*, Aug. 2, 2017, <http://wyborcza.pl/7,75398,22178325,czystka-antoniego-macierewicza-minister-chce-miec-swoich-generalow.html>.

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- 116 Luca Tomini, “Reassessing Democratic Consolidation in Central and Eastern Europe and the Role of the EU,” *Europe-Asia Studies* 66, no. 6 (2014): 871.
- 117 See Rachel Vanderhill, “Promoting Democracy and Promoting Authoritarianism: Comparing the Cases of Belarus and Slovakia,” *Europe-Asia Studies* 66, no. 2 (2014): 255-283.
- 118 See, e.g., the assessment in Darina Malová and Branislav Dolný, “Economy and Democracy in Slovakia during the Crisis: From a Laggard to the EU Core,” *Problems of Post-Communism* 63, no. 5-6 (2016): 308.
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## ABOUT THE AUTHORS

Ambassador (ret.) **Norman Eisen** is a senior fellow in the Governance Studies program at the Brookings Institution, a CNN political commentator, and the chair of the government watchdog group CREW, which he co-founded in 2003. Eisen served from 2009 to 2011 in the White House as special counsel and special assistant to the president for ethics and government reform. Following his White House service, Eisen was the U.S. ambassador to the Czech Republic from 2011 to 2014. Before government service, Eisen was a partner in the DC law firm Zuckerman Spaeder LLP, where he specialized in litigation and investigations. His writing has appeared in *The New York Times*, *The Washington Post*, and many other publications. He received his J.D. from Harvard Law School and his B.A. from Brown University, both with honors. Eisen's book *The Last Palace: Europe's Turbulent Century in Five Lives and One Legendary House*, was published by Crown in 2018.

**Melissa Hooper** is a lawyer, a rule of law expert, and the director of foreign policy advocacy at Human Rights First. Prior to joining Human Rights First, she was the regional director working on Russia, Azerbaijan, and Ukraine, at the American Bar Association Rule of Law Initiative, living in Moscow through 2014. She was the co-chair of the Human Rights Working Group of the Bilateral Presidential Commission between Russia and the United States, under President Obama, from 2011 to 2014. Hooper's research and advocacy proposes U.S. policy responses to recent strategies used by European populist nationalist governments to undermine democratic institutions, norms, values, and alliances, providing an opening for soft power threats posed by Russia and others.

**Andrew Kenealy** is a research analyst in the Governance Studies program at the Brookings Institution, where he researches U.S. diplomatic history and democratization. He graduated *cum laude* from Dartmouth College with a B.A. in government.

**James Kirchick** is a visiting fellow at the Brookings Institution's Center on the United States and Europe and Project on International Order and Strategy. He is the author of *The End of Europe: Dictators, Demagogues and the Coming Dark Age* (Yale University Press, 2017).

**Kemal Kirişci** is the TÜSİAD senior fellow and director of the Turkey Project at the Brookings Institution. Before joining Brookings, Kirişci was a professor of international relations and held the Jean Monnet chair in European integration in the department of political science and international relations at Boğaziçi University in Istanbul. His areas of research interest include EU-Turkish relations, U.S.-Turkish relations, Turkish foreign and trade policies, European integration, immigration issues, ethnic conflicts, and refugee movements. He is the co-author of the monograph, *The Consequences of Chaos: Syria's Humanitarian Crisis and the Failure to Protect* (Brookings Institution Press, 2016), which considers the long-term economic, political, and social implications of Syria's displaced and offers policy recommendations to address the humanitarian crisis. His latest book, *Turkey and the West: Faultlines in a Troubled Alliance*, was published by the Brookings Institution Press in November 2017.

**Alina Polyakova** is the David M. Rubenstein fellow in the Brookings Institution Foreign Policy program's Center on the United States and Europe, and adjunct professor of European studies at the Paul H. Nitze School of Advanced International Studies at

Johns Hopkins University. Polyakova's writings have appeared in *The New York Times*, *The Wall Street Journal*, *Foreign Affairs*, *Foreign Policy*, and *The Atlantic*, as well as a number of academic journals. Her book, *The Dark Side of European Integration* (Ibidem-Verlag, 2015), examines the rise of far-right political parties in Europe. Prior to joining Brookings, Polyakova served as director of research and senior fellow for Europe and Eurasia at the Atlantic Council. Polyakova holds a doctorate from the University of California, Berkeley.

**Ted Reinert** is a senior research assistant in the Center on the United States and Europe at the Brookings Institution. Reinert's research areas include trans-Atlantic relations, challenges to liberalism and democracy, and U.S. and European politics and foreign policy with a focus on the left. Previously, he worked at the German Marshall Fund of the United States and its Transatlantic Academy, at the NATO Parliamentary Assembly, as a reporter, and as a Fulbright English teaching assistant in Germany. He holds an M.A. from the Johns Hopkins School of Advanced International Studies and an A.B. from Bowdoin College.

**Amanda Sloat** is a Robert Bosch senior fellow in the Center on the United States and Europe at the Brookings Institution. She previously served in the U.S. government for nearly a decade, including at the White House, State Department, and House of Representatives' Foreign Affairs Committee. Her most recent position was deputy assistant secretary of state for Southern Europe and Eastern Mediterranean affairs, where she was responsible for U.S. relations with Turkey.

**Torrey Taussig** is a nonresident fellow in the Brookings Institution Foreign Policy program's Center on the United States and Europe. In 2018-19, she is based in Berlin as a Robert Bosch Foundation fellow. Taussig specializes in U.S. foreign policy, European security, authoritarian politics, and democracy studies. Previously, Taussig held pre-doctoral and post-doctoral fellowships at the Brookings Institution. She also held a post-doctoral fellowship at Harvard University's Belfer Center for Science and International Affairs. Taussig has a doctorate from the Fletcher School of Law and Diplomacy at Tufts University. She received a master's degree from the Fletcher School and a bachelor's degree in political science and economics from Williams College.

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