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„Lead us not into temptation, but deliver us from evil“:

**Dismantling of the rule of law and corruption
as challenges to democracy in Central
and Eastern Europe**



Main thesis

1. The main threat to democracy and the rule of law across Central and Eastern Europe (CEE) comes from elites in power trying to evade accountability for corruption. They use and tweak the existing legislation in such a way to make themselves effectively untouchable and to serve their personal interests.
2. The judicial system in CEE is one of the main victims of the process of state capture despite the numerous international and domestic criticisms and recommendations to protect human rights, maintain integrity and provide equal access to accountability for all.
3. With enough strict conditionality mechanisms imposed by the European Union, progress in reform is possible, as exhibited by the Recovery and Resilience Facility and the condition on the rule of law.

Introduction

Rule of law is fundamental to democracy, as it guarantees checks and balances that prevent the abuse of power and breaches of the social contract. It represents the principle of governance in which everyone is accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, ensuring equality before the law. The phenomenon of corruption erodes such values, as it benefits certain people at the expense of others.

Since the 1990s, Bulgaria and Romania have experienced high levels of corruption, which continue to have undue influence over rule of law principles and undermine reforms. This ongoing challenge coalesced with negative corruption trends in Hungary and Poland, where democracy and the rule of law have been slowly strangled in recent years due to the illiberal tendencies of the populist far-right leadership of Fidesz and Law and Justice (PiS). Currently, these four countries have the lowest freedom scores in the EU according to the Nations in Transit Report, and score lowest on protecting fundamental rights in the EU according to the Rule of Law Index.¹ Finally, Hungary, Bulgaria and Romania are recognised by Transparency International as the most corrupt states in the EU. Moreover, Hungary and to a lesser degree Poland have experienced the most considerable decline of the rule of law among EU member states in recent years. In the case of Hungary, the dismantling of the rule of law was accompanied by democratic backsliding on an unprecedented scale. In effect, Hungary became the only country in the EU recognised as partly free by Freedom House.

In attempting to evade accountability for corruption, populist elites in CEE have weakened rule of law mechanisms and, with them, the very framework of democracy. The recent elections in Poland offer some reason for optimism, but the fate of countries in the region is still linked to their ability to safeguard the principles of justice, accountability and transparency in the context of authoritarian pressure.

Political capture of the judiciary in Romania

Romanian anti-corruption efforts were long tied to the European Union accession process. In 2004, three years before accession, Traian Băsescu ran and was elected president on a platform promising to combat corruption. In 2005 he classified corruption as a threat to national security,² and reorganised the National Anticorruption Office, established in 2002, into the National Anticorruption Directorate (DNA). It was foreseen as an autonomous prosecution agency for investigating large-scale corruption cases.

Right after Romania's accession to the EU, DNA and broader anti-corruption efforts focused on police forces, border police and customs workers, but gradually shifted to investigating more and more political corruption, officeholders and elected officials, with the agency boasting a conviction rate of investigated cases of over 90% in 2016.³ Such successes were however not accompanied by administrative reform, so the same environment and mechanisms that allowed one individual to use public office for private gain remained in place even after these investigations and convictions.

One effect of the prosecution-led anti-corruption effort was that political control over corruption networks grew, as did the importance of political protection from prosecution. Joining a politically controlled network of corruption reduced the chances of being denounced to the authorities for corrupt acts. As such, corruption in Romania changed by adapting to new circumstances and remained systemic despite some improvement in perceptions.⁴ This was perhaps best highlighted by the Colectiv nightclub fire in 2015, which triggered nationwide protests under the hashtag #CorruptionKills, leading to the fall of Victor Ponta's cabinet and the appointment of a technocratic government.

The high-profile prosecution of corruption triggered a political backlash. In early 2017, the new social democratic cabinet enacted emergency ordinance OUG 13/2017, altering the country's criminal code. Changes included decriminalising negligence, the refusal to report close relatives, and certain abuses of office. These changes, notably raising public outcry and international concern, were largely reversed after significant street protests and pressure from national and international bodies. Subsequent amendments to the criminal code were less impactful.

The conflict between DNA and the political elites included arguments that the agency had grown too powerful and was acting outside the bounds of the rule of law. Several measures were therefore taken to reduce DNA's power, including the removal of Chief Prosecutor Laura Codruța Kövesi in 2018, raising concerns about political interference in the fight against corruption. Moreover, DNA had collaborated with the Romanian Information Service (SRI) to gather evidence for prosecution, based on two protocols between the institutions (from 2009 and 2016). These were declared fully and partially unconstitutional respectively in 2019,⁵ following an intimation to the Constitutional Court (CCR) from the President of the Chamber of Deputies Liviu Dragnea, himself under investigation. He was convicted later that same year for abuse of power and electoral fraud.

2 Horațiu Pepine, *Combaterea corupției ca strategie de securitate*, *Deutsche Welle*, 28.02.2005. <https://www.dw.com/ro/combaterea-corupției-ca-strategie-de-securitate/a-2633456>

3 DNA 2016 annual report: https://www.pna.ro/bilant_activitate.xhtml?id=38

4 Andrei Macsut, *Patterns of Corruption – A Study of Sub-National Units in Romania*, Central European University, 2023, https://www.etd.ceu.edu/2023/macsut_andrei.pdf

5 Curtea Constituțională a României, *Decizia Nr.26 din 16 ianuarie 2019*, https://www.ccr.ro/wp-content/uploads/2020/07/Decizie_26_2019.pdf

Another measure that reduced the power of DNA was establishing, in October 2018, the Section for Investigating Crime in the Judiciary (SIIJ), a prosecution office specifically for magistrates who could no longer be investigated by DNA. Its creation was criticised by the European Commission, the Court of Justice of the European Union and various Romanian institutions and organisations, who saw it as a tool for political pressure and for protection from accountability. Despite being reorganised in 2022, very few magistrates have been investigated. Moreover, no one was indicted, despite multiple media investigations and whistleblower accounts⁶ supporting the view that political forces wished to subdue the judiciary and evade accountability.

Magistrates can currently retire as early as 47, provided they have 25 years of experience on the job, and their pension is 80% of their gross monthly total earnings over the last 48 months of activity.⁷ Such privileges have been criticised by the European Commission, which set conditions on Recovery and Resilience funds on reform to the pension system. Yet such reform is resisted both by magistrates themselves and by the political class, who have actively increased their privileges over the years.⁸

The combined effect of these measures was a significant reduction in the number of indictments for corruption since 2017 and what can be described as the “political capture” of the judiciary. It allows systemic corruption networks to work unhindered and ensures that new political forces that might be willing to reform the system have a hard time accessing any real power.

The omnipotent Prosecutor’s Office in Bulgaria

The most jeopardised spot in the Bulgarian judicial system is the Prosecutor’s Office. The Bulgarian prosecution carries a legacy engrained in its very foundation in 1944, as it was structured according to the Soviet model.⁹ In effect, there are no control mechanisms concerning the prosecutor’s ability to act politically, and all prosecutors are his subordinates. This allows the prosecutor to wield influence over the entire prosecution, to abuse inconvenient opponents, including judges who refuse to comply with political orders, and journalists who criticise government policies. Under communism, the office represented the regime and its voice “spilled over the courts”.¹⁰

Regardless of various changes over the years, including the separation of powers and the numerous reforms in the judicial system, the Prosecutor’s Office maintained its omnipotence. Essentially, the Bulgarian prosecutor general is the most untouchable person in the country

6 Virgil Burlă, Cum a dispărut corupția din magistratură. Secția Specială 2: Niciun rechizitoriu în cinci luni, *Europa Liberă România*, 20.10. 2022, <https://romania.europalibera.org/a/anchete-coruptie-magistratura/32091750.html>

7 Mariana Bechir, Magistrații se vor pensiona la 60 de ani începând din... 2062: Raport de admitere pe modificarea legii pensiilor speciale, *CursDeGuvernare*, 10.10.2023, <https://cursdeguvernare.ro/magistrati-se-vor-pensiona-60-ani-incepand-din-2062-pensii-speciale.html>

8 Mircea Marian, DOCUMENT Lista uriașă a privilegiilor unui magistrat: pensii speciale, sporuri nenumărate, chirii subvenționate, călătorii în vacanță și asistență medicală extinsă, *defapt.ro*, 3.10.2023, <https://defapt.ro/document-lista-uriasa-a-privilegiilor-unui-magistrat-pensii-speciale-sporuri-nenumarate-chirii-subventionate-calatorii-in-vacanta-si-asistenta-medicala-extinsa/>

9 Maria Yordanova, Dimitar Markov, Dragomira Paunova, Rositsa Elazar, Judicial Reform: Prosecution and Investigation authorities in the context of EU membership, *Center for the Study of Democracy*, 2005, https://csd.bg/fileadmin/user_upload/publications_library/files/1576.pdf

10 Radosveta Vassileva, Bulgaria’s autocratic model, *New Eastern Europe*, 27.09.2018, <https://neweasterneurope.eu/2018/09/27/bulgarias-autocratic-model/>

and has a monopoly over criminal investigations. His powers are structured in such a way that “he can annul or amend any decision taken by any prosecutor which has not been reviewed by a judge, he may second prosecutors without their consent.” He also has an effective dominance over the country’s supreme court due to its composition. The prosecutor general is elected for a seven-year term, and it is almost impossible to replace him or review any of his decisions. There were three different attempts to replace the prosecutor general by different officials, including the justice minister and parliamentarians, but it was not until May 2023, when the Judicial System Act was amended that it was possible to remove the prosecutor with less votes in the Supreme Judicial Council. All this authority provides the prosecutor general with the capacity to influence the legislative branch as well.

The Council of Europe, the Venice Commission and the European Commission have repeatedly asked for Bulgaria to reform the office. However, there was a significant lack of political will to modernise this institution despite the consistent abuses identified by the European Court of Human Rights, while it continued to target proponents of reform and whitewash the acts of corrupt officials.

In recent years, the persona of the former Prosecutor General Ivan Geshev (2019-2023) was the embodiment of Bulgaria’s deeply flawed justice system. Geshev faced external and internal criticism for his failure to root out endemic corruption and advocate for judicial reform. Ivan Geshev was the deputy prosecutor general (2018-19) under Sotir Tsatsarov, who later was elected as a chairman of the Anti-Corruption Commission. The close relationship between these two effectively nullified the independence of both authorities, which are fundamentally meant to serve as checks and balances in relation to each other. They also shared close ties to the political elite, prosecuting figures from the opposition and leaving out cases implicating Bulgarian politicians.

Geshev’s unethical behaviour of disrespect for the presumption of innocence and the separation of powers, and his public denouncement of corruption allegations for high-level public officials, sparked mass protests in Bulgaria in 2020. They eventually led to the fall of the government and new national elections. It took a few legislative changes to dismiss Ivan Geshev for undermining the authority of the judiciary. The early termination vote that took place in June 2023 was based on one of the new provisions which reduced the required majority in the Supreme Judicial Council for such a decision from 17/25 to 13/27.

Super strong executive power in Hungary

Since 2010, Fidesz has dominated Hungary’s political landscape, capitalising on economic turmoil and corruption from the 2000s. With a constitutional majority, Fidesz undertook measures to solidify its control, notably through the endorsement of a new constitution and its numerous amendments, and the restructuring of the judiciary. After 2015 its policies served as an important source of inspiration for the government of Law and Justice in Poland. The 2011 constitution severely weakened checks and balances, limiting the constitutional court’s authority, particularly with regards to budgetary oversight. Executive power was centralised, with long-term appointments to key positions, including the judiciary. Fidesz lowered judges’ retirement age, prompting retirements and fostering loyalty to the ruling party.

The National Office for the Judiciary (OBH), established in 2012, centralised various administrative functions of the judiciary, such as personnel management, budgetary oversight

and the coordination of court activities, concentrating power and affecting judicial independence, while also tng political meddling. It is worth remembering that its head is appointed by the president of Hungary based on a proposal from the justice minister. The OBH president has the power to transfer judges to different positions against their wishes and to arbitrarily assign cases as they wish.¹¹

The creation of a new administrative court system in 2019 allowed the government greater influence over the judiciary, by granting the justice minister a significant role in the appointment of judges. The administrative courts were tasked with handling cases related to government decisions and administration. Of course, having appointments made by a member of the executive goes against the principle of the separation of power.

The rise in corruption was strengthened by the fight of the government against civil society. In April 2014, a law was passed requiring NGOs receiving significant foreign funding to register as “foreign-supported organisations”, with Orban himself calling them “paid political activists”.¹² This was followed by police raids on offices of NGOs that the government accused of “meddling” in Hungary’s domestic affairs,¹³ further reducing their ability to hold the government to account and expose political corruption. Finally, Fidesz dominated the public and private media outlets, weakening investigative journalism and decreasing its ability to track and expose corruption networks.

The dismantled judiciary in Poland

Once Law and Justice (PiS) won a majority in 2015, it started a process of dismantling the judicial system, rendering it vulnerable and susceptible to political influence. Similarly to Bulgaria, by 2023 the institutions tasked with ensuring integrity and the rule of law in Poland resembled the Soviet example. Through its reforms, the Law and Justice party disrespected judicial independence and the separation of powers. They justified their capture of the judiciary on a narrative that identified the judiciary with the bygone communist regime, painting the judiciary as a “judiocracy” of old communist elites and claiming that the Polish judges were remnants of the socialist system.¹⁴ In reality, the party recreated deeply politicised institutions, effectively harassing officials and opposition. In 2019, Polish journalists exposed an online “trolling” campaign being organised within Poland’s ministry of justice, in which professional trolls were hired to harass and discredit judges on social media platforms such as Twitter.¹⁵

The Constitutional Tribunal was put in the grip of the ruling party at the very beginning, with political appointments made against procedural rules. These appointments included its President Julia Przyłębska, who is notably a good friend of Jarosław Kaczyński, the leader

11 Lydia Gall, “Wrong Direction on Rights”, Human Rights Watch, 16 May 2013

12 Website of the Hungarian Government, “Prime Minister Viktor Orban’s Speech at the 25th Balvanyos Summer Free University and Student Camp,” 30 July 2014, <http://www.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/prime-minister-viktororban-s-speech-at-the-25th-balvanyos-summer-free-university-and-student-camp>

13 Council of Europe, “Letter to the Hungarian Prime Minister’s Office,” 24 July 2014, http://www.coe.int/en/web/commissioner/country-report/hungary/-/asset_publisher/hKTqZqCwoY6P/content/commissioner-expresses-concern-over-ngos-in-hungary?inheritRedirect=false&redirect=http%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fcommissioner%2Fcountry-report%2Fhungary%3Fp_p_id%3D101_INSTANCE_hKTqZqCwoY6P%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D1

14 John Macy, Allyson K. Duncan, The Collapse of Judicial Independence in Poland: A Cautionary Tale, *Judicature International*, 2020, <https://judicature.duke.edu/articles/the-collapse-of-judicial-independence-in-poland-a-cautionary-tale/>

15 Anne Applebaum, The Disturbing Campaign Against Poland’s Judges, *The Atlantic*, 28.01.2020, <https://www.theatlantic.com/ideas/archive/2020/01/disturbing-campaign-against-polish-judges/605623/>

of Law and Justice. The independence of the National Council for the Judiciary (KRS) was compromised as the Sejm appointed 15 out of 25 members for a nine-year term, all of which were proposed by the current governing majority and in absence of any propositions from the opposition parties (among which 11 members were reappointed). They were elected in violation of the constitution. The make-up of the Polish Supreme Court was drastically changed as the retirement age of judges was lowered from 70 to 65. Effectively, in 2017, 70 of 120 supreme court judges were replaced. KRS appointed more than one-fourth of new judges to various posts. Their nominations are illegal from the point of view of the constitution.

This capture of institutions resulted in the legal delegitimization of verdicts by European institutions, giving primacy to Polish national law. In October 2021 the Constitutional Tribunal ruled that European Court of Justice verdicts regarding judicial independence must not be implemented in Poland because they are unconstitutional. This verdict resembled the Russian State Duma law from 2015, which allowed the Russian constitutional court to assess international agreements and decisions of international bodies, and to declare them unenforceable if they contradict the Russian constitution.

Further, a 2018 law empowered the Minister of Justice/Prosecutor General Zbigniew Ziobro to appoint every single person involved in the investigation, prosecution and adjudication of disciplinary charges against ordinary judges in Poland, effectively purging judges who are critical of the government and applying EU legal reasoning, instead of violating professional ethics. Thus, judges were not only undermined in social and traditional media campaigns but were also harassed and attacked by the disciplinary system for judges in Poland. The disciplinary rulings affected mostly judges who are critical of the government. Over a thousand judges have been targeted since the establishment of the Disciplinary Chamber in 2017.¹⁶ Finally, the prosecutor general's role in Poland was significantly compromised. In 2015, the public office was reformed such that the justice minister also assumed the office of prosecutor general.

These issues remain salient in Poland following the 2023 elections. Although PiS has been ousted from power following a much higher turnout than anticipated, redressing the rule of law is a tough challenge. The current legal framework in Poland makes it difficult to revoke political appointees, such as the Constitutional Tribunal, so creative but at the same time at least controversial solutions are being undertaken by the new government.

The chief obstacle to reforming the judiciary is President Andrzej Duda, who uses his veto power to undermine laws aiming at restoring the rule of law. He might also send bills for constitutional review. As such, certain reform efforts will likely occur after the presidential elections of 2025 but only if a candidate of Law and Justice loses. However, even then, the rule of law will probably not be restored to the level before 2015, when the level of corruption was still higher than the EU's average.

European reactions

The European Union employed various measures to promote the adoption of and alignment with its rule of law principles. This included creating mechanisms like the “Rule of Law Report” and the “Cooperation and Verification Mechanism” for Bulgaria and Romania. However, the most impactful mechanism was the conditionality requirement tied to the Recovery and Resilience Facility (RRF). For example, in Poland, 36 billion EUR was withheld from the

¹⁶ How to save the rule of law in Poland: The European Commission should return to the ECJ, *European Stability Initiative*, 2021, <https://www.esiweb.org/proposals/how-save-rule-law-poland>

RRF until unlawfully suspended judges were reinstated. Another critical reform condition for unlocking funds from Poland's National Recovery and Resilience Plan is implementing the rulings of the Court of Justice of the European Union, despite opposition from President Andrzej Duda and Law and Justice politicians who accused the European Court of Justice of corruption. Reforms in Bulgaria, leading to the removal of General Prosecutor Ivan Geshev, were also tied to unlocking funds from the RRF. This conditionality requirement spurred reforms that had faced resistance for years. Despite populist and Eurosceptic rhetoric, politicians in these countries recognise the importance of securing EU funds for economic growth, market access and citizen welfare, which largely depend on their integration with the EU.

Conclusion

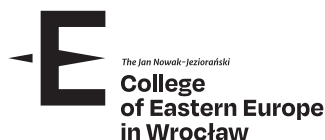
The primary threat to democracy and the rule of law in Central and Eastern Europe (CEE) stems from the concerted efforts of political elites to evade accountability for corruption. Across the region, from Hungary and Poland to Bulgaria and Romania, ruling parties have used their power to undermine democratic institutions and shield themselves from legal scrutiny. Tactics range from constitutional reforms to emergency ordinances, all designed to weaken anti-corruption measures, curtail judicial independence, and perpetuate impunity for those in power.

This pattern is particularly evident in Hungary and Poland, where ruling parties have systematically dismantled the judiciary to ensure political control and subvert the separation of powers. In Romania and Bulgaria, similar strategies have been employed, with key prosecutorial and judicial positions filled by political appointees loyal to the ruling elite. The result is a compromised legal system that better serves the interests of those in power rather than the principles of justice and accountability.

Despite these challenges, there have been pockets of resistance from civil society, the media and international actors. Mass protests, investigative journalism and pressure from European institutions have all contributed to exposing corruption and holding elites accountable. However, the road to reform remains steep, and the struggle to restore the rule of law in CEE continues amidst entrenched interests and systemic obstacles. The resilience of civil society and the commitment of international partners offer hope for a future where the rule of law prevails over corruption and impunity.

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