



## Populism, COVID-19, and the Rule of Law: the cases of Hungary and Poland

**Paul Blokker**

### **Abstract**

The COVID-19 pandemic that started in Europe in early 2020 has not only had major effects on public health and European economies, but equally affected democratic politics in a significant manner. An important question is whether the COVID-19 crisis has created opportunities for (right-wing) populist parties to strengthen their position, and more generally, whether liberal democratic systems have suffered from the pandemic in terms of the guarantee of rights and in terms of an increase in monitoring and controlling of society and individual behavior. The paper will first discuss and contextualize the emergence of populism, focusing on its most prominent, right-wing version. Subsequently, the cases of Hungary and Poland will be discussed.

### **Keywords**

COVID-19 - Hungary - Poland - Populism - Rule of Law

### **1. Introduction**

The pandemic that started in Europe in early 2020 has not only had major effects on public health and the European economies, but equally affected democratic politics in a significant manner. An important question – as yet not fully answered – is whether the COVID-19 crisis has created opportunities for (right-wing) populist parties to strengthen their position, and more generally, whether liberal democratic systems have suffered from the pandemic in terms of the guarantee of rights and in terms of an increase in monitoring and controlling of society and individual behaviour.

The political response to the COVID-19 pandemic puts into play a number of dimensions that are directly relevant for right-wing populism. First, as it is frequently argued, the pandemic constitutes a crisis which populist forces are prone to exploit. Indeed, it is often stated that populism<sup>1</sup> emerges in moments of crisis and hence can

---

<sup>1</sup> My understanding of populism largely follows Andrew Arato's definition, in which populism refers to: 1) an appeal to the people and to popular sovereignty; 2) an understanding of a part of the population as standing for the whole (the 'people'); 3) a friend-enemy approach to the people and their alleged

be understood as a reactionary phenomenon. As Bobba and Hubé (2021) argue, the rise of right-wing populism can be partially related to distinctive crises, not least the 2007/8 financial and economic crisis and its prolonged socio-economic effects, including the Euro-crisis, which boosted the political standing of populists (in particular in Southern and East-Central Europe, cf. Kriesi and Pappas 2015) or informed the formation of a range of, also left-wing, populist movements (e.g. the Five Star Movement in Italy, Podemos in Spain, Syriza in Greece).

Second, the pandemic has stimulated a return of the centrality of the nation-state and of national government (cf. Bieber 2020), in some ways overlapping with populist anti-globalism and sovereigntism. The governance of the pandemic has often included a nationalist turn, by promoting the health of the domestic population rather than engaging with European or transnational solidarity. Also, the narrative of populism, which divides society in the people and its enemies, in some ways corresponds to the prioritization of the security and health of national populations. Frequently, the 'enemy' has been identified in migrants or foreigners, as potential diffusers of the pandemic.

Third, the pandemic has led both to the strengthening of the status of scientific knowledge as well as, paradoxically, to its politicization and questioning<sup>2</sup>. The latter, not least in the name of conspiracies, has been part and parcel of right-wing populist simplification of knowledge and use of fake facts. Right-wing populists in power have had to rely on expert advice in some ways, but have equally used the pandemic to reduce pluralism and silence opposition.

Fourth, the crisis has frequently seen last-minute and ad hoc policy responses, which operated according to the idea of the state of emergency, state of danger or of natural disaster. In other words, frequently parliamentary and judicial control of political power have been (temporarily) suspended in the name of urgency. The prioritization of executive power over different forms of control and checks and balances is a characteristic of populism, in particular when in government.

This paper will focus in particular on the last dimension, related to the rule of law, both in terms of the immediate impact of crisis politics during the pandemic, and with regard to a more structural effect COVID-19 policies might have on democratic systems (cf. Grogan 2020). Relevant legal dimensions of COVID-19 politics in general, and not only policies made by populist actors, include the legal basis for policies and

---

enemies; 4) a unified, homogeneous understanding of the people; 5) an insistence on a strong, constituent understanding of politics; 6) attachment to elections (Arato 2019, 1107).

<sup>2</sup> Alain Supiot's discussion of inoculation at the end of the 18th century is instructive (Supiot 2017, 98). The political conflict regarding progress through scientific knowledge that emerged in those days has never been resolved, as we see in current times with scientific responses to the pandemic and the sceptical counter-reaction, which mobilizes highly different positions on the issue of vaccination.

restrictions, the chaotic nature of urgency legislation, and hence the diminishment of legal certainty, and the abuse of emergency measures in order to realize specific political objectives.

This paper will first discuss and contextualize the emergence of populism, focussing on its most prominent, right-wing version. Subsequently, the cases of Hungary and Poland will be discussed. It is important to explain why these two cases have been selected. Evidently, both countries are 'illiberal' states and are increasingly seen as autocratic, even if not yet outright authoritarian. I take these two cases here as 'extreme cases', in that both countries come from a recent history – since 1989 – of being rapidly democratizing countries, to then equally swiftly turning into the opposite direction. Both countries have had conservative, right-wing populist governments for an extended period of time now and are generally considered 'backsliding'<sup>3</sup>, which also means that constitutional democracy is to be considered severely compromised. The choice for the cases is grounded in the idea that these extreme cases show us what may happen in times of emergency when populist forces are relatively free to act. In other words, they are cases of (formerly) robust democracies that have turned into backsliding states in conditions of crisis. In the final part, I will briefly conclude on the relation between populism, emergency policies and the rule of law.

## 2. Right-wing populism

The pandemic emerged in a political context which has seen the strong upsurge of right-wing populism (a peak is often identified in 2016). In order to understand and analyze the relation between populism and policies in relation to the COVID-19 pandemic, it is important to outline the main components of the rise of (right-wing) populism as well as to situate populism in a distinctive historical trajectory.

As I have argued elsewhere (Blokker 2020), I believe one important way to grasp European populism is by understanding it as a distinctive popular-political reaction to the liberal-legal order that emerged in the post-1945 era. This is of relevance for the discussion of pandemic politics, not least because of a specific position right-wing populists tend to take with regard to the rule of law and constitutional democracy.

In Western Europe, a significant post-war trend regards the emergence of distinctive constitutional democratic regimes, embedded in an international system of human rights and political and legal integration and grounded in a rationale of *anti-*

---

<sup>3</sup> Andrew Arato (2019) distinguishes usefully between different stages or phases of populism: spontaneous movement, professionalized movement, party part of governmental coalition, ruling party, and populist regime.

*totalitarianism*. Populist movements and parties, which emerged in particular from the 1970s/80s onwards, have formulated a powerful, anti-liberal critique on this liberal idea of embedded constitutional democracy. In current times, the populist critique is frequently formulated in terms of 'globalism' and 'sovereignism'. Globalism is a term used to criticize universalist understandings of modern society and the alleged subjugation of societies to forces external to itself, in primis, international and transnational political and legal regimes (in particular the European Union, but also the European Convention of Human Rights and its institutions). One recent illustration of right-wing populist critique can be found in the sceptical view towards supranational institutions as prominent in a declaration of conservative-populist forces with regard to the Conference on the Future of Europe (issued on 2 July 2021):

The European Union is in need of profound reform because today, instead of protecting Europe and its heritage, instead of enabling the free development of European nations, it is itself becoming a source of problems, anxiety and uncertainty. Nations feel that they are slowly being stripped of their right to exercise their legitimate sovereign powers [...]

The EU is becoming more and more a tool of radical forces that would like to carry out a cultural, religious transformation and ultimately a nationless construction of Europe, aiming to create a European superstate, destroy or cancel European traditions, transform basic social institutions and moral principles<sup>4</sup>.

Sovereignism is a political perspective which strongly prioritizes the nation-state, and in particular the idea of a historical nation and its identity and traditions.

A further, and strongly related, critique is that of liberalism, understood as the main ideological vehicle of globalism and as supporting a 'progressive hegemony' (Vossen 2011). Liberalism is decried for its alleged monopolistic position in political thought and politics, but also as providing the main building blocks for what I have called embedded constitutional democracy (Blokker 2020) in the form of rights, equality, multi-culturalism and the protection of minorities. Liberalism is often understood in rather loose terms in the populist critique and is frequently equated with neo-liberal ideas of the market, as well as cosmopolitan, universalist ideas regarding European integration, human rights, and 'open society'. Conservative populists frequently counterpose liberalism to the native culture, historical roots, and traditions of the local community.

In many post-war societies in Western Europe, including France, Germany, Italy, the Netherlands, and the UK, clear forms of 'backlash politics' have emerged since the 1970s and 80s. This right-wing populism critiques the core principles of the

---

<sup>4</sup> See for the declaration (in French), [https://rassemblementnational.fr/wp-content/uploads/2021/07/Déclaration\\_sur\\_lavenir\\_de\\_leurope\\_MLP.pdf](https://rassemblementnational.fr/wp-content/uploads/2021/07/Déclaration_sur_lavenir_de_leurope_MLP.pdf).

universalistic, liberal-constitutional model of the post-war years, as expressed in human rights, the liberal rule of law, and minority protection (Oomen 2016; Thornhill 2019). In current times, important cases include France (Rassemblement National), Italy (Lega), and the Netherlands (Partij voor de Vrijheid; Forum voor Democratie). In the Netherlands, for instance, the pioneering, progressive democratic regime underwent a significant conservative turn in the early 2000s (Oudenampsen 2018; Vossen 2011).

The universalist, liberal project and its understanding of the law, in particular regarding international, EU law, and human rights, is being contested throughout Europe (as for instance in the case of Brexit) (Oomen 2016; Madsen 2019). The populist backlash appears as more acute in East-Central European countries, especially in terms of authoritarian tendencies in populism-in-government. A number of the 'new democracies' in East-Central Europe (ECE) have witnessed a clear form of political backlash in recent years. The ECE-region, made up of countries that made a transition to liberal democracy relatively recently, provides an important set of examples regarding both the institutionalization of embedded constitutional democracy (since 1989) and in terms of a societal and political reaction in the form of populist critiques of the liberal understanding of the law. In fact, the post-communist countries form particularly important examples, because these societies have seen both a strong tendency towards juridification since 1989 – in terms of constitutionalization, the extension of human rights and other legal regimes, and the rise of prominent courts – and a strong, relatively recent, populist backlash. In particular the cases of Hungary (Fidesz) and Poland (PiS) have seen a radical backlash in recent years.

Originally, the momentous changes in ECE around the year 1989 were widely understood as 'legal revolutions' or 'legalistic revolutions', and as ushering in the transformation of the former communist countries towards liberal-democratic regimes. Currently, however close to 30 years since the regime change, the region witnesses a strong backlash in the form of a counter-revolution by law or counter-constitutionalism (Scheppele 2017; Sledzinska-Simon 2017). Observers identify in particular in Hungary and Poland a constitutional 'capture' by populist forces as well as a defiance of and attack on judicial institutions, in the name of popular sovereignty and a strong critique of liberalism.

Key populist developments in both ECE and WE – despite significant differences between East and West with regard to for instance democratic consolidation, issues of democratic transition, and forms of nationalism – may be understood as conservative reactions to what is perceived as liberal-legalist domination (identified in domestic democratic institutions as well as in supranational ones). In both ECE and

WE, conservative intellectuals and civil society groups have been gathering strength since the 1990s, and in particular since the early 2000s. Conservative forces have increasingly radicalized, and have become significant political forces, mobilizing society, and providing intellectual support, expertise, and legitimacy to populist projects (cf. Blokker 2020; Trencsényi et al. 2018).

Core examples of conservative, illiberal projects in Europe are the conservative-populist regimes in Hungary and Poland. The discussion below will engage with these two countries in order to briefly analyse the pandemic politics that emerged from early 2020s onwards. The focus on Hungary and Poland will give us insights into how populist governments which have managed to importantly change their democratic systems before the pandemic appeared, have reacted to the COVID-19 crisis. The analysis will give us an understanding of how such populist regimes may react to externally induced crises. As suggested by Andrew Arato, populism should be diversified according to stages of development of the populist phenomenon, from spontaneous upsurge to professionalized movement, to political party, to government, to regime (Arato 2019). If understood in this way, Hungary and Poland may stand for possible futures of other countries where populist parties have important potential to become government parties (examples are France or Italy).

### **3. Populism in government**

Let us turn to two states that are considered the greatest threat to the rule of law in the EU, Hungary and Poland, the discussion of which gives us hence a good insight into what relatively profound political and legal consequences and dangers resulting from the health crisis may be as a result of (the rise of) populists in government in a democratic political regime.

#### *Hungary*

According to several observers, the modus operandi of the Hungarian Fidesz party (Fidesz – Magyar Polgári Szövetség), in power since 2010 and often described as populist, conservative, and illiberal, is one of emergency or crisis rule (cf. Bene and Boda 2021). In its 10 years of being in political power, the Fidesz party has used a range of strategies and policies to endorse and entrench a populist, if not authoritarian, form of rule. Fidesz has utilized its popular mandate, based on (super-)majorities won in general elections to pursue a form of majoritarian politics, in which the majority ‘will’ comes before considerations of the rule of law and human rights, and in which oppositional voices, both in the institutions and in wider civil society are not taken into account. The claim is that Fidesz, and in particular its

political leader Viktor Orbán, are directly representing the common good of the Hungarian people. This also means that legal procedures and constraints (as for instance in the form of judicial review) are perceived as obstacles to majoritarian rule. Such an illiberal, populist approach to the democratic system and to pluralist democracy have led Fidesz to steadily undermine the separation of powers, the independence of the judiciary, and to suppress potential critical forces in terms of civil society and the media. According to several observers, an important characteristic of the political rule of the Hungarian populists is their exploitation of crises for political purposes and in order to consolidate and centralize political power (Ádám 2020; Antal 2021). As argued by Kriszta Kovács,

Orbán has been perpetually on a war footing. He has made sharp distinctions between political friend and foe to maintain a sense of constant crisis and felt inclined to 'wage war' against the foes: against 'financiers', against 'illegal migrants', against George Soros 'who obviously holds in his pocket the EU and the "pro-refugee" NGOs', against 'terrorists', and most recently against Covid-19'. For years, Hungary has been in a state of emergency (Kovács 2021).

In this context of dramatically curtailed democratic and legal institutions, it comes hence not as a surprise that Fidesz's reaction to the COVID-19 pandemic was the harshest and potentially most far-reaching in terms of the negation of rights and the suppression of possibilities of democratic politics in the European context (cf. Bolleyer and Salát 2021; Kovács 2021). The approach consisted in the instalment of a state of emergency and the partial militarization of the health system. On 31 January of 2020, the so-called Operational Group was set-up in order to deal with the epidemiological situation. This Group *inter alia* provided day-to-day information to the Hungarian citizenry, but it has been claimed that it has systematically avoided responding to critical questions by independent media (Bene and Boda 2021, 90-91). The real turning point came with the declaration of the state of pandemic emergency on March 11 and in particular with the adoption of the 'Authorization Act' or 'Enabling Act' on March 30. This Act permitted the «government to rule by decrees without any functional or time limitation, without any debate in the legislation, and without any guarantee for immediate constitutional review» (Bene and Boda 2021, 91-92). It is worthy to cite some of the passages of the Act to understand some of the draconian measures included.

The state of danger

Article 53

(1) In the event of a natural disaster or industrial accident endangering life and property, or in order to mitigate its consequences, the Government shall declare a state of danger, and may introduce extraordinary measures laid down in a cardinal Act.

(2) In a state of danger, the Government may adopt decrees by means of which it may, as provided for by a cardinal Act, suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures.

(3) The decrees of the Government referred to in paragraph (2) shall remain in force for 15 days, unless the Government, on the basis of authorization by the Parliament, extends those decrees.

(4) Upon the termination of the state of danger, such decrees of the Government shall cease to have effect.

#### Common rules for the special legal order

##### Article 54

(1) Under a special legal order, the exercising of fundamental rights – with the exception of the fundamental rights provided for in Articles II and III, and Article XXVIII (2) to (6) – may be suspended or may be restricted beyond the extent specified in Article I (3).

(2) Under a special legal order, the application of the Fundamental Law may not be suspended, and the operation of the Constitutional Court may not be restricted.

(3) A special legal order shall be terminated by the organ entitled to introduce the special legal order if the conditions for its declaration no longer exist.

(4) The detailed rules to be applied under a special legal order shall be laid down in a cardinal Act<sup>5</sup>.

What becomes clear is that the government is unbound by legal and political constraints as long as the ‘state of danger’ continues (itself to be judged by the government), and even if formally parliament needs to confirm authorization for the extension of the Act, as it itself reflects the governmental majority, such confirmation constitutes no check on power whatsoever.

But the details of some of the measures, regarding the amendment of Hungary’s penal code, reveal even better the authoritarian tendencies involved.

#### Obstructing epidemic containment

Section 322/A (1) A person who obstructs the carrying out

a) of an epidemiological isolation, observation, quarantine or monitoring ordered for the prevention of the introduction or spread of an infectious disease subject to compulsory quarantine,

b) of an epidemiological isolation, observation, quarantine or monitoring during an epidemic,

c) of a phytosanitary- or epizootic-related measure ordered to prevent the importation, exportation or spread of an infectious animal disease or a plant

---

<sup>5</sup> Act XII of 2020 on the containment of coronavirus (2/2020), see <https://covidlawlab.org/wp-content/uploads/2020/10/ACT-XXII-of-2020-On-the-Containment-of-Coronavirus.pdf>.



quarantine pest, or to eliminate its occurrence, is guilty of a felony and shall be punished by imprisonment for up to three years.

(2) The punishment shall be imprisonment for one to five years if the criminal offence is committed by a group.

(3) The punishment shall be imprisonment for two to eight years if the criminal offence causes death.

(4) A person who commits preparation for obstructing epidemic containment shall be punished by imprisonment for up to one year.

(2) Section 337 of the Btk. shall be replaced by the following provision:

“Section 337 (1) A person who, at a site of public danger and in front of a large audience, states or disseminates any untrue fact or any misrepresented true fact with regard to the public danger that is capable of causing disturbance or unrest in a larger group of persons at the site of public danger is guilty of a felony and shall be punished by imprisonment for up to three years.

(2) A person who, during the period of a special legal order and in front of a large audience, states or disseminates any untrue fact or any misrepresented true fact that is capable of hindering or preventing the efficiency of protection is guilty of a felony and shall be punished by imprisonment for one to five years<sup>6</sup>.

The Act led to an important international counter-reaction, and was by some assessed as fully undoing checks and balances in the Hungarian system. The European Parliament as well as several human rights organizations, such as the Hungarian Helsinki Committee raised serious concerns about the Act, in particular with regard to its lack of a sunset clause. Two and a half months later, the Act was repealed, but in reality a new legislation (the Transitional Act) was adopted that allows for similar powers in case of a ‘medical crisis’ (cf. HHC 2021; Bene and Boda 2021, 92). The government hence denounced its ‘pandemic emergency’, but created the possibility for a new emergency, that is, a ‘medical emergency’ (Kovács 2021).

When the second wave of COVID-19 came, the Fidesz government introduced a further emergency, a ‘state of danger’. As Kovács argues, «[t]he powers that Orbán has in the state of danger are on top of those granted by the two previous emergencies» (Kovács 2021; cf. Bolleyer and Salát 2021, 1115). In combination with a constitutional amendment adopted at the end of 2020 (the ninth amendment since 2011<sup>7</sup>), in which the declaration of a state of emergency is made easier, this legislation moves Hungary towards an authoritarian system in which the government, and in particular the prime minister, are largely unbound by legal restrictions. Orbán enjoys «unlimited emergency powers. These powers are

<sup>6</sup> Act XII of 2020 on the containment of coronavirus (2/2020), see <https://covidlawlab.org/wp-content/uploads/2020/10/ACT-XXII-of-2020-On-the-Containment-of-Coronavirus.pdf>.

<sup>7</sup> See <https://hungarytoday.hu/fidesz-kdnp-govt-vote-adopt-9th-constitutional-father-mother/>.

temporary in the text, but only the prime minister can determine when they are no longer necessary» (Kovács 2021; cf. Bolleyer and Salát 2021).

### *Poland*

The emergence to power of the Law and Justice party (PiS – Prawo i Sprawiedliwość) in 2015 is often understood as Poland following in the tracks of Hungary. PiS had already been in power in 2005-7 and manifested itself as a conservative-populist party, with as political programme the radical reform of the Polish state, in particular the judicial system, in order to allegedly cleanse it from continuity with the communist past. Many observers have argued that PiS «has embarked on controversial reforms that have been criticized for eroding the political independence of institutions that underpin the functioning of the rule of law» (Vashchanka 2020, 5). The core of PiS' agenda was «constituted by the idea of a strong state and focus on fighting corruption which underpinned its call for the “decommunization” of the state» (Lipiński 2021, 116). According to PiS, the post-communist transformation was dominated by leftist (post-communist) and left-liberal forces, which attempted to radically change Polish society into a liberal and Europeanist direction. PiS, in contrast, interprets the liberal project as leading to the undoing of traditional Polish society and values and as imposing an internationalist-cosmopolitan political programme, which includes ‘gender ideology’ and LGBTIQ rights, onto Polish society.

The approach towards the COVID-19 pandemic by PiS was less drastic in comparison to the Hungarian unlimited state of emergency, but equally contained unconstitutional dimensions, and a general avoidance of constitutional checks and balances by using statutory law issued by the government to deal with the pandemic, rather than introducing a constitutional state of emergency. This approach was used both in the first and second waves of COVID-19 (Jaraczewski 2021). Poland started monitoring the pandemic from late January 2020 onwards, while the government adopted a special act on March 3. This act outlined emergency powers and distinct responsibilities for public officials and economic actors (Lipiński 2021, 119). On March 24, the government introduced the ‘state of epidemic’ by statutory law, and adopted a range of restrictions on public life. These restrictions, including the limitation of gathering to two people and prohibition of traveling were critiqued as unconstitutional by opposition parties on the centre left as well as far right and by expert and civil society organizations (Lipiński 2021, 119). According to the latter, draconian pandemic measures could only be introduced through the constitution, as stipulated in article 228:

In situations of particular danger, if ordinary constitutional measures are inadequate, any of the following appropriate extraordinary measures may be introduced: martial law, a state of emergency or a state of natural disaster<sup>8</sup>.

The 1997 Constitution allows for only one clear way in which an election can be postponed, that is, in case of a state of emergency. As argued by Vashchanka,

Three kinds of extraordinary regimes exist in the Constitution: martial law, a state of emergency, and a state of natural disaster. There are differences in their legal consequences and who may declare them but they do have one result in common: for the duration of any extraordinary regime, and for 90 days following its termination, national and local elections shall not be held, and the term of office of elected bodies shall be appropriately extended. The government was thus constitutionally authorized to declare a state of natural disaster for up to 30 days, but doing so would push the election date into the autumn (Vashchanka 2020, 6).

The government however declined to declare the ‘state of natural disaster’ as indicated in article 228<sup>9</sup>, because it argued that this would lead to dramatic consequences for the state budget, due to the obligation for compensation in case of losses suffered due to the limitation of civil rights, and, perhaps more importantly, it would delay the presidential elections scheduled for May 10, as article 228 (7) stipulates:

During a period of introduction of extraordinary measures, as well as within the period of 90 days following its termination, the term of office of the Sejm may not be shortened, nor may a nationwide referendum, nor elections to the Sejm, Senate, organs of local government nor elections for the Presidency be held, and the term of office of such organs shall be appropriately prolonged. Elections to organs of local government shall be possible only in those places where the extraordinary measures have not been introduced<sup>10</sup>.

The Polish government feared that delay of the presidential elections might harm its own incumbent candidate, Andrzej Duda, for instance due to a likely economic contraction to occur as a result of the pandemic and COVID policies (Zoll, Południak-Gierz and Bańczyk 2021). The government’s insistence on going through with the elections changed its initial approach to the pandemic, in which it had sought larger

<sup>8</sup> See <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

<sup>9</sup> According to Jakub Jaraczewski, the government’s «use of secondary legislation to limit human rights and freedoms is directly contrary to art. 31 pt. 3 of the Polish Constitution, which requires such limitations to be introduced in a statute of the parliament. While some of the limitations, such as the mask mandate, were ultimately enshrined in the revised 2008 law, many remain regulated by resolutions of the government and lack a proper basis in a statute or the statutory legal base for them is exceedingly vague, leaving the secondary legislation to outline actual details and scope of measures – a practice that also directly violates the principles of relationship between primary statutory legislation and secondary legislation issued to complement it, as outlined in the art. 92 of the Constitution» (Jaraczewski 2021).

<sup>10</sup> See <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

consensus, also from the opposition. As the opposition parties heavily criticized PiS' insistence on going forward with the presidential elections, originally planned for May 10 but ultimately held on June 28 and July 12, and declared its approach unconstitutional and dangerous for citizens' health, PiS increasingly returned to its 'normal', populist modus operandi of heavily criticizing the opposition and portraying it as a threat to national identity and national interests (Lipiński 2021, 120). PiS criticized the opposition for wanting to «serve foreigners in a comprador manner» (Prime Minister Morawiecki, cited in Lipiński 2021, 123), while equally criticizing the European Union for showing a slow response to the COVID-19 crisis. Indeed, PiS re-emphasized the idea of Europe it shares with many right-wing populist parties, that is, a «Europe of the Peoples» or «Europe of the Fatherlands» (cf. Lipiński 2021, 123). A key reason for PiS wanting to win the elections resulted from its loss of a majority in the Senate in the 2019 general elections, and hence, its need for the presidential powers, not least the presidential legislative veto established by the 1997 Constitution, to execute its anti-communist, conservative radical reform programme (Lipiński 2021).

One clear peculiarity of the Polish case is hence the dual attention to COVID-19 and the presidential elections. One could interpret this as a politicization of the pandemic in the name of the power struggle between political forces in Poland. This also meant that the government's pandemic policy became contradictory:

the Polish authorities were focused not only on fighting the pandemic between March and May 2020, but also on organizing the elections. This meant that not all the country's human, institutional and financial resources were totally committed to fighting the virus during that period. The government, the parliament, and even state enterprises such as the Postal Service, devoted an inordinate amount of time and resources on preparing for the election (Matczak 2021, 350).

The government tried to 'accommodate' for the COVID-19 crisis by allowing for postal voting, as introduced in the Election Code in 2014, and available upon request, but changed again in 2018, to restrict postal voting for people with disabilities (Vashchanka 2020, 6). In the PiS' proposal for changing voting legislation, no request would be necessary and postal voting would be the only voting procedure. This was in strong contrast to PiS' own position a few years earlier, when it argued that postal voting was not secure and vulnerable to fraud (Vashchanka 2020, 6). PiS used its majority in the Sejm to push its bill through parliament as quickly as possible (Vashchanka 2020, 6-7). The parliament itinerary anyhow meant that the bill could become law at its earliest only days before May 10. PiS further sought to bypass the National Election Commission (NEC), normally charged with overseeing the elections and contributing to the design of the ballot (Vashchanka 2020, 7).

The election planning was heavily criticized by domestic (e.g. the Ombudsman) and international forces (in particular, rapporteurs from the Council of Europe's

Parliamentary Assembly), and a major opposition candidate threatened to boycott the elections. Even a prominent PiS politician, Jarosław Gowin, threatened to withdraw his and his grouping's support, proposing an extraordinary extension of President Duda's mandate with two years instead (Vashchanka 2020, 7). Ultimately, PiS decided to postpone the elections to late June. PiS had clearly further compromised the rule of law by proposing ad hoc, rapidly introduced and deliberated, and potentially unconstitutional, changes. In the second round on July 12, which followed 'more familiar voting methods', which included postal voting but only as an option (Vashchanka 2020, 13), Duda managed to extend his mandate.

#### **4. Concluding remarks**

Affinities between populism of the conservative, right-wing kind and the distinct dimensions of the COVID-19 crisis are evident. One issue is the predominance of nationalist approaches, a re-iteration of national sovereignty, and a critique of EU policies. This is evident in both Hungary and Poland, but can equally be detected in the approaches of other right-wing populists across Europe (cf. Guasti 2020; Bobba and Hubé 2021). Second, while populists in government ultimately had to take recourse to consultation of experts and relied in their pandemic policies on such expert knowledge (as in the case of both Hungary and Poland), at the same time scientific knowledge is frequently questioned by right-wing populists, not least on the basis of conspiracy ideas (leading, for instance, to positions close to the no-vax movement). Third, one clear tendency in both the Hungarian and Polish cases is the instrumental usage of the pandemic crisis by the authorities to stifle a pluralism of voices and to condemn any form of critique on governmental policy decisions. This is most clear in the Hungarian case, where potential critique by citizens and the media alike was criminalized, but also emerges in the case of Poland, where the presidential elections saw the partial marginalization of opposition forces. Fourth, populists often take recourse to a discursive construction of the enemy of the people (not explicitly discussed in this paper; there is, however, ample evidence of blaming migrants and foreigners for the pandemic in the two cases discussed, cf. Bobba and Hubé 2021).

The core focus of this paper has, however, been a fifth dimension, that is, the utilization and abuse of the state of emergency by populist governments and the detrimental impact on the rule of law as a result. In the case of Hungary, the pandemic policies fall in line with an established approach of crisis exploitation by the Hungarian Fidesz party (cf. Bolleyer and Salát 2021). In other words, Fidesz intentionally uses crises in order to centralize power, to strengthen the position of the prime minister, to reduce pluralism and alternative voices in society, and to use the law to facilitate its political power position, rather than accepting a core feature

of the rule of law, that is, constraining political power and limiting arbitrary, discretionary decision-making. The amendment of the Hungarian constitution and introduction of a 'state of danger' enhanced arbitrary power wielding and further strengthened the discretionary powers of the prime minister in particular. In the Hungarian case, the pandemic has clearly led to a further structural strengthening of the populists' position.

In Poland, the pandemic was equally instrumentalized and politicized, in order to maintain PiS' political position, by means of a manipulation of the presidential elections in 2020, crucial for PiS' hold on power. Unlike Hungary, Poland refrained from using constitutional, systemic means to use the crisis for its own purposes. This partly stems from the fact that PiS in Poland never obtained the ample majority that Fidesz (still) enjoys in Hungary. For the latter, this means that Fidesz has always been able to translate its parliamentary majority in a constitutional majority, enabling Fidesz to more or less legitimately change the constitution at will for partisan purposes. In Poland, PiS has had to move in a different manner, emptying the liberal-constitutional system by means of ordinary law and even unconstitutional practices. This was also clear in the pandemic, as its policy has frequently been criticized of violating the 1997 Constitution, a tension which came also through in its manipulation of the presidential elections, initially scheduled for May in the heart of the first wave of COVID-19.

In sum, the discussion of these two 'extreme cases' – involving right-wing populists which have been in power for a considerable period of time – clearly shows the great perils of crisis situations for democratic, pluralist politics and the role of right-wing populism in attempting to bring about a shift in the post-war liberal-constitutional predominance. A threat to the rule of law is equally present in European countries where populists were not in power, but what seems to emerge from the Hungarian and Polish cases is that there is a great likelihood of the politicization and abuse of crises for partisan purposes, pushing these countries further into authoritarian directions. In other words, Hungary and Poland can be seen as a concrete embodiment of the widespread counter-reaction to the post-war, liberal-constitutional and internationally entangled European order.

**Bibliography**

- Ádám, Z. 2020. "Ultra-orthodoxy and selective voluntarism: How did the Orbán regime react to the first wave of the pandemic?" *European Policy Analysis* 6, 2: 277-292.
- Antal, A. 2021. "The Orbán Administration's Class Politics and the Spread of COVID-19." *Berlin Journal of Critical Theory* 5, 1: 131-149.
- Arato, A. 2019. "How we got here? Transition failures, their causes and the populist interest in the constitution." *Philosophy & Social Criticism* 45, 9-10: 1106-1115.
- Bene, M. and Z. Boda. 2021. "Hungary: Crisis as Usual. Populist Governance and the Pandemic." In *Populism and the Politicization of the COVID-19 Crisis in Europe*, edited by G. Bobba and N. Hubé, 87-100. London: Palgrave MacMillan.
- Bieber, F. 2020. "Global Nationalism in Times of the COVID-19 Pandemic." *Nationalities Papers*. Published online.
- Blokker, P. 2020. "Populist Understandings of the Law: A Conservative Backlash?" *Participation and Conflict (PaCo)* 13: 3.
- Bobba, G. and N. Hubé (eds.). 2021. *Populism and the Politicization of the COVID-19 Crisis in Europe*. London: Palgrave MacMillan.
- Bolleyer, N. and O. Salát. 2021. "Parliaments in times of crisis: COVID-19, populism and executive dominance." *West European Politics* 44, 5-6: 1103-1128.
- Grogan, J. 2020. "States of emergency." *European Journal of Law Reform* 22, 4: 338-354.
- Guasti, P. 2020. "The impact of the Covid-19 pandemic in Central and Eastern Europe: The rise of autocracy and democratic resilience." *Democratic Theory* 7, 2: 47-60.
- HHC (Hungarian Helsinki Committee). 2021. "Overview of Hungary's Emergency Regimes Introduced due to the COVID-19 Pandemic". Ultimo accesso 29 ottobre 2021. [https://helsinki.hu/en/wp-content/uploads/sites/2/2021/05/HHC\\_Hungary\\_emergency\\_measures\\_overview\\_25052021.pdf](https://helsinki.hu/en/wp-content/uploads/sites/2/2021/05/HHC_Hungary_emergency_measures_overview_25052021.pdf).
- Jaraczewski, Jakub. 2021. "The New Normal? Emergency Measures in Response to the Second COVID-19 Wave in Poland." *Verfassungsblog* 2021/3/24. Ultimo accesso 29 ottobre 2021. <https://verfassungsblog.de/the-new-normal-emergency-measures-in-response-to-the-second-covid-19-wave-in-poland/>.
- Kovács, Kriszta. 2021. "Hungary and the Pandemic: A Pretext for Expanding Power." *Verfassungsblog* 2021/3/11. Ultimo accesso 29 ottobre 2021. <https://verfassungsblog.de/hungary-and-the-pandemic-a-pretext-for-expanding-power/>.

- Kriesi, H. and T.S. Pappas (eds.). 2015. *European populism in the shadow of the great recession*. Colchester: ECPR Press.
- Lipiński, A. 2021. "Poland: 'If We Don't Elect the President, the Country Will Plunge into Chaos'." In *Populism and the Politicization of the COVID-19 Crisis in Europe*, edited by G. Bobba and N. Hubé, 115-130. London: Palgrave MacMillan.
- Madsen, M. 2019. "Resistance to the European Court of Human Rights: The Institutional and Sociological Consequences of Principled Resistance." In *Principled Resistance to ECtHR Judgments. A New Paradigm?*, edited by M. Breuer, 35-52. Berlin: Springer.
- Matczak, M. 2021. "When Politics Mixes with Fighting the Virus: Response to the COVID-19 Pandemic in Poland." In *Good Public Governance in a Global Pandemic*, edited by P. Joyce, F. Maron and P.S. Reddy, 349-358. Brussels: IIAS-IISA.
- Oomen, B.M. 2016. "A serious case of Strasbourg-bashing? An evaluation of the debates on the legitimacy of the European Court of Human Rights in the Netherlands." *The International Journal of Human Rights* 20, 3: 407-425.
- Oudenampsen, M. 2018. "Een genealogie van Nederlands Nieuw Rechts." *B en M: Tijdschrift voor Beleid, Politiek en Maatschappij* 45, 1: 106-110.
- Scheppele, K.L. 2017. "The Social Lives of Constitutions." In *Sociological Constitutionalism*, edited by P. Blokker and C. Thornhill, 35-66. Cambridge University Press.
- Sledzinska-Simon, A. 2017. "The Polish Revolution: 2015-2017." *I-CONnect. Blog of the International Journal of Constitutional Law*. Published on July 25, 2017. Ultimo accesso 29 ottobre 2021. <http://www.iconnectblog.com/2017/07/the-polish-revolution-2015-2017/>.
- Supiot, A. 2017. *Governance by numbers: The making of a legal model of allegiance*. London: Hart Publishing.
- Thornhill, C. 2019. "Constitutionalism and populism: national political integration and global legal integration." *International Theory* 12, 1: 1-32.
- Trencsényi, B., M. Kopeček, L.L. Gabrijelčič, M. Falina and M. Baár (eds.) 2018. *A History of Modern Political Thought in East Central Europe, Volume II: Negotiating Modernity in the Short Twentieth Century and Beyond*. Oxford: Oxford University Press.
- Vashchanka, V. 2020. "Political manoeuvres and legal conundrums amid the COVID-19 pandemic: the 2020 presidential election in Poland. Case study." International Institute for Democracy and Electoral Assistance (IDEA). Ultimo accesso 29



ottobre 2021. <https://www.idea.int/sites/default/files/political-manoeuvres-and-legal-conundrums-2020-presidential-election-poland.pdf>.

Vossen, K. 2011. "Classifying Wilders: the ideological development of Geert Wilders and his party for freedom." *Politics* 31, 3: 179-189.

Zoll, F., K. Południak-Gierz and W. Bańczyk. 2021. "The Right to Damages Caused by COVID-19-Related Restrictions under Polish Law." Ultimo accesso 29 ottobre 2021.

[https://drive.google.com/file/d/1ZxLKQTNXK1C8Nx2m\\_JvkE8XvM6ZWht4V/view](https://drive.google.com/file/d/1ZxLKQTNXK1C8Nx2m_JvkE8XvM6ZWht4V/view)

**Paul Blokker** is associate professor in political sociology at the Department of Sociology and Business Law, University of Bologna, Italy, and research coordinator at the Institute of Sociological Studies, Charles University Prague, Czechia. His research focusses on the sociology of constitutions, constitutional politics, democratic participation, and populism. Recent publications: *Sociologia dei diritti umani*, with Laura Guercio, Mondadori, 2020; 'Building democracy by legal means? The contestation of human rights and constitutionalism in East-Central Europe', in: *Journal of Modern European History*, 2020. He is co-editor of the journal *European Journal of Cultural and Political Sociology* (Taylor & Francis), the journal *International Journal of Social Imaginaries* (Brill) and the book series *Social Imaginaries* (Rowman and Littlefield).

Email: paulus.blokker@unibo.it