

Democratic Erosion and Democratic Resilience in Central Europe during COVID-19

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ABSTRACT

What are the effects of populists in power on democracy during a pandemic? The paper seeks to distinguish the extent to which the COVID-19 pandemic can (not) be traced to democratic erosion and democratic resilience. Are the changes in the quality of democracy resulting from political leaders' actions or rather a path-dependent continuation of previous trends? This contribution focuses on two paths – democratic erosion and democratic resilience – in the Visegrad Four countries (the Czech Republic, Hungary, Poland, and Slovakia), which are all governed by populist leaders. It builds on previous literature that focused principally on the first wave of the pandemic by focusing on institutional guardrails and accountability (vertical, horizontal, and diagonal) during the 18 months of the pandemic. It seeks to answer the following question: What conditions are necessary and sufficient to prevent democratic erosion?

KEYWORDS

pandemic, democratic erosion, democratic resilience, CEE, Czech Republic, Hungary, Poland, Slovakia

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During the COVID-19 pandemic, faced with unprecedented challenges to public health and economy, established and new democracies alike struggled to maintain the quality of their democracy (EDGELL ET AL. 2021). The violations of democratic principles included chipping off fundamental liberties and press freedom, and, most crucially, erosion of diagonal accountability (GUSTI 2020; MERKEL 2020). Established democracies prevented most of their democratic backsliding, while democracies in transition were less successful in preventing democratic erosion (EDGELL ET AL. 2021; ENGLER ET AL. 2021). The pandemic tests the institutional safeguards and accountability (AFSAHI ET AL. 2020; GUSTI 2020A). It shifts the loci of power towards governments, weakening the parliaments and stress-testing the judiciary independence (MERKEL 2020).

The conditions for democratic resilience are vertical accountability (where elections took place during the pandemic), horizontal and diagonal accountability (GUSTI 2020A; GUSTI – BUSTIKOVA 2021). In vertical accountability governments have to ensure free and fair electoral competition. In horizontal accountability mechanisms, parliaments must act as checks on executive power, as do the courts at all levels by scrutinizing regulatory and legal changes adopted ‘in the name of public health.’ Diagonal accountability mechanisms include media and civil society. Media demand and provide the transparency of and information on government actions and the pandemic. Meanwhile civil society can mobilize against pandemic-related violations of democratic standards and in support of the rule of law.

This paper is structured as follows. First, the literature on pandemic-related democratic erosion is discussed. Second, the analysis focuses on democratic backsliding during the pandemic in the V4 countries. The focus is on the dynamics leading to democratic erosion and democratic resilience. Third, I conclude by summarizing the main findings and the limits of the analysis, and outline some questions for future research.

PANDEMIC EROSION OF DEMOCRACY: DEMOCRATIC ACCOUNTABILITY AND PANDEMIC SWERVING

There is an ongoing discussion in political science about whether the current trend of democratic erosion represents the so-called “illiberal turn” (BAKKE – SITTER 2020; CIANETTI – HANLEY 2021). Bustikova and Guasti (2017) criticized the notion of a turn in this case, replacing it with the concept

of swerving. *Pandemic swerves* are an extension of the original concept. Focusing on swerving during the pandemic allows us to capture the dynamics – the attempts at a concentration of power, and the pushbacks against the parliament and the courts (horizontal accountability), and the media and civil society (diagonal accountability). Democracy erodes when executive aggrandizement remains uncontested, media freedom is undermined, and a mobilization for democracy by civil society is absent or polarized (CF. GUASTI – BUSTIKOVA 2021).

Accountability has three components – horizontal, vertical, and diagonal – that all centre on constraining the use of power (LINDBERG 2013). Vertical accountability is the relationship between voters and elected officials via elections and it is eroded by the imposition of limits on electoral competition. Horizontal accountability is the balance of power and it can be distorted by shifting power to one branch. The most frequent distortion of horizontal accountability is an executive aggrandizement that undermines legislative oversight and judicial independence (BERMEO 2016; GUASTI 2020B). Finally, diagonal accountability focuses on the time between elections, during which media and civil society hold the government accountable (BERNHARD ET AL. 2020), and it can be distorted by curtailing media freedom and placing limits on civil society (GUASTI 2020A).

A pandemic can lead to erosion of all forms of accountability (ENGLER ET AL. 2021). Vertical accountability might be eroded by incumbents skewing the electoral playing field – by disadvantaging challengers by imposing limits on campaigning (CF. PIRRO – STANLEY 2021 AND GUASTI 2020 ON THE POLISH 2020 PRESIDENTIAL ELECTIONS). In horizontal accountability, the pandemic is a perfect opportunity for executive aggrandizement. It puts parliaments and courts attempting to preserve institutional safeguards in a position to defend slowing down the government's efforts (MERKEL 2020; CORMACAIN – BAR-SIMAN-TOV 2020; PETROV 2020). Diagonal accountability is tested by governments lacking candor towards the media regarding the statistics on the impact of the pandemic and by limiting core civil liberties and freedoms such as those of protest and association (EDGEELL ET AL. 2020; HABERSAAT ET AL. 2020; GUASTI 2020A).

Emergency powers during the pandemic enable leaders to bypass or weaken checks and balances (eroding horizontal accountability). In countries where backsliding was underway before the pandemic, and thus the

institutional safeguards were already weakened, accountability tended to erode more, and placing limits on media freedom was the most common pandemic violation (LÜHRMANN ET AL. 2020; EDGELL ET AL. 2021).

This paper centres on democratic swerving during the pandemic by focusing on distortions of accountability during the pandemic. The next part analyses the dynamics of democratic swerving in the Visegrad Four countries (the Czech Republic, Hungary, Poland, and Slovakia) during the first 18 months of the pandemic. It further expands on Guasti (2020A), a text which focused on the same countries during the first six months of the pandemic.

PANDEMIC SWERVING IN THE V4

Democratic Erosion in Hungary

The pandemic is a perfect opportunity for a power grab. Viktor Orban was ready and succeeded in the ultimate form of executive aggrandizement – a rule by decree. In March 2020, the Hungarian National Assembly enabled the PM to rule by decree while instituting significant penalties for “obstructing the crisis efforts by disseminating misleading information,” and jail penalties for breaking the quarantine rules (VEGH 2020). In June 2020, the rule by decree law was replaced by a ‘medical state of emergency’ that the government might declare by decree without parliamentary approval (VEGH 2021). Thus, the Hungarian parliament turned itself from a co-equal branch of power tasked with government oversight to a rubber-stamper.

The two-thirds majority of FIDESZ enabled sidelining of the opposition. The courts had already been fully captured, so there was no possibility for legal recourse (BUZOGANY 2017; BRUSZT 2020). The lack of constraints enabled Orban to continue his crackdown on the final vestiges of power beyond his control: the media, small independent churches, civil society, LGBTQ+, universities, and opposition-led municipalities (VEGH 2021). The crackdown on the media took place under the guise of fighting the ‘spreading pandemic misinformation.’ (KELLER-ALANT 2020; RFE/RL 2021) Civil society organizations with foreign funding have to report their activities, and small churches are marginalized. In moves such as the creation of free parking or new industrial zones, the PM is shifting resources away from opposition-led municipalities towards his allies.¹ The crackdown

against LGBTQ+ continued by the introduction of the concept of “gender at birth” – a de facto ban on transgender citizens changing their legal gender (KNIGHT – GALL 2020). But the most significant and lasting move was the transfer of 11 state universities and significant stocks in state companies to a foundation led by Orban’s allies in 2021 (EURONEWS 2021).

Viktor Orban seized the pandemic moment. As a result, both horizontal and diagonal accountability eroded significantly. The parliament is now a rubber stamper. The courts are captured (horizontal accountability), and free media are marginalized, while media controlled by Orban’s allies are rewarded by state advertisement (CF. BATORFY – URBAN 2020), and civil society has been marginalized. Central European University was pushed out of the country, and domestic universities that are sources of opposition were transferred to a foundation whose mission is to generate right-wing elites. The only hope for democracy in Hungary is the ongoing unification of the opposition led by Gergely Karácsony. Nevertheless, the extent to which the 2022 general elections will be free and fair remains to be seen.

Illiberal Swerving in Poland

In Poland, strengthening the executive during the pandemic presented itself as an opportunity to resolve the issue of the divided parliament that had prevented the Law and Justice party from delivering legislation that was long-sought by its conservative allies. However, the outcome was mixed – the government did not succeed in executive aggrandizement, but it delivered on limiting reproductive rights.

In March 2020, the Polish parliament adopted a new law strengthening the executive’s power in handling the crisis (WOJCIK – WIATROWSKI 2021). Critical voices saw this as an attempt at executive aggrandizement – shifting power from the divided parliament. Judicial independence in Poland is severely undermined – the Constitutional Tribunal is largely captured, and disciplinary proceedings were launched against judges of lower courts that continued implementing EU law (CF. SADURSKI 2019). The Constitutional Tribunal became a key player in delivering on a demand by the Catholic Church and conservative groups – namely the demand for limits to legal access to abortion (LETOWSKA 2020). During May 2020, the Polish Sejm discussed the bill, but similarly to 2016, large-scale protests

ensued (CF. KOROLOJCZUK 2016). The legislative path was abandoned, and in October 2020, the Constitutional Tribunal instituted a near-total abortion ban (LETOWSKA 2020). Again, protests ensued, but the ban remains in place.

The 2020 Polish presidential elections had hallmarks of eroding vertical accountability. After the opposition rejected Law and Justice's proposal to lengthen the president's term by two years, Law and Justice decided to switch to a postal vote, ignoring the constitutional restriction on changing electoral rules less than six months before elections. In preparation for the aborted postal vote, the Polish Post started to gather the private data of 30 million Polish citizens, violating the GDPR and other existing laws (ODIHR 2020). Originally planned for May 2020, the elections, with in-person voting, took place in June and July 2020. The incumbent, Andrej Duda, was reelected by a thin margin of 51%. Infringements in this case included the failure of the public broadcaster to provide balanced and impartial coverage of the candidates (ODIHR 2020).

The government tried and failed in limiting protests and association rights. Polish activists found new innovative ways to protest, such as drive-by protests or jamming major crossroads. The government nonetheless partially succeeded in its crackdown on the media. In the fall of 2020, the state company ORLEN purchased a network of 20 regional newspapers and a distribution network (DW 2020). The attempt at forcing the highest-rated private TV network TVN24 to sell to a Polish owner in September 2021 failed due to domestic and international pressure (ONOSZKO – MARTEWICZ 2021).

In sum, during the pandemic, the Polish democracy was swerving towards illiberalism. Some institutional constraints remain in place (those on the parliament, private media, and civil society), while the government has utilized others to aggrandize its power and deliver on core conservative policies sought by its allies. The vertical accountability declined, and the horizontal accountability remained the same (as the courts were already captured in the pre-pandemic times). The vertical accountability continues to withstand the ongoing attempts at skewing the playing field, but the polarization is strengthening.

Guardrails Hold in the Czech Republic

In the Czech Republic, Andrej Babiš promised to run the state as a firm (BUSTIKOVA – GUASTI 2019) but continued to struggle with his company Agrofert's conflict of interest and his prosecution for his alleged misuse of EU funds. The PM attempted at various points to concentrate his power, but the guardrails held.

The parliamentary oversight and investigative journalism were crucial – the opposition performed oversight by forcing the government to seek renewals of the pandemic-related state of emergency (GUASTI 2020A). In early 2021, the parliament refused to prolong the state of emergency due to the mishandling of the pandemic (IROZHLAS 2021A; CF. BUTKOVIČ 2021 FOR A SIMILAR DEVELOPMENT IN AUSTRIA). The government attempted but failed to instrumentalize the pandemic to push through legislation favourable to the PM in his conflict of interest proceedings. The Senate was key in pushing against the pandemic-related violations of civil rights and liberties (SENÁT ČR, 2020).

Investigative journalists stepped in when the government failed to provide information on the case rate, hospital bed occupancy, the case fatality rate, and public procurement, forcing the government towards more transparency (HLÍDAČ STÁTU 2021).

The municipal, administrative, and Constitutional courts were crucial in scrutinizing the legal compliance of the pandemic regulations and measures (GUASTI 2020A). From repeated rulings, it became evident that the Ministry of Health was counting on the courts to let infringements of previous laws slide in the name of public health (IROZHLAS 2021B). Alas, the municipal and administrative courts called the Ministry of Health out on this tactic. Furthermore, the Constitutional Court ruled that the government retains a political responsibility for the public health and the health of democracy and cannot hide behind experts and numbers (JUDGEMENT 123/2021 COLL.; IROZHLAS 2021C). Also, the Supreme Audit Office was crucial in scrutinizing the pandemic procurement, finding major infringements, and awarding record fines (SOA 2021).

As for vertical accountability, the 2020 regional and Senate elections saw an increase in turnout (VOLBY.CZ 2020). Upon initially planning to exclude

COVID-19 positive and quarantining citizens from the vote, the government adopted a new law that enabled drive-thru voting in all regions for citizens in quarantine and at-home visits by a special commission for the COVID-19 positive (MV ČR 2020). Civil society continued its mobilization for liberal democracy – holding the PM accountable for his conflict of interest (BERNHARD ET AL. 2019). The mobilization before the 2021 general elections led to an almost 5% increase in turnout and the victory of the democratic opposition (VOLBY.CZ 2021).

In sum, the Czech Republic saw some pandemic swerving, but its institutional guardrails prevented executive aggrandizement. When the opposition was unified, it held the government accountable (horizontal accountability) and prevented erosion of vertical accountability (exclusion of COVID-19 positive and quarantining citizens from the vote). The courts were key in preventing democratic erosion (horizontal accountability), as were the media and civil society (diagonal accountability).

Swerving, but Not Turning in Slovakia

During the onset of the pandemic, Slovakia simultaneously managed to carry out an effective pandemic response and coalition building after the 2020 general elections. The swift response by the outgoing PM Pellegrini led to a major success during the first wave (GUASTI 2020A). Once the new PM Matovič took office (April 2020), he immediately started to test the institutional guardrails (BUSTIKOVA – BABOS 2020). The second and third waves' strength increased the pressure on the Slovak healthcare system and the political pressure on the PM (UCEN 2021). When the large-scale COVID-19 testing events in November 2020 and January 2021 failed and further increased public frustration, PM Matovič saw the last resort in negotiating the importation of Sputnik V from Russia without informing his coalition partners or the government (GUASTI – BILEK 2021). As a result, the coalition partners called on Matovič to resign. Matovič resigned and was replaced by Eduard Heger (who, like Matovič, was also from the political party OLANO).

The Slovak parliament remains polarized, undermining its ability to hold the government accountable (horizontal accountability). The coalition partners held Matovič accountable and managed to prevent an attempt to curtail access to abortion (fall 2020). The political polarization

also translates into polarization within the civil society and undermines the vaccination efforts (GUAŠTI – BILEK 2021).

In addition to the pandemic, Slovakia continues to undergo the reckoning about the rule of law – prosecuting large-scale corruption networks that linked the police, prosecutors, and the mafia, and which led to the murder of the investigative journalist Jan Kuciak and his fiancé in February 2018 (UCEN 2021). Furthermore, the media are essential in holding the government and other state institutions accountable for managing the pandemic (spring 2020), corruption in the pandemic-related public procurement (summer 2020), gaps in the vaccine rollout (2021), and ensuring that anti-corruption measures do not become a tool against the opposition (throughout the pandemic) (ibid.).

In sum, Slovakia experienced and withstood a major stress test of its guardrails, its horizontal accountability is working, and the media are a key element of the diagonal accountability. However, the pandemics and the major political reckoning about the rule of law in the country contribute to increasing the polarization in the country.²

CONCLUSIONS

This paper analyses the dynamics of pandemic swerving, focusing on accountability in the V4 countries over the 18 months of the pandemic. The paper's starting point is that the pandemic tests the institutional guardrails and democratic quality in all countries by enhancing executive dominance (MERKEL 2020). Under what conditions does executive dominance turn into executive aggrandizement? The answer offered here is that when horizontal and diagonal accountability fail to effectively push back against attempts at executive aggrandizement by illiberal elites, democracy erodes.

The analysis presented here shows that democracy eroded in Hungary and, to a lesser degree, in Poland but remained resilient in the Czech Republic and, to a lesser degree, in Slovakia.

In Hungary, the parliament with a two-third FIDESZ majority was a willing conduit in the executive aggrandizement led by Viktor Orbán, and the captured courts failed to act. The capture of the media and civil society is almost

complete ^(CF. VEGH 2021). Hungary in 2021 is on the cusp of authoritarian rule, and it remains to be seen whether the 2022 elections can reverse this trend.

The Polish attempt at executive aggrandizement was significantly less successful than that in Hungary ^(CF. WOJCIK – WIATROWSKI 2021). Only the Law and Justice party's capture of the Constitutional Tribunal allowed it to deliver on its conservative agenda ^(CF. SADURSKI 2019). The 2020 presidential elections were an example of how illiberal politicians succeed by skewing the playing field to maintain their power ^(ODIHR 2020). The Law and Justice party's attempts to curtail civil society were not successful. Their attempt to capture the media was only partially successful as TVN24 remains a key source of balanced information ^(ONOSZKO – MARTEWICZ 2021FT).

In the Czech Republic, democracy proved resilient ^(CF. GUAISTI 2020A, 2020B). The opposition was able to hold the government accountable ^(CF. BUSTIKOVA 2021). Media and civil society were crucial in maintaining diagonal accountability. In October 2021, the voters exercised vertical accountability, and PM Babis lost the election to the democratic opposition thanks to the 5% increase in turnout (cf. ft. 10).

In Slovakia, PM Matovič tested the guardrails, and his attempt to circumvent the existing rules and coalition partners cost him the PM office ^(CF. GUAISTI – BILEK 2021). However, in this case, horizontal and diagonal accountability are undermined by a polarization stemming from the ongoing rule of law reckoning ^(CF. UCEN 2021). The coalition managed to contain Matovič and prevent a rollback on reproductive rights, but the political polarization is spilling into civil society, politicizing the pandemic response and undermining the vaccination efforts.

While this analysis shows the various dynamics of democratic erosion and democratic resilience during the pandemic, it does not seek to establish a causal link between the pandemic and democratic erosion or democratic resilience. The cases of Slovakia and Poland show that the pandemic alone is not the source of polarization; it is rather that what happens during the pandemic can increase polarization. Further research should broaden the scope of the analysis and untangle the causal mechanisms, distinguishing between democratic erosion during the pandemic and democratic erosion due to the pandemic.

ENDNOTES

- 1 For example, parking fees were a major municipal revenue in Budapest when it was led by the leader of the unifying opposition Gergely Karácsony, but the PM abolished them throughout the whole country, stating that citizens need free parking in a pandemic (cf. Vegh 2021).
- 2 On polarization undermining the pandemic response see also Machitidze and Temirov's (2020) comparison of two hybrid regimes, Ukraine and Georgia.

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