Authoritarian Member States in International Organizations

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Authoritarian Member States in International Organizations
Hungary and Romania in the European Union

Matt Barg

ABSTRACT
This thesis investigates under which conditions do authoritarian Member States exist in International Organizations that require democratic governance in their treaty law. The European Union is used as a case study along with two of its Member States that are in the process of transitioning to democracy from previous authoritarian regimes—Hungary and Romania. This thesis employs stealth authoritarian theory to analyze how a democratizing Member State may violate these laws and revert to authoritarian governance. It also critiques international enforcement mechanisms to consider their effectiveness to enforce their laws and norms as well as prevent an authoritarian reversal. Finally, cultural internalization of IO law is analyzed in order to assess the conditions in which a Member State’s domestic population would approve, or even call for, undemocratic governance that violates IO law.
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Introduction

Hungary was the first Soviet-occupied state to slash a hole in the Iron Curtain when it opened its border with Austria in 1989. Consequently, Hungary became a bastion of democratic hope in Central and Eastern Europe following the collapse of the Soviet Union.
Since the Fidesz government gained its supermajority in Hungary’s Parliament in 2010, however, the progress made toward establishing a democracy has been dismantled. Hungary’s decline toward authoritarianism has illuminated weaknesses in the European Union’s (EU) ability to enforce its fundamental values and ensure democracy in its Member States.¹

Prime Minister Orbán and the Fidesz government have maintained the illusion of democracy Hungary; all the while, they have essentially reinstated a single-party system. The Fidesz government drafted a new Constitution with almost no input from oppositional parties and the public. The new Constitution, known as the Fundamental Law, was passed without any votes from oppositional parties in Hungary’s Parliament, and the Fidesz government found a way to circumvent the constitutionally required public debate process for the Fundamental Law’s adoption. The Fidesz government has passed legislation without oppositional party influence or debate, removed political checks and balances, and redefined rule of law to suit its aspirations. This government has restructured the judiciary and bureaucratic institutions, provided Fidesz party members with tremendous electoral advantages, and established a means of entrenching itself into institutional frameworks for the unforeseeable future.² The media is under attack and forced to self-censor.

¹ The Fidesz party lost its supermajority by one seat in February 2015 when a special election was held in Veszprem to replace Tibor Navracsics, who became an EU commissioner.
² Rule of law is defined as “The importance of the rule of law applies to all peoples, whether of a particular, tribe, city state of the world. As the rule of law governs the behavior of individuals within
offices and the homes of non-governmental organization (NGO) employees have been raided. It appears that the Fidesz government has halted Hungary’s transition to democracy for authoritarianism.

Democracy and rule of law in Romania, which borders Hungary to the east and is also a former Soviet-occupied country, have also been in jeopardy in recent years. Democratic hopes have remained far lower in Romania, in comparison to Hungary’s peaceful transition after the Soviet Union lost control over the region in the late 1980s. Romania’s transition to democracy has been tumultuous and began with the execution of its communist president, Nicolae Ceausescu. Romania’s democratic transition has been plagued by institutional corruption and political turmoil. In 2012, the political instability reached its pinnacle as Prime Minister Victor Ponta attempted to impeach his chief political opponent, President Traian Basecu. Prime Minister Ponta enacted emergency ordinances, even though there was no legitimate emergency in Romania, to remove the Constitutional Court’s review powers. Prime Minister Ponta also intended to remove key checks against his office and his majority coalition’s power in Parliament. This attempt to consolidate power through extralegal means was ultimately unsuccessful, primarily because of pressures from European Union actors.

The EU has consistently had greater influence over governance in Romania when compared to Union’s role in Hungary. This is greatly due to the EU’s implementation of a post-accession monitoring instrument in Romania—the Certification and Verification Mechanism (CVM)—that observes the Member State’s progress to correct major democratic deficiencies. These major democratic deficiencies in Romania include corruption of public officials and the independence of the judiciary. The CVM has only been applied to the 2007 a state, so does it govern the behavior of states within the international system.” Zartner, Dana. Courts, Codes, and Customs: Legal Tradition and State Policy Toward International Human Rights and Environmental Law (2014): 5.
EU accession class, which included Romania and Bulgaria, and there is no monitoring tool for Hungary or any other EU Member States.

The central question of this thesis is under which conditions does an authoritarian Member State exist in an international organization (IO) that requires democratic governance in its treaty law? Specifically, this thesis aims to examine the discourse surrounding international organizations and their Member States, the effectiveness of IO enforcement mechanisms, democratization, authoritarian reversals and Member State internalization of IO norms. Further, the following will analyze the consequences when Member State violates the EU’s fundamental values of democracy and rule of law, which are found Article 2 of Treaty of the European Union, as well as the EU’s ability to prevent authoritarian reversals. Hungary and Romania will be used as case studies. Hungary and Romania’s accession into the EU required a certain level of democratic proficiency before the states could join the Union. However, each country teetered on an authoritarian reversal this decade.

After being occupied by the Soviet Union for over four decades, both of these states began democratic transitions in 1989. Hungary and Romania’s democratic progress has waned at times. Each country has experienced egregious violations of democracy and rule of law principles in recent years—despite their admittance to the EU and acceptance of the supranational organization’s requirement of a certain level democracy, rule of law and human rights compliance. First, the following will examine the Member States’ government structures, how they have violated the EU’s fundamental values in question, and the potential for an authoritarian reversal. Next, this thesis will analyze the EU’s institutional enforcement mechanisms and democracy-building strategies. The final section assesses the internalization of EU law and norms into Member States in order to understand whether the domestic
society has adopted these norms and require public institutions to respect these norms as the appropriate standards of behavior. The primary objective of this thesis is not to simply point out incidents of democracy and rule of law violations but to also recognize when a Member State is systematically creating an authoritarian government. In addition, this thesis aims to determine the extent that an IO becomes involved and pressures a Member State to improve its democratic performance.

Analysis should first scrutinize domestic governance practices and key democratic institutions to determine which conditions an authoritarian Member State exists in an IO. The first hypothesis uses stealth authoritarian theory to appraise possible authoritarian Member States. Authoritarian reversals occur nearly exclusively in transitioning states that formerly had authoritarian regimes. A transitioning state’s authoritarian reversal requires governments to work through and undermine the democratic institutions and practices that were crafted during its transition. Therefore, comprehensive understanding of this phenomenon requires observation of how transitioning IO Member States undermine democracy and rule of law to establish an authoritarian foothold. Stealth authoritarianism is a means of protecting and entrenching power when transparent authoritarian practices are not a viable option, which would be the case for Member States that do not wish to draw attention or hope to conceal their violations of IO treaty law requiring democratic governance. There are six indicators of stealth authoritarian governance: (1) the executive branch uses constitutional order to dominate and partially control judicial and legislative branches; (2) those in power rewrite laws or uses constitutional loopholes to consolidate power into the executive branch; (3) those in power build strong formal as well as informal institutions that are filled with ruling-

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4 Ibid.
party loyalists; (4) there is strong control over mass media; (5) ruling-party turnover is obstructed by election and campaign laws that provide incumbents with unfair electoral advantages over challengers; and, (6), there is a weak civil society. These sub-hypothesis, however, are not independent. Rather, they are interactive and certain components of stealth authoritarianism cannot be achieved until others have been completed. Despite different means, the outcome of stealth authoritarian practices is simply authoritarianism.

The second hypothesis evaluates the role that IOs have in Member State democratization and the effectiveness of their enforcement mechanisms. This hypothesis estimates that IOs may be able to support transitions to democracy, but they cannot prevent reversals to authoritarianism in transitioning Member States for the following reasons. First, IOs direct enforcement mechanisms found in treaty law are weak and cannot force a Member State to comply with IO rules. Also, most IOs do not have mechanisms that allow them to intervene with military force when Member States do not comply with IO law. Second, indirect enforcement mechanisms (economic and political pressures) from IOs do not promote long-term democratic consolidation and do not prevent authoritarian reversals. Finally, IOs with limited monitoring and evaluating mechanisms can fail to prevent an authoritarian reversal. In some cases, IOs are unable to initially recognize authoritarian reversals because monitoring and evaluating are either ineffective or do not exist.

The final hypothesis examines compliance and internalization of international law. An authoritarian Member States exists in an international organization when the IO’s norms have not been internalized into domestic society. Signing and ratifying treaties is only the first step to compliance with international law. It is necessary that Member States

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domestically internalize international law for it to become binding. Yet, accession into an IO only requires surface-level internalization of international law, and the internalization process is slow moving. This process can be disrupted or terminated in times of crisis, especially economic crises. Political leaders often have the ability derail the internalization and acceptance of IO norm process during these crises. As a result, democratic transitions are far more likely to fail if the public does not believe democratic governance is the appropriate standard of behavior from its leaders. Both the Hungarian and Romanian citizens’ faith in democratic political leadership and democratic principles have faltered over the past decade.

The EU was created in response to World War II to promote international peace, cooperation and economic stability in the region. In 1951, six states signed the Treaty Establishing the European Coal and Steel Community. The main goal of this treaty was to create interdependence on coal and steel so that no country could mobilize its armed forces without others knowing. The Union progressed throughout the 20th century to create the European Economic Community, established a consolidated European Commission and Council, and continued to add Member States. The word ‘democracy’ was not mentioned in any of the Union’s treaties until 1992 when the European Union was formally created. Article 2 of the Treaty on European Union (TEU) established democracy, rule of law, and respect for human rights and fundamental freedoms as the Union’s core values.

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7 Belgium, France, West Germany, Italy, Luxembourg, and the Netherlands
9 Treaties of Rome: EEC and EUROTEM Treaties (1957)
10 Merger Treaty (1965), also known as the Brussels Treaty, and the Single European Act (1986)
12 Article 2 of the 1992 Treaty of the European Union (TEU) states “[t]he Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of
values, or norms, have unofficially been part of the Union since its beginning, but the collapse of the Soviet Union (1989-1991) likely caused the Union’s shift in focus to democracy in the 1992 TEU and its amendment with the Treaty of Lisbon in 2007. Both of these treaties aimed to continue the advancement of democracy and rule of law in the EU.  

The fifth enlargement of the EU took place in 2004 when the Union added ten Central and Eastern Europe (CEE) states, eight of which were former Soviet satellites that operated under authoritarianism. Accession was offered to these newly democratic states primarily to prevent democratic ‘backsliding’ into their former authoritarian way of governance. Despite membership requirements of democracy, economic stability, and human rights protections, several of these CEE Member States have democratically regressed over the past two decades. Some of these Member States have adopted undemocratic governance practices that draw similarities to authoritarianism of their communist pasts.

Given the EU backdrop, the scope of this thesis is not to define democratic governance or the foundational freedoms listed in Article 2 of the TEU. This thesis intends to analyze global governance, international law and international organization membership from within the context of certain Member States, in particular Hungary and Romania. Investigation of the current situations in both Member States is essential, but it is also necessary to examine the historic influence from the Soviet occupation and communist dictatorship (1946-1989) in order to fully understand the current state of democracy in Hungary and Romania. These case studies will offer insight into democratic transitions from
communism in Central and Eastern Europe, the possibility of authoritarian reversals, EU accession process and its enforcement mechanisms, and democratic norm internalization into domestic cultures.

**Literature Review**

To answer the central thesis question, this thesis employs a theoretical approach that utilizes multiple perspectives to explain the conditions in which an authoritarian Member State exists in an IO that legally requires democracy from its members. The first theoretical approach used is stealth authoritarian, and it considers how a Member State constructs an authoritarian regime despite democratic requirements from the IO it belongs to. The second theoretical approach comes from the viewpoint of the IO and its enforcement mechanisms to prevent Member States from building authoritarian regimes. The final theoretical approach examines the role of the Member State’s domestic society and culture in order to evaluate what to degree the public has internalized the IO’s democratic norms and laws. These different vantage points aim to collectivity explain the conditions in which authoritarian Member States exist in IOs.

**Stealth Authoritarianism and Authoritarian Governance**

Following the Cold War, democracy clauses have been placed in international agreements and treaties to establish democracy as a fundamental norm for certain IOs. The democracy clauses in IO treaties also sanction regimes that abuse their authority through extra-legal means. Democracy clauses included into treaties can be found in the EU, the Organization of American States (OAS), the Council of Europe, and the African Union (AU).

For instance, Chapter II Article 3 of the OAS Charter states, “The solidarity of the American States and the high aims which are sought through it require the political

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organization of those States on the basis of the effective exercise of representative democracy.”17 Also, the African Union created the African Charter on Democracy, Elections and Governance in the early 2000s to provide specific guidelines for democratic governance.

Establishing these norms within IOs has led to the elimination of many transparent authoritarian regimes.18 The decline of transparent authoritarianism, however, has resulted in a new authoritarian practices. The growth of civil society around the globe has been a key contributor for leaders to reconsideration their means of authoritarianism, since civil society groups aims to expose undemocratic practices and human rights violations. In addition, IO treaty law that requires democratic governance has caused some Member State leaders with authoritarian objectives to employ more discrete tactics to achieve their authoritarian goals. “Stealth authoritarianism serves as a way to protect and entrench power when direct repression is not a viable option,” which is the case for Member States that adopt authoritarian governance practices in international organizations that require democracy.19

Some authoritarian leaders have since transformed their governance practices to play by the same rules as democratic governments.20 Stealth authoritarian regimes use democratic institutions and practices to create an illusion of legitimacy that masks authoritarianism. These practices include rewriting constitutions, constitutional amendments, revising court structures and review powers, appointing judges without oppositional party input, providing bureaucratic or state institutions with increased powers or duties that formerly belonged to judicial or legislative branches, and empowering the executive branch to dominate legislative

17 Charter of the Organization of American States.
19 Ibid, 1678.
and judicial branches to rewrite or influence law. Stealth authoritarianism makes it increasingly difficult for outside observers to identify and eradicate governance in comparison to transparent authoritarian regimes, like those of Adolf Hitler, Joseph Stalin or Saddam Hussein. Stealth authoritarianism regimes are those that use legal mechanisms in generally accepted democratic states for anti-democratic ends, such as elections, constitutional amendment procedures, and judicial review powers. These claims have been made in Russia, Turkey, Hungary, Azerbaijan, Algeria, Ethiopia and Romania.

This thesis tests the components of stealth authoritarianism in its case studies to evaluate the state of democracy in Hungary and Romania and to determine whether these governments are authoritarian. Stealth authoritarianism has six interrelated and interactive components: (1) constitutional order provides the executive branch the power to dominate and partially control judicial and legislative branches; (2) weak formal institutions and rule of law; (3) strong informal institutions and networks, which are filled with ruling party loyalists, that use their power to threaten and persuade opponents; (4) weak civil society; (5) subtle constitutional violations and maximum usage of loopholes in the constitutional order; (6) and, control over the mass media. Often, international organizations struggle to properly diagnose stealth authoritarian governance. This is primarily because these organizations consider these components individually and independently as democratic violations rather than comprehensively appraising the interaction of these components, which produces something far worse than the violation of a single IO law. International organizations also

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21 “Ibid. (BOTH Stealths above)  
22 “Stealth Authoritarianism.”  
23 Ibid.  
generally combat these components individually and independently. This approach often leads to IOs failure to prevent authoritarianism, because the matter is not addressed systematically.

The toolbox of stealth authoritarian regimes includes using judicial review not as a check on the political branches of government, but as a tool to consolidate power into the executive branch and remove accountability for politicians. Stealth authoritarian leaders often use libel and defamation lawsuits against dissidents, which creates self-censorship in the media. Legislators in the authoritarian faction adopt electoral laws to disenfranchise oppositional parties as well as increase the difficulty to remove incumbents. The toolbox also includes prosecuting political dissidents and opponents with non-political crimes, like tax evasion or embezzlement, using internationally-supported surveillance laws and institutions to blackmail or discredit political opponents. In addition, these leaders often enact democratic reforms and rule of law rhetoric to sculpt public perceptions and deflect attention from undemocratic practices.25

It is necessary to define the traditional form of authoritarianism to not only demonstrate the similarities between the two forms but to also highlight the differences. The forms of authoritarianism utilize different means; however, the undemocratic ends are incredibly similar. Authoritarianism is traditionally defined as a “legal order in which there is little or no political pluralism and the incumbent party acts ‘via legal or extralegal means, to suppress political opposition.’”26 Corruption and abuse of state resources are widespread. It is incredibly difficult to remove the incumbent party through elections, and regime change is

25 Ibid.
26 Ibid.
typically only possible by a transition, revolution, *coup d’état*, or foreign intervention.\(^{27}\)

Traditional, or transparent, authoritarian regimes generally have a set of common mechanisms. These mechanisms include overtly defying or disregarding laws and constitutions,\(^{28}\) imposing emergency laws or martial law, silencing dissidents with harassment and violence,\(^{29}\) closure of media outlets and banning publications,\(^{30}\) vote count manipulation through vote buying, intimidation, and electoral fraud,\(^{31}\) packing courts and replacing constitutions to remove checks and balances on the authoritarian government’s power.\(^{32}\) Traditional authoritarian governance is far more blatant and easily detected by international organizations and the international community when compared to the subtle, more covert mechanisms utilized in stealth authoritarian regimes. Nevertheless, stealth authoritarian uses variations of these tactics with for the same authoritarian ends.

The law is a crucial tool for stealth authoritarian regimes. These regimes use law to entrench the status quo, protect their incumbents from democratic challenges, and create a dominate-party or single-party state.\(^{33}\) The single-party state still has oppositional parties, but oppositional parties have almost no input in governance. These governments are able to grasp great amounts of power through legal maneuvering and often enact ‘constitutional coups,’ which “through a series of perfectly legal moves the constitutionally devious leaders can

\(^{27}\) Ibid.
\(^{32}\) Levitsky & Way, ibid.
\(^{33}\) Varol, supra note 1.
achieve a substantively anti-constitutional result.” A constitutional *coup* is constitutional because there is no break in legality—the government doesn’t violate any laws to achieve its goals. It is a *coup* because the prior constitutional order is turned on its head without a legitimating process for the changes made. In worst-case scenarios, constitutional *coup* s transform a state from a constitutional democracy to an authoritarian regime while appearing to respect the constitution through the process.

One of the clearest indications that a state is becoming authoritarian, regardless of whether it’s stealth or traditional authoritarianism, is the leadership’s manipulation of the electoral environment so that electoral outcomes almost always have a predetermined conclusion. Electoral turnover, or partisan alternation, is a core component of democracy and allows the electoral system to respond to electoral preferences. Electoral turnover proves that incumbents can be “dethroned.” Election and media laws give authoritarian incumbents advantages that are supplemented by the selective application of the laws against challengers in the election. This combination provides incumbents with nearly insurmountable advantages.

A democratizing state’s reversal to authoritarianism requires the government to work through and undermine the democratic institutions and practices that were crafted during the democratic transition. Assessment of stealth authoritarian components can help determine whether a Member State is systematically creating a stealth authoritarian government or just

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35 Ibid.
36 Ibid.
38 Ibid.
39 Ibid.
violating democracy and rule of law principles in an isolated fashion without an authoritarian objective; moreover, a government is simply violating a democratic principle but not with the intention of building an authoritarian government. At times, democratic governments violate democratic principles, like restricting freedoms and imposing laws through the executive branch without following legislative protocol after a terrorist attack. Nevertheless, this does not necessarily mean that this government is attempting to create an authoritarian regime.

Application of stealth authoritarian theory to the following case studies will help make the distinction of whether a transitioning Member State is in the process an authoritarian reversal, or whether the Member State suffers from democratic deficiencies but is ultimately headed toward democratic consolidation. Because EU Member States are required to have a certain level of democratic progress prior to accession, this theory will provide insight to the state of democracy and authoritarianism in these Member States. This is a relatively novel theory and has not been academically critiqued. Employing this theory in the context of international organizations should provide further insights into stealth authoritarian theory.

Democratization: International Organizations and the Domestic State

Samuel Huntington argued that democratization in the developing world is “an important—perhaps the most important—global political development of the late twentieth century.” Democratization has been widely studied. Much of the democratization scholarship examines the transition from authoritarianism to democracy as one that is confined to internal national forces. The growing presence of international organizations in global and national politics has recently led scholars to consider the role of external

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democratization factors, in this case international organizations. Some scholars have claimed that international actors are essential for a successful regime transformation.\textsuperscript{41} Existing democratic countries, like the U.S. and Western European states, have made democracy promotion a foreign policy goal. International organizations have been a significant tool for achieving these ends.\textsuperscript{42} For example, the IO-democracy relationship has helped justify the growth of the North Atlantic Treaty Organization (NATO), the EU, Council of Europe, and North American Free Trade Association (NAFTA), in which these organizations have promoted democracy by adding Member States that are transitioning to democracy from authoritarian regimes.\textsuperscript{43}

Scholarly consideration of the relationship between international and domestic politics first began with the “second image reversed” theory, which observes how international factors affect domestic structures.\textsuperscript{44} This theory surveys various international factors, including international economic trends, military intervention, and the anarchic structure of the international system and how IOs affect domestic political structures. The factors that affect domestic political structures include electoral outcomes, regime type, domestic coalitions, and trade policies. The second image reversed theory recognizes that despite the fact that international factors may potentially have a powerful external influence over domestic regimes, the extent of these international factors influence requires some link

to the domestic political process.\textsuperscript{45} In response to this original theory, academic scholarship of how international organizations affect Member States’ domestic democratization has primarily fallen into two groups: ‘democratization from above’ and the transitional-consolidation theorists.

First, democratization from above theory contends that IOs can support the democratization of formerly undemocratic Member States.\textsuperscript{46} Jon Pevehouse argues that there are three potential causal mechanisms that explain the effects that IOs can have on regime change. First, authoritarian regimes can be compelled to liberalize by economic and diplomatic pressures from IOs when these pressures are paired with internal pressures, such as protests and social movements. Economic pressures from an IO can create fiscal hardships on the regime through trade suspensions and seizure of financial benefits.\textsuperscript{47} Diplomatic pressures can result in international isolation that further de-legitimizes the regime domestically, and during times of crisis a regime’s international standing may be particularly important. Public and elite perception of the regime can be weakened if allies and institutional partners treat the state as an outcast.\textsuperscript{48} Second, IO membership can lead certain elite groups to accept liberalization because membership lowers the risks that these groups face during democratization. There will inherently be groups of elites that will attempt to stop the liberalization process. IO membership obstructs these groups by making credible guarantees to key groups that reduce their fears of democratization. Finally, acceptance of

\textsuperscript{47} Ibid.
liberalization can occur through either a hand-tying process or through the socialization of domestic elites. The socialization process involved in accession into an IO helps persuade elites to be less resistant to the liberalization process by changing their belief systems. This is done when IOs act as an external guarantor of their interests, rights and preferences, or by adjusting preferences during the socialization process.\(^{49}\)

In opposition to democratization from above theory, the transitional-consolidation camp argues that IOs may be able to promote democracy through the means described above, but ultimately IOs cannot prevent or stop authoritarian reversals. Transitional-consolidation theorists argue that ‘democratization from above’ arguments fail to distinguish between the effects that IOs have on the temporary survival of a transitional democracy and the effects that ensure long-term democratic consolidation. Milan Svolik argues that scholarship must distinguish between ‘transitional’ and ‘consolidated’ democracies, because each one has different challenges to prevent regression to authoritarianism.\(^{50}\) The threat of an authoritarian reversal is constant in transitional democracies, but authoritarian reversals are rare in consolidated democracies.\(^{51}\) Therefore, democratic consolidation suggests a qualitative change has taken place that nearly eliminates the possibility of authoritarian reversion rather than mere democratic survival.\(^{52}\) However, it is difficult to measure whether or not a state has

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achieved democratic consolidation. A transitional democracy may resist an authoritarian reversal for a sustained period of time when conditions are favorable, but it still may be at risk. The factors that enable democratic consolidation and avert authoritarian reversal include economic performance, wealth, previous military rule, political structures and a combination of these factors.

The transitional-consolidation theory suggests that by not addressing this distinction between transitioning and consolidation that ‘democratization from above’ theorists falsely suggest that international organizations can promote consolidation as well as prevent reversals to authoritarianism. IOs can foster consolidation in transitional democracies by building capacity and providing technical expertise, coordinating between public and private actors, and enhancing transparency. The transitional-consolidation argument claims that IOs cannot stop authoritarian reversals in transitioning democracies, despite their ability promote democratic consolidation. This is because IOs do not have enforcement mechanisms strong enough to prevent a reversal. There are very few IOs have mechanisms to enforce their policies with forceful military intervention. The economic sanctions, political pressures and internal enforcement mechanisms used against noncompliant Member States don’t carry enough weight to prevent these reversals.

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This thesis uses the second-image reversed perspective to observe the role that IOs play in national democratization process of their Member States. The ‘democratization from above’ theory provides insights to promoting democratic consolidation for Member States and the strategies utilize in the hopes of preventing authoritarian reversals. However, this thesis contends that the transitional-consolidation theory is appropriate in the case of the EU, because the EU does not have enforcement mechanisms strong enough to prevent a reversal. While it is necessary to observe the role that IOs have on Member State democratization, analysis of internalization and compliance of international law is the next step to comprehensively study why a transitioning Member States reverts to an authoritarian regime and violates IO law.

Internalization and Compliance with International Law

Internalization of international law is defined as “the process by which nations incorporate international law concepts into domestic practice.”\(^5\)\(^8\) Ratification of international treaties or acceptance of a customary international law principle technically binds a state to follow the rule, but there is widespread agreement that international law is not fully implemented until it has been internalized domestically.\(^5\)\(^9\) Transitioning Member States that have not internalized an IO’s treaty law requirements for democratic governance into their domestic institutions, or a if Member State’s domestic society has not deemed democracy and rule of law as the appropriate behavior for governance, are far less likely to reach democratic consolidation. Therefore, these Member States are more vulnerable for

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authoritarian reversals. The “logic of appropriateness” declares that actors, both elites working in government and individual citizens, are required to have a binding sense of obligation to law before it becomes accepted as the appropriate standard of behavior.\textsuperscript{60} The logic of appropriateness leads to the creation of international norms, which is defined as “a standard of appropriate behavior for actors with a given identity.”\textsuperscript{61} International relations scholarship defines international norms as, “shared understandings of standards of behavior,”\textsuperscript{62} which “guide human behavior,”\textsuperscript{63} that “indicate how a state should behave.”\textsuperscript{64} The most widely accepted theory of norm development and emergence in international legal studies scholarship is the emergence through a norm entrepreneur.\textsuperscript{65}

When a new concept becomes an international norm, it typically starts with a norm entrepreneur, which is a person, group of people, institution or a state that has strong notions about the appropriate or desirable behavior in their community.\textsuperscript{66} After the norm emerges and is advocated by the entrepreneur, decision-makers increasingly recognize the norm until it reaches a tipping point where the norm attains recognition. Next, there is a torrent of recognition and acceptance of the norm by the general population. Ultimately, the norm becomes widely accepted and ingrained into a society to the point where it becomes the

\textsuperscript{62} Klotz, Audie, J.\textit{Norms in International Relations: The Struggle Against Apartheid.} Ithaca: Cornell University, 14 (1995)
\textsuperscript{66} Ibid.
standard of appropriate behavior. However, the sociological perspective of international norms provides a more encompassing definition in which international norms are established through institutions; that is, international norms are “a relatively stable collection of practices and rules defining appropriate behavior for specific groups of actors in specific situations.”

Regardless, international law and international norms are so tightly linked that the two terms can be used interchangeably. Since the sociological prospective advances the international relations definition, this thesis combines these two terms for its definition of international norms.

Understanding how states internalize international law is essential to understanding the role of international law within a specific state. In order to fill the void for weak or nonexistent enforcement capabilities, international law needs to be internalized into the fabric of domestic law to make the international legal rules punishable by domestic legal mechanisms. Domestic populations cannot perceive international laws as appropriate, and therefore binding, until the international laws have been embedded and accepted into the domestic legal culture and institutions, which comprise a state’s legal tradition. Cultural attributes of legal tradition include purpose of law, origins of law, and concern about reputation as a law abider. Institutional attributes include separation of powers and strength

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67 Ibid.
71 Ibid.
of the judiciary, hierarchy of law, and monist versus dualist position. A state’s legal tradition can provide great insight to compliance with international law and internalization of IO norms.

A democratizing state’s legal tradition has often changed dramatically as the state transitions between regime-types. Democratizing states typically have to completely rebuild their legal institutions and governance structures in the process, which includes transforming their institutional attributes mentioned above. The cultural attributes need to follow these institutional modifications in order for democratic and rule of law principles to be comprehensively internalized. Crises can impede internalization of democratic norms institutionally and culturally. Commonly, economic crises obstruct internalization of democratic norms, but even accession into an IO can create a crisis capable of blocking internalization.

This thesis uses internalization, norm adoption and legal tradition theory in its case studies to explain why a Member State violates EU laws, norms, and potentially implements authoritarian practices. Hungary and Romania had to completely reconfigure their legal tradition not only during the democratization process but to also align with EU norms. In addition, this theoretical approach considers the effects the 2008 global economic crisis had on the internalization process. Both of these countries had only just become Member States prior to the global economic crisis in 2008. Their legal traditions had not fully adopted democracy and EU norms. The economic crisis partially influenced each country’s domestic society to lose of faith in democracy and the EU as effective governance structures.

Therefore, domestic societies did not require their leaders to fully comply with democratic principles.

**Methodology**

This thesis takes a comparative legal studies approach. The principal research methodology employed below is content analysis of primary and secondary sources. The primary sources used in this research are European Union treaties, the Hungarian Fundamental Law and legislation, the Romanian Fundamental Law and legislation, Constitutional Court decisions in both countries, civil society reports, studies and research projects conducted at Central European University’s Center for Media, Data and Society, and reports by European institutions.

The primary research relied greatly on the Council of Europe’s European Commission for Democracy Through Law (Venice Commission). Even though the Venice Commission is not an EU institution, this Commission provides comprehensive legal opinions examining laws and institutional structures for potential violations of democratic principles and European norms. The Organization for Security and Co-operation in Europe (OSCE) and the studies conducted by its Office for Democratic Institutions and Human Rights provided data and analysis for electoral fairness and national relevant electoral laws. Reports prepared by Amnesty International provided information regarding civil society and NGOs. Secondary sources include scholarly journal articles and books that examine democratic and economic transitions of Central and Eastern European countries, national politics in the region, democracy building, authoritarianism and international organizations, especially the European Union.
Curiosity into governance in Hungary initially began after a proposed Internet tax failed to be enacted after thousands of protesters gathered in its opposition in Budapest. I intended to research the Fidesz government’s policies for Internet governance but quickly realized that Hungary had a much larger, systemic issue with its government. I spent the summer of 2015 in Budapest at Central European University’s Center for Media, Data and Society as an intern and a research fellow. General assessment and assumptions about the state of Hungary and the region’s national governments have been formulated through my work with Central-Eastern European scholars, lawyers at the Hungarian Civil Liberties Union, and observations through personal experiences during my time spent in Hungary. I also led discussion groups at CEU’s summer course in Advanced Topics of Internet Governance, Civil Society and Policy Advocacy with regional freedom of expression and media experts to learn about global attitudes towards Hungary’s governance and media policies.

This thesis then researched Romania to provide context for the Hungarian government. Romania and Hungary have several commonalities. They both were Soviet-occupied states following World War II, and began their democratic transitions in 1989. They both have also recently joined the EU and have struggled to ensure democracy and rule of law in this decade. Aside from these broad commonalities, Prime Minister Ponta’s actions in 2012 appeared to be strikingly similar to those of the Fidesz government. However, the EU had far greater influence over governance in Romania compared to Hungary. Therefore, Romania became a viable example to provide additional and nuanced findings for the central research question.
Member State Authoritarian Reversals

International organizations that value democracy as a key tenet of the organization typically require that Member States meet minimum standards of democracy before accession. IO membership is often one of the reasons that prompt a former authoritarian state to democratize. A democratizing state’s reversal to authoritarian requires the government and its actors in the reversal to work through and undermine the democratic institutions and practices that were crafted during the democratic transition. In order to assess whether a Member State is systematically and overtly creating an authoritarian government or just violating democracy and rule of law principles without an authoritarian objective, this section uses stealth authoritarian theory to make this determination through case studies. To measure stealth authoritarianism, case studies analyze its six components. Democratizing Member States are more likely to move toward authoritarianism when the following forces are present: (1) the executive branch uses constitutional order to dominate and partially control judicial and legislative branches; (2) the regime rewrites law or uses constitutional loopholes to consolidate power into the executive branch; (3) the regime builds strong formal as well as informal institutions that are filled with ruling-party loyalists; (4) the regime has strong control over mass media; (5) ruling-party turnover is obstructed by election and campaign laws that provide incumbents with unfair electoral advantages over challengers; and, (6), there is a weak civil society. These sub-hypothesis, however, are not independent. Rather, they are interactive and certain components cannot be achieved if others are not present.

This section employs these six stealth authoritarian hypotheses on both the current situations in Hungary and Romania to determine whether they have engaged stealth authoritarian governance and experienced an authoritarian reversal. The second section will
analyze the EU’s enforcement mechanisms and response to undemocratic practices in these case studies. Finally, the internalization of international law section will explore why these case studies have not complied with the EU’s democratic norms and laws in certain scenarios and the effect that crises have had on the democratization and the norm internalization process.

Case Study: The Fidesz Government in Hungary

In Hungary’s 2010 election, the Fidesz party and its coalition with the Christian Democratic People’s Party (KDNP) won more than two-thirds of seats in Parliament, after they won nearly 53 percent of the popular vote. Despite the authoritarian practices of the Fidesz government after winning its supermajority, this was a free and fair election. Due to disproportionate electoral laws, 53 percent of the popular vote translated into 68 percent of Parliamentary seats. In a proportionate electoral system the percentage of votes won for a particular party equals the percentage of seats won in Parliament. However, Hungary’s disproportionate electoral system is weighted and provides extra seats, which is how 53 percent of the popular vote translated into 68 percent of the seats in Parliament. The disproportionate election system was created as Hungary was transitioning into democracy in 1989. Leaders in the transition created this disproportionate electoral system in order to promote pluralism in Parliament, prevent the communists from regaining control, and to provide smaller parties with more seats. In 2010, this system backfired for proponents of democracy. The Fidesz party has been able to grab a tremendous amount of power and pass legislation without debate or votes from other parties in Parliament.

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73 KDNP is officially a coalition partner with Fidesz, however, the party has been unable to get into Parliament on its own and break the election threshold of 5 percent since it barely did so in 1994. KDNP has nearly no influence over the Fidesz agenda, and the coalition was primarily created so the Fidez government could win enough votes to win a supermajority.

74 Hungary’s Parliament is also known as the National Assembly.
The Fidesz party was able to quickly grab power partially because of Hungary’s weak separations between its branches of government. As portrayed in Figure 1 below, Hungary has a unicameral Parliament. There are limited checks built in the Hungary’s government structure. There is no real separation between legislative branch and the Prime Minister, because the majority party in Parliament selects the Prime Minister. Also, the majority party selects the President. There are incredibly weak separations between legislative and executive branches. Therefore, a strong and independent Constitutional Court in Hungary is an essential check against other political branches. The Constitutional Court is the only formal check against the legislative and executive branch. The leaders of the democratic transition understood this and knew the importance adding checks to its democratizing government.

**Figure 1: The Structure of Hungary’s Governmental Branches**
Hungary held its first free and fair elections for the first time in over four decades in 1990. As Hungary was transitioning into democracy in 1989, the leaders of the transition heavily amended the 1949 Stalinist-era constitution (Act XX of 1949) at roundtable meetings. The amendments to Act XX of 1949 created a constitution that met the standards of a modern, democratic constitution that protected human rights and fundamental freedoms. The roundtable meetings, which were comprised of oppositional parties and the communists who had just lost their 40-year grip in the country, were concerned with two hazards to Hungary’s transition to a multiparty democracy: a fractured parliament where small parties were unable to form stable coalitions, which was addressed by the disproportionate electoral system, and a deeply entrenched constitution that would be too difficult to change once the new democratic leaders gauged how they wanted to design their political institutions. The amendments, also known as the 1989 Constitution due to such vast changes to the previous Constitution, established an amendment process that required a two-thirds majority vote to amend the Constitution. This created an amendment threshold that was attainable and not excessively demanding that the Constitution could not be amended as democratic leaders began to recognize what Hungary needed to democratize. The leaders of the transitions also made structural adjustments to bolster democratic governance.

75 At the time the country was known as the Republic of Hungary, which was later changed to Hungary by the Fundamental Law that was enacted in Jan. 1, 2012.
78 There was no break in legality from Act XX of 1949, and “the 1989 Constitution” is the amended Act XX of 1949.
The 1989 Constitution established a judicial check against the other branches when it created the Constitutional Court. The Constitutional Court was constructed to be independent and have wide powers of judicial review to check the powers of the executive and legislative branches. The 1989 Constitution established *actio popularis* to bring matters before the Constitutional Court. *Actio popularis* allows anyone to bring a case before the Court, not just those affected by the law, to review laws for constitutionality. As a result, nearly every important law was challenged before for the Court. Indeed, the Constitutional Court became the highest respected political institution in Hungary in the early stages of the transition.\(^79\)

In addition to the Constitutional Court, the 1989 Constitution made additional checks against Hungary’s unicameral parliamentary system. It established the public consultation process, which changed Parliamentary procedure to require extensive consultation with civil society and opposition parties before bills can be put to a vote. Four ombudsmen were also added to monitor Parliament and ensure that human rights were protected. Further, the amendments created politically independent bureaucratic institutions: the central bank, state audit office, prosecutor general’s office, national election commission and the media board. Up until the Fidesz government’s victory in 2010, Hungary’s transition to democracy had been relatively successful in comparison to other democratizing states in Eastern Europe. Scholarship prior to 2010 generally applauded Hungary’s democratic advancements and found the country to be a beacon of democratic hope for the former Soviet-controlled states.

Despite these democratic advancements, nearly all of these checks have been eliminated once the Fidesz Party took power in 2010. Table 1 summarizes the components of stealth authoritarian in Hungary and the current state of these components. Hungary’s

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Parliament has become a political tool of Prime Minister Orbán’s office. There is essentially no separation between Parliament and the executive branch because of the majority party’s power to choose the Prime Minister and the primarily ceremonial President of Hungary. Due to limited institutional separation and coordination between the Prime Minister’s Office, Parliament and the Presidency, reference of these institutions will be consolidated into ‘the government’ throughout this thesis. The government’s leader is Prime Minister Victor Orbán. This case study investigates each of the components of stealth authoritarian on the Fidesz government since it gained power in 2010.

**Table 1: Stealth Authoritarian Indicators in Hungary**

<table>
<thead>
<tr>
<th>Legal Tool to Consolidate Power</th>
<th>Supermajority in Parliament</th>
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<tbody>
<tr>
<td>Strength of the Judiciary</td>
<td>Weak</td>
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<tr>
<td>Strength of Formal Institutions Checks on</td>
<td>Weak</td>
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<tr>
<td>Government</td>
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<tr>
<td>Informal Institutions</td>
<td>Packed with Fidesz Loyalists</td>
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<tr>
<td>Control over Mass Media</td>
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<td>Strength of Civil Society</td>
<td>Weak-Moderate</td>
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<td></td>
<td>Frequent Attacks by the Government</td>
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**Use of Law and Constitutional Loopholes for Executive Branch Consolidation**

The first sign that the Fidesz government was moving towards stealth authoritarian occurred into just its third month in power. The Fidesz government used its supermajority to amend the four-fifths rule for drafting a new constitution. In 1995, the Socialist (MszP) majority government amended the 1989 Constitution procedural rule for drafting a new Constitution from a two-thirds majority vote in Parliament to require a four-fifths vote. The
amendment required oppositional party input and cooperation in the drafting process. The new rule essentially required a “super” supermajority for writing a new constitution.\textsuperscript{80}

After the Fidesz government easily amended the four-fifths rule with its supermajority, it began to write a new Constitution. The drafting process took place from October 2010 to April 2011 and consisted of two disconnected stages: an inconsequential public stage (stage 1) and a consequential secret stage (stage 2).\textsuperscript{81} In October 2011, a constitutional commission, called the Salamon Commission after its chair László Salamon and comprised of members of Parliament (MPs), was given the task of to create a list of principles for the new Constitution.\textsuperscript{82} The meetings were open and civil society groups were able to provide their opinions. The list of principles, however, did not reflect any of the opinions or proposals made by civil society or the ‘democratic opposition’ parties in Parliament—the Socialist MszP party and the new Green LMP party.\textsuperscript{83} The democratic opposition parties left the Salamon Commission when none of their proposals were accepted. Nevertheless, the Fidesz bloc approved the Commission’s constitutional principles on March 7, 2011, with a Parliamentary resolution.\textsuperscript{84}

In stage 2, which also began on March 7, 2011, the approved resolution stated that members of Parliament (MPs) had one week to propose a complete draft of the new


\textsuperscript{82} László Salamon would later be elected as a judge to the Constitutional Court.

\textsuperscript{83} In 2010, MszP was the largest opposition (15 percent of seats) party to Fidesz and LMP was the third and smallest opposition party (4 percent of seats). The second opposition party was Jobbik (12 percent of seats). Since MszP and LMP do not wish to be associated with the far-right Jobbik party, they call themselves the “democratic opposition.” The number of seats mandated to each party changed after the 2014 election.

\textsuperscript{84} Parliamentary resolution No.9/2011. (III. 9.) Official Gazette.
constitution due to the national holiday commemorating the 1848 Revolution that takes place on March 15th each year. The resolution also stated that the proposed Constitution could be written with or without taking the draft principles into account. The first stage of the drafting process was disconnected from the second, and the drafts were written in secrecy. It is rumored that the Constitution’s lead author, József Szájer, wrote much of it on his iPad.85 Szájer at the time was not even a member of Hungarian Parliament. Nevertheless, Szájer is a member of the party’s inner circle and a Fidesz member to the European Parliament. There is no official record of who was involved in the drafting process, consultation, opinions engaged, or how the final draft was created, despite many Fidesz MPs claiming credit for being part of the process.

The draft of the Constitution came out on March 14, 2011, and was introduced into Parliament as a private member’s bill by Péter Ágh from the Fidesz party and András Andrádszki from the Christian Democratic party. A private member’s bill in Hungarian Parliament bypasses steps normally required by government bills. Government bills typically require impact assessment as well as consultation from relevant agencies that must enforce the law and civil society groups that would be affected by the law. Because the impact assessment and consultation were not required, they were of course not performed by Parliament. Regardless, the Fidesz bloc insists that the public was involved in the consultation process since they sent out questionnaires to registered voters in late February and early March 2011. However, the questionnaire did not address any substantive questions about constitutional design and were sent out right before the constitutional draft appeared, which meant that the questionnaires could not be collected and assessed in time to affect the

draft. On April 18, 2011, the Fidesz bloc in Parliament passed the new Constitution (the Fundamental Law) without a single vote from opposition parties. The Socialist MszP and new Green LMP parties abstained from voting as a form of protest, but votes from these parties would have been inconsequential due to the Fidesz supermajority. During the drafting process and prior to adoption, thousands of protesters demonstrated in Budapest to voice their disapproval and hope to persuade the government not to adopt the new Constitution. Protesters were concerned with the government overextending its power, limitations on freedoms, and forcing Christian ideology onto citizens. Nevertheless, the voices of those who opposed the Fundamental Law were not powerless to prevent its adoption.

The Fidesz government has successfully achieved a key element of stealth authoritarianism. The government first used its supermajority to amend the rules for drafting a new Constitution. Several procedural rules were bypassed, like public consultation and impact assessment. Next, the Fidesz government was able to write the Fundamental Law without any input in drafting the document from oppositional parties, without a legitimate debate Parliament, and without a single vote from opposing parties. Now that the Fidesz government has created its constitutional order, the government begins to dismantle formal checks against its centralized power.

Dismantling the Judiciary and Formal Checks Against the Executive Branch

The leaders of the 1989 democratic transition recognized that the unicameral parliamentary system in Hungary relies on a formal judiciary institution to check the power of the closely-knit legislative and executive branches. As the Fidesz government established its authority in Parliament, the Prime Minister’s office and the Presidential office, it began to dismantle the Constitutional Court in order to further consolidate power. Elimination of the
Constitutional Court’s strength and independence would essentially eliminate all the formal checks against the Fidesz government. It is necessary to examine a series of legal battles between the Constitutional Court and the Fidesz government—along with uncontested legislation—to realize certain interactive components of stealth authoritarianism: consolidation of power for executive branch through constitutional order, weak formal institutions and rule of law, and subtle constitutional violations and maximum usage of constitutional loopholes.

The initial step to weaken the strength and independence of the Constitutional Courts was packing the Court with judges selected by the Fidesz government. First, the procedure for electing Constitutional Court judges was amended so that a single two-thirds Parliamentary vote can place a judge in the Court. Prior to the amendment, multiparty agreement was necessary for nominating a judge to the Court. Next, the Fidesz government increased the number of judges on the Court from 11 to 15, which allowed the government to pack the Court with judges of its choice. The Parliament also gave itself the authority to elect the Constitution Court’s president. This was previously the task of the Court’s judges to elect its president. These three acts occurred in the Fidesz government’s first year in power. Each placement of the new judges into the Court was done so without any opposition party influence. The Fidesz government selected nine out the fifteen judges in its first three years. Currently, only three sitting judges were appointed to the Court prior to 2010. As expected, the new judges in the Court have voted in unison with the Fidesz government’s position in

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86 The original amendment was to the 1989 Constitution, but this rule also became a part of the Fundamental Law.
each case heard by the Court, with only a few exceptions. Only Justice István Stumpf has gone against party lines more than once even though he is a member of the Fidesz party. He has been ridiculed as a disloyal and traitorous party member.

As the Court was in the process of being packed with Fidesz loyalists, it fought back against the government on a number of occasions. The first battle between the Fidesz government and the Constitutional Court was over a 98 percent retroactive tax against the severance payments paid to all state officials who left their posts after Jan. 1, 2010. It is likely that this tax was aimed at the officials from the previous government who were leaving office to make room for the new Fidesz appointees. The Court found this law to be unconstitutional on the grounds that it violated the Constitution’s prohibition of *ex post facto* laws and the size of the tax was confiscatory. In retaliation, the government passed two constitutional amendments. The first amendment restricted the jurisdiction of the Court so it could generally no longer review any law that impacts fiscal or tax policy. The second reenacted the retroactive tax, extending the tax back five years. After the new retroactive severance tax went into effect, it was challenged before the Court again. The Court heard the case, despite the constitutional amendment that restricted its jurisdiction, and struck down the tax again. The Court bypassed its constitutional jurisdiction by claiming the tax violated

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89 See Alkotmánybíróság (AB) [Constitutional Court] Oct. 28, 2010, MK.184/2010 (Hung.).
90 The Constitutional amendment allowed the Court to only review fiscal or tax policy cases that infringe on the right to life and human dignity, the right to the protection of personal data, freedom of thought, conscience and religion, and Hungarian citizenship rights. However, it is unlikely that tax and fiscal policy will affect any of these rights listed.
91 See Alkotmánybíróság (AB) [Constitutional Court] Oct. 5, 2011, MK.37/2011 (Hung.).
human dignity rather than being a fiscal matter. However, the Fidesz government found a significant loophole in the Court’s decision. As the Court limited its judgment to 2005-2010, which was prior the constitutional amendment restricting its jurisdiction, the Court acknowledged that the Parliament could restrict its jurisdiction going forward after passing the 2010 amendment. Therefore, the taxes levied on severance payments after the jurisdiction-limiting amendment that went into effect were constitutional.

Next, the Court reviewed the constitutionality of the amendment restricting its powers on fiscal and tax laws. Unfortunately, the Court found that it did not have the powers to evaluate constitutional amendments for substantive unconstitutionality because the amendment was passed in a formally constitutional manner. Nevertheless, the Court chastised the Fidesz government for frequently amending the Constitution in its first year of office; these actions were prior to the enactment of the Fundamental Law. The three dissenting justices—András Bragyova, László Kiss, and Miklós Lévay—were all elected prior to 2010. Former Chief Counsel to the President of the Hungarian Constitutional Court Gabor Halmai remarked, “the Court created a very bad precedent, the Majority of Constitutional Judges voluntarily signing the death sentence to judicial review.”

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92 “The Constitutional Court annulled again the retroactive effect of the 98 per cent tax. The decision was based on the Court’s competence to protect human dignity. The Court argued that the retroactive effect of the tax was an affront to this right, since it attempted to tax gains on which tax had already been lawfully paid. Under the decision, the tax office cannot collect tax under the new 98 per cent tax rule for income earned in 2005-2010 and any tax already collected under this category must be refunded.” Alkotmánybíróság (AB) [Constitutional Court] Oct. 5, 2011, MK.37/2011 (Hung.).
94 See Alkotmánybíróság (AB) [Constitutional Court] July, 12 2011, MK.61/2011 (Hung.).
The next blow dealt to the Court’s judicial review powers was found in Fundamental Law, which became effective on Jan. 1, 2012. The Fundamental Law ended *actio popularis* and implemented a German-style constitutional complaint system. The German-style constitutional complaint process only allows those who are affected by an unconstitutional law to bring a complaint before the Court. It is rare that laws that involve institutional power and the structure of government institutions directly affect individuals in a manner that is not abstract. These abstract constitutional challenges can still be brought before the Court by ombudsmen, the President or 25 percent the members in Parliament. However, the current oppositional party division between the far left (the Socialists [MszP]) and the far right (Jobbik) make it unlikely that 25 percent of MPs will be able to organize a challenge. In addition, the Fidesz government eliminated of three of the four ombudsmen postions. Further, the President who is elected by MPs is not likely to challenge the current government on constitutional issues.

The first case to be brought before the Court under the new complaint system ironically involved the lowering of the retirement age for ordinary courts judges from 70 to 62 on the day the Fundamental Law went into effect (Jan. 1, 2012). In one fell swoop, 10 percent of the ordinary judiciary were forced to retire, including eight of the 20 court presidents at the county level and 20 of the 80 Kuria judges (Supreme Court). Prior to the judicial retirement law, the Fidesz government suspended the usual procedure for electing judges from June 2011 to January 2012 until the Fundamental Law went into effect. The power to fill the empty seats was given to the newly elected President of the National Judicial Office Tünde Handó, who is wife of József Szájer who infamously wrote much of the

96 The Supreme Court, also known as the *Kúria*, is the highest court in Hungary. The Constitutional Court in Hungary is a special court that specifically exercises judicial review over Parliaments procedures and laws.
Fundamental Law on his iPad. Several prematurely retired judges brought their cases before the Constitutional Court. On July 16, 2012, the Court ruled that lowering the retirement age was an arbitrary change in their status and violated the independence of the judges.97 Dissenting opinions all came from justices elected by the Fidesz parliamentary supermajority: Justices Balsai, Dienes-Oehm, Svívós, Lenkovics and Szalay, Pokol and Stumpf. After the Court shot down this law, Prime Minister Orbán angrily said in a press conference, “the system is to stay,” despite the Court’s ruling that the law was unconstitutional.98 In response, the European Commission of the EU began to apply political pressure on the government and began an infringement procedure. The Fidesz government replied and changed the law so the retirement age became 65 and the retirement process would be over ten years, instead of retiring at 62 over a one-year process. Increasing the retirement process to ten years allowed many judges to work past the age of 65.

The next battle between the Fidesz government and Constitutional Court came after the Court ruled that parts of the Transitional Provisions to the Fundamental Law were unconstitutional. The Fundamental Law referred to a list of laws called the Transitional Provisions that specified how to implement the new constitution, but its legal status was ambiguous from the start. The Transitional Provisions were passed in Parliament on Dec. 30, 2011, and went into effect the same day the Fundamental Law went into effect on Jan. 1, 2012. Parliament claimed the Transitional Provisions were amendments to the Fundamental Law. Parliament was trying to make amendments to the Fundamental Law before it even came into effect. The ombudsman who brought the challenge before the Court said

97 See Alkotmánybíróság (AB) [Constitutional Court] July, 16 2012, MK.33/2012 (Hung.).
Parliament had not passed the Transitional Provisions as a constitutional amendment and could not be part of the constitution.  

The Court examined not only the formal Parliamentary procedure for amending the Fundamental Law but also reviewed the subject matter of what a constitutional amendment should be. All of the judges elected before the Fidesz government took power voted to strike the Provisions. At this time, seven of the 15 judges in the Court were appointed and elected by Fidesz, and they did not yet have a decisive majority. This is one of the occasions that Justice Stumpf voted against the government. The Court found that constitutional amendments must take proper form through direct incorporation into the constitution rather than laws and rules tacked onto the end of the constitution. Moreover, the Transitional Provisions could not be part of the Fundamental Law because the transitional nature of these laws only allows them to function during the transition period between constitutions. In addition to striking down the permanence of the Transitional Provisions, the Court also found that the Provisions could not regulate other topics and act as an “open gateway” to push through all kinds of permanent changes to the Fundamental Law without amending the constitutional text.

The Court struck down all parts of provisions that were not transitional. This included the introduction of the Transition Provisions and its first four articles. The introduction condemned the pre-1989 communist regime run by the Hungarian Socialist Workers’ Party (communist party) as a criminal organization and claimed the largest opposition to Fidesz in Parliament, the Socialist party (MszP), is the communist party’s successor. The Provisions

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99 See Alkotmánybíróság (AB) [Constitutional Court] Dec. 28, 2012, MK.45/2012 (Hung.).

100 See Sect. IV P4 in Alkotmánybíróság (AB) [Constitutional Court] Dec. 28, 2012, MK.45/2012 (Hung.).
also removed statutes of limitations for ‘crimes’ committed during the communist era, and opened up the door to prosecute MszP members for these ‘crimes.’ Article 11(3)(4) allowed the head of the National Judicial Office to move cases from court to court at her discretion, and this power was also given to the Prosecutor General. There is a long list of laws thrown into the “open gateway” that were removed by the Court.101

The battle over the Transitional Provisions did not end here. The Fidesz government reenacted all the components of the Transitional Provisions with the Fourth Amendment to the Fundamental Law. The Fourth Amendment struck a major blow to the Constitutional Court by nullifying all the decisions the Court made opposing the Fidesz government since the Fundamental Law became effective.102 The Court previously found that the Fundamental Law’s definition of the family was unduly narrow as it did not include same-sex partnerships and other non-canonical family formations,103 but the Fourth Amendment reinstated the requirement that “family ties shall be based on marriage and the relationship between parents and children.”104 The Court voided the law that that criminalized homelessness, but the Fourth Amendment reinstated this.105 The Court found the law that banned displaying extremist symbols, specifically the swastika and the Soviet red star, unconstitutional. The Fourth Amendment not only made speech against minorities illegal but also went a step further to ban hate speech against the Hungarian Nation.106 The Court ruled against the law that removed the legal status of more than 300 churches, which also gave Parliament the sole

101 See Transitional Provisions articles 12, 13, 18, 21, 22, 23, 27, 28, 29, 31, and 32 for more laws found unconstitutional by the Court.
103 See Alkotmánybíróság (AB) [Constitutional Court] June 11, 2012, MK.43/2012 (Hung.).
105 Fourth Amendment, Art. 8.
106 Fourth Amendment, Art. 5.
power to determine official churches. The Amendment, however, gave this power back to Parliament as well as the additional power to recognize churches based on their willingness to participate in the state’s community goals.¹⁰⁷ The last notable law reinstated by the Amendment is the campaign advertising law that bans parties from advertising in commercial broadcasts that the Court previously found unconstitutional.¹⁰⁸ Not only did the Fourth Amendment reinstate these laws, but also, more importantly, it hamstrung the Court from continuing to challenge the government. Essentially, the Fourth Amendment was the final blow in the battle to eliminate the Court’s check against Parliament and the closely linked executive branch. The Amendment prohibited the Court from expanding beyond the scope of questions submitted for constitutional review; the Court’s review must be “closely related” to the question submitted.¹⁰⁹ It also explicitly restricted the Court from substantively reviewing constitutional amendments for conflicts within the constitution, like the Court had done so with the Transitional Provisions. The Court can now only review amendment procedures.¹¹⁰ The Fourth Amendment nullified all the decisions made by the Court in its 22-year history when the Fundamental Law went into effect.¹¹¹ Prime Minister Obán and Fidesz government eliminated the primary check against it power. After the only substantial check against the Fidesz government’s consolidation of power by Constitutional Court was removed, the other weaker, informal checks were easily dismantled.

The other formal institution that can act as a check against Parliament and the Prime Minister is the President of Hungary. Under the previous constitution, the president had veto powers to suspend a law and either send it back to Parliament for revision or send it to the

¹⁰⁷ Fourth Amendment, Art. 4.
¹⁰⁸ Fourth Amendment, Art. 12(4).
¹⁰⁹ Fourth Amendment, Art 12(4).
¹¹⁰ Fourth Amendment, Art 12(5).
¹¹¹ Fourth Amendment, Art. 19(2).
Constitutional Court for review. In 2010, instead of changing the laws regarding the president’s powers, the Fidesz government changed the person. Through parliamentary procedure, which went uncontested once again due to its supermajority, Fidesz elected the party’s former vice-chair Pál Schmitt as president. President Schmitt did not attempt to block any of the Parliament’s actions during his presidency.\textsuperscript{112} He stepped down in April 2012 due to a plagiarism scandal regarding his 1992 doctoral thesis, but he was replaced with Fidesz co-founder János Áder.

In July 2015, the Fidesz government passed an amendment to the Freedom of Information Act that decimated the former freedom of information guarantees in order for Fidesz to further conceal its actions, protect itself against corruption charges and protect the institutions that the government had established. Freedom of information “guarantees the transparency of the activities of public authorities and of the spending of public funds.”\textsuperscript{113} The amended Freedom of Information Act, which was signed by President Ader, allows public bodies to charge for “human labor costs.” Yet, it is unclear how much the public has to pay for “human labor costs.” Previously, the only charges for data requests came from the cost of copying documents. One provision of the bill allows public bodies to refuse data requests for ten years if the data was used in decision-making processes. This impedes any potential investigation into government spending by the public or civil society groups. The Fidesz government comprehensively blocked any checks against it from political institutions and the public. The next step Prime Minister Orbán and the Fidesz government take to ensure that they are not obstructed at any turn and entrench their power is packing informal institutions with loyalists.


\textsuperscript{113} Definition provided by the Hungarian Civil Liberties Union Freedom of Information and Data Protection Program Director Fanny Hidvégi. See http://tasz.hu/en/freedom-of-information.
The European Union has done little to prevent Constitutional Court’s diminishing strength, independence, and power against the government’s consolidation. The EU only became involved when the retirement age of judges was lowered. But, the EU requested the Fidesz government to redress this matter on grounds of discrimination rather than violation of the Union’s principles of democracy. Further, the Fidesz government only partially complied with the European Union Court of Justice’s decision. The government compromised and extended the retirement age to 65. Moreover, the EU could have obstructed an essential component to authoritarianism by intervening when the Constitutional Court lost its independence and its formal check against the Fidesz government’s growing strength.

**Strong Public Institutions and Entrenching Future Power**

As the Fidesz government was weakening formal institutions and their checks against its supermajority in Parliament, the government was also filling state and bureaucratic institutions with Fidesz loyalists and expanding the powers of these institutions. These institutions include the National Judicial Office, Budget Council, State Audit Office, Public Prosecutor, Media Authority and Council, and Election Commission. The Fidesz government has also created terms for these positions that can last several election cycles as well as remain in office for the unforeseeable future in many circumstances. The following section will address each of these institutions and how the Fidesz government has used them for authoritarian ends.

The Constitutional Court was not the only part of the judiciary that lost its independence. Under the former Constitution, a panel of judges selected the lower-court judges. The Fundamental Law replaced this process when it established the National Judicial
Office (NJO). Parliament elected Tünde Handó, the wife of József Szájer, the infamous Fundamental Law drafter, as the president of the NJO. The NJO president is elected to a nine-year term; however, she can only be replaced after her term expires once Parliament has selected a candidate with a two-thirds vote. Therefore, Handó may be able to legally remain in office past her nine-year term if Parliament cannot muster a two-thirds majority to replace her. Even if the Fidesz party loses its majority in Parliament, the new majority would need to garner support for two-thirds vote to remove her. Fidesz government has implemented this same replacement rule for the head of all the informal institutions mentioned above.

Indeed, this move to insert a Fidesz-friendly figure in the role of NJO president is highly consequential for the purposes of institutional control. The head of the NJO has the power to select new judges, promote and demote judges, begin disciplinary proceedings, and select court leaders. The NJO president chooses new judges from a list prepared by local judicial councils, but she creates the application process and can reject lists created by the councils and restart the process. The President of Hungary signs off on all judicial appointments, but the Fidesz appointed President is unlikely to reject appointment made by another Fidesz loyalist. The Fourth Amendment also gave the NJO president the authority to reassign cases to any court in Hungary. The best examples of this office working to the benefit of the Fidesz government occurred in February 2012. Handó reassigned a case involving a high-profile corruption case against MszP officials and another case that was an appeal to criminal corruption conviction against a Fidesz party member from a Budapest court to the countryside. Both decisions were favorable for the Fidesz government. Handó effectively has the power to decide which judge hears any case.
The Fundamental Law created the Budget Council, which is comprised of three members. Two members are elected by a two-thirds vote in Parliament for six-year terms and the third member is appointed to a 12-year term by the President of Hungary. Fidesz loyalists were of course selected for these positions. The Budget Council can veto any budget proposed by Parliament if it adds even one forint (Hungarian currency) to the national debt. The Fundamental Law provided the President with the power to dissolve Parliament and call for new elections if a budget is not agreed upon by March 31 of each year. Moreover, if Fidesz is in jeopardy of losing its power in Parliament to another party, this provision could thwart the oppositional party’s chance to take control of Parliament.

Under the new order of the Fundamental Law, the State Audit Office, which was formerly an incredibly strong and independent institution, has been given the power to investigate the alleged misuse of public funds. However, the former Fidesz MP who was elected to the 12-year term as head of the Office has no professional audit training. Similar loyalist-packing took place in other key state bureaucratic institutions as well. The head of the Public Prosecutor’s Office, Péter Polt, was nominated in 2010 by President Schmitt and elected by a two-thirds vote in Parliament. Polt became a Fidesz member in 1993 and ran for a Parliamentary mandate in 1994, which he lost. The number of ombudsmen has been reduced from four to one. Formerly in Hungary, ombudsmen had their own office, staff and jurisdiction to monitor certain human rights areas. The new regime only has one ombudsman who has two deputies and the staff has been greatly reduced. Specifically, the data-protection ombudsman’s office was removed, and this authority was consolidated into the government and its independence has been abolished.

The National Election Commission (NEC) is comprised of seven members that are appointed by the President and elected with a two-thirds vote from Parliament. As with the NJO and the Budget Council, among others discussed above, each NEC commissioner is a Fidesz loyalist. NEC commissioners are elected to nine-year term but remain in office if Parliament cannot garner a two-thirds vote to replace the commissioners once their term has expired. The NEC is responsible for overseeing that election laws are followed, deciding on complaints, and administering final results. Fidesz control over the NEC provided Fidesz incumbents with tremendous advantages over challengers during the 2014 election. The commission’s seemingly unlimited term will provide Fidesz incumbents with advantages over challengers in the future.

Hungary’s media regulatory body includes the Media Authority and the Media Council. The Media Authority is hierarchically superior to the Media Council, and it consists of three elements: the President of the Authority, the Media Council, and the Office of the Media Council. The President of the Authority is appointed by the President of Hungary after being nominated by the Prime Minister and serves a nine-year term. The Fidesz government selected former Fidesz MP Annamária Szalai as the Media Authority’s President. The Media Law created the system so the President of the Media Authority is also the Chairperson of the Media Council. The President-Chairperson has the sole power to appoint positions in these bodies, and Szalai appointed Fidesz loyalists to key positions. Per usual, the President-Chairperson can remain in office after the term expires until Parliament musters a two-thirds majority to elect a replacement.

In addition to packing state institutions and expanding their roles, cardinal laws have entrenched the Fidesz agenda into future governance, whether or not the Fidesz party has a
majority in Parliament. Cardinal laws in Hungary are those passed by Parliament that require a relative two-thirds vote to pass as well amend.\footnote{A relative two-thirds vote requires a two-thirds vote as long as Parliament has a quorum. An absolute two-thirds vote requires a two-thirds majority of all members of Parliament.} In order to enact or amend the cardinal, there must be an absolute majority. Therefore, cardinal laws have become entrenched in legal code almost as much as the Fundamental Law due to the high standard to overturn these laws. The Fidesz government with its supermajority has been able to pass cardinal laws at will since 2010. These laws will remain in the legal code until a new party earns a supermajority in Parliament or is able to build a two-thirds coalition.

Packing informal institutions with loyalists is a vital component for constructing a stealth authoritarian government. These public institutions typically regulate government activity and can provoke legal actions for violations. These institutions also ensure that the political playing field is level. By packing informal institutions with loyalists, the Fidesz government has used these institutions to shelter itself from regulation and has provided the party with great advantages over opposing parties that may present serious challenges against the Fidesz government in the future. Further, the Fidesz government has entrenched its authority into informal institutions with the seemingly unlimited terms and replacement procedures for officials that a new government would have difficulty passing without a supermajority. Packing informal institutions with loyalists further entrenches Fidesz government’s institutional power.

**Controlling the Media**

Stealth authoritarianism relies on controlling the media to block dissent, promote self-censorship in journalists, and as an advantage for elections. The Fidesz government passed legislation and packed institutions to gain control over the media. In 2010, Parliament passed...
two laws to regulate media: the Media Act and the Press Act, which are commonly referred
together as the Media Laws. While the Media Act restructured the media regulatory
system by creating the Media Council and the Media Authority, the Press Act involved
media content and press regulation—both of these Acts are cardinal laws. The Media Laws
damage freedom of expression, media pluralism, and press independence. The new laws
provided the Media Authority and Council with tremendous amounts of power. In addition to
the Media Laws, Parliament passed a progressive tax on advertising revenue for media. The
Council of Europe’s Venice Commission commented on the Media Laws that, “[t]he three
legal texts under examination are extremely lengthy, complex and regulate virtually every
aspect of the media sphere.”

The Media Laws use vague language that provides the Media Authority and the
Media Council with the legal ambiguity to facilitate arbitrary application of the law. For
example, Article 16 of the Press Act prohibits media content that violates “constitutional
order.” Throughout the Media Laws, the same vague language for illegal speech applies to
minorities, religion and political beliefs, and nearly every other category of speech.
Furthermore, the regulatory bodies do not have a set of guidelines for interpretation of illegal
content and application of sanctions.

The Media Act provides a variety of sanctions to media outlets, including fines,
suspensions of the outlet’s operations, deletion of the outlet from the media register or

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116 Act CLXXXV of 2010 on Media Services and Mass Media; Act CIV of 2010 on the Freedom of
Press and the Fundamental Rules on Media Content.
117 These criticisms have come from the European Parliament, European Commission, the Council of
Europe’s Human Rights Commissioner, Venice Commission, OSCE, international and domestic NGOs.
119 Article 17, Press Act.
120 Article 20 (5), Press Act and Article 24, Media Act.
termination of the public contract on broadcasting services. The maximum fine for a media service provider with ‘significant market power’ is 200 million HUF (approximately $724,000 USD), and the maximum fine for online media is 25 million HUF (approximately $90,000 USD). Court proceedings do not have a suspensive effect on these fines as the Media Council collects them regardless of a pending challenge in court. These large fines have led journalists and media outlets to self-censor in fear that their outlet will not be able to survive economically if they receive a large fine. The fact that the Fidesz Parliament elected the members of the Media Council and the Media Authority increases the likelihood of self-censorship. The result has been limited dissent and critique of the Fidesz government.

The Media Laws also require “balanced” coverage. Balanced coverage requires news programs to clearly distinguish between facts and opinions. Once again, the term balanced is incredibly vague and subjective. Requiring balanced coverage seems like a respectable request, but facts should be comprehensive and accurate rather than balanced. It can be nearly impossible to separate fact from opinion in countless situations. For public media services, the National News Agency (NNA) selects the news materials, and NNA is the only authorized provider for public media. The Media Council Chairperson selects the NNA director. Accordingly, well-informed or educated Hungarians with access to multiple media sources consider public media services to be the mouthpiece for the Fidesz government. However, many Hungarians living outside of Budapest in the countryside either do not have access to Internet and other media sources or cannot afford media service.

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121 Specifically in Article 187.
122 Articles 163 and 189, Media Act.
123 Article 13, Press Act.
124 Article 12(4), Media Act.
125 Article 101(4), Media Act.
126 This opinion comes from conversations my experiences living in Budapest.
subscriptions. So, the only news that many rural Hungarians receive is public news. This is a sizeable population considering that 30 percent Hungarians live in rural areas.\textsuperscript{127} Rural Hungarians do not have access to multiple sources of information and points of view. The lack of information is dangerous and partially a reason why rural Hungarians have supported the Fidesz party despite its authoritarian practices.

In another attempt to prevent diverse perspectives into Hungary, the Fidesz government created a new advertisement tax for media outlets. This tax, however, was only created to tackle one media outlet; this just so happens that this media outlet is the largest in Hungary. On June 11, 2014, Parliament passed Act XXII on Advertisement Tax to create a new progressive tax on media outlet’s advertising revenues. The taxation levels increase based off an outlet’s net revenue, and the highest rate is set a 50 percent for outlets with revenues exceeding 2 billion HUF.\textsuperscript{128} There is only one media outlet in Hungary, however, that exceeds 2 billion HUF: the Luxembourg-based RTL Group, which is owned by Europe’s largest media corporation, Bertelsmann.

Stealth authoritarian regimes attempt to control information and block dissent of their authoritarian policies by controlling the media. Media control provides stealth authoritarian regimes influence over the information received by voters. The Hungarian government has blocked the public from accessing information and arguments from all sides of the political spectrum. Freedom of the media is an essential democratic tool that provides the public with necessary information for local and national debates that is necessary for votes to be informed. The hefty fines issued through arbitrary Media Council decisions have prevented national reporters from providing information to the public. The lack of information was

\textsuperscript{128} Approximately 7.2 USD
apparent in the 2014 election and exacerbated by undue advantages that new election and campaign laws provided to Fidesz incumbents.

**Ruling-Party Turnover: Election Laws and Incumbent Advantages**

Elections and the possibility electoral turnover are vital elements of democracy. Electoral turnover allows the electoral process to respond to electoral preferences as well as proves that the incumbent can lose his or her seat.\(^{129}\) Stealth authoritarian governments provide the image that they have free and fair elections, but the outcomes are almost always predetermined in the favor of the authoritarian party incumbents. These regimes will reconfigure nearly every factor of an election to ensure that the current regime remains in power. For instance, stealth authoritarian regimes often reconfigure the number legislative seats, rules for counting votes, gerrymander, and rewrite campaign laws. All of these small advantages working in unison provide the current regime with nearly insurmountable advantages in elections.

As previously discussed, the disproportionate electoral law gave the Fidesz party 68 percent of seats in Parliament with 53 percent of the popular vote. In 2014, the Fidesz party retained its supermajority with only 44 percent of the vote. During this Fidesz government’s first four years in power, it passed a series of laws that would ensure that the Fidesz government would retain its supermajority. Despite losing its supermajority by one seat in 2015 due to a special election held to replace a Fidesz MP after he was elected to the European Commission, the laws effectively guaranteed the party held onto its supermajority in 2014. Loss of its supermajority by one seat has still hardly prevented the Fidesz government from acting as it pleases. It is nearly predetermined that the Fidesz government

will find a way to regain its full supermajority in 2018, barring drastic changes to the current regime, which do not appear likely.

One of the first acts the Fidesz government made after it gained power in 2010 was to take control of the Election Commission. Parliament prematurely terminated the mandates of Election Commission members who were elected through 2014. Formerly, five seats were filled by a delegate from each party in Parliament while the other five members were filled through mutual agreements made between the governing and opposition parties. The Fidesz party filled all the seats not held by its delegates with Fidesz members. The Election Commission also has the power to block referendums, which weakened civil society’s ability to challenge the government. This was the first step to ensure that the 2014 elections results went in the favor of Fidesz incumbents.

On the surface, the 2014 election appeared to be in line with European democratic election standards. Voters were provided with a diverse option of candidates and votes were recorded accurately. The Fidesz party, however, enjoyed undue advantages. These advantages were created through election conduct regulated by the Fundamental Law, the Act on Elections of All Members of Parliament (Election Act), and the Act on Election Procedures (Election Procedures Act). First, the new election system reduced the number of seats from 386 to 199, and the method of seat distribution was changed. Out of the 199 seats, 106 seats are decided through constituency districts in a one-round majority wins election. The other 93 seats are allocated through a proportional system that is based off the national popular vote for parties that break the 5 percent threshold. Under the previous electoral system, unused votes from the district contests were allocated to the proportional contest

131 10 percent for a two-party coalition, 15 percent for a coalition with more than two parties.
based off the national vote. The new electoral system added the surplus votes from a winning candidate in the district contest were also added to the proportional contest. This led to six extra seats for the Fidesz-KNDP coalition.\textsuperscript{132} The reduction of seats also required redrawing district lines. Redrawing district lines have been criticized by both the Council of Europe’s Venice Commission and the Organization for Security and Co-operation in Europe (OSCE) for its lack of transparency, independence and consultation, and as gerrymandering.\textsuperscript{133} In addition, the district lines created through the Electoral Act were created as a cardinal law and require a two-thirds majority to change the constituency lines. This tremendously reduces the chances of a opposition party winning a majority in Parliament.

As for the campaign process, OSCE found the Fidesz incumbents “enjoyed an undue advantage because of restrictive campaign regulations, biased media coverage and campaign activities that blurred the separation between political party and the State.”\textsuperscript{134} New media laws and campaign advertising laws also provided Fidesz incumbents with an unfair advantage over opposition candidates. The lack of critical reporting due to self-censorship caused by the threat of substantial fines was exacerbated by the lack of independence in public media, as previously discussed. The Fifth Amendment of the Fundamental Law passed in September 2013 amended the Fourth Amendment’s limitations on political advertisements after being pressured by European institutions to do so. However, the results were the same even after the amendment. The Fourth Amendment only allowed political advertisements in mass media if they were aired during the specified electoral campaign time period, in public


service mass media, and for free. The Fifth Amendment allowed private mass media to show political ads, but only during the campaign period and for free of charge. During the 2014 election, none of the Hungarian private broadcasters chose to provide free airtime for campaign ads because of the current economic crisis in Hungary’s media industry. The total lack of ads aired on private broadcasts deprived audiences and voters from a variety of political messages.

Campaigns were nearly indiscernible in rural areas, and there was no clear separation between the Fidesz political party and the government in terms of the campaign advertisements used. The Fidesz incumbents took advantage of an uneven playing field when the Fidesz party used the same slogan as a government campaign, “Hungary is performing better,” that continued to be aired on private broadcasts. This campaign was produced over a year prior to the election, and the rights were sold to the Fidesz party after it aired a remarkably similar campaign ad. OSCE found this to be a clear violation of separation between state and political party for election campaigns. The Media Council did not make any decisions for “balanced coverage” violations even though there were complaints filed. If examined independently, the electoral and campaign laws may appear to have had inconsequential or only minor impacts on the elections. But the comprehensive examination the interactive effects of the all the laws provide Fidesz incumbents with tremendous advantages over opponents and ensured their supermajority in Parliament remained intact. These laws and any future election laws should be analyzed after the 2018 election.

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Strength of Civil Society

Civil society organizations are one of the last lines of defense against authoritarian and violations of freedoms. Civil society groups have the ability to exposure stealth authoritarian regimes to international actors. Essentially, civil society can turn a stealth authoritarian regime into simply an authoritarian regime. Civil society generally acts as a watchdog over government actions and an informal check against the government. Stealth authoritarian regimes weakened civil society’s governance role in various ways, like intimidation or removing its influence in legislative processes. In some countries civil society groups may have only a small presence, which stealth authoritarian regimes find ideal. The Fidesz government found the best way to weaken civil society’s presence in Hungary was through verbal attacks and violent intimidation.

In 2014, Prime Minister Orbán and other high-level government officials began to accuse NGOs of being “political activists…paid by foreign interest groups.”137 Prime Minister Orbán used these accusations to issue audits of 59 NGOs. The Government Control Office carried out these audits. The Governmental Control Office’s legal authority to conduct these audits is “seriously contested.”138 The primary dispute involves the European Economic Area/Norway Grant NGO Fund, which is an important funder for NGOs that focus on human rights, women’s rights, LGBT rights, environmental protection, and anti-corruption. In August 2014, a criminal investigation was opened on NGOs connected with the Fund for


allegedly committing financial crimes by contributing to political parties. In September of that year, Őkotárs and DemNet—two NGOs funded by EEA/Norway grants—were raided. The police seized their computers, servers and documents. Even worse, officers raided the homes of NGO workers, searching the workers and seizing their computers. Four NGOs were sanctioned in December 2014 for not cooperating with the audit that resulted in suspension of their tax registration numbers.

There are larger implications for the assault on civil society. While civil society groups are being pressured with sanctions and closures, the real problem in Fidesz’s attacks on civil society is the limitation of freedom of association. After the raids, many NGOs were deemed as toxic by government accusations and media reports. The negative image placed upon these NGOs has led to loss of potential funders, clients and collaborators, and even lawyers to represent them caused by fear of government attacks. Moreover, as much of the media has been forced to self-censor, civil society groups act as one of the few independent voices able to offer to dissent and critique of the Fidesz government. As a result of these direct attacks to civil society, the viability of publicly challenging government policies and laws was dealt a substantial blow.

The ability to use referendums as challenges against the government was also undermined. The Fidesz government packed the Election Commission with its party members. The Election Commission was given the power to block referendums. A key function of civil society’s role in national democracies is to bolster transparent governance and challenge government policies that violate human rights, fundamental freedoms,

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democracy and rule of law—whether these alleged violations pertain to domestic or international law. In Hungary, referendums that are conducted through popular votes are a vital tool for civil society to derail any government policies that violate human rights, fundamental freedoms, democracy and rule of law. The Election Commission’s power to arbitrarily block referendums potentially eliminates civil society’s role to check the government. Decisions made by the Commission can be appealed to the Constitutional Court. Nevertheless, it is unlikely that the Commission’s decisions will be overturned due to the lack of independence of the Constitutional Court.

**Conclusions**

The Fidesz government has successfully built a stealth authoritarian government. In its authoritarian reversal, this regime has used stealth authoritarian tactics as it worked through democratic channels, or at least the façade of democratic channels, such constitutional amendments, constitutional drafting process, judicial and institutional appointments and elections. The Fidesz government has methodically consolidated power into the hands of Prime Minister Orbán. The principle tool for this government has been its supermajority in Parliament. Despite the presence of multiple parties, the Fidesz government has constructed a single-party state. Initially, the Fidesz supermajority in Parliament was a legitimate choice made by the electorate in 2010. However, the Fidesz government has used this authority for undemocratic ends and has abolished all oppositional debate and input in governance.

Democratic pillars have been torn down for authoritarian ones. Nearly all checks against the government have been removed. The government dismantled the Constitutional Court’s power to check Parliament and the executive branch. The Fidesz government did so
by removing the independence of the Court and eradicating its judicial review powers that could obstruct the executive branch’s consolidation of power. Informal public institutions were given additional powers and packed with Fidesz loyalists for with open-ended term limits. The public institutions no longer operated with the public’s interest in mind. Rather, they function in accordance with Fidesz rule. The demanding procedure to amend Cardinal Laws has also entrenched this government’s rule and policies for the unforeseeable future. Media laws and regulatory bodies have silenced media dissent and critique of the government. The lack of information has had spilled over into elections and campaigns. Election and campaign laws have nearly assured that the Fidesz government will be able to withstand electoral processes and remain in power. Finally, this regime has both legally and physically attacked entities representing civil society, obstructed civil society groups ability to access information of government activities and spending, and grasped control over referendums.

Each of these actions viewed independently might cause one to believe that these are isolated instances violating democratic principles and rule of law. Prime Minister Orbán and his government have consciously made each of these actions with greater intentions of building an authoritarian government. EU institutions have weighed the Fidesz government’s actions in this independent fashion. This is a principal reason for the EU’s inaction and inability to prevent Hungary’s authoritarian reversal. The EU has hardly acknowledged these actions and has only intervened in a few instances. Regardless, the EU has been unable to alter the authoritarian path of the Fidesz government and protect its democratic values found in Article 2.
Case Study: Romania

In July 2012, it appeared that Prime Minister Victor Ponta was going to take Romania down the same path towards authoritarianism as Hungary. Prime Minister Ponta and his center-left Social Liberal Union (USL) Government instituted emergency ordinances—even in the absence of legitimate emergency—that resulted in replacing the Speakers of both Parliamentary Chambers, firing the ombudsman, prohibiting the Constitutional Court from reviewing Parliament’s actions, and threatening the Court’s judges with impeachment. As democracy and rule of law were being violated, Prime Minister Ponta and the Parliament were in the process of impeaching President Traian Basescu. The means of the Ponta Government’s consolidation of power draw comparisons to the Viktor Orbán and the Fidesz government; however, the end results were far different. Ultimately, the Ponta Government was thwarted by Romania’s Constitutional Court and pressures from the EU. The Ponta Government in Romania has employed several similar stealth authoritarian tactics used by the Fidesz government in Hungary. Nonetheless, Romania has not experienced an authoritarian reversal. Political turmoil and consistent ruling party changes have prevented a single faction from gaining a foothold strong enough for an authoritarian. In addition, the extra checks in the structure of Romania’s government, in comparison to Hungary, have played a consequential role. This section will demonstrate that certain elements of stealth authoritarianism must be present for others to be achieved.

Figure 2: The Structure of Romania’s Governmental Branches
The Romanian government has been a perpetual violator of democratic principles and rule of law, even after its accession into the European Union in 2007. The complexity of Romania’s government structure (as shown in Figure 2) in comparison to Hungary has prevented a single leader or political party to consolidate power and thoroughly entrench itself into government structures for the long haul. Political turmoil has also been a crucial factor in preventing a single faction for gaining tremendous amounts of power. Much of the political turmoil has been caused by the poor condition of Romania’s economy and the austerity measures that followed the 2008 global economic crisis, but public protests have also led to several Prime Minister resignations.

In contrast to Hungary, the President’s Office in Romania is a strong check against other political branches. Ironically, this check was implemented by the country’s former
communist leader, Nicolae Ceausescu, who was later executed when the Soviet-supported communist regime fell in Romania in 1989. Ceausescu created a full-blown executive presidency in 1974 by raising the status of the president of the State Council. The executive branch is divided into two sections: the President and the Government. The Government refers to Prime Minister’s Office, Cabinet of Ministers and the majority party or coalition in Parliament. Unlike the ceremonial President of Hungary, the President of Romania has far greater powers that are similar powers to the President of the United States. The Romanian President is Commander-in-Chief over the armed forces. The president has power to veto legislation, grant pardons, institute states of emergency, dissolve Parliament, and call on Parliament for referendums. The President is elected to five-year terms and can serve only two terms. The President also is responsible for nominating a Prime Minister candidate from the majority party or coalition when the Government has a change in power, which then goes to Parliament for a vote. The President can also be impeached for severe violations of the Constitution. Presidential impeachment processes have greatly affected Romanian politics in the past decade.

Following the collapse of the Soviet Union and the subsequent end of Soviet-occupation in Romania, the country drafted and adopted the 1991 Constitution to mark its transition to democracy. In 2003, several revisions were made to the 1991 Constitution for Romania’s integration into the European Union. The amended Constitution was adopted through a referendum that took place on October 18, 2003. Despite opposition and NGO allegations that the vote was rigged, the amendments came into force ten days later. The points of contention by these groups were over the voter turnout and the results. The minimum referendum threshold of 51 percent of eligible voters was barely met, as there was
a 55 percent turnout. Also, the final tally was 91 percent in favor and 9 percent opposed to the amendments. The massive margin of victory raised suspicions. Neither of these claims has been substantiated nor have they been brought to court. The referendum process in Romania over the next decade would be a major point of contention.

**Table 2: Stealth Authoritarian Indicators**

<table>
<thead>
<tr>
<th>Emergency Ordinances</th>
<th>Emergency Ordinances</th>
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<tbody>
<tr>
<td>Strength of the Judiciary(^\text{141})</td>
<td>Moderate</td>
</tr>
<tr>
<td>Strength of Formal Institutions and Government Checks</td>
<td>Emergency Ordinances</td>
</tr>
<tr>
<td>Informal Institutions</td>
<td>Difficult to Pack due to frequent Government changes</td>
</tr>
<tr>
<td>Control over Mass Media</td>
<td>Control is Not Centralized, but media often suffers from a lack of independence</td>
</tr>
<tr>
<td>Strength of Civil Society</td>
<td>Historically Weak and Underfunded</td>
</tr>
</tbody>
</table>

**Use of Law and Constitutional Loopholes for Executive Branch Consolidation**

Since Victor Ponta was appointed as Prime Minister in 2012, Ponta has had two primary objectives. First, Prime Minister Ponta was determined to impeach President Traian Basescu, who was the man who nominated him as Prime Minister. Second, he sought to weaken the Constitutional Court’s judicial review power over Parliament’s actions. Prime Minister Ponta, however, has not been the only Prime Minister to attempt to replace the President as well as undermine the judiciary. Prime Minister Călin Popescu-Tăriceanu also attempted to impeach President Basescu in 2007. While the Fidesz government’s consolidation power comes from its Parliamentary supermajority, the Romanian Government’s consolidation power comes from issuing emergency ordinances. Emergency

\(^{141}\) This is in reference to the independence and strength of the Constitutional Court. Other courts in Romania have had several judges and prosecuted convicted of corruption.
ordinances allow the Government to bypass Parliament and implement law, which are known as legislative delegation power.

Article 115 of the Constitution specifies two types of government ordinances. First, paragraphs 1 to 3 of Article 115 provides legislative delegation powers to the Government:

1. Parliament may pass a special law enabling the Government to issue ordinances in fields outside the scope of organic laws. (2) The enabling law shall compulsorily establish the field and the date up to which ordinances may be issued. (3) If the establishing law so requests, ordinances shall be submitted to Parliament for approval, according to the legislative procedure, until the expiry of the enabling time limit. Non-compliance with the term entails discontinuation of the effects of the ordinance.  

These three paragraphs give the Government the authority to issue laws outside the scope of organic laws. Organic laws in Romania are similar to cardinal laws in Hungary. Organic laws regulate areas of higher importance to Romania than ordinary laws. Organic laws address national borders, citizenship, organization of Government bodies, political parties, and organization and functioning of the courts. Organic laws are also similar to cardinal laws in that they require higher standards for amending or enacting as compared to ordinary laws. The hierarchy of laws in Romania starts with ordinary laws at the bottom, then organic laws, then constitutional laws at the top with the highest authority.

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142 Constitution of Romania, Article 115(1)-(3).
Second, paragraphs 4 to 8 of Article 115 allows the Government to adopt emergency ordinances without a delegation from Parliament.\textsuperscript{143} Paragraph 4 states that “[t]he Government can only adopt emergency ordinances in exceptional cases, the regulation of which cannot be postponed, and have the obligation to give the reasons for the emergency status within their contents.” It appears, however, that the Government’s frequent use of emergency ordinances indicates abuse of this mechanism. Since 2000, there has consistently been over 100 emergency ordinances issued \textit{annually} and in several years there have been over 200 issued. The emergency ordinance procedure allows these ordinances to remain in force unless the second and deciding Chamber of Parliament explicitly rejects it. The Parliamentary majority can keep the emergency ordinance in force by delaying the vote in the two Chambers in Parliament. This has been the cause of government abuses as well as such a high frequency of emergency ordinances issued in recent years.

Article 115 does place two specific limitations on emergency ordinances. Paragraph 6 does not allow these ordinances to pertain to constitutional laws, fundamental State institutions, rights or freedoms set forth in the Constitution, electoral rights, nor forcible

\textsuperscript{143} (4) The Government can only adopt emergency ordinances in exceptional cases, the regulation of which cannot be postponed, and have the obligation to give the reasons for the emergency status within their contents. (5) An emergency ordinance shall only come into force after it has been submitted for debate in an emergency procedure to the Chamber having the competence to be notified, and after it has been published in the Official Gazette of Romania. If not in session, the Chambers shall be convened by all means within 5 days after submittal, or, as the case may be, after forwarding. If, whithin 30 days at the latest of the submitting date, the notified Chamber does not pronounce on the ordinance, the latter shall be deemed adopted and shall be sent to the other Chamber, which shall make a decision in an emergency procedure. An emergency ordinance containing norms of the same kind as the organic law must be approved by a majority stipulated under article 76 (1). (6) Emergency ordinances cannot be adopted in the field of constitutional laws, or affect the status of fundamental institutions of the State, the rights, freedoms and duties stipulated in the Constitution, the electoral rights, and cannot establish steps for transferring assets to public property forcibly. (7) The ordinances the Parliament has been notified about shall be approved or rejected in a law which must also contain the ordinance that ceased to be effective according to paragraph (3). (8) The law approving or rejecting an ordinance shall regulate, if such is the case, the necessary steps concerning the legal effects caused while the ordinance was in force.
transfer of assets into public property. The second limitation stems from the reference to organic law quorum procedure found in paragraph 5. Article 76(1) requires a higher quorum procedure for organic laws where there must be an absolute majority in each Chamber rather than a relative majority used for ordinary laws. Moreover, a strong and independent Constitutional Court is crucial to prevent the Government’s abuse of emergency ordinances.

Strength of the Judiciary

The Constitutional Court was an incredibly weak institution and did not play much of a role in the democratization process throughout the 1990s and early 2000s. The Romanian Constitutional Court was the only court of the same stature in the region that did not have final arbiter powers over constitutional matters—the Polish Constitutional Tribunal also did not have final arbiter status until 1997. Article 145 of the 1991 allowed the Court’s decisions to be overruled by a two-thirds vote in Parliament. Parliament would rarely consider the Court’s decisions as mandatory. The Court also did not have the jurisdiction to settle conflicts between public institutions. Parliament had decision-making supremacy over all constitutional matters for over a decade during Romania’s democratic transition. It was not until the 2003 constitutional amendments that the Constitutional Court began to reflect those of the same authority throughout the European Union. Romania altered the Constitution to bring the Court’s powers in line with EU norms and requirements for accession. Most importantly, the amendments removed Parliaments ability to override Constitutional Court decisions. Not only did the Court begin to decide on constitutional matters, but also the nature of its legitimacy elicited political debates that began to consider constitutional boundaries. This was a novel concept in Romania since liberal democracy and

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constitutionalism were relatively new in the transitioning state. On several occasions, the Court has showed its strength and stood up against the Government’s misuse of power.

The Court began to establish itself through a series a constitutional crises that began as the incumbent National Liberal Government started the impeachment process of President Basescu in 2007. The Prime Minister at the time, Călin Popescu-Tăriceanu, and his Government began the impeachment process for charges alleging unconstitutional presidential activism and involvement in inner-party struggles. Parliament voted to suspend President Basescu. Article 95(1) of the Constitution states that presidential impeachments can only result from “grave acts infringing upon Constitutional provisions.” In an advisory opinion, the Court ruled that the acts committed by President Basescu could not be considered “grave.”\textsuperscript{145} This advisory opinion, however, was not needed because 75 percent of votes cast in the referendum (the final impeachment step) were in opposition of the impeachment. Basescu was reinstated as President after his 30-day suspension. Furthermore, the Court established its presence and likely would have overturned the impeachment had President Basescu not won the referendum.

Another impeachment attempt of President Basescu took place in 2012, this time by Prime Minister Victor Ponta and his USL Government. The impeachment attempt occurred in multiple stages and involved legal maneuvering by the Government. The first step was an attempt to remove the Constitutional Court’s review powers. On July 4, 2012, the Romanian Government issued an emergency ordinance to eliminate the Constitutional Court’s power to check the constitutionality of laws passed by Parliament.\textsuperscript{146} The ordinance amended Article 27(1) of Law 47/1992 on the Organisation and Operation of the Constitutional Court. In

\textsuperscript{145} Advisory Opinion 1/2007.  
\textsuperscript{146} Emergency Ordinance No. 38/2012.
June 2012, 67 MPs challenged the constitutionality of a law that amended that same Article. Due to this pending challenge before the Constitutional Court, the law did not come into force. Yet, the adoption of the emergency ordinance, which had the exact same content as the challenged law, removed the Court’s ability to review the law. The Constitutional Court pushed back against the Government emergency ordinance. The Court ruled on July 9 that the law to amend Article 27(1) was unconstitutional, the adoption of the emergency ordinance was unconstitutional, and the Government behavior was abusive towards to Court.\textsuperscript{147}

The Government issued another emergency ordinance the following day—July 5, 2012. The ordinance amended referendum procedures in Article 10 of Law No.3/2000 on the Organisation of the Referendum.\textsuperscript{148} This emergency ordinance eliminated the 51 percent voter turnout requirement for presidential impeachment referendums. The emergency ordinance lowered the bar for impeachment referendums: “the dismissal of the President of Romania is approved if it meets the majority of valid votes of the citizens that took part in the referendum.”\textsuperscript{149} The Court ruled against the amendment and required that presidential impeachment referenda require that the President’s removal from office must met the same standard that he or she is elected, 51 percent of the population must participate for the vote to be valid.\textsuperscript{150}

While the Ponta Government was attempting to amend to impeachment process, it just so happened that Parliament was in the process of suspending President Basescu for

allegedly overstepping his powers with illegal phone taps, using security forces against political enemies and pressuring prosecutors in criminal cases. Parliament voted on July 6, 2012, to suspend President Basescu for 30 days. While Prime Minister Ponta was attempting to impeach President Basescu in July 2012, he also removed the speakers of both Chambers of Parliament and replaced them with political allies. Ponta also replaced the Ombudsman with one of his choosing. According to Article 98 of the Constitution, after the President is suspended, the Speaker of the Senate and the Speaker of the Chamber of Deputies become the interim President until the impeachment referendum is organized. Given both the Speakers were members of parties that supported President Basescu, Parliament removed the Speakers and replaced them with political allies. The Ombudsman has the authority to challenge emergency ordinances issued by the Government. Therefore, he was removed from office, and replaced with a new ombudsman who did not challenge any emergency ordinance issued during this period.

Moreover, Prime Minister Ponta and Parliament were changing the rules of impeachment while the process had already begun. The impeachment referendum took place on July 29, and nearly 90 percent of the votes cast were in favor of impeaching Basescu. However, the 51 percent quorum was not met because only 46 percent of eligible voters participated in the referendum. On August 21, 2012, the Constitutional Court made its decision on the impeachment. The Court found the referendum to be void, because it did not meet the required quorum. In a game of tug of war, the Government also chose to selectively publish Court decisions in the Official Gazette, which ultimately made the decision ineffective. Romanian court decisions are not effective and binding until they have been published in the Official Gazette. The decision was later published after the European
Commission chastised the Government. President Basescu was re-installed back into office, and ultimately the Ponta Government accepted the Court’s decision.\textsuperscript{151}

Not from a lack of effort, the Ponta Government has been unable to consolidate power and remove the Constitutional Court’s judicial review powers. In contrast to the Hungarian Constitutional Court, there has been no restructuring of the Court or changes in appointment procedures. The Court is comprised of nine justices that serve nine-year terms that cannot be prolonged or renewed. Three justices are appointed by the Chamber of Deputies, three by the Senate and three by the President. The Constitutional Court renews three justices every three years. The Court’s organization laws carefully safeguard its independence and prevent packing the Court by a particular branch.

The ordinary courts in Romania—the High Court of Cassation and Justice, Superior Court of Magistry, Court of Appeals, the Tribunal Courts, and Courts of First Instance—have not endured the same independence. Several judges in these courts have been charged and convicted of corruption. Romania’s accession into the EU came with the Union’s Cooperation and Verification Mechanism (CVM) that monitors the Member State’s progress. A primary CVM focus has been the rampant corruption in Romania. Public official corruption is monitored and investigated by National Anticorruption Directorate. Despite debates about the effectiveness and independence of courts in corruption cases, hundreds of public officials and several judges have been convicted of corruption. Even Prime Minister Ponta is not immune from corruption investigations. In July 2015, Ponta was charged with corruption for allegedly committing fraud, tax evasion and money laundering dating back to his time as a lawyer before he became Prime Minister in 2012. He is the first Prime Minister

to stand trial while in office.\textsuperscript{152} Corruption trials are slow moving in Romania; the trial is currently in progress, as of October 2015.

On October 30, 2015, a fire broke out in a Bucharest nightclub during a performance by a local band. The fire killed 56 people and hundreds were injured.\textsuperscript{153} A wave of protests broke out in Bucharest—a some of which were the largest since the fall of communism in 1989—that charged the government with corruption, inaction and ineptitude in the wake of the tragedy. Protesters accused the government of being too lax in issuing permits and failing to sufficiently inspect public venues.\textsuperscript{154} As a result of the protest, Prime Minister Ponta resigned on November 4, 2015. In his resignation statement, Ponta said, “I have the obligation to acknowledge that there is legitimate anger in society. In my years as a politician, I put up a fight in any battle with political opponents. However, I won’t put up a fight against the people.”\textsuperscript{155} Ponta’s Cabinet was replaced two weeks later, and Parliament elected Dacian Ciolos, a political independent, as Prime Minister.

Prime Minister Ponta was unable to establish a key component of stealth authoritarian—consolidation of power into the executive branch and removal of formal checks from other branches of government. The Constitutional Court maintained its strength and independence to prevent this from occurring. From this point, a stealth authoritarian regime will face severe difficulties to establish the other components of authoritarianism. The regime will likely be unable to pack informal institutions without contestations, ensure the regime maintains its power through elections, and control the media. These components have also been obstructed by political turmoil and consistent regime changes in Romania. Despite

\textsuperscript{152} http://www.bbc.com/news/world-europe-34279002
\textsuperscript{155} Ibid.
a legitimate authoritarian challenge in Romania, the current situation shows its democratic deficits and vulnerability of an authoritarian reversal.

**Ruling-Party Turnover and Packing Public Institutions with Loyalists**

Political turmoil and frequent regime changes in Romania has not allowed political elites to thoroughly pack public institutions with loyalists. Prime Minister Ponta and his Government have challenged democratic principles and rule of law, but the Government has not successfully consolidated power in the executive branch. The has been, in part, caused strength and independence of the Constitutional Court, checks from the Presidency and the opposition party checks in Parliament. The inability for any government faction to consolidate power in Romanian politics has been affected by political turmoil. The nightclub fire protests and Ponta’s resignation are the most recent examples of political turbulence.

Political stability in Romania has been incredibly volatile in recent years. Political turmoil has been partially caused by the recent crackdown on corruption, but much the turmoil has been caused by economic instability. There were three Governments in 2012. Prime Minister Emil Boc (Democratic Liberal Party) and his cabinet resigned in February 2012 following weeks of protests against austerity measures and surviving several votes of no confidence. In April 2012, Prime Minister Mihai Razvan Ungureanu’s Government was forced out of office after a vote of no confidence in Parliament. President Basescu then appointed Social Democrat Victor Ponta as interim Prime Minister, who was later voted into office when the Social Democratic Party and its coalition won the Parliamentary majority in December 2012.

The National Anticorruption Directorate and CVM have closely watched state institutions and public officials. From March 2013 to March 2014, Romanian courts decided
on 281 convictions of corruptions against 857 people in this period. This included Cabinet Ministers, MPs, mayors, and former Prime Minister Adrian Nastase received his second corruption conviction.\textsuperscript{156} Prime Minister Nastase resigned in March 2006 due to corruption charges that he was later convicted of in 2012. In 2014, 23 judges, including four judges on the High Court of Cassation and Justice, six Chief prosecutors and six prosecutors were indicted on corruption charges.\textsuperscript{157} The National Anticorruption Directorate has begun investigations of over 4,200 corruption allegations in this same time span. These corruption charges and convictions are not likely the attacks to political opponents from a single regime due to the fact that there has not been a consistent coalition in power since 1996 when the neo-communist coalition lost its majority.

\textbf{State of the Media and Elections}

The economic crisis has hit the Romanian media hard. Advertising revenues fell sharply, and several media companies reported that their advertising revenues dropped by 70 to 80 percent from 2008 to 2009.\textsuperscript{158} Media groups began to cuts jobs and wages. Some groups cut entire sections, like the editorials, and went from daily to bi-weekly or weekly.\textsuperscript{159} Investigative journalism steadily disappeared due to the industry’s poor financial status.\textsuperscript{160}

Article 31 of Romanian’s Constitution guarantees the right to information, but government

\textsuperscript{156} http://www.romania-insider.com/over-850-romanians-convicted-for-corruption-ministers-mps-judges-mayors-prosecutors/123600/
\textsuperscript{158} European Journalism Centre. Media Landscape: Romania. http://ejc.net/media_landscapes/romania
\textsuperscript{159} Ibid.
officials have frequently blocked journalists from accessing information in corruption cases.\textsuperscript{161}

The effects of the economic crisis on the diminished media landscape have allowed certain politicians to use the media to push their political agenda. Former Senator and media magnate Dan Voiculescu founded one of the largest media conglomerates in Romania—Intact Media Group. Vioculescu also founded the Romanian Conservative Party (PC), which is part of the USL coalition that currently has the majority in Parliament. There was widespread criticism claiming that Vioculescu used his media conglomerate for the impeachment campaign of President Basescu in 2012. There is an inherent conflict of interest when a Senator and political party founder has control over one of the largest media groups in Romania. Vioculescu was later convicted of corruption and money laundering and sentenced to ten years in prison—a reoccurring theme for Romanian politics. The imprisoned Vioculescu was facing corruption charges again in 2014. His media outlets repeatedly attacked the chief anticorruption prosecutor who was pursuing graft charges against him. Other news outlets have been impacted by political influence as well. In July 2014, a news station owned by Romania cable and satellite behemoth RCS-RDS fired reporter Cristi Citre after he criticized Prime Minister Ponta on his personal Facebook page.

As diversity in traditional media source outlets has faded away, many Romanians have chosen to use the Internet for news. Over 50 percent of the population used the Internet for news in 2014.\textsuperscript{162} The problem is that only a few online news outlets in the country are profitable. Online outlets cannot afford to conduct original reporting. Instead, they generally act as consolidators of already reported news, which limits the media pluralism and diversity.

\textsuperscript{161} Ibid.
\textsuperscript{162} Ibid.
To make matters worse for Romania’s media landscape, reporters are often intimidated, verbally abused and threatened with physical harm by the police as well as the public. In November 2014, police arrested and beat reporter Stefan Mako who works for the online news site Casa Jurnalistului after he recorded police arresting a man in Bucharest. In August of that year, protesters attacked three journalists as they covered a rally. These attacks have damaged journalists ability and courage to cover certain news topics.

Like the Hungarians, the Romanian public suffers from a lack of information due to self-censoring journalists, and news is often dominated by political attacks. The media, however, does not suffer from the same packing of regulatory and monitoring bodies with government loyalists as in Hungary. The National Audiovisual Council (CNA) is the sole media regulatory body in Romania. There are 11 members in the Council, and their appointments are as follows: three appointments for the Senate, three from the House of Deputies, two from the President and three from the Government. There are allegations that the Council is politicized, its decisions are often arbitrary and it is overall ineffective. Regardless, a single branch or political faction does not appear to have direct control over CNA.

The Government and Parliamentary majority are responsible for selecting the leadership for the public broadcaster. Freedom House reported that this selection led to pro-Government bias in media coverage for the 2014 Presidential election.\(^\text{163}\) There was also a lack of transparency in the allocation of public advertising funds provided by the EU for the 2014 presidential election.\(^\text{164}\) It is still difficult to thoroughly assess the impact this coverage had on the Romanian public, especially due to the history of the Romanian citizenry’s


\(^{164}\) Ibid.
distrust of public institutions and lack of civic engagement.\textsuperscript{165} Although the state of Romania’s media appears to be in disarray, one political faction does not appear to have control and dominance over the media like the system the Fidesz government created in Hungary. There are conflicts of interests that suggest absence of media independence in some cases. Indeed, there are several instances of apparent government pressure on the media and the news outlet caving to the government pressure. For instance, firing a journalist for his critique of a government official on a private Facebook account threatens media independence and promotes self-censorship. However, the state of the media in Romania does not suggest systematic control exhibited in authoritarian states. Influence over the media is too fractured, and there is not one clear political faction in control.

\textbf{Civil Society}

Civil society has not been able to completely and consistently entrench itself in Romania since the 1989 transition. At times, civil society has been part of democratic processes, particularly after the National Salvation Front (FSN) lost its majority in the 1996 parliamentary elections. The National Salvation Front Romania quickly grasped power after Ceausescu was executed in 1989. But the regime changes that resulted over the next two decades made it difficult for civil society groups to create specific plans of attack other than its focus on corruption. Just as the media industry, civil society in Romania has been weakened by the country’s economic situation. Civil society groups have been historically underfunded in Romania. Moreover, civil society has remained relatively weak in Romania over the past three decades.

Following Prime Minister Ponta’s resignation, for the first time in the history of Romania’s young democracy the President has promised to consult civil society in appointing the new prime minister. Current President Iohannis invited civil society representatives to consultation meetings for selecting nominees. Civil society representatives included individuals from Freedom House, Funky Citizens, Hope and Homes for Children Romania, and Salvati Dunarea Si Delta. The President’s inclusion of civil society in the process was in response to the ongoing protests of the Bucharest nightclub fire. On November 6, 2015, President Iohannis said, “I believed that, in this situation, when the street played a decisive role, when civil society formulated demands, requests, specific, it was very important to have this meeting.” These protests have provided the citizenry and civil society with momentum as a legitimate force in governance in Romania, but one should not hastily declare that civil society organizations will continue to be a factor in Romania’s democratic processes. This may just be a move to appease the protestors. It is best to wait and see whether civil society’s strength continues to grow in Romania.

Conclusions

No political faction in Romanian politics has been able to build an authoritarian regime since the state began democratizing in 1989. Nevertheless, Romania suffers from democratic deficits and rule of law violations in several areas. The Government has repeatedly abused its emergency ordinance powers in attempts to expand its powers and legal authority beyond the normal constraints of law. However, the Constitutional Court has blocked the Government on multiple occasions and has proved that the Court can be a

167 Ibid.
legitimate political check. The Constitutional Court’s check against the Prime Minister’s consolidation of power is a principal factor to prevent Romania’s authoritarian reversal. In contrast to Hungary’s structure, Romania has far more political branches and actors to prevent consolidation of power into one branch. The state’s strong Presidency has been an essential check against the limited separation between Parliament and the Prime Minister’s Office as well. Due to political turmoil and divisions between factions, packing informal institutions with loyalists has not occurred in Romania. Certain leaders may exercise stealth authoritarian tactics in a few areas, but because several of these components are lacking and do not interact together Romania’s government cannot be considered a stealth authoritarian regime.

There is still much democratic progress to be made in Romania, and the state is still teetering between democratic consolidation and backsliding to authoritarianism. Corruption is rampant and the legal process is often ineffective in these cases. The state of the media appears to be poor in several areas. Civil society plays a small role to check the government and promote transparency. This is caused by the Romanian public’s historic limited engagement in civic activity and underfunded civil society groups, but its presence is growing. Despite these democratic deficits, Romania’s government cannot be classified as authoritarian. There is no clear political faction that systematically controls branches of branches of government, informal institutions, the media, civil society or election processes.
International Organization Enforcement Mechanisms

International organizations are frequently criticized as having weak enforcement mechanisms to ensure that their laws and principles are respected. This section applies three hypotheses to the previous case studies with respect to EU enforcement mechanisms. First, IOs direct enforcement mechanisms are weak and cannot force a member state to comply with IO rules, because IOs do not have mechanisms to intervene with force. Next, indirect economic and political pressures applied by IOs do not promote long-term democratic
consolidation in transiting countries and cannot stop an authoritarian reversal. Both direct and indirect enforcements measures are weaker than the threat of withholding membership during the pre-accession period. Finally, IOs with limited monitoring mechanisms can fail to adequately recognize or control an authoritarian reversal. The theory that IOs cannot prevent authoritarian reversals is confirmed in the case of Hungary. The EU has been unable to prevent Hungary from reverting to authoritarianism under the Fidesz regime because of weak enforcement mechanisms and the lack of EU institutional monitoring. It is still unclear whether EU institutions will be able to promote long-term consolidation of democracy in Romania.

The EU has direct means of enforcing its laws and fundamental values with Article 7 of the Treaty of the European Union and its infringement procedures. EU institutions also use indirect means of enforcement—political and economic pressures—that are used more often than the direct mean of enforcements. Article 2 of the Treaty of the European Union establishes democracy, rule of law, and respect for human rights and fundamental freedoms, including the rights of minorities, as the Union’s fundamental values that are common to all Member States. EU institutions have limited direct enforcement mechanisms to stop or prevent authoritarian reversals. The primary enforcement instrument is the preventative and sanctioning mechanisms found Article 7 TEU, which is known as the “nuclear option.” Article 7 has both preventative and sanctioning mechanisms. The preventative mechanisms is found in Article 7 (1):

On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. Before making such a determination, the Council shall
hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure.

Paragraphs 2-3 of the Article provide the sanctioning mechanisms where the European Council can revoke certain membership rights, including voting rights for Member States in the European Parliament. This mechanism, however, has incredibly demanding procedures for determining violations and is often obstructed by politics in EU institutions. Article 7’s sanctioning powers have never been used on a Member State. Therefore, the nuclear option operates primarily as a threat.

The other direct enforcement mechanism is the infringement procedure. The EU’s European Commission initiates infringement proceedings against Member States suspected of violating EU law. Infringement procedures can either be resolved through Early Settlement or through the Formal Procedure, which has five potential steps. The first step of the Formal Procedure is the European Commission issues a letter of formal notice where the Member State has two months to comment and respond with the noncompliance problem. If the Member State does not respond, the Commission state’s why it believes the Member State has violated EU law, and the government has two months to comply. Third, if a Member State still does not comply, the Commission will refer the case to the Court of Justice of the European Union (ECJ). The Commission can ask the ECJ to impose a lump sum and/or a penalty payment on the Member State. Fourth, the ECJ will decide whether the Member State has violated EU law if there is still noncompliance. If so, the Member State is required to change its laws or practices as soon as possible in accordance with the ECJ judgment. Finally, if the Member State still does not comply, the case is returned to the ECJ,

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168 The legal basis of infringement procedures is found in Articles 4 and 17 TEU, and Articles 258, 259, 260(2), 260(3) TFEU.
and at this time the Commission can request additional lump sum and/or penalty payments for noncompliance.

The indirect enforcement, or enforcement measures that are outside the scope of EU formal procedures, that are typically issued by the EU are social pressure, multilateral economic pressure from other IOs, and issue linkage. Social pressure can be applied from EU institutions as well as other Member States. Social pressure is almost always applied from one or both of these actors above when a Member State is suspected of violating EU law. Issue linkage is a tool used by IOs to increase its leverage over a non-compliant Member State. Issue linkage ties compliance to access to treaty membership or economic packages. Withholding economic packages often occurs multilaterally between multiple IOs. For instance, the EU will link Member State compliance to an International Monetary Fund-EU economic package. The primary enforcement tactics used against Hungary’s authoritarian backsliding have been infringement procedures, issue linkage, and social pressure. These tactics used by the EU, however, have not been able to prevent Hungary’s authoritarian reversal. The main enforcement tactics used in Romania have been post-accession monitoring and evaluating and issue linkage. The following section examines the effectiveness of EU enforcement mechanisms when applied to Hungary and Romania’s democratic backsliding and violations of EU law.

*EU Enforcement Mechanisms in Hungary and Romania*

The EU has had difficulties framing valid legal arguments against the Fidesz leadership in Hungary. The Fidesz party legally rose to power through fair and free elections in 2010. Also, the Fidesz government has used constitutional loopholes and legal maneuverings to create its constitutional order. In 2012, the European Commission found
violations of EU law in Hungarian legislation and started an infringement procedure against the Member State in three issue areas: lowering of judicial retirement ages, the independence of the data protection ombudsman, and the independence of the central bank. The ECJ found that Hungary’s law that lowered the retirement age of judges, prosecutors and notaries constituted unjustified age discrimination. This is problematic because the EU has not addressed the systemic issue of Hungary’s authoritarian governance practices and other means that weaken the Constitutional Court’s strength and independence.

The Fidesz government incrementally complied with the ECJ decision for lowering the judicial retirement age and slightly changed its law. The retirement age for judges was changed to 65 and the retirement process would take place over ten years, instead of retiring at 62 over a one-year process. In April 2014, the ECJ ruled that changes to Hungary’s data protection administration led to the unlawful replacement of the data protection ombudsman. The Fidesz Parliament removed the mandate of the data protection ombudsman, András Jóri, two years before his six-year term expired in 2014. On Jan. 1, 2012, the independent data protection ombudsman institution was replaced with the National Authority for Data Protection and Freedom of Information (NADPFI). Officials of NADPFI are appointed by Parliament. Because ombudsman institutions exist to check legislatures and guarantee fundamental rights are ensured in legislation, the independence of the institution has been compromised by replacing the institution. The ECJ found that EU Council Directive 95/46 requires that Member States guarantee the independence of authorities responsible for the protection of personal data. To date, there has been no real compliance with the ECJ ruling and the data protection authority still lies in the hands of the National Authority for

Data Protection and Freedom of Information, which is headed by a Fidesz loyalist for a nine-year term. If the European Commission wants to address this issue again, the matter can be returned to the ECJ once again.

While the retirement age of judges and the independence of the data protection authority were partially resolved through ECJ decisions, the issue with the independence of Hungary’s Central Bank was resolved in a different manner and reference to the ECJ was not necessary. The European Commission used an infringement procedure that included the possibility of ECJ fines, but the Commission also used issue linkage in the matter. In December 2011, the EU and IMF made negotiations on a €15-20 billion financial assistance package contingent on Hungary restoring the independence its Central Bank. Once again, the Fidesz government packed the Central Bank’s key decision-makers with Fidesz loyalists, like the interest-rate setting committee and the head of the Central bank. In April 2012, the European Commission was satisfied with the changes made to the Central Bank’s legal status, and the issue by not brought before the ECJ. Over the past two years (2014-2015), however, the European Central Bank has criticized the Central Bank’s independence as Parliament and the Prime Minister still have control to choose head of the bank and its key decision-makers.¹⁷¹

Political pressure has also been ineffective to persuade Hungary’s undemocratic practices. When democracy and rule of law are challenged, Prime Minister Orbán has frequently countered by challenging the democratic accountability of EU institutions:

I was elected, the Hungarian government was also elected, as well as the European Parliament…But who elected the European Commission? What is its democratic

legitimacy? And to whom is the European Parliament responsible? This is a very serious problem in the new European architecture.¹⁷²

Prime Minister Orbán has continuously deflected political pressures and has pointed to democratic practices in other Member States to placate external criticisms. The best example is the government’s response to criticisms of the Media Laws that were passed in 2010. After EU institutions and the Venice Commission addressed specific concerns with the Media Laws, the Hungarian government released two documents that listed 20 European countries and EU-Member States as examples for precedents for each concern brought by the institutions.

Central European University’s Center for Media and Communications Studies researched each of the 20 example countries and their corresponding laws.¹⁷³ The study found that a majority of examples given “omit or inaccurately characterise relevant factors of the other countries’ regulatory systems, and as a result, the examples do not provide sufficient and/or equivalent comparisons to Hungary’s media regulation system.”¹⁷⁴ For example, European institutions criticized the sanctioning powers of Hungary’s Media Authority over all media. In response, the Fidesz government listed 15 countries as precedents that sanction media—in some combination—with fines, suspensions, license revocations and/or terminations.¹⁷⁵ However, the study’s experts found that Hungary’s Media Authority’s sanctioning scope was inconsistent with every country listed. The evaluation

¹⁷⁴ Ibid, ix.
¹⁷⁵ Czech Republic, Denmark, Estonia, Finland, France, Germany, Ireland, Italy, Latvia, Lithuania, Poland, Portugal, Slovakia, Slovenia, and the UK.
found various regulatory bodies and/or the courts, which oversee a specific media sector, that impose media sanctions in the example countries, while Hungary’s Media Authority has sanctioning power over all media sectors and have sole decision-making power. Hungary has frequently adjusted its media laws due to external pressures and criticism from European institutions, but it appears that the Hungarian government has skillfully made minimal changes to its laws to appease Brussels. The core of the Media Laws has remained intact.

The Fidesz government has routinely reverted to noncompliance practices after the EU and ECJ have intervened. The EU has only targeted individual incidences of noncompliance with EU law rather than addressing the larger, systemic issues with the Fidesz governance. Moreover, the EU has been unable to prevent Hungary’s authoritarian reversal by attacking violations in this isolated manner. The EU needs to comprehensively address the systemic issues for the organization to stop authoritarian reversals. It is difficult to comprehensively ascertain why the EU has not been more strict with Hungary and enacted harsher punishments, even the applying Article 7 to Hungary. A common answer to this question is that the EU is primarily an economic international organization and does not care about issues outside the scope of regional fiscal matters. While this may be partially true, this answer is far too simplistic. A factor that may advance that theory is the democratic nature of the EU itself. Each country elects members to represent its Member State in the European Parliament (EP). Representatives in the EP may fear that applying Article 7 to a Member State may create a precedent that could be applied to their country for similar practices or other violations of EU law. Further, the EU was not likely prepared to address authoritarian reversal when it accepted the 2004 accession class, which had eight former communist Member States. In addition, the series of crises the EU has faced in recent years, including

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the 2008 global economic crisis, the perpetual fiscal crisis in Greece, and now the Syrian refugee crisis, has likely deterred the EU’s attention away from democratic governance matters. Unfortunately, authoritarian governance by a Member State can create a new crisis or exacerbate a current crisis, like the fence built by the Fidesz government on the Hungarian-Serbian border and potential human rights violations inflicted on the Syrian refugees by Hungarian officers.

In contrast to Hungary, enforcement of Article 2 has more successful in Romania, but this largely due to different post-accession conditions in these Member States. For the first time, the EU created a post-accession monitoring and evaluating mechanism to regulate the progress of Romania and Bulgaria after their accession in 2007. This mechanism is the Cooperation and Verification Mechanism (CVM). The problem, however, is the CVM only applies to the 2007 accession class, and it was not applied to previous accession classes. The democratic trajectory of Romania was been greatly influenced by the CVM. The lack of monitoring and evaluating following Hungary’s accession, which took place just three years before Romania, has also been a contributing factor to Hungary’s violation of EU fundamental values and its reversal to authoritarianism. There is not enough evidence to concretely determine whether the EU has been able to either prevent an authoritarian reversal or promote democracy in Romania, but the combination of the CVM and issue linkage have led to increased compliance with EU demands compared to Hungary.

The European Commission decided in December 2006 to apply the CVM to Romania just prior to its accession the following year.\textsuperscript{177} The main focus of the CVM has been to

\textsuperscript{177} European Commission Decision C (2006) 6569.
address rule of law shortcomings in judicial reform and the fight against corruption.\textsuperscript{178}

Article 38 of the European Commission Decision states that this safeguard measure should not remain in force longer than necessary and may be lifted when the shortcomings are met.

The European Commission Decision set benchmarks for Romania to accomplish:

1. Ensure a more transparent, and efficient judicial process notable by enhancing the capacity and accountability of the Superior Council of the Magistracy. Report and monitor the impact of the new civil and penal procedure codes.
2. Establish, as foreseen, and integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken.
3. Building on progress already made, continue to conduct professional, non-partisan investigations into allegation of high-level corruption.
4. Take further measures to prevent and fight against corruption, in particular within local government.\textsuperscript{179}

The CVM was originally intended to end three years after accession, but Article 38 allows the CVM to remain intact as long as these shortcomings persist. As of 2015, eight years after Romania’s accession, the CVM is still intact.

During the Ponta Government’s impeachment attempt of President Basescu in 2012, the Constitutional Court was not the only actor who fought the Government. The European Commission played a crucial role to address the blatant violations of democracy and rule of law. The Commission decided to intervene and use the July 2012 CVM Report as an instrument to prevent the crisis from spreading.\textsuperscript{180} On July 11, 2012, Prime Minister went to Brussels to explain the political developments to European Parliament President Martin Schulz and European Commission President José Manuel Barroso. Prime Minister Ponta was


\textsuperscript{179} Commission Decision of 13/XII/2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks on the areas of judicial reform and the fight against corruption.

given an 11-point list with requirements that the Romanian Government was responsible to provide answers to, reconcile and demonstrate to EU institutions that Romania was respecting the rule of law and European standards. The list included:

(1) Repeal Emergency Ordinance no. 38/2012 and Emergency Ordinance no. 41/2012;
(2) Ensure that Constitutional Court rulings on the quorum for a referendum and the scope of the Court’s responsibilities are respected;
(3) Respect constitutional requirements in issuing emergency ordinances in the future;
(4) Implement all the decisions of the Constitutional Court;
(5) Ensure the immediate publication of all acts in the Official Journal, including the decisions of the Constitutional Court;
(6) Require all political parties and government authorities to respect the independence of the judiciary; with a commitment to discipline any government or party member who undermines the credibility of judges or puts pressure on judicial institutions;
(7) Appoint an Ombudsman enjoying cross-party support, through a transparent and objective process, leading to the selection of a person with uncontested authority, integrity and independence;
(8) Introduce a transparent process for the nomination of the General Prosecutor and Chief Inspector of the National Anti-Corruption Directorate. This should include open applications based on criteria of professional expertise, integrity and a track record of anti-corruption action. No nomination should be made under the acting Presidency;
(9) Avoid any presidential pardons during the acting Presidency;
(10) Refrain from appointing Ministers with integrity rulings against them; Ministers in that situation should step down;
(11) Adopt clear procedures which require the resignation of Members of Parliament with final decisions on incompatibility and conflicts of interest, or with final convictions for high-level corruption.181

The Romanian Government and Prime Minister Ponta responded and the rule of law crisis was averted, largely due to EU pressures. However, not all of the 11 recommendations have been thoroughly addressed. The 2013 CVM Report showed that Romania still had not appointed new leadership to the General Prosecutor’s Office or the Chief Inspector of the National Anti-Corruption Directorate.

181 The original document was published in the online version of the Romanian newspaper Gandul
The CVM also has strength through issue linkage. The primary use of issue linkage against Romania has involved its membership into the Schengen Area. The Schengen Area was established by the Schengen Agreement in 1985. The Schengen Area does not require passports or border controls at common borders. During the Soviet era, Romanian citizens did not have access to freely travel to neighboring countries. Following the collapse of Soviet control, freedom of movement has a priority for Romania citizens and the Government. The EU has consistently linked CVM performance in Romania with Schengen membership. The European Commission used issue linkage with the CVM and Schengen membership to prevent the Ponta Government’s consolidation of power and preserve the independence of the Constitutional Court. This issue linkage has also been a key tool for fighting rampant corruption, which Romanian corruption control bodies are still fighting and will so for years to come. On multiple occasions, the European Commission has discussed the removal of the CVM in Romania and Bulgaria. Nevertheless, other Member States have obstructed the CVM removal. Initially, Netherlands and Finland indicated that they would block agreements until more progress had been made to reform corruption control, judicial reform and the fight against organized crime in Bulgaria. However, these two Member States did not link CVM progress Schengen membership. The Member State link between CVM progress and Schengen membership came from Germany and France following the 2012 Romanian crisis.

The EU cannot use a ‘carrot or stick’ approach to promote governance in line with EU law and norms in Member States like it does pre-accession. This changed when the CVM

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has been implemented on 2007 accession class, and the EU has not yet been decided whether Member States candidates, like Turkey, Serbia, Albania, Montenegro, would have a similar post-accession mechanism if they were granted membership. The future of democracy in Romania remains unclear, and at times there is little hope. The lack of optimism can be partially attributed to the EU’s inability to prevent Hungary’s authoritarian reversal. The democratic deficits in Hungary and Romania are partially a result of the absence of domestic internalization of EU norms and democratic principles. The punishing nature of economic sanctions and political pressure promotes temporary compliance not domestic internalization of EU norms. Domestic internalization of EU norms is essential for compliance and democratic consolidation.

Member State Internalization of International Law

The presence of an authoritarian Member State in an international organization is not only a result of weak enforcement mechanisms, but also because the IO’s law and values have not been internalized by Member States. Signing and ratifying treaties is only the first step to compliance with international law. It is necessary for states to domestically internalize
international law for it to become binding. The same type of logic applies to accession into an international organization. Member State accession into an IO is like signing and ratifying an international treaty. Member States must internalize the IO’s laws as well as adopt the norms of appropriate behavior for Member States. In the case of the EU, each Member State’s accession into the Union involved different adjustments—institutionally and culturally—to comply with the Copenhagen Criteria. Eight-out-of-ten countries in the EU’s fifth enlargement in 2004 were former Soviet Republics or Soviet-occupied states that governed under single-party communist dictatorships. Also, both Member States of the 2007 accession class have the same authoritarian history. Since 1989, these states have engaged in democratic transitions to reshape their government structures and legal systems. The transitions also required reshaping their cultures to embrace democracy, capitalism, and Europeanization following their accession to the EU.

Accession into the EU only requires surface level internalization of the Union’s laws and norms. When a Member State joins the EU, it is required to obey EU laws and treaties. Member State’s compliance and respect of EU values, like democracy and rule of law, is further complicated because the EU does not have a set homogenous principles defining democracy and rule of law for Member States to follow. These values are not clearly defined by Article 2 or any other treaty. The EU allows leeway for Member States to define these terms, and the Union handles violations on a case-by-case basis—as seen above in the enforcement section. During the accession process, candidates must pass the extensive Copenhagen Criteria. A key component of the Copenhagen Criteria is candidates demonstrate that they are democratic. In order to prove that the candidate is democratic, they

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must demonstrate that the country has a procedural democracy: elections, rule of law, and a system of checks and balances. The problem is that procedural democracy does not guarantee that democracy will continue to exist in the candidate state, especially in transitioning states. Stealth authoritarianism, particularly in Hungary, portrays how a procedural democracy can be manipulated and fail to remain democratic. Further, while procedural democratization and anticipation of Europeanization was successful for many of the former Soviet satellites in the 1990s, EU membership required not just procedural democratization but performance democratization, which had not yet existed in most of these countries.185

Performance democratization is a progressive step beyond procedural democracy that entails good governance in areas of civil rights and political liberties, access to information, government transparency and accountability, and free and fair elections. Several of the transitioning new Member States had formal-legal democracies at the procedural level, but democracy had not reached consolidation at the social level. Theoretically, the EU assumed that accession would lead to formal-legal democracy in Member States as well as domestic internalization of EU laws and values into the society of each Member State. Despite partial institutional internalization of democracy, several societies in these former communist Member States have not yet internalized EU democracy and rule of law norms. The lack of internalization is particularly transparent in states with democratic deficiencies. It is imperative that norms are internalized both culturally and institutionally for long-term compliance. If there is a void in either side of the coin, the probability for full internalization is tremendously damaged.

In both Romania and Hungary, EU democracy and rule of law norms have not been fully adopted culturally. This can be greatly attributed to each country’s Soviet past, but this is not the only explanation. First of all, democratization and internalization take time and patience. Hungary has been an EU member for hardly a decade, and Romania has been a member for even less time. Throughout each country’s democratic transition, societal trust in public officials and democratic institutions has wavered. To make matters worse, the 2008 global economic crisis obstructed cultural internalization of EU democratic norms. The crisis has had devastating effects on both of these countries, which were not only transitioning democratically but also economically. The economic struggles led to public skepticism of both democracy and the EU. It is first necessary to observe how their Soviet histories have affected each state’s current government and legal systems.

Soviet legal systems were implanted in Hungary and Romania during their Soviet occupations. Each country’s current government structure and legal system, as well as the public’s perceptions of these institutions, has been influenced by their Soviet pasts. Soviet law was unlike any other law. Soviet law was based off of the Marxism-Leninism doctrine, and it was “a doctrine to be accepted as indisputable truth.” Leaders, jurists and administrators in this legal system relied on Marxism-Leninism as their guide to interpret law. Marxism-Leninism doctrine believes that the exploitation of man by man was an inescapable result of private ownership. Rather than establishing a legal order for resolving disputes, Soviet law’s sole priority was to transform society towards the communist ideal—a fraternal society that is free of exploitation of man by man, and each person will work for the community according to his or her ability and will receive from the community according to

his or her needs. Soviet law was characterized by its economic and class preoccupations. Even though Soviet proponents considered Soviet society to be flawed, they still considered it to be far superior to capitalist societies. Since they knew their society were flawed, Soviet states were in a constant state a revolution in order to reach the final state of communism. Therefore, Soviets gave governments all the power they needed to reach the communist ideal, which resulted in authoritarian governance.

There were three tasks of the Soviet government and law. First, national security of Soviet states and republics required that the power of the state to be consolidated into the hands of a few key officials and increased so enemies of socialism were discouraged from attacking Soviet regimes, which would ensure peace between states. The second task, which was economic, was to develop production based on socialist principles to create abundances so everyone could be provided with what they need. The third task was educational and sought to rid man of selfish tendencies and anti-social behavior that have been caused by a legacy of poor economic organization. Outside of Russia, the Soviet republics and satellite states were removed of all their previously existing laws, except for those that were in accordance with Soviet principles. Certain states, however, resisted the Soviet takeover. In 1956, Hungarian workers and peasants rebelled against the Soviet-supported communist state. The 1956 Hungarian Revolution lasted only a few weeks and was ultimately suppressed by Soviet troops. Behind Alexander Dubcek’s leadership, Czechoslovakia’s 1968 Prague Spring attempted to liberalize the Soviet-supported state. The revolt was quashed in August of that year after the Soviet Union and Warsaw Pact Members invaded Czechoslovakia. As the Soviet Union’s control over Central and Eastern Europe was

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187 Ibid.
188 Ibid.
collapsing in the late 1980s, the Romanian Revolution successfully ended the Soviet-occupation as revolutionary actors killed President Nicolae Ceausescu and his wife. The National Salvation Front and Ion Iliescu took control of Romania shortly after.

The Soviet legal history has left its mark on Hungary and Romania. The purpose of law under this system was not individualistic and wasn’t used to resolve disputes. Rather, the purpose of Soviet law was communal—in the Marxist-Leninist sense. Citizens did not use the legal system to resolve disputes or challenge the government. Due to the single-party, communist government structure and lack of separation of powers, judicial review was non-existent. The consolidation of great amounts of power into the hands of a few government officials greatly affected the role of the ordinary citizenry. Generally, ordinary citizens were subservient to those in powers, they did not participate in politics, and citizens did not challenge the government, except for a few instances of revolution and protest. This also led to distrust of public institutions and state actors. Distrust only grew when Soviet-supported governments began to control the media and increased surveillance over citizens following the attempted Hungarian Revolution in 1956.

During Hungary and Romania’s democratic transitions, they had to reconfigure their government structures, institutional powers and legal systems. Hungary changed nearly every word of its Soviet-era Constitution (Law XX of 1949) with the 1989 amendments. Romania decided to draft a new constitution that was passed by a popular referendum in 1991. Even though each state had a new constitution that aimed to build democracy and rule of law, as the revolutionary fervor calmed toward the mid-1990s, the fragile post-communist societies needed to culturally adapt to democratic governance to legitimize the transition.
Distrust for public institutions has remained strong in Hungary and Romania. This distrust is often justified due to the rampant corruption in both countries. Yet, there are exceptions to this rule. Public opinions polls in the late 1990s showed that Hungarians considered the Constitutional Court to be the most highly respected political institution in Hungary after the Court opened in January 1990. The high regard for Hungary’s Constitutional Court is greatly due to *actio popularis*, which provided any citizen standing to challenge any law before the Court. The reputation of the Court has since been damaged due to the Fidesz government’s actions to control it. The value of the Romania Constitutional Court, which has fought for democracy in several instances, has frequently been questioned. The Romanian legal culture has been heavily influenced by the Soviet era. The cultural norm is not use the legal system to resolve disputes or challenge the government. Instead, Romania has placed this duty in the hands of Parliament. The Romanian public and politicians have consistently questioned the necessity of its Constitutional Court as well as the entire judicial system.

Romania’s Constitutional Court did not have the final arbiter powers over constitutional disputes until these powers were granted to the Court with the 2003 amendments. The Court’s role in the democratization process throughout the 1990s and early 2000s was minimal if not irrelevant. In a 1997 interview, President of the Romanian Constitutional Court Ion Muraru said, “[i]n our country, in the Constituent Assembly, it was hard to convince even the lawyers that we needed a distinct authority of the sort.”

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Romania attempted to amend its Constitution again. Reduction and definition of the Constitutional Court’s powers was a high priority. Romania’s Constitution, however, was not amended when Parliament could not reach an agreement. The limited faith in the efficacy of the Constitutional Court is likely conflated by the public’s distrust of the ordinary courts. Several judges, magistrates and prosecutors from Romania’s ordinary courts have been charged with corruption. Opinion polls have consistently shown that the public considers legal institutions and professionals to be corrupt, and that the judiciary is politicized, which leads to flawed administration of justice.  

In recent years, the Hungarian and Romanian public have come to believe that democracy has not performed well in both countries—for good reason.  

While civic participation has fluctuated in Hungary since its democratic transition, civic participation in Romania has been nearly non-existent over the past 25 years. Civic involvement in politics and democracy has historically remained low in Romania, primarily because of contempt for the government officials. The complicated political processes that sections of the population are unable to fully comprehend, the public and civil society’s inability to intervene in democratic practices and policies due to the political factions strongholds, and distrust of public institutions due to rampant corruption have also prevented civic participation. While public perceptions of democratic performance in both Member States have remained low, the 2008 global economic crisis further damaged the public’s perception that democracy can

function effectively in their countries. Hungarian and Romanian citizens placed much of the blame for their economics woes on democracy and the EU after the global economic crisis.

Hungary and Romania recently became EU members prior to the 2008 economic crisis. This crisis derailed the cultural internalization of EU norms. The crisis hit underdeveloped EU Member States especially hard because of their intra-EU division of labor role to produce low-skill products, whereas more advanced economics, like Germany and Nordic countries, have ‘knowledge economies’ that focus on technology and finance.\textsuperscript{194} In relation to other Member States, Hungary and Romania are both considered to be underdeveloped. The 2008 crisis caused slower growth, social mobility to reverse, and populism, isolationism, and nationalism to increase in popularity in many underdeveloped EU Member States.\textsuperscript{195} Slower growth has led to reduced private consumption and investment, less public spending and austerity programs. As Hungary and Romania became Member States, they anticipated that EU membership would provide them with Western European-type welfare safety nets. Instead, they received public spending cuts and austerity measures. The lower-middle class was first hit by the crisis. The lower-middle class rose from the lower class due to new jobs and access to credit after the communist era ended, but the crisis pushed this class back down. This has caused the already stretched social welfare programs to be further stretched. The traditionally poor were also negatively affected, because the austerity measures led to cuts in public social welfare spending that has already been stretched thin. Finally, the young adult sector of the population was negatively affected because this group could not find jobs, even after graduating from universities. The economic

crisis created social and economic tensions. The result of these tensions has been to look inward for solutions; therefore, stoking ardent nationalism, populism and protectionism in some states. Citizens in these states that were hit hardest by the economic crisis have been the most likely to become anti-democracy and anti-EU. In 1991, 74 percent of the Hungarian population approved of the change to democracy, but the approval rating dropped to 56 percent in 2009. In addition, a 2009 study showed over 70 percent of Hungarians polled said that they were better off during communism. Hungarian citizens did not have faith in democratic governance or EU-type democracy. Conditions were perfect for the populist Fidesz party to grab power and create a new, anti-democratic (authoritarian) government.

The 2010 Parliamentary election in Hungary was a free and fair election that was not manipulated by the Fidesz party or any other party. It was simply a democratic response by the Hungarian voters. The election of the Fidesz government in 2010 was a response by the Hungarian public to the poor economic situation and the party’s populist, nationalist, and isolationist agenda. Before Viktor Orbán and the Fidesz party gained their supermajority, they attacked the social-democratic party’s (MszP) Prime Minister Ferenc Gyurcsány and forced his resignation in 2009. During a speech given at an MszP party meeting in 2006, which was intended to be confidential, Prime Minister Gyurcsány said that he had been lying for over a year and a half about the economic situation in Hungary in order to win elections a few months earlier. After a recording of the speech was later leaked to Hungary’s state radio,

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196 Pew Foundation. “End of Communism Cheered But Now with More Reservations.”  
http://www.pewglobal.org/2009/11/02/end-of-communism-cheered-but-now-with-more-reservations/; Romania was not included in this study.

197 Pew Foundation. “End of Communism Cheered But Now with More Reservations.”  
http://www.pewglobal.org/2009/11/02/end-of-communism-cheered-but-now-with-more-reservations/; Romania was not included in this study.
Orbán and Fidez members began to call for Gyurcsány’s resignation. Protests broke out and continued in Budapest until Gyurcsány finally resigned.

Economic crises often lead to public leanings toward the conservative right of the political spectrum, and Gyurcsány’s actions exacerbated the collapse of Hungary’s political left. The public’s fear and desire for a solution to the economic crisis resulted in electing a populist and nationalistic government that ran on a platform that opposed liberal democracy and the EU. In a 2009 speech in the Kötcse village, Orbán blamed Hungary’s situation on the bipolar political system, and called for this system to vanish and be replaced by center-field political power to take its place—a single party state. Orbán obviously saw himself as the single party state’s leader. Rhetoric that the 1989 transition was an ‘insufficient transition’ or a ‘stolen transition’ began to gain traction in Hungary at this time. The Fidesz party ran on a nationalist, anti-EU platform. Despite Orbán’s role in the democratic transition in 1989, Orbán promised to “transition the transition.” In 2010, the center-right Fidesz party and far right Jobbik party combined to win 70 percent of the vote. The Fidesz party’s vision for Hungary’s ‘second transition’ is a strong, unified nation-state with ideological foundations rooted in anti-modernism in which Europe has become decadent and should return to its Christian roots, and Hungary should return to its traditional Christian roots. The result of this ‘second transition’ has demolished democratic governance and rule of law in Hungary. There has been a tremendous regression in the internalization process of EU norms in Hungary’s institutions. The Fidesz agenda has been so deeply entrenched into government institutions

that it would be incredibly difficult for the public to require institutional compliance even if
democratic and EU values do become the cultural norm in Hungary.

Romania did not experience the same right-wing nationalism and populism that
Hungary and several other European states embraced following the economic crisis. The
majority coalition in Romania has been consistently held by Romania’s left side of the
political spectrum. Nevertheless, the crisis created further political turmoil in the already
turbulent political arena. Romania’s underdeveloped economy was vulnerable prior to the
2008 crisis. The domestic economic crisis that followed led the Government to negotiate and
accept a 13 billion Euro IMF-EU-World Bank loan in March 2009. However, the loan had a
conditionality that reduced public spending, which led to implementing austerity measures.
Public sector wages were cut by 25 percent and many extra-benefits were cut, 200,000 public
employees were laid off between 2009 and 2011, government agencies were restructured,
health insurance became taxed, unemployment and child benefits were cut by 15 percent, and
several state enterprises were privatized. None of the most unpopular measures, however,
were implemented until after the 2009 presidential election.

After President Basescu was reelected, he began to push for implementing these
austerity measures. In June 2010, Prime Minister Boc and his Cabinet implemented the 25
percent public sector wage cut, the health insurance tax, and 15 percent cut in social security.
These austerity measures infuriated the public that was already suffering from the effects of
the crisis. Prime Minister Boc and his Cabinet were later forced out of office in 2012 after a
series of protests. The perpetually inactive citizenry took to the streets in Bucharest and
protested the Government’s austerity measures. It was not just austerity measures that they

were protesting, however. The citizenry linked the austerity measures to their discontent with those in power and the endless corruption. Whether or not the population believes in democratic principles remains in question. Regardless, a strong majority of the population believes that democracy has not worked in Romania due to poor democratic performance by public officials and institutions, primary due to corruption.

Despite some instances of successful EU democratic and rule of law norm internalization, these norms have not been culturally internalized into either Member State’s domestic society. Until there is cultural internalization, the institutions that promote and ensure democracy and rule of law will not be held accountable and required to ensure that these norms are respected. The 2008 economic crisis was a tremendous setback for the cultural internalization process. In Hungary, the crisis sparked the public dismissal of democracy and the EU that led to the decline towards authoritarianism. The crisis exacerbated the Romanian public’s derisive attitude toward its government and further postponed acceptance that the country can be ruled democratically.

Conclusions

To answer the central question—under which conditions does an authoritarian Member State exist in an international organization that requires democratic governance in
its treaty law—this thesis examined the Member State from multiple angles. First, this thesis began from the perspective of the Member State to comprehend how a Member State might construct an authoritarian government despite an IO’s legal requirement for democratic governance. Next, the perspective from the IO observed the EU’s enforcement mechanisms and its response to undemocratic governance. The final section employed the vantage point of the Member State’s domestic society. This thesis aimed to answer why a Member State would not only violate IO treaty law and norms, but also revert to authoritarianism by investigating cultural internalization of IO norms and democratic principles.

This thesis found that Hungary not only employed all the components of stealth authoritarianism, but the Member State has also experienced an authoritarian reversal and should be labeled as an authoritarian regime. Application of stealth authoritarian theory to Romania has provided tremendous context to the theory. Romania suffers from severe democratic deficits due to rampant corruption and a weak ordinary judiciary, but the Member State cannot be classified as authoritarian. Despite efforts made by former Prime Minister Ponta, neither the President nor the Prime Minister has been able to consolidate its power and effectively remove formal checks against their authority. The Constitutional Court has maintained its independence and demonstrated its strength as it battled Ponta’s efforts to eliminate its judicial review powers. The consistent changes in political leadership and perpetual political turmoil have also prevented one faction from gaining an authoritarian foothold.

Comparison of these case studies shows that a stealth authoritarian regime must be able to consolidate power into the executive branch and remove formal checks from the legislative and judicial branches in order to start working towards packing informal
institutions, controlling the media, ensuring ruling party victories in elections and weakening civil society. There were two primary factors—one internal and one external—that influenced the differing outcomes in Hungary and Romania: the checks created by the structure of governmental branches and the EU's Cooperation and Verification Mechanism (CVM).

The weak separation of powers between branches and limited checks against the executive branch in Hungary’s government structure is a major factor for its authoritarian reversal. The separation between the executive and legislative branch is almost nonexistent. The judiciary, the Constitutional Court, is an essential check against these branches. Once the Fidesz government constructed its legal authority with the Fundamental Law, the government used its supermajority in Parliament to dominate and control the judicial branch. After a long battle with the Constitutional Court, Prime Minister Orbán and the Fidesz Parliament eliminated the judicial check against its power and continued to pack the Court with Fidesz loyalists. Currently, the Fidesz government has appointed the majority of the Court’s justices. Also, the Court does not have substantial judicial review powers that could potentially block the Prime Minister and Parliament’s overextension of powers beyond those found in the Fundamental Law. Once the formal checks against the power centralized into Prime Minister Orbán’s hands were eliminated, the Fidesz government could then begin to pack informal institutions with loyalists and expand the powers of these bureaucratic agencies, control the media, reconfigure election and campaign laws to ensure the Fidesz government maintained its power and principal authoritarian tool—its supermajority.

The structure of Romania’s government is far more complex and has several more checks than Hungary’s structure. The Fidesz government only needed to eliminate the
judicial branch’s formal check to consolidate its power into the Prime Minister’s hands. However, Romania’s structure has a two-headed executive branch and a bicameral Parliament in addition to Romania’s Constitutional Court. First, the President of Romania has far more powers than the ceremonial President of Hungary. The President of Romania has expansive powers, similar to the President of the U.S. In contrast, Hungary’s President has only a few minor powers, which includes veto authority over bills passed in Parliament. Romania’s President is also elected rather than appointed by the majority in Parliament. The Romanian President has constantly battled the Prime Minister for executive branch control, but neither has been able to consolidate power into their office since Nicolae Ceausescu’s assassination, which marked the start of the democratic transition.

In addition to the extra presidential check in Romania, its Constitutional Court has been able to maintain its independence and strength. This is largely due to the selection process of the Court’s justices and their term limits. The Court is comprised of nine justices that serve nine-year terms, which cannot be prolonged or renewed. Three justices are appointed by the Chamber of Deputies, three by the Senate and three by the President. The Constitutional Court renews three justices every three years. The selection process and term limits reduce one faction or branch’s ability to pack the Court, because the selection process involves input from several institutions. Also, the composition the Court changes every three years. Hungary’s Constitutional Court was far easier for the Fidesz government to pack. First, justices are nominated by a vote in Parliament and confirmed by the President’s signature. Because the majority in Parliament chooses the Hungarian President, there is not a legitimate separation between these branches. The Fidesz Parliament used its supermajority to change the rules for nominating justices and removed the requirement for input from
oppositional parties in Parliament. Next, Parliament changed the law to increase the number of justices from 11 to 15. Finally, the retirement age for justices, rather than term limits, allows Hungary’s authoritarian government an additional means to pack the Constitutional Court in comparison to Romania. Each Member State’s current leadership did not create the initial design of their government structure. These structures were assembled as the countries transitioned to democracy in 1989. Authoritarian reversals and stealth authoritarianism require maneuvering through the institutions in place. Moreover, Hungary’s governmental structure has proven far easier to work through for leaders with authoritarian goals.

Recognition of these weaknesses should be considered by democratizing states. International organizations should also consider this point for pre-accession conditionality as well as assessment for which institutions to protect to prevent authoritarian reversals.

The public’s ability to influence the government’s actions has also been a primary difference between Hungary and Romania. There have been several large protests in Budapest, Hungary, over the past five years, but most of them have been inconsequential. Initially, it appeared that the Internet tax protest in October 2014 was successful when the Hungarian Parliament decided to not pass the tax. However, several prominent members of Hungary’s civil society contend that the Fidesz Parliament never planned to pass the Internet tax, and it was only created to distract the public from other bills Parliament was in the process of enacting that would be publicly unfavorable.\textsuperscript{201} In addition to not satisfying all the components of stealth authoritarian, the Romanian public’s ability to persuade its leaders with protests further demonstrates that the Member State cannot be considered authoritarian. The nightclub fire protests in Bucharest led to Prime Minister Ponta’s resignation, who was

\textsuperscript{201} This is the opinion found from interviews with Internet Tax Protest organizer Gulyás Balázs and the Hungarian Civil Liberties Union.
the main Romanian leader that threatened to push Romanian toward authoritarianism. The protests also gave civil society groups a seat at the table to select the new Prime Minister, which was unprecedented. Authoritarian governments generally do not respond to the public will, and if they do so, it is likely to be an inconsequential concession, like the Internet tax in Hungary.

The other key difference that has been influential for the state of democracy in Hungary and Romania is external—the EU’s Cooperation and Verification Mechanism (CVM). The EU’s mechanisms to enforce its law and safeguard democracy—economic sanctions, political pressures, infringement procedures, and Article 7—have been overall ineffective to counteract and prevent undemocratic practices by Hungary and Romania’s governments. The CVM, however, has been a powerful tool for the EU in Romania. The problem is that the CVM was only applied to the 2007 accession class (Romania and Bulgaria), and there are no institutional monitoring mechanisms for the other former-authoritarian Member States, including Hungary. The CVM has been monitoring severe democratic deficiencies in Romania since it became a Member State in 2007. Because of the constant monitoring and evaluation of a Member State’s democratic progress, it would be incredibly difficult for a stealth authoritarian regime to slip past the CVM. The lack of monitoring in Hungary is a key point of difference between the two Member States that has affected their democratic outcomes.

The CVM has been used as a leverage tool to coerce compliance in Romania. Authoritarian crises have been appeased in this Member State after EU officials utilized the CVM as a tool for leverage with issue linkage. The EU has primarily tied the CVM with membership into the Schengen Treaty, which would allow Romania to enter the EU’s free
movement zone without passports or any constraints. Schengen Membership is especially important to former Soviet-occupied Member States. During the Soviet-occupation, Romanian citizens were not able to travel freely to neighboring countries without going through exhaustive bureaucratic processes. The CVM has promoted democracy in Romania as well as pacified authoritarian crises. However, there is still no conclusive evidence that the EU can prevent an authoritarian reversal in Romania if a faction can garner enough strength. This doubt arises primarily because of the EU’s inability to prevent Hungary’s authoritarian reversal.

The final component addressing the central question pertains to a Member State’s domestic culture and internalization of EU democratic norms. Both countries have legal systems and institutions that have been greatly influenced by their Soviet pasts. The reason why Hungary has reverted to authoritarian and why Romania has not fully consolidated to democracy is because their cultures are still skeptical of democracy and EU norms. Both Member States had just joined the EU prior to the 2008 global economic crisis. This crisis hindered the norm internalization process. Hungarian and Romanian citizens believed that the EU would provide a social welfare safety net in the case of an economic crisis, which their respective governments no longer provided after communism. The EU was unable to genuinely help those in need when the 2008 economic crisis eliminated jobs, cut wages, and in some cases increased taxes. Democracy and EU norms had also not yet been internalized into Romania’s culture. The 2008 crisis was yet another chapter of the Romanian population’s distrust of public officials’ ability to provide them with a legitimate democracy. The public blamed the austerity measures that resulted from the crisis on institutional corruption. Political turmoil broke out again with civic protests and the removal of yet
another Prime Minister and his Government. Romania has not culturally internalized the EU’s democratic norms because of the poor democratic performance by government officials and institutions. Until Romania has culturally internalized democracy and EU legal norms and demand them as the appropriate standard of behavior for its leadership and institutions, Romania will remain in a state of transition rather than democratic consolidation. Therefore, Romania will remain in greater peril of reverting to authoritarianism. Due to the EU’s inability to prevent Hungary’s reversal, this is a grave concern.

In Hungary, a large percentage of the citizenry, especially those most affected by the crisis, began to blame their economic woes on democracy and the EU. They called for a government that promoted nationalism, isolation, and protectionism. As a result, the Hungarians elected the Fidesz government to a supermajority in 2010, because this party ran a populist platform that the citizenry was demanding. From there, the Fidesz government reverted to authoritarianism, partially with the will of the people. However, it is safe to estimate by the 2014 election results that approval of the Fidesz government is shrinking. The problem is that the Fidesz government has so entrenched its authoritarian regime into Hungary that the voters will likely not be able to remove this government without extreme measures, like a revolution. Stealth authoritarianism in the EU may resurge in other transitioning Member States with the Syrian Civil War refugee crisis.

The Syrian refugee crisis hit Europe this summer (2015), and it appeared that EU and its Member States were ill prepared. Hungary is one of the first entry point into the EU’s free movement zone as it is located in the Union’s south-east corner. Hungary’s populist, nationalist response to the refugee crisis began with a billboard campaign sponsored by the Fidesz government. Billboards were placed throughout Hungary that contained populist
messages, including “If you come to Hungary, don’t take the jobs of Hungarians!” and “If you come to Hungary, you have to keep our laws!” The problem was that these billboards were written in Hungarian, and the Syrian refugees could not read them. It seems that these billboards were actually created to stir up populist fervor against immigration and Syrian refugees. As the number of Syrian refugees attempting to enter Hungary increased, Hungary's isolationist response was to build a fence on Hungary’s border with Serbia and Croatia. There have been several allegations of human rights violations for spraying refugees and journalists with tear gas and imprisoning refugees. The Fidesz government even passed a law that made it illegal for refugees to enter Hungary without permission. As a result, thousands of refugees were imprisoned. This crisis has created fear and panic not only in Hungary but also throughout Europe.

Further research on stealth authoritarian, international organizations and the effects of crises on transitioning Member States can be conducted on the developing situation in Poland. Poland, which was in the 2004 EU accession class with Hungary, may be the next former-communist EU Member State to employ stealth authoritarianism. Poland’s voters have responded to the refugee crisis in Europe by electing a populist and nationalist government. After spending the past eight years as a minority party, the right-wing populist Law and Justice party (PiS) won a majority in Parliament in November 2015. Law and Justice party leader, Jaroslaw Kaczynski, is an admirer of Viktória Orbán and his idea of illiberal governance. The PiS party campaigned on a populist platform, which included

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opposition to gay rights and fear of Muslims. PiS leadership has begun to enact practices similar to those of the Fidesz government. There have been two major offenses against democracy and rule of law in just first few weeks of the PiS government’s leadership. First, the independence of the Constitutional Court was threatened when the President Andrzej Duda, who was a former member of the PiS party, refused to swear in five new judges who were selected by the previous Parliament. The PiS Parliament has also amended the Constitution to void the election of judges by previous Parliaments. The second major offense came from a presidential pardon. President Duda pardoned the head of the Anticorruption Bureau, who was accused of abusing his power, before the Court issued its final decision. These actions have caused several Polish and international legal scholars to label Poland as a state that is no longer governed by rule of law. There is also fear that a constitutional coup is occurring in Poland. The new government has also changed the appointment process for the heads of the public media by the President and Parliament. As of December 2015, the PiS government is only in its second month of power. The situation in Poland and the EU response to undemocratic practices should be watched closely and further researched.

205 Ibid.