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Narrating the Rule of Law

Patterns in East Central European Parliaments

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Narratives are highly relevant for policymaking (Shanahan et al. 2018) and the functioning of institutions, including rule of law arrangements. They inform, influence and serve to justify political action, as well as mobilise support (Coman and Volintiru 2023; Smith-Walter and Jones 2020, p. 254; Blum and Kuhlmann 2019). Therefore, to properly evaluate parties' political behaviour regarding the rule of law, scholars must consider local narratives and their embedding in the respective context (Rech 2018, p. 338). However, narratives used in parliaments have received little attention in analyses of the rule of law, which tend to focus on institutions such as the law itself and its structure. Also, existing analyses of narratives usually focus on individual cases (Schlaufer et al. 2022).

This book analyses and compares narratives of the rule of law in parliaments, directing much-needed attention to this crucial issue. Although most political entities across the globe declare the rule of law as one of their guiding principles, they articulate different ideas of what the rule of law is, what purposes it serves, what elements it comprises and how it relates to democracy. Many understand it as legality, including predictability of public action, legal certainty, general, transparent and prospective laws and their effective implementation. Others add equal and human rights and legal protection by an impartial and independent judiciary, or even media freedom—as the European Commission does in its Rule of Law Reports. Moreover, it is contested if the rule of law serves primarily to limit power or to achieve moral ends[1] (e.g. Shapiro 1994; Fallon Jr. 1997; Kleinfeld Belton 2005; Waldron 2008; Magen and Morlino 2009; Tamanaha 2004; Møller and Skaaning 2014; Bedner 2018; Lorenz 2024).[2]

[1] Obviously, this is a stylised juxtaposition. Fallon Jr. (1997, p. 24) argues that "theories of the Rule of Law are inevitably framed to serve political or moral interests" and even the decision to exclude substantive content from it "must itself rely on substantive claims of political morality".

[2] Rule of law definitions are often classified as 'thick' and 'thin' concepts. Regarding the promotion of the rule of law, Schimmelfennig (2012, p. 113) distinguishes between formal and institutional definitions, which focus on constitutions, laws, courts and law enforcement agencies, and

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The relationship between the rule of law and democracy is also controversial. One side argues that the authority of law and thus the rule of law can only be ensured in a democratic environment. It therefore conceives democracy as an element of the rule of law (Tamanaha 2004, p. 99ff.). Others see tensions between the core ideals of democracy and the rule of law, with democracy revolving "around infusing the law with the will of the majority" and the rule of law appealing to its "supremacy over the wills of the persons" (Shapiro 1994, p. 2; also Murphy 1993). Thus, the very legitimation of the rule of law and the balance of power between elected politicians and non-majoritarian legal institutions is a matter of dispute. Accordingly, politicians and scholars disagree on what challenges the rule of law.

In Europe, disputes over the rule of law and its meaning have been raging for a number of years (Coman 2022), and East Central European countries have been criticised for rule of law deficiencies. Many politicians and scholars pointed out that the governments of Hungary and Poland restricted the independence of the national judiciary, civil society organisations and the media (e.g. Scheppele 2013; Sadurski 2019; Jakab and Bodnár 2020; Bakke and Sitter 2022). Criticism also referred to deficits concerning the independence of prosecuting authorities and media in Slovakia and Romania. Furthermore, EU Rule of Law Reports were critical of half-hearted measures against corruption and politicians' conflicts of interest in Romania, Slovakia and Czechia (European Commission 2022a, b, c).

According to critics, such rule of law problems in some member states have become a general threat to the EU. As Commissioner of Justice Didier Reynders put it, "(r)espect for the rule of law is a prerequisite for protecting all other values" of the EU enshrined in Article 2 of the Treaty on European Union, "and it is crucial for the effective application of EU law and for mutual trust between Member States and their judicial authorities." He added that the rule of law is essential for the internal market to function (Reynders 2023, p. 11). All this is in danger if member states ignore rule of law standards. In fact, judicial authorities in some member states refused to extradite suspects to Poland due to serious concerns about the independence of the Polish judiciary (Wendel 2023).

Others challenged this view. The criticised governments emphasised their commitment to the rule of law and some of them dismissed the criticism as politically motivated.[3] Leaders in Warsaw and Budapest considered criticism related to the rule of law as unfair and biased (e.g. Morawiecki 2021) and questioned the objectivity of the European Commission's concept of the rule of law (e.g. Varga 2020). This argument was also supported by some scholars (e.g. Grosse 2020, 2022a, 2022b; Szymanek 2020; Maksymiuk 2022; Drinóczi 2019; Mendelski 2016[4]). In their perspective, the hegemony of a particular Western European, liberal conception of

substantive definitions, which include legal culture and substantive outcomes such as individual human rights, equality and justice.

[3] For a similar line of reasoning concerning a political bias of studies on Hungary see Avbelj (2017), p. 280f.

[4] For earlier works see Sajó (2003) and Fekete (2012).

the rule of law clashes with the principles of national sovereignty and democracy to which the EU also subscribes. Moreover, the EU's general reference in the treaties to the value of the rule of law would leave open how it is to be implemented in the member states.

Embedding their argument in a broader perspective, Grosse (2022a, p. 154) contends that the EU pursues a strategy of proclaiming its own values as universal. This would have long historical roots in "Western Europe's sense of civilizational superiority over other parts of the world. It was driven by the missionary nature of Europeans relating to the values promoted" and "most often" accompanied by "economic and geopolitical expansion".[5] Especially for Poland, observers have identified a link between arguments for Poland's own 'authentic culture' with postcolonial theories since around 2005 (Bill 2014; Bucholc 2022). Scholars and politicians insist that there are different legitimate ways of realising the rule of law based on different cultures and ideologies (Peerenboom et al. 2012, p. 473), that the EU's approach is "ideologically biased" towards a liberal version (Hertogh 2016, p. 46) and that the competition between different models should be democratically resolved to ensure that the EU's motto of "unity in diversity" is respected.

So far, the debate on the rule of law has centred mainly on legal developments and theoretical arguments. This book aims to contribute empirically to a better understanding of the related rhetoric and arguments, focusing on national parliaments. Obviously, the competing narratives are more nuanced than sketched above, and the lines of conflict are more complicated than a mere divide between East and West. It is also clear that politics and political developments in the Czech Republic, Hungary, Poland, Romania and Slovakia are by no means identical (Lorenz and Formánková 2020; Bos and Lorenz 2021; Lorenz and Anders 2021; Lorenz and Mariş 2022; Lorenz and Dalberg 2023). Nevertheless, these countries share common historical legacies and experiences.[6] These include the difficulties of coming to terms with the transition from communism to democracy when rule of law principles like the prohibition of retroactive legislation and the independence of judges who had already served before 1989 rendered it difficult to solve questions around moral guilt. Other shared experiences relate to problems of the transition to a market economy. During that time clientelist networks survived or emerged which could include politicians and judges, and which are still a source of public controversy

[5] Without recourse to the rule of law debate, Lange (2019, p. 80ff.) provides sources for the empirical underpinning of this interpretation. While colonisation in its original sense, which also involved the export of institutional models, ended with the Second World War, there were numerous subsequent attempts to export the rule of law and other institutions, as described by Schimmelfennig (2012) and Peerenboom et al. (2012).

[6] With the assumption of commonalities and differences, we draw on the vast body of literature on conceptualising historical mesoregions (like Central, East Central or South Eastern Europe) that emerged since the spatial turn in the social sciences and the humanities (Döring and Thielmann 2008; Mishkova and Trencsényi 2017). One of the main insights of this post-structuralist reasoning is that spaces and (meso)regions are only to some degree geographically given, while to a more important degree are 'social products', i.e. the result of human imagination and action (von Hirschhausen et al. 2015, 2019).

today. Other shared experiences include the conditionality policy prior to EU accession and the implementation of Western models such as judicial councils based on recommendations from international bodies. These common experiences might have fostered similar rule of law narratives.

In fact, opinion polls on the rule of law reveal regional patterns. The independence of judges, for example, is less supported in Central and Eastern European countries than in other EU member states (European Commission 2018, p. 8, 15; 2023, p. 4). Similarly, the idea of disbursing EU funds only upon rule of law compliance is less popular here than in the rest of the EU (Kantar and European Parliament 2020, p. 4). These differences could result from divergent narratives of what the rule of law means and a diverging view of its relevance. Legal studies also point to regional commonalities, often summarising the post-socialist countries as a group with distinct characteristics. A 2019 study saw them marked by "a detailed Bill of Rights, rule of law safeguards and constitutional review entrenched after the recent memory of arbitrary exercise of power"[7] when compared to other European countries (Albi and Bardutzky 2019). A study by the European Network of Councils for the Judiciary (ENCJ) observed systematically higher formal standards in these countries, although these are not always implemented.[8]

Identifying regional specifics might also mirror long-standing stereotypes, a lack of case-specific knowledge, or difficulties in classifying the diverse ideas and institutions across Europe. Scholars often lack knowledge of the languages, contexts and therefore also the meanings that actors associate with the words and interpretations they use. These can deviate from the scholars' own understanding (Sadurski 2018, p. 7). Ilie (2015, p. 6) points to the fact that Central and Eastern European countries, "although they experienced a relatively similar political system during the communist era", nevertheless have "distinctive, historically rooted political cultures, which are still reflected in specific parliamentary practices." She especially mentions "differences exhibited by Romanian and Polish parliamentary discourse practices, both during the communist dictatorship and in the postcommunist period" (ibid.). Looking at judicial reasoning, Cserne (2017, p. 41) argues that the emphasis on the regional distinctiveness of Central and Eastern European countries is misguided because several allegedly distinct features can also be observed in other parts of Europe. It would also ignore "the intra-regional differences" as well as processes of convergence "that reduce the significance of

[7] They distinguish this group from systems with a "predominance of parliament with the absence of or weak role for a constitutional court, and a generic or ECHR-based Bill of Rights" (UK, Malta, Netherlands, Luxembourg, Denmark, Sweden and Finland), systems with an "extensive Bill of Rights, the rule of law safeguards and constitutional review by a constitutional court" (Germany, Italy, Spain, Portugal, Greece) and "traditional or hybrid legal constitutions combining strict and flexible aspects, e.g. an older or ECHR-based Bill of Rights" (France, Belgium, Austria, Ireland, Cyprus) (Albi and Bardutzky 2019).

[8] It states that "formal arrangements about the safeguards of independence are often less in line with the ENCJ standards in North-Western Europe than in Central Europe, while the scores on perceived independence are generally higher" (ENCJ 2020, p. 5).

topographical or historical differences in judicial style". Competing narratives can also be found within countries. Blokker (2019, p. 336) observed that the "legal-constitutional paradigm", which was dominant for a long time, is increasingly challenged by "a number of competing constitutional narratives", including political constitutionalism and communitarian and democratic constitutionalism.[9]

To complicate matters, ideas and concepts can change over time and this can affect narratives (Skinner 1969; Bödecker 2002). Research on conceptual history ('*Begriffsgeschichte*') tries to capture the past by analysing the different uses of terms over time (Koselleck 2006). Historians commonly try to be sensitive to what people in earlier times meant by their words to avoid an 'anachronism' or 'presentism' of interpretation (Lange 2019, p. 72f.). This also includes understanding that actors speaking in the past might have had certain things in mind which are now captured by terms that simply did not exist or were used differently in their time (ibid.: 74).

Evidently, the terminology used in connection with the rule of law also varies. In Czechia, the literal translation of the term 'rule of law'—*vláda práva*—is relatively rarely used in everyday legal and political language. Instead, people use the notion of the "state governed by the rule of law" (*právní stát*), similar to the German *Rechtsstaat*, although over time it has taken on the broader meaning of the substantive rule of law (Šimáčková 2013). In contrast, the term 'rule of law' in Polish (*praworządność*) contains no reference to statehood, while two other terms accentuate the state and the law as a corpus (*państwo prawa*, *państwo prawne*). So far, we do not know whether the existence of these different terms or phrases, which help to accurately express issues and nuances, reflect or perpetuate different ideas around the concept (Lorenz and Anders 2023).

Apart from some legal studies (e.g. Martini 2009), research has contributed little to shedding light on these questions. The rule of law situation in East Central European member states has been studied extensively, mainly under the term 'democratic backsliding'. There are by now numerous analyses on how rule of law institutions have been dismantled (see, for an overview, Anders and Lorenz 2021, p. 9ff.). The recent conflicts over the rule of law have also increased interest in rule of law discourses in some East Central European countries. However, these studies mostly focus on governments (Schlipphak and Treib 2017; Mos 2020; Csehi and Zgut 2020; Brusenbauch and Marek 2023). Much less is known about the rule-of-law-related speeches in parliaments, i.e. how politicians outside the executive talk about the rule of law and make sense of it. There are hardly any long-term and comparative studies on EU member states covering which ideas and arguments

[9] Such theorising is compatible with the idea of thought communities that exist on certain topics which are not structured along national or regional borders, but present in all European societies, albeit with some variation (for images of Europe, refer for example to Bátora and Baboš 2020).

parliamentarians use publicly.[10] For example, we do not know if rule of law narratives are coherent and consistent within parties and if they are stable.

It is important to fill this gap because ideas, meanings and sense-making are constitutive of human action (Taylor 1971). Especially actors in parliaments constitute, reconstitute and perpetuate certain narratives, in our case on the rule of law, which, as mentioned at the beginning, can inform and legitimise their actions (Schmidt 2008). "Discourses enacted in parliament not only reflect political, social, and cultural configurations in an ever-changing world, but they also contribute to shaping these configurations discursively, cross-rhetorically, and cross-culturally", argues Ilie (2015, p. 1). They influence public discourses and sense-making (Schmidt 2008, p. 311) and thus the way the wider population perceives reality. Given that in "a community organised around rules, compliance is secured – to whatever degree it is – at least in part by the perception of a rule as legitimate by those to whom it is addressed" (Franck 1988, p. 706; see also Raustiala and Slaughter 2002, p. 541), it is crucial to know how key actors address, legitimate or criticise the rule of law.

As indicated above, we define narratives as a way of talking about a certain subject and relating it to other themes. We are interested in how actors make sense of it by defining what the rule of law is, relating it to other subjects, such as democracy, and mentioning challenges.[11] A narrative emerges when different actors express a certain view in several different statements in different situations. They can reflect the speakers' normative beliefs but they might also be strategically constructed and applied with the aim to persuade others (Shenhav 2006; Smith-Walter and Jones 2020, p. 355). Speakers may (intentionally or unintentionally) use inaccurate information and narrate the reality selectively.[12] Narratives change over time when speakers use and recombine elements of previously shared ideas to lend credibility to values and arguments.

Against this background, this study explores the narratives of the rule of law used in the parliaments from 1990 in Hungary, Poland and Romania and from 1992 in Czechia and Slovakia until 2021. We want to explore if there are patterns of narratives on the concept of the rule of law and problems around it. Covering 30 years of parliamentary debates on rule-of-law-related issues in five countries, our empirical study of rule of law narratives is based on a broad and unique corpus of

[10] For case studies, see for example Iancu (2018), Buzogány and Varga (2021), for a comparative study of a shorter period see Granat (2023).

[11] With this definition and with our analytical focus on the ways of speaking about a theoretical concept, we deviate from the predominant understanding of political narratives that define them as a "recounting of events" (Rau and Coetzee 2022) and put the emphasis on the plot, chronology and sequence (Shenhav 2006). We do not define a narrative as a coherent and complete story, defined by "a setting, characters (such as heroes, villains, and victims), a plot, and a moral of the story" (Schlaufer et al. 2022, p. 252).

[12] For example, the PiS party in Poland has been accused of officially privileging a particular conception of the rule of law as the national heritage, while historically there have been different conceptions of law and the rule of law (Bucholc 2019).

documents. It allows us to analyse cross-national differences and to trace changes over time. The findings help to understand if recent crisis diagnoses with respect to the disregard of the rule of law would have been justified also in the past and whether, conversely, the recourse of some governments and scholars to national differences in rule of law cultures is warranted.

What makes this study unique is that we selected and analysed the empirical material in a case-sensitive, interpretative and comparative way. We did this in an international team with a native or excellent command of the languages and profound area expertise. Another unique feature of this analysis is that it provides translations of many of the statements that make up the narratives, opening this empirical material to a wider audience. This allows decision makers, lawyers, scholars, media analysts and anyone else interested to obtain a more nuanced understanding of how key actors address the rule of law in Poland, Czechia, Slovakia, Hungary and Romania.

When analysing the narratives, we combine a theory-guided deductive approach, more wide-spread in political science and sociology, with inductive elements, more prevalent in history, area studies and ethnography. To date, many studies on the rule of law have used the deductive approach in a normative and prescriptive way, defining certain models as guiding (Schimmelfennig 2012, p. 112). An inductive approach, instead, is open to new and unknown features of the empirical object, making it suitable for reconstructing narratives. Our study is based on general theoretical considerations (and therefore to some extent also theory-driven) but abstains from defining the issues under investigation too narrowly and takes advantage of expert knowledge for interpreting the narratives (Chap. 4). This allows for a fine-grained mapping of narratives that can inform comparative research on the rule of law, revealing, inter alia, the relevance and the meaning that political actors attach to particular elements or indicators of the rule of law.

The structure of the volume reflects the research process. We start in Chap. 2 with the general theoretical background of our study, which builds on approaches and findings from political science, history, sociology and cultural studies. Our point of departure is the neo-institutionalist assumption that existing orders influence actors' behaviour, but that actors can also use or try to modify these orders according to their interests or normative ideas. They do so by using, constructing and circulating ideas and beliefs through discourse. At the same time, they understand others' norm expectations and might consider it appropriate to express themselves accordingly, even if they do not share these norms. This is why narratives do not necessarily represent the speakers' personal views. We further assume that the specific context matters for how politicians refer to the rule of law. This includes the above-mentioned experiences with the transition to democracy and a market economy. Based on these considerations, we expect that regardless of the regional proximity of the countries, there may be national differences in rule of law narratives as well as changes over time.

These considerations provide a rather general framework and we underline that it remains an empirical question how actors narrate the rule of law. Given our premise that theory-building is inseparable from its empirical contexts, there are limits to

deriving hypotheses from theories informed by other empirical cases for our object of study. We therefore devote Chap. 3 to providing an in-depth empirical introduction to our cases. As we show in this chapter, drawing on various studies of the region, certain developments in these countries may have affected narratives about the rule of law in parliaments. These developments are either missing or not discussed in detail in current rule of law research, while other factors are possibly overemphasised. Specifically, we discuss the perhaps limited relevance of party ideologies, the massive post-1989 power shifts, conflicts over the post-1989 developments and the consequences of institutional choices, particularities of the relationship between politicians and judges, and the role of the EU. For scholars studying the rule of law from a theoretical perspective and for EU scholars unfamiliar with the region, this chapter provides detailed information to understand the actors' background and experiences that might inform their rule of law narratives.

Chapter 4 then describes our methodological approach, specifically how we combine deductive and inductive research strategies to map rule of law narratives in a way that is sensitive to the context while aiming to keep findings comparable. It also provides an overview of the sources used. As we describe in this chapter, we analysed debates with direct mentions of the term 'rule of law' or its semantic equivalents. We additionally covered debates on key legislation related to the rule of law in order to take into account that the rule of law may be associated with different things in different contexts and that parliamentarians may also talk about the rule of law and related issues without explicitly using the term. Chapter 4 also informs the reader how we analysed these documents. We sketch out how we identified and categorised the relevant parts of the parliamentary documents and then conducted a qualitative content analysis to provide an in-depth examination of the rule of law narratives comparable across our five countries.

Chapter 5 presents the findings of our empirical study with respect to how the MPs and government representatives referred to the foundations of the rule of law. Specifically, we explore how politicians spoke about the purpose of the rule of law, its elements and sources of legitimacy. To substantiate our interpretations and make them comprehensible and trustworthy for readers we provide various illustrative quotes. As mentioned above, we also consider this an important measure to make the original sources accessible. The chapter reveals that speaking about the foundations of the rule of law is much less controversial than suggested by the heated debates at the European level. However, we also found one aspect—the legitimacy of the rule of law—on which the MPs disagreed rhetorically and with growing intensity.

Chapter 6 shows that the rule of law discourses are nevertheless not devoid of controversy, i.e. problems, conflicts and dissent. The chapter reveals that the handling of rights was very controversial in some parliaments while a topic of minor relevance in others, which causes a potential for conflicts among countries at the European level. The relationship between the rule of law and democracy seemed less uncontroversial at first glance, but it was disputed in certain parliaments and time periods. The final subchapter demonstrates that a number of aspects were described as challenges to the rule of law across party lines, often with country-

specific narratives. Finally, established rhetoric divides exist regarding some challenges to the rule of law.

Chapter 7 summarises our main findings, discusses their implications for theory-building and provides policy recommendations. We call, inter alia, for putting more scholarly attention on the controversial aspects around the prohibition of retroactive action as one element of the rule of law discussed in several of the analysed countries. This was a matter of great concern in the context of dealing with pre-1989 injustice and later amnesties. We also suggest building stronger ties with and among parliaments. These share many narratives on the rule of law, for example the need to respect the constitution and criticism of tendencies of centralising power.

References

Albi, Anneli, and Samo Bardutzky. 2019. *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law: National Reports*. The Hague: Springer Nature.

Anders, Lisa H., and Astrid Lorenz. 2021. Examining Illiberal Trends and Anti-EU Politics in East Central Europe from a Domestic Perspective: State of Research and Outline of the Book. In *Illiberal Trends and Anti-EU Politics in East Central Europe*, ed. Astrid Lorenz and Lisa H. Anders, 1–25. Cham: Springer Nature.

Avbelj, Matej. 2017. Transformation in the Eye of the Beholder. In *Central European Judges Under the European Influence: The Transformative Power of the EU Revisited*, ed. Michal Bobek, 275–291. Oxford/Portland: Hart Publishing.

Bakke, Elisabeth, and Nick Sitter. 2022. The EU's Enfants Terribles: Democratic Backsliding in Central Europe Since 2010. *Perspectives on Politics* 20: 22–37.

Bátora, Jozef, and Pavol Baboš. 2020. Making Sense of the European Union: Mapping 'Thought Communities' in Six EU Member States. *Sociológia* 52: 527–555.

Bedner, Adriaan. 2018. The Promise of a Thick view. In *Handbook on the Rule of Law*, ed. Christopher May and Adam Winchester, 34–47. Cheltenham/Northampton: Edward Elgar Publishing.

Bill, Stanley. 2014. *Seeking the Authentic: Polish Culture and the Nature of Postcolonial Theory*. Nonsite.org. Article Issue #12. https://www.academia.edu/download/54702038/Seeking_the_Authentic_Polish_Culture_and.pdf. Accessed 26 September 2023.

Blokker, Paul. 2019. Populist Counter-Constitutionalism, Conservatism, and Legal Fundamentalism. *European Constitutional Law Review* 15: 519–543. https://doi.org/10.1017/S157401961900035X.

Blum, Sonja, and Johanna Kuhlmann. 2019. Stories of How to Give or Take – Towards a Typology of Social Policy Reform Narratives. *Policy and Society* 38: 339–355. https://doi.org/10.1080/14494035.2019.1657607.

Bödecker, Hans Erich. 2002. *Begriffsgeschichte, Diskursgeschichte, Metaphergeschichte*. Göttingen: Wallstein Verlag.

Bos, Ellen, and Astrid Lorenz, eds. 2021. *Politics and Society in Hungary. (De-)Democratization, Orbán and the EU*. Wiesbaden: Springer.

Brusenbauch Meislová, Monika, and Dan Marek. 2023. 'It's the EU's Fault!' Strategies of Blame Avoidance in Andrej Babiš's Discourse on the Conflict-of-Interest case. *European Politics and Society* 24: 392–409. https://doi.org/10.1080/23745118.2022.2043066.

Bucholc, Marta. 2019. Commemorative Lawmaking: Memory Frames of the Democratic Backsliding in Poland After 2015. *Hague Journal on the Rule of Law* 11: 85–110. https://doi.org/10.1007/s40803-018-0080-7.

———. 2022. The Rule of Law as a Postcolonial Relic: The Narrative of the Polish Right. *Zeitschrift für Rechtssoziologie* 42: 43–66. https://doi.org/10.1515/zfrs-2022-2003.

Buzogány, Aron, and Mihai Varga. 2021. Illiberal Thought Collectives and Policy Networks in Hungary and Poland. *European Politics and Society* 24: 40–58. https://doi.org/10.1080/23745118.2021.1956238.

Coman, Ramona. 2022. *The Politics of the Rule of Law in the EU Polity: Actors, Tools and Challenges*. Cham: Palgrave Macmillan.

Coman, Ramona, and Clara Volintiru. 2023. Anti-Liberal Ideas and Institutional Change in Central and Eastern Europe. *European Politics and Society* 24(1): 5–21. https://doi.org/10.1080/23745118.2021.1956236.

Csehi, Robert, and Edit Zgut. 2020. 'We Won't let Brussels Dictate Us': Eurosceptic Populism in Hungary and Poland. *European Politics and Society* 22: 53–68.

Cserne, Peter. 2017. Formalism in Judicial Reasoning: Is Central and Eastern Europe a Special Case? In *Central European Judges Under the European Influence: The Transformative Power of the EU Revisited*, ed. Michal Bobek, 23–42. Oxford: Hart Publishing.

Döring, Jörg, and Tristan Thielmann. 2008. *Spatial Turn: Das Raumparadigma in den Kultur- und Sozialwissenschaften*. Bielefeld: transcript Verlag.

Drinóczi, Tímea. 2019. The European Rule of Law and Illiberal Legality in Illiberal Constitutionalism: The Case of Hungary. *MTA Law Working Papers 2019/16*. https://doi.org/10.2139/ssrn.3470005

ENCJ [European Networks of Councils for the Judiciary]. 2020. *Independence, Accountability and Quality of the Judiciary. Measuring for Improvement*. ENCJ Report 2019-2020. https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-encj2017-p/Reports/ENCJ%20report%20IAQ%202019-2020%20adopted%20GA%202020.pdf. Accessed 16 May 2024

European Commission. 2018. Perceived independence of the national justice systems in the EU among companies. Flash Eurobarometer 462. Briefing note.

———. 2022a. *2022 Rule of Law Report. Country Chapter on the Rule of Law Situation in Czechia. Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. 2022 Rule of Law Report*. The rule of law situation in the European Union, SWD (2022) 503 final, https://commission.europa.eu/system/files/2022-07/12_1_193978_coun_chap_czechia_en.pdf.

———. 2022b. *2022 Rule of Law Report. Country Chapter on the Rule of Law Situation in Romania. Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. 2022 Rule of Law Report*. The rule of law situation in the European Union, SWD (2022) 523 final, https://commission.europa.eu/system/files/2022-07/52_1_194026_coun_chap_romania_en.pdf.

———. 2022c. *2022 Rule of Law Report. Country Chapter on the Rule of Law Situation in Slovakia. Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. 2022 Rule of Law Report*. The rule of law situation in the European Union, SWD(2022) 525 final, https://commission.europa.eu/system/files/2022-07/56_1_194041_coun_chap_slovakia_en.pdf.

———. 2023. *Perceived Independence of the National Justice Systems in the EU Among the General Public*. Flash Eurobarometer 519. Report.

European Parliament. 2020. *Public Opinion in the EU in Time of Coronavirus Crisis (3rd survey)*. First Results. https://www.europarl.europa.eu/at-your-service/en/be-heard/eurobarometer/public-opinion-in-the-eu-in-time-of-coronavirus-crisis. Accessed 15 May 2024

Fallon, Richard H., Jr. 1997. The Rule of Law as a Concept in Constitutional Discourse. *Columbia Law Review* 97: 1–56.

Fekete, Balazs. 2012. *Rule of Law in a 'Post-Communist' Legal Pluralism – on the Social Conditions of the Rule of Law from an East-Central European Perspective*. SSRN. October 27. https://doi.org/10.2139/ssrn.2167227

Franck, Thomas M. 1988. Legitimacy in the International System. *American Journal of International Law* 82: 705–759. https://doi.org/10.2307/2203510.

Granat, Katarzyna. 2023. The Parliamentary Politics of the Rule of Law Crisis in the EU. *Journal of European Integration* 45: 1017–1034. https://doi.org/10.1080/07036337.2023.2220879.

Grosse, Tomasz Grzegorz. 2020. *Spór polityczny wokół praworządności w Unii Europejskiej*. Warsaw: Instytut Sobieskiego.

———. 2022a. Europejski uniwersalizm w dobie kryzysów. *Roczniki nauk społecznych* 50: 137–157.

———. 2022b. Federacja Demokratyczna jako Wizja Przyszłości Unii Europejskiej. In *Wizje przyszłości Unii Europejskiej*, ed. Marcin Romanowski and Jarosław Szymanek, 69–83. Warsaw: Wydawnictwo Szkoły Wyższej Wymiaru Sprawiedliwości.

Hertogh, Marc. 2016. Your Rule of Law Is Not Mine: Rethinking Empirical Approaches to EU Rule of Law Promotion. *Asia Europe Journal* 14: 43–59. https://doi.org/10.1007/s10308-015-0434-x.

Iancu, Alexandra. 2018. Questioning Anticorruption in Postcommunist Contexts. Romanian MPs from Commitment to Contestation. *Südosteuropa* 66: 392–417. https://doi.org/10.1515/soeu-2018-0030.

Ilie, Cornelia. 2015. Parliamentary Discourse. *The International Encyclopedia of Language and Social Interaction*: 1–15.

Jakab, András, and Eszter Bodnár. 2020. The Rule of Law, democracy, and human rights in Hungary. Tendencies from 1989 until 2019. In Rule of Law, Common Values, and Illiberal Constitutionalism Poland and Hungary within the European Union, eds. Tímea Drinóczi and Agnieszka Bień-Kacała, 105–118. London: Routledge.

Kleinfeld Belton, Rachel. 2005. *Competing Definitions of the Rule of Law*. Implications for Practitioners (Carnegie Papers, Rule of Law Series, No. 55)

Koselleck, Reinhart. 2006. *Begriffsgeschichten: Studien zur Semantik und Pragmatik der politischen und sozialen Sprache*. Frankfurt am Main: Suhrkamp.

Lange, Felix. 2019. Coercion, Internalization, Decolonization: A Contextual Reading of the Rise of European International Law Since the Seventeenth Century. In *The International Rule of Law: Rise or Decline?* ed. Heike Krieger, Georg Nolte, and Andreas Zimmermann, 66–89. Oxford: Oxford University Press.

Lorenz, Astrid. 2024. Constitutions and the Rule of Law. In *Handbook of Comparative Political Institutions*, ed. Adrian Vatter and Rahel Freiburghaus. Cheltenham: Edward Elgar Publishing.

Lorenz, Astrid, and Lisa H. Anders, eds. 2021. *Illiberal Trends and Anti-EU Politics in East Central Europe*. Cham: Palgrave Macmillan.

———. 2023. Conceptions and Perceptions of the Rule of Law and How Studying Them Can Help to Resolve the EU Rule of Law Crisis. In *Rule of Law and the Judiciary*, ed. Katja Meier, Astrid Lorenz, and Mattias Wendel, 37–60. Baden-Baden: Nomos.

Lorenz, Astrid, and Dirk Dalberg, eds. 2023. *Das politische System der Slowakei*. Wiesbaden: Springer VS.

Lorenz, Astrid, and Hana Formánková, eds. 2020. *Czech Democracy in Crisis*. Cham: Palgrave Macmillan.

Lorenz, Astrid, and Daniela-Maria Mariş, eds. 2022. *Das politische System Rumäniens: Entwicklung und Herausforderungen in Europa*. Wiesbaden: Springer VS.

Magen, Amichai, and Leonardo Morlino. 2009. Hybrid Regimes, the Rule of Law, and External Influence on Domestic Change. In *International Actors, Democratization, and the Rule of Law: Anchoring Democracy?* ed. Amichai Magen and Leonardo Morlino, 1–25. London: Routledge.

Maksymiuk, Magdalena. 2022. The Principle of Democracy and the State of Law with Regard to the Values Enshrined in Article 2 of the Treaty on European Union. In *Unity in Pluralism – Europe's Underestimated Strength*, ed. Joanna Siekiera, 61–72. Warsaw: Wydawnictwo Szkoły Wyższej Wymiaru Sprawiedliwośc.

Martini, Stefan. 2009. Die Pluralität von Rule-of-Law-Konzeptionen in Europa und das Prinzip einer europäischen Rule of Law. In *Normative Pluralität ordnen*, ed. Matthias Kötter and Gunnar Folke Schuppert, 303–344. Baden-Baden: Nomos Verlagsgesellschaft.

Mendelski, Martin. 2016. Das europäische Evaluierungsdefizit der Rechtsstaatlichkeit. *Leviathan* 44: 366–398.

Mishkova, Diana, and Balázs Trencsényi, eds. 2017. *European Regions and Boundaries: A Conceptual History*. New York / London: Berghahn Books.

Møller, Jørgenand, and Svend-Erik Skaaning. 2014. *The Rule of Law: Definitions, Measures, Patterns and Causes*. New York: Palgrave Macmillan.

Morawiecki, Mateusz. 2021. *Speech in the European Parliament*. https://www.europarl.europa.eu/doceo/document/CRE-9-2021-10-19-ITM-002_EN.html. Accessed 19 July 2023

Mos, Martijn. 2020. Ambiguity and Interpretive Politics in the Crisis of European Values: Evidence from Hungary. *East European Politics* 36: 267–287.

Murphy, Walter F. 1993. Constitutions, Constitutionalism, and Democracy. In *Constitutionalism and Democracy*, ed. Douglas Greenberg, Stanley N. Katz, Melanie Beth Oliviero, and Steven C. Wheatley, 3–25. New York/Oxford: Oxford University Press.

Peerenboom, Randall, Michael Zürn, and André Nöllkaemper. 2012. Conclusion: From Rule of Law Promotion to Rule of Law Dynamics. In *Rule of Law Dynamics: In an Era of International and Transnational Governance*, ed. Michael Zurn, André Nollkaemper, and Randy Peerenboom, 305–324. Cambridge: Cambridge University Press.

Rau, Asta, and Jan K. Coetzee. 2022. Designing for Narratives and Stories. In *The SAGE Handbook of Qualitative Research Design*, ed. Uwe Flick, 700–715. London: Sage Publications Ltd.

Raustiala, Kal, and Anne-Marie Slaughter. 2002. International Law, International Relations and Compliance. In *The Handbook of International Relations*, ed. Walter Carlnaes, Thomas Risse, and Beth Simmons, 538–558. Thousand Oaks: Sage Publications Itd.

Rech, Walter. 2018. Some Remarks on the EU's Action on the Erosion of the Rule of Law in Poland and Hungary. *Journal of Contemporary European Studies* 26: 334–345.

Reynders, Didier. 2023. Foreword. In *Rule of Law and the Judiciary*, ed. Katja Meier, Astrid Lorenz, and Mattias Wendel, 11–14. Baden-Baden: Nomos.

Sadurski, Wojciech. 2018. *How Democracy Dies (in Poland): A Case Study of Anti-Constitutional Populist Backsliding*. Sydney Law School Research Paper No. 18/01

———. 2019. *Poland's Constitutional Breakdown*. Oxford/New York: Oxford University Press.

Sajó, András. 2003. Pluralism in Post-Communist Law. *Acta juridica hungarica* 44: 1–20.

Scheppele, Kim Lane. 2013. The Rule of Law and the Frankenstate: Why Governance Checklists Do Not Work. *Governance* 26: 559–562.

Schimmelfennig, Frank. 2012. A Comparison of the Rule of Law Promotion Policies of Major Western Powers. In *rule of Law Dynamics: In an Era of International and Transnational Governance*, ed. Michael Zurn, André Nollkaemper, and Randy Peerenboom, 111–132. Cambridge: Cambridge University Press.

Schlaufer, Caroline, Johanna Kuenzler, Michael D. Jones, and Elizabeth A. Shanahan. 2022. The Narrative Policy Framework: A Traveler's Guide to Policy Stories. *Politische Vierteljahresschrift* 63: 249–273.

Schlipphak, Bernd, and Oliver Treib. 2017. Playing the Blame Game on Brussels: The Domestic Political Effects of EU Interventions Against Democratic Backsliding. *Journal of European Public Policy* 24: 352–365.

Schmidt, Vivian A. 2008. Discursive Institutionalism: The Explanatory Power of Ideas and Discourse. *Annual Review of Political Science* 11: 303–326.

Shanahan, Elizabeth A., Michael D. Jones, Mark K. Mcbeth, and Claudio M. Radaelli. 2018. The Narrative Policy Framework. In *Theories of the Policy Process*, ed. Christopher M. Weible and Paul A. Sabatier, 173–213. New York: Routledge.

Shapiro, Ian. 1994. Introduction. In *The Rule of Law*, ed. Ian Shapiro, 1–10. New York/London: New York University Press.

Shenhav, Shaul R. 2006. Political Narratives and Political Reality. *International Political Science Review* 27: 245–262.

Šimáčková, Kateřina. 2013. Právní stát nebo vláda práva? In *20 let Ústavy České republiky: ohlédnutí zpět a pohled vpřed*, eds. Aleš Gerloch, and Jan Kysela, 167–176. Plzeň: Aleš Čeněk, s.r.o.

Skinner, Quentin. 1969. Meaning and Understanding in the History of Ideas. *History and Theory* 8: 3–53.

Smith-Walter, Aaron, and Michael D. Jones. 2020. Using the Narrative Policy Framework in Comparative Policy Analysis. In *Handbook of Research Methods and Applications in Comparative Policy Analysis*, ed. B. Guy Peters and Guillaume Fontaine, 348–365. Cheltenham/ Northampton: Edward Elgar Publishing.

Szymanek, Jarosław. 2020. Zamiast zakończenia: Rule of law jako wspólna wartość w prawie Unii Europejskiej. In *Wartości Unii Europejskiej a praworządność*, ed. Marcin Romanowski, 353–376. Warsaw: Wydawnicto Instytutu Wymiaru Sprawiedliwości.

Tamanaha, Brian Z. 2004. *On the Rule of Law: History, Politics, Theory*. Cambridge: Cambridge University Press.

Taylor, Charles. 1971. Interpretation and the Sciences of Man. *The Review of Metaphysics* 25: 3–51.

Varga, Judit. 2020. *European Commission's Rule of Law Report is Absurd and Untrue*. https://www.kormany.hu/en/ministry-of-justice/news/european-commission-s-rule-of-law-report-is-absurd-and-untrue 05.10.2020

Von Hirschhausen, Béatrice, Hannes Grandits, Claudia Kraft, Dietmar Müller, and Thomas Serrier. 2015. *Phantomgrenzen: Räume und Akteure in der Zeit neu denken*. Göttingen: Wallstein Verlag.

Von Hirschhausen, Béatrice, Hannes Grandits, Claudia Kraft, Dietmar Müller, and Thomas Serrier. 2019. Phantom Borders in Eastern Europe: A New Concept for Regional Research. *Slavic Review* 78(2): 368–389.

Waldron, Jeremy. 2008. The Concept and the Rule of Law. *Georgia Law Review* 43.

Wendel, Mattias. 2023. Enforcing the Independence of National Courts by Means of EU Law: Standards, Procedures and Actors as Exemplified by the Crisis of the Polish Judiciary. In *Rule of Law and the Judiciary*, ed. Katja Meier, Astrid Lorenz, and Mattias Wendel, 123–142. Baden-Baden: Nomos.

Actors, Institutions and Narratives. The Neo-Institutional Framework of Analysis

2

Research on the rule of law in Europe has intensified in the last ten years. Many current studies focus on rule of law deficits in selected countries (e.g. Sadurski 2019; Jakab and Bodnár 2020). Their (implicit) benchmark is often the EU legal framework rather than international indices of the rule of law or national development paths. While Hungary and Poland receive a lot of attention, other countries are understudied. In most studies, the dismantling of the rule of law is associated with the ideology and actions of the governing parties (Lacey 2019; Bakke and Sitter 2022; Pappas 2019, p. 190; Sajó 2021, p. 576ff.; see Chap. 3). Historical, cultural and cross-national contextualisation—although often considered crucial for understanding policies (Brier 2009)—is missing in current studies on the rule of law in EU member states.[1]

Our study is based on the assumption that these analyses of the rule of law need to be complemented by studies with a broader empirical foundation. To borrow from Avbelj (2017, p. 275f.), "given that the discussed national perspectives are inevitably deeply situated in the relevant comprehensive national societal contexts", they "could be most likely fully understood only from within these contexts, having the bigger national picture." This includes knowing the ideational and rhetorical references of key actors embedded in their social contexts. Rule of law issues, in other words, "should not be viewed in isolation but along with broader economic and political concerns, to which sometimes they are subordinated" (Rech 2018, p. 338).

As this chapter shows, our study can build on a rich body of theoretical approaches and empirical research. This helps to formulate different expectations regarding the patterns of narratives in the parliaments under study. In theoretical terms, we draw on neo-institutionalist accounts with their focus on the emergence, transformation and structuring effects of institutions. In this perspective, the rule of

[1] Historians examined the rule of law in terms of overarching, long term, often national institutional and policy patterns and processes. Interdisciplinary legal research has addressed lawyers' understanding of their roles, but not their views of the rule of law.

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law (including the constitutional or judicial provisions that affect it) is an institution that shapes behaviour, legitimises it, and sanctions deviations. It was created and has been developed by (socially embedded) actors who discursively interpret and reinterpret it and strengthen or dismantle it accordingly and who shape public perceptions of the rule of law. How politicians—key actors in these processes—debate the rule of law is therefore highly relevant to understanding its development.

The well-established strands of neo-institutionalism—historical, sociological and rational choice institutionalism (Hall and Taylor 1996; Kaiser 2001; Hay 2009)—and also the more recent discursive institutionalist approaches (Schmidt 2008) are based on different premises about actors' preferences and their significance for the development of institutions such as the rule of law.[2] Nevertheless, they are all compatible with the following five general assumptions that guide the present study.

Firstly, law and the institution of the rule of law historically emerged and developed as the result of the action of rational and norm-driven politicians, judges and other actors in specific power relations, against the background of different problem perceptions, experiences and ideas. Actors participate in speech events (e.g. in parliaments) where such processes are addressed. For centuries, these processes were nationally contoured. As a result, patterns of the emergence of functions differ and the narratives referring to such processes may vary across polities.

Secondly, regardless of their original purposes, the context and conflicts that shaped their creation, once institutions such as the rule of law are established, they acquire a force of their own and are "remarkably sturdy and resilient" (Dahl 1982, p. 188). They influence the way actors think and behave. This includes effects on intellectual and political debates, with reflections on why the institutional setting is plausible, valuable and appropriate, potentially resulting in its perception as an element of a 'universal' and collective canon of values even though the context of origin and the institutional model used are particular. This does not mean that institutions determine action and perceptions unidirectionally. While the effects of social founding contexts can be inscribed in institutions, actors can challenge them and reinterpret their relevance.

Thirdly, the formal stipulation of rule of law norms and procedures does not automatically ensure their acceptance and application. Successful institutionalisation requires that formal rules are accepted and supported by complementary informal rules (Helmke and Levitsky 2004, p. 728; Dimitrova 2010). In this sense, the "mere emergence of a 'minimal commitment' to liberal democracy in East Central Europe (. . .) tells us very little about the process of democratization itself, because this democratic minimum needs to be embedded in 'thick' democratic political cultures" (Brier 2009, p. 341). Context factors that affect these informal rules are therefore relevant and it is important to analyse how certain ideas materialise in different

[2] Different approaches to study narratives, e.g. the '*homo narrans*' model of the individual (Smith-Walter and Jones 2020, p. 352f.; Shanahan et al. 2018, p. 180ff.), can be combined with the neo-institutional framework presented here.

contexts. After momentous historical changes such as the post-1989 democratisation and EU accession, for example, ideas and practices might have persisted that were not visible in and sometimes collided with the official legal texts. Besides, perceived illegitimacy or deficits in functioning can lead to demands for change. Thus, formally established institutions such as the rule of law may remain or become the subject of contestation. This can lead to their de-institutionalisation or inspire countermeasures to re-institutionalise and stabilise them, and this may also be reflected by public narratives.

Fourthly, while it is possible to analytically separate the preferences of actors and their rhetoric, the empirical relationship of these two categories cannot be disentangled with certainty. Narratives might mirror the norms and beliefs of speakers, but politicians might also communicate strategically. Actors may be interested in creating discourse coalitions for strategic reasons, just as they can be interested in forming policy coalitions. Others might prefer to express their 'true' preferences and ideas about the rule of law without paying much attention to the rhetoric and interests of others.

Fifthly, theory-building is always embedded in and informed by specific contexts, whether consciously or unconsciously. The intimate knowledge of certain cases constitutes a rarely reflected habitual heuristic in the formulation of hypotheses and methodology (Kelle and Kluge 2010, p. 17). For example, theories on political parties' rationales of action are often based on empirical studies on their form and organisation in Western consolidated liberal democracies.[3] These parties represent the implicit norm, while deviating "varieties in party practices" in many new democracies are rarely considered (Ghergina et al. 2018, p. 3). In the following, we therefore discuss insights from research about our cases and do not take existing theories as a universal state of the art.

In the following sections, we elaborate the general analytical framework of our study in more detail. Section 2.1 applies it to briefly trace the history of the liberal rule of law. This is to illustrate some 'classical' conflicts surrounding its meaning and development and the essential role of politicians (and judges). Sections 2.2 and 2.3 develop these considerations and discuss why national and temporal differences in the rule of law narratives are theoretically conceivable. In Sect. 2.4 we then discuss potential conflicts and competing narratives that may arise from party competition, the government–opposition divide and differing rationale of politicians' and judges' views of the rule of law.

[3] It also includes changes in these societies over time, such as membership losses (Dalton and Wattenberg 2000).

2.1 Actors as Creators and Addressees of the Rule of Law. A Short History

Applied to the emergence and development of the rule of law, our general assumptions outlined above underline the relevance of actors. Since the rule of law has been and continues to be a differently interpreted and contested idea, the actors interpreting it (and the narratives they use) make a difference when it comes to the institutionalisation and de-institutionalisation of the rule of law. The contentiousness of the rule of law has not always resulted in direct confrontations but also in parallel institutionalisations of law and the rule of law in different countries with competing ideational underpinnings, narratives and logics of action. With increasing transnational and international connections and interdependences, however, a clear legal definition became necessary, but this led to struggles over the right way of understanding and realising it. These three aspects are discussed below.

Historically, the creation of the rule of law—at least in its liberal form[4]—was embedded in the bourgeois revolutions in Europe and North America since the end of the eighteenth century and closely linked to the idea of constitutionalism.[5] It thus pre-dated democracy in this area (Fukuyama 2010; Zakaria 1997). Law and justice and the recognition that they have to be respected had existed before.[6] However, now the bourgeoisie shackled the nobility and itself by means of constitutions (Elster 2000). These consisted of a catalogue of liberties and property rights for all citizens against encroachments of state power and a judiciary independent of political power (Waldron 2008, p. 7ff.).

These new rights and institutions created opportunities for legal mobilisation, also against ruling majorities. Parties with various political agendas and, especially in East Central Europe, also movements striving for political unification or secession benefited from the rule of law, and increasingly perceived it as advantageous. Later, this process went hand in hand with the expansion of the electoral principle and the spread of democracy. The further formalisation of the rule of law, including the expansion of the judiciary, gained importance, as it promised to protect classical liberal negative rights (Martini 2009). Therefore, judges became influential actors in addition to politicians (Halliday and Karpik 1997; Tamanaha 2004, p. 29).[7]

[4] According to Shapiro (1994, p. 9), "reasoned commitment to the rule of law is pre-eminently a liberal commitment". While the genesis of the rule of law as described in the following is often linked to its liberal rooting, there is also a liberal critique of rule of law institutionalisation which argues that liberalism can be damaged by overregulation by the state (Flathman 1994).

[5] Others date the emergence of the rule of law back to ancient Greece (Tamanaha 2004, p. 7ff.).

[6] Raz (1979) argues that law created dangers that the rule of law was then supposed to reduce. However, since the rule of law is also supposed to reduce other risks to personal freedom, this seems to be exaggerated, and the law is instead part of the remedy rather than the problem (Waldron 2008, p. 10ff.).

[7] The US Supreme Court provided a prominent example of self-empowerment in 1803 when it declared that it had the right to interpret the constitution, despite the absence of any constitutional norm granting such authority (Lübben 2021).

These processes were inspired by the new idea of liberalism and accompanied by a theoretical rationalisation. While initially the liberal content in the sense of a "rationally inspired constitutional programme" was emphasised more than formal aspects (Martini 2009, p. 308), formal aspects received growing attention. Thinkers from Locke to Kant perceived "institutionalized government" as a precondition "of the realization of liberal ideals" (Flathman 1994, p. 298). Constitutionalism was a combination of universalist values and particularistic interests (Olgiati 2006, p. 55). It was linked to the conviction that society had self-control mechanisms that would lead to prosperity and justice if only these mechanisms were allowed to operate unhindered (Grimm 1994, p. 45) and that civic public culture, economic activity and a professional state administration were crucial for modern statehood (Habermas 1962/1990, 1992). In a historical comparison of systems, the essential value of constitutionalisation was to replace a non-consensual state power, which was legitimised by itself, with a state power "that required consensus and was legitimised by those subject to the rule" (Grimm 1994, p. 404). The rule of law was thus one component of a broader ideational framework regarding state, market and society legitimising the modern state as a rational, reason-based order. In this respect, the essence of the concept of the rule of law lay in the legality of political rule and the principle of equality before the law (Stein 2021, p. 6).

Actors soon intended to export the new rule of law principle. "(T)here have been several historic waves of international rule of law promotion, often linked to war, colonialism, and occupation" (Schimmelfennig 2012, p. 111; see also Lange 2019, p. 85ff.). However, liberalism was criticised as early as the mid-nineteenth century. From a Marxist perspective, for example, the new rights were the result of an emancipation of parts of the society—the bourgeoisie—but at the same time an instrument to preserve pre-political relations (above all the existing property rights), to enforce political decisions, ideologically justify an 'inherently unjust' system, and conceal the 'actual power relations' in society (Campbell 1997).

In developing these ideas, the Marxist movement sought to replace the (capitalist) constitutional state with a classless society without a state. It became politically influential in the October 1917 Russian Revolution, where it suppressed the first beginnings of the liberal rule of law from the late tsarist era, which can be regarded as an early example of de-institutionalisation. While in the autocratic tsarist empire formal law was established, but given little value in practice, in the emerging Soviet Union, it was completely subordinated to the state ideology.

Later, fascism and National Socialism broke with the logic of the liberal democratic rule of law by means of undermining and de-institutionalising it. Contemporaries characterised the National Socialist system as a *Doppelstaat*, a "dual state" that applied laws tactically (Fraenkel 1940/1974). Operating within the framework of the "norm state" it was intended to ensure the integration of bourgeois elites into the new system and its economic and administrative functionality in the short term. From the beginning, however, the norm state was undermined by the *Maßnahmenstaat*, the "prerogative state", which no longer accepted any constraints on state action through law (Stolleis 1994; Mertens 2009). The invocation of legality

and the rule of law, even by dictatorships, conversely testified to the attractiveness of statehood based on law.

After 1945, political majorities in several European states introduced comprehensive models of non-majoritarian legal control, (also) in response to the experience of National Socialism and in competition to the new state communism. Independent constitutional courts and the protection of fundamental rights were the main objectives. Especially in West Germany (required and supported by the Western Allies), Italy and France, efforts were made to establish safeguards against repeating past mistakes. Nevertheless, the concrete institutional arrangements differed, influenced by how much authority and respect the former political institutions and incumbents enjoyed, and political decision makers built on the pre-war institutional arrangements rather than creating entirely new ones (Johnson 1993, p. 28). Re-institutionalisation trumped new institutionalisation.

Countries under communist rule, including in East Central Europe, did not generally deny the rule of law but understood it in terms of communist or socialist legality. Ruling parties argued that a bourgeois rule of law would only serve the interests of property owners while law in socialism would help to provide legal certainty and effective central state administration in a system which realises the working class's interests (Gardos-Orosz 2021, p. 1329ff.). All state institutions were to serve these 'class interests' in the planned transition to communism (Garlicki 1977, p. 55; Sect. 2.2). At the heart of this 'socialist' conception of the rule of law was the rejection of the separation of powers in favour of "the principle of the unity of state power based on the doctrine of Rousseau" (Garlicki 1977, p. 55). Formally, the parliament elected by the people was the highest state authority.[8] At the same time, socialist constitutions enshrined prominently a superior role for the communist party in society and the state. The communist party was understood as the "vanguard of the working class" and the "militant alliance of the most active and most politically conscious citizens from the ranks of the workers, peasants and intelligentsia", as stated in Article 4 of the 1960 Czechoslovak constitution.[9] It was the ruling party that defined the 'class interests' (Gardos-Orosz 2021, p. 1329ff.).

In general, law remained important under socialism.[10] Significant decisions were cast in legal form, and constitutions and legal texts remained present. State socialism in East Central Europe was organised bureaucratically. Socialist law served not only as a means of "protecting socialist conditions, but [. . .] also as an instrument of

[8] It passed laws, made appointments to other central state organs, controlled their activities, and issued guidelines for their activities, while it could not be dissolved, and there was no right of objection to its laws (Garlicki 1977, p. 55f.).

[9] The Romanian constitution designated the Communist Party as the leading force of society since 1965 (Art. 3, also Art. 26), the Hungarian constitution since 1972 ("The Marxist-Leninist party of the working class is the leading force of society", § 3), the Polish constitution since 1976 ("the Polish United Workers' Party is society's leading political force in the building of socialism", Art. 3 [1]).

[10] In a values-based understanding of the law, which envisages a pluralistic emergence of norms, common good orientation etc. (Waldron 2008, p. 19ff.), such laws would not be called law.

socialist education" (Buhr and Kosing 1979, p. 277). Social guarantees, such as the right to work, education or housing, were recognised (albeit with limited individual choice).[11] However, the law did not constrain the ruling party (Küpper 2005, p. 417ff.) and citizens enjoyed no or only minimal political rights to defend themselves against the state and limited individual property guarantees. The law did not protect citizens from possible state restrictions of fundamental rights. Instead, socialist constitutions allowed the exercise of these rights to be restricted in cases where they conflicted with the "public good" or with the "principles of social cooperation" (Osiatynski 1994, p. 112), or simply with the "'superior nature' of socialist law" (Sajó 1990, p. 331). Nor did they secure control over the executive and the legislature as anchored in liberal constitutions (Brunner and Meisner 1980, p. 7ff.; Heydebrand 2002, p. 16ff.). Instead, the lack of autonomy of society and the economy from state decisions, the recurrent recourse to the socialist collective and the state, and its legitimation through material benefits rather than liberal freedoms and participation rights were strong features of socialist systems.

With the transitions from communism and planned economy to democracy and a market economy from 1989 onwards, these principles were removed from the constitutions of all East Central European states. Actors in all post-communist states supported the establishment or activation of independent constitutional courts. However, these changes could also be superficial (Sajó 1990) as old ideas persisted and traditional practices were continued under different institutional banners (Krygier and Czarnota 2006, p. 302f.; Bugaric 2015; see Sects. 2.3 and 2.4, Chap. 3).

In the early 1990s, Western states intensified their rule of law promotion. "Like the state, the market, and the bureaucracy, with which it is closely linked," this "institution based on Western, rational values" was now "backed by the authority of international organizations, and disseminated across the globe", as Schimmelfennig (2012, p. 111) put it. Referring to Rodríguez-Garavito (2011) and Trubek (2006), he also mentions that "the emergence of the rule of law paradigm resulted from the shift from 'embedded liberalism' to 'neoliberalism,' the upsurge of democracy promotion after the end of the Cold War, and 'global neoconstitutionalism'" (Schimmelfennig 2012, p. 111). The spread of legal norms was driven, among others, by lawyers and judges with different interests (Halliday and Carruthers 2007, p. 1192f.). During these processes, the rule of law as an ideal was "never seriously rejected", although understood in different ways (Magen and Morlino 2009, p. 7f.).

In fact, the comparative history of constitutionalism suggests that throughout history both directions of impact (the rule of law as a result of human action and as a factor affecting it) have been influenced by events outside individual states. Since the nineteenth century, European constitutional thinking and written constitutions have been based on norms and institutions formulated and created in the French and American Revolutions (Brandt et al. 2006; Daum et al. 2012, 2020). In Europe they

[11] The idea of the educational function of institutions can also be found much earlier. John Stuart Mill (1993, p. 209) attributes such a function to the representative constitution, which educates people to become good citizens (cited in Kaiser 2001, p. 259).

were adopted in several waves of constitutionalisation through norm diffusion and legal transfer, which varied from selective reception and adaptation to the complete takeover of texts and institutions. In the heyday of constitutionalisation in Central and Eastern Europe, the interwar period of the twentieth century, constitution makers from Estonia to Albania not only looked at traditional Western European models but also reflected intensively on the constitutional development in other states of the wider region (Müller 2021).

External developments also influenced the post-1945 stabilisation of the Western European democratic constitutional states. The Cold War competition between the political systems contributed significantly to the expansion of welfare states[12] and, thus, indirectly, to the acceptance of the rule of law and democracy (Johnson 1993, p. 38). This was accompanied by discussions about the extent to which legal guarantees aimed at social benefits and participation rights contradicted the constitutional principles of legal equality, freedom of enterprise and property (Forsthoff 1964, p. 38ff.; cited in Böckenförde 1991, p. 160). Left-wing criticism of an ideological bias of the rule of law in favour of the privileged classes and its instrumentalisation for imperialist aspirations persisted (Campbell 1997). In addition to the experience of wealth and freedom, however, the reference to communist states as negative counterexamples strengthened the legitimacy of the institutional structures.

On the other side of the Iron Curtain, states experienced direct external intervention after 1945, above all through the claim of the Soviet leadership (or the Central Committee of the Communist Party of the USSR) to set up the basic institutional parameters. The invasion of Hungary by Soviet troops in 1956 and Czechoslovakia by the Warsaw Pact states in 1968 ended attempts to liberalise socialism and became deeply inscribed into the collective memory of East Central Europe. That is why the CSCE Helsinki Final Act of 1975, with its stipulation of non-interference in the internal affairs of the signatory states and respect for human rights and fundamental freedoms, became a significant point of reference for the burgeoning political opposition in the communist states of the region. Therefore, from 1989 onwards, the new political majorities in the East Central European states found it natural to join transatlantic and European institutions (NATO, Council of Europe, EU) as communities of values and guarantors of national independence (Sect. 3.4).

Membership in these international organisations promoting the rule of law increased transnational interdependence and meant that international or supranational legal obligations became applied at the national level. This changed the power balance between governments (including those who had not negotiated and signed the international treaties but inherited them from their predecessors), opposition parties, NGOs and other actors. Such power shifts could result from the creation of new venues where actors could pursue their interests. For example, actors at the EU and the national level as well as transnational actors were now able to

[12] In their beginnings, social policy measures, in Germany the social legislation of Bismarck, had been developed to stabilise the political system (Stolleis 2001).

strategically activate the European Court of Justice or the European Court of Human Rights to challenge and alter laws and policies at the national level (e.g. Kelemen 2003; Fuchs 2013). In situations where rights that are enshrined in national and international law but not further defined (e.g. fundamental rights), the case law of the courts may differ from national interpretations in favour of litigants. They can strategically use such differences to gain an advantage.[13]

Courts (and with them judges) were thus enhanced by the possibility and necessity of extended judicial review. The European Court of Human Rights has developed a rich body of jurisprudence on human rights, but also on the rights of judges and judicial independence (Gutan 2024), which has ultimately led to "significant structural change" of the signatory countries' constitutional systems (Keller and Stone Sweet 2018a, p. 677). In the EU, national courts can initiate preliminary reference procedures before the European Court of Justice (ECJ) by submitting questions concerning the compatibility of national law with EU law (Conant et al. 2018). By activating the ECJ, they can indirectly influence the interpretation and application of national law, primarily since the ECJ is known for its integrationist rulings.[14] In landmark cases, it developed the Community independently of the will of the member state governments[15] (Weiler 1994). In addition to these entanglements, national courts interpret EU secondary law in their case law.

In this context, judicial networks gained in importance. Since the late 1990s, various networks within the framework of the Council of Europe, as well as transnational NGOs,[16] have developed a wide range of blueprints and recommendations to standardise jurisprudence and the rule of law. These have become checklists for policymakers. At the same time, many governments started formulating requirements for more efficiency, transparency and accountability of judicial institutions instead of specific institutional requirements. The concept of the rule of law changed from one based on institutional guarantees of judicial independence to a more results-oriented one, measured by the efficiency of the judiciary (Piana 2017).

From a historical-institutionalist perspective, globalisation and the transnationalisation of law, human rights discourses and EU integration in the

[13] For example, there have been different interpretations of what is covered by the freedom of expression. See ECtHR, 21.07.2011, complaint no. 28274/08.

[14] The European multilevel system also allows other actors to pursue their interests via the European level. This is particularly true for national governments with their privileged access to EU decision-making who can pursue their interests at the EU level and tie the hands of their successors (Smith 1997; Schmidt 2003; Anders 2018).

[15] There is no consensus on the extent of the ECJ's independence from the member states. While some assume that the Court has a "maximum of decision-making power and autonomy" (Höreth 2009, p. 196; see also Kelemen 2012), others emphasise that—as all courts—it depends on the political actors to execute its decisions and therefore needs to and does anticipate the position of governments and the public in its judgments (Garrett et al. 1998; Blauberger and Martinsen 2020).

[16] Piana (2017) mentions the Open Society Foundation, the Ford Foundation, the American Bar Foundation and the Bertelsmann Foundation as "some very reputable, internationally active" NGOs with this work profile.

1990s entailed that non-majoritarian institutions above the nation states (supported by national governing parties) have gained an increasingly important role in determining policies (Zürn 2022). At the same time, the "massive intervention of international and supranational actors, both governmental and non-governmental, within national judicial systems" has been justified by them "mainly [. . .] in the name of the principle of the rule of law (Carothers 2006; Börzel and Risse 2004)" (Piana 2010, p. 1).

These developments increasingly constrained the national governments' room for manoeuvre and prompted discontent (ibid.; De Wilde et al. 2019; Dilger 2023). This is reflected in the success of new parties and movements that oppose liberal, cosmopolitan values, and in the shift in position of some existing parties,[17] which now advocate rolling back non-majoritarian institutions and foreign influences (Berman 2019). They partly referred to postcolonial theories (Fomina 2016), partly to populist, nationalist and illiberal ideas. Some observers even speak of a 'counter-revolution' against liberalism (Zielonka 2018).

The rise of illiberal actors and their policies triggered conflicts and reactions from the targeted parties and authorities. The majority in the EU Parliament, the European Commission and the European Court of Justice condemned the rule of law backsliding in some member states, i.e. the de-institutionalisation, which endangers the legitimacy of the EU as a whole. They sharpened and further developed the EU's concept of the rule of law and the instruments to protect it, i.e. a supranational institutionalisation (Coman 2022; Priebus and Anders 2023; Sect. 3.4).

In summary, the rule of law is the result of human action (including rhetoric) that has historically led to processes of institutionalisation, re-institutionalisation and, in some cases, de-institutionalisation at different points in time. In these processes, it has been especially politicians and judges who nurtured ideas of the rule of law, cast them into law, justified, interpreted, applied and developed them further or disregarded them—increasingly in interaction with actors above the national level. This was reflected in narratives used in politics, academia and society. However, the narratives that shaped these developments have not been analysed systematically across countries, time and actors involved.

2.2 Discussing National Differences in Rule of Law Narratives

The description presented in the previous section is a rough sketch of the history of the rule of law that ignores many differences between countries and actors. However, sociological institutionalist approaches highlight the fact that institutions and human action (and rhetoric) are "embedded in structures of meaning and resources that are relatively invariant in the face of turnover of individuals and relatively resilient to the idiosyncratic preferences and expectations of individuals and changing external circumstances" (March and Olsen 2008, p. 3). They structure which actions are

[17] For the more nuanced picture see e.g. Lacewell (2017).

thinkable and deemed appropriate (Hall and Taylor 1996, p. 948). This suggests that rule of law narratives reflect long-standing local or national ideas of appropriate behaviour, "structures of meaning, embedded in identities and belongings [. . .] that give direction and meaning to behavior, and explain, justify, and legitimate behavioral codes" (March and Olsen 2008, p. 3; see also March and Olsen 1989, 1995, 2011).

For our subject of the rule of law this means that although all studied countries have undergone a transition to democracy and a liberal market economy since 1989 and introduced formal rule of law institutions before joining the European Union, there might exist and persist national differences regarding the concrete ideas, narratives and practices associated with the rule of law (Ilie 2015). Since the end of the 1980s, Václav Havel's notion of a 'return to Europe' was spreading across East Central Europe, signifying the assertation of East Central Europe historically belonging to a normatively conceptualised Europe. However, this truly transnational and regionally shared moment soon dissolved due to different developmental paths and a strong locational competition between the countries (through economic reforms) since the late 1990s (Bohle 2009, p. 179ff.). Regional coordination and cooperation formats, including the Visegrád framework, were more relevant for joint lobbying vis-à-vis the EU than for convergence inside the region (Walsch 2014). Therefore, national differences persist. Depending on where we look, they may be minor nuances or represent genuine differences.

Like sociological institutionalism, historical institutionalism suggests that after the founding moment of a polity, mechanisms of institutional stability and specific national contexts might have contributed to the solidification of certain national narratives or systematic differences between national rule of law conceptions. The starting point of this argument is that historically the various nation states were the arenas for inventing, negotiating and establishing political institutions, although this does not exclude—as demonstrated in Sect. 2.1—diffusion among states and through international and supranational institutions. Power relations, specific problems or experiences and practices in the founding moment or in formative periods differed across countries and influenced later developments. These differences were cast in institutional arrangements that persist as legacies, limiting the scope for action and perspectives of subsequent actors (Mahoney 2000; Pierson 2000; Shane 2008, p. 194f.).

Once established, these institutions provide specific options for action and exclude others, they co-constitute the identities and interests of the actors (Steinmo et al. 1992, p. 7ff.; McCann 2009, p. 835). As Dahl (1982, p. 65) noticed, a country's cleavages and conflicts partly shape political institutions, and in some countries (he mentions Britain, the Scandinavian countries, Switzerland and the United States), "many of the most crucial constitutional features antedate industrialisation and are partly the consequence of older rather than contemporary patterns of cleavage and conflict."

The conceptual history branch of historiography has similarly departed from the assumption that institutions and structures determine human agency. Reinhart Koselleck, a leading scholar in conceptual history, has offered an influential concept

for explaining human agency, both its principal openness and its limits (Koselleck 1984). Humans would live in the present of their daily experience in society (*Erfahrungsraum*); any change in this highly institutionalised and routinised setting would be dependent on their *Erwartungshorizont*, horizon of expectations, on what they would expect in the future. Expectations for the future, of course, are informed not only by present lives but also by lived and selectively remembered history. This means that parliamentarians when speaking about the rule of law act within particular national contexts and their institutions. Thus rule of law narratives can differ by country.

While the idea of national paths and traditions is primarily rooted in sociological and historical institutionalism, the emergence of nationally distinctive institutions and related narratives can also be conceived in terms of rational institutionalism. In this perspective, actors can approve and support institutions once they are in place since they create predictability, reduce transaction costs, improve options for cooperation within the system and contribute to the peaceful resolution of conflicts of interest and the integration of entire systems (North and Weingast 1989; Buchanan and Tullock 1962; Arthur 1994). They can use ideas shared in a society strategically for their own goals as actors, especially politicians, publicly invoking shared ideas of appropriate institutions.

Rationalist and historiographic views were combined, for example, by North and Weingast (1989), North (1998) or David (2000). In their view, the advantages of existing models are used more adeptly over time due to learning effects, and adjustments or path changes would be associated with higher costs, which makes them unattractive (Sanders 2008). This cost–benefit structure fosters lock-in effects that can persist even when the original intentions or assessments that guided the decision to adopt an institution no longer apply (David 2000; for EU enlargement, see Dimitrova and Pridham 2004). It does not mean that adjustments do not occur, but learning is filtered through the culture of a society (North 1998, p. 252).

Many scholars do also combine rationalist arguments with sociological ones to explain human action. They assume that there are behavioural regularities reproduced through habitualisation (*enacting* mode) and strategic use (*acting* mode) (Jepperson 1991, p. 149). This results in actors building up trust which is no longer exclusively based on knowledge of the historical circumstances and guiding ideas of the introduction of the rule of law, but also on experiences of the functioning of the institutional order. They also derive the expectation from such knowledge "that persons or organisations are sufficiently structured and controlled by institutionalised rules even in unpredictable situations" (Lepsius 2013, p. 57; also March and Olsen 1995). These and other mechanisms (Mahoney 2000) contribute to the fact that specific guiding ideas (*scripts*) or '*mental maps*'[18] are repeatedly maintained and often shared in a community (Thelen 2003).

[18] Numerous other relevant terms can be found in the literature, e.g. ideology, commitments, philosophies, values, narratives, frames and constructed meaning (McCann 2009, p. 836). For an overview of the various understandings of democracy, see Osterberg-Kaufmann et al. (2020).

Institutions and the mental maps that people have of them are further stabilised if they are intertwined with complementary, mutually supportive models of order, such as ideas of democracy or the constitution. If one follows the assumptions of path dependency, constitutional cultures are passed on over generations (Aust and Nolte 2012, p. 49; Chesterman 2008, p. 342). Therefore, even though there is some formal institutional convergence regarding more separation of powers, recognition of fundamental and human rights and the primacy of written law, national differences continue to exist (Vorländer 2007, p. 171ff., 176f.). Similarly, the understandings of democracy vary across states (Cho 2015; Ferrin and Kriesi 2016; Shin and Kim 2018). In general, empirical studies on political culture point to stable national differences (e.g. Almond and Verba 1963; Pickel and Pickel 2006; Easton 1965; Inglehart 1979). It is often assumed that, in addition to the abstract functional conditions of institutions, attitudes and normative beliefs which are adapted to the institutional arrangements and support it are particularly relevant "for the success of order" (Wischmeyer 2015, p. 418).

Thus, according to various approaches, the particular culture of the rule of law and corresponding institutional arrangements go hand in hand with specific national contexts and processes, which promotes self-perpetuating solutions for perceiving and handling problems. According to Finer, different historical contexts create "different preoccupations", and "different preoccupations have generated different emphases" (Finer 1979, cited in Elgie and Zielonka 2001). In this sense, for example, the past experience of national movements and the formation of nation states may have left its mark, as it provides a fund of legitimacy narratives for subsequent actors (Vorländer 2007, p. 169). Narratives about the rule of law might be entangled with notions of national sovereignty and legitimacy.

In line with these theoretical assumptions, systems described as guided by the rule of law differ, sometimes significantly (Tamanaha 2004). While states in Europe and North America are generally committed to liberal concepts of the rule of law and thus concerned with guaranteeing freedom and property (Böckenförde 1991, p. 148) through legal equality, legality, judicial protection of individual rights and legal certainty (Pech and Grogan 2020, p. 17), the underlying ideas and constitutional traditions differ. For example, the British rule of law or the French *état de droit* are not identical to the German *Rechtsstaatlichkeit* (Martini 2009). The differences are linked to divergent ideas about the source of legitimacy (people or law, see Abromeit 1995) or about how an independent judiciary should be organised.

England is an example of "historical-evolutionary constitutionalism" with an "equally historical and political understanding of order" (Vorländer 2017, p. 224f.). Constitutional law has limited influence over politics, whereas established rules, conventions and the parliamentary system, which is strictly based on majority rule, hold greater relevance (ibid.). Given its unitary system and the parliamentary government, a rigid separation of powers is not an essential element of its rule of law conception (Dahl 1982, p. 66).

France is an example of a "rational-voluntaristic concept of order". Here, "(i)t is the ideas of a nation or republic and the associated notions of order that provide the legitimation resources for the political system" while the constitution is more an

"instrument of government" (Vorländer 2017, p. 225). French constitutionalism attaches great importance to the parliament and the legal order of the republic created by it as an expression of the *volonté générale*.[19] The rule of law and constitutional review are far less prominent than other constitutional principles (Martini 2009).

The United States and Germany are examples of a "rational-juridical concept of order". Here, the constitutions have a prominent legal status and "normally take legal precedence over the political decision-making process, which is reflected not least in the establishment of constitutional courts" (Vorländer 2017, p. 225f.). In the U.S., arguments about the rule of law are dominated "by debates about the proper place of courts" in the constitutional order (Shapiro 1994, p. 2). In Germany, a comprehensive catalogue of fundamental rights and a high level of judicial control have been typical features since 1949.

The Swedish legal culture—to give a final example—leaves the clarification of moral issues to parliament, attaches a lower status to courts and formal rights, and values extrajudicial solutions to conflicts, for example through the parliamentary ombudsman (Husa 2010).[20] If specific national paths of understanding the rule of law exist in Europe and the U.S., then this can also be true for the East Central European states.

It is reasonable to assume that different national paths and understandings also persist even with EU integration. Close coordination with and at the EU level does not need to result in rapid convergence of national legal cultures and ideas of the rule of law. While in federations, federal institutions such as the federal constitution can partly compensate for differences in rule of law conceptions and narratives between territorial units (Hueglin and Fenna 2006, p. 43), such a mechanism is not yet working for the EU multilevel system. This is because the overarching rule of law concept and a common understanding of what it precisely means are still in the making (Meier et al. 2023, Sect. 3.4). The EU Treaty contains in Art. 4 para. 2 sentence 1 TEU the requirement to respect the member states' "national identities, inherent in their fundamental structures, political and constitutional". Some national constitutional courts developed the instrument of "constitutional identity review" to safeguard such national peculiarities (Wischmeyer 2015, p. 416). This results in conflicts about institutions and their meaning.

Historically, references to the rule of law and constitutionalism came in different varieties in our five cases. Romanian actors traditionally oriented themselves towards the French legal system (Piana 2010) but selectively borrowed foreign constitutional norms, adapted them to suit their context and partly never implemented (Müller 2022). The legal systems of Czechia, Hungary, Poland and Slovakia share some elements of the Austro-German constitutional tradition with its

[19] In the tradition of Rousseau, it is "against the nature of the body politic for the Sovereign to impose on itself a law which it cannot infringe" (Rousseau 1762, cited in Buchstein 2013, p. 57). For a people to be the addressee of law, it must also create it (cited in Tamanaha 2004, p. 34).

[20] The ombudsman's office, established in 1809 to control the executive or administration, represents the idea that certain conflicts were "not suitable for adjudication" (Kessel 2021).

rule-of-law-related arrangements. However, there are differences. In Poland, the memory lives on that the first modern European state constitution came into force here—in 1791—and that since the nineteenth century, there has been a virulent tradition of resistance and revolt against foreign domination and imperial dominance by the three partitioning powers (1830/1831, 1863/1864). In Hungary, resistance against Austrian dominance (1848) (Jedlicki 1999),[21] the enormous territorial losses due to the Treaty of Trianon (1920) and a narrative of the "thousand-year constitutional tradition" play an important role. Czechoslovakia first enjoyed statehood after the First World War, although a modern Czech national identity had begun to form in the phase of 'national revival' (*národní obrození*) in the eighteenth and nineteenth centuries. There were short experiments in that time with democratic constitutions in the partly newly created states. However, these suffered many setbacks in interwar Poland, Hungary and Romania (von Beyme 1994, p. 11).

After 1945, communist systems were established in all the countries studied that officially designated the rule of law as one fundamental principle of the socialist state order in the sense of legality serving the ends of communist rule.[22] Yet, the legal systems differed. They varied, for example, in the relevance of arbitration commissions, the official legitimation of judicial staff and the possibility for judges to check the legality of laws within certain limits (Garlicki 1977). Furthermore, the nature of informal practices differed. In part, informal practices developed as a means to resist formal legalism; in part, they helped to cope with the dysfunctionalities of socialism and thus contributed to its preservation (Kornai 1992[23]).

Historical experiences of external powers interfering in the nation state were revived in communist times, especially in the case of uprisings against Soviet rule. It might be relevant for politicians addressing the rule of law that in Hungary (1956) and Poland (1956, 1980) national motives for these uprisings were considerable. Even after their failure, national liberalisation attempts remained strong. In Romania, patriotism played a vital role, but precisely as the central legitimising basis of the *autocratic* communist system (von Beyme 1994, p. 17). In Czechoslovakia, nationalism was a divisive factor rather than a unifying one due to the state's binational character, which had been formally federalised since 1968. The question of Slovak emancipation became a taboo topic after the Second World War, largely due to the

[21] The bearers were members of the gentry and intelligentsia, politically rooted in feudal and oligarchic aristocratic nations, and an intense messianic nationalism characterised their political style.

[22] In this understanding, one of the essential rule of law guarantees was "the existence of the courts as well as the functioning of the same"; their function was "to secure to every citizen a just ruling in his case". This purpose was to be served by "the principle of independence of the courts from the organs of state administration (the executive) and the principle of judicial independence" as well as the participation of people's jurors—all in the spirit of socialist law (Garlicki 1977, p. 56f.).

[23] According to the Hungarian economist János Kornai, clientelist networks and corruption were systemic standards created by the scarcity of goods and labour when the price mechanism was overridden. Strictly enforced laws, by contrast, would have hindered production and everyday life.

role of Slovak nationalism in the destruction of interwar democratic Czechoslovakia. Its re-entry into public life after the fall of the authoritarian regime played a significant role in the swift "velvet divorce" of the joint state (Bútora et al. 1994). Such differences can inform even present discourses (Ilie 2015).

Therefore, country-specific rule of law narratives seem possible. This also includes aspects considered elements of the rule of law in some national contexts (e.g. fighting corruption) not being addressed with reference to the rule of law in other contexts.

2.3 Discussing Temporal Differences in Rule of Law Narratives

As the previous section indicates, different national institutionalisations of the rule of law and related narratives can be subject to temporal dynamics. In fact, historical institutionalism leaves room for both abrupt path changes (Beyer 2005) and smooth transitions from one path to another (Thelen 2003; Pierson 2004). The decision of governments in the studied countries to introduce democracy and a market economy after 1989/90 meant dramatic path changes. Similarly, EU conditionality had a strong impact on the institutional set-up and the pace and nature of judicial reforms in the five countries, which was later viewed critically by some. These developments might have entailed changing narratives. In the following, we therefore discuss how specific experiences, newly created institutions, contextual dynamics and events may have affected the debates about the rule of law.

Temporal differences in narrating the rule of law would not be a unique trait of the countries we study, primarily since the concept of the rule of law itself did not impose a specific meaning over time. For the German constitutional lawyer Ernst-Wolfgang Böckenförde, it is "one of those literally vague [. . .] concepts that can never be defined 'objectively' by themselves, but are open to the influx of changing conceptions of the state and constitutional theory and thus also to various concretisations" (1991, p. 143f.).[24] The discussion of the history of the rule of law in Sect. 2.1 suggests that even the erosion of established understandings of the rule of law is possible.

According to historical institutionalism, at "critical moments" one guiding concept is replaced by another. Such "critical junctures" include path changes and major reforms that affect the institutional arrangement and its impact (Thelen 2003, p. 216f.; Pierson 2004, p. 135). New ideas and institutions are more likely to be accepted by actors and thus able to develop binding effects and a change in thinking if they are perceived as fair by the norm addressees and can effectively settle political or social conflicts (Kneip 2013, p. 6; Merkel 2010, p. 116).

[24] Böckenförde (1991, p. 144) also emphasises in this context that the meaning is not arbitrary. The concept changes "but without changing completely in terms of content, i.e. without losing its continuity, and without degenerating into a mere empty formula".

However, historical institutionalism does not suggest the existence of universal patterns of such significant changes. Instead, they are theorised to "typically occur in distinct ways in different countries (or other units of analysis)" with distinct legacies (Collier and Collier 1991, p. 29). Thus, the idea of changes in institutional development, perhaps linked with a change of related narratives, does not generally contradict the idea of national paths but rather complements it. At the same time, similarities across countries are still possible.

Such similarities are plausible for the post-1989 break with communism and the accession to the European Union in 2004 and 2007. Despite national specifics, these critical junctures occurred almost simultaneously and probably led to the diffusion of certain ideas in the discourses of all the countries studied. Also, regardless of national differences, system change resulted in "functionally equivalent consequences in the economy and society" (von Beyme 1994, p. 12); political, economic and social upheavals were interwoven. This hyper-transformation, together with the resulting desire to join the Euro-Atlantic organisations, distinguishes the contexts of perceptions of the rule of law from all other phases of democratisation worldwide (von Beyme 1994, p. 12). The (on an abstract level) similar sequence of path changes (Collier and Collier 1991, p. 27) might be reflected in a similar track of narrational changes regarding the rule of law.

In the states under study, the 1989 revolutions may have included a break with existing legal concepts, even though the national struggles and discourses differed, as did the features and sequence of revolutionary changes. At critical junctures, actors can deliberately detach themselves from past institutions. Germany after the Nazi regime is an often-cited example. Following "the historical experience that a formal constitutional state could not prevent the material unjust state, but could even serve it as an instrument, it was a central concern of the Parliamentary Council to rule out a similar deviation of the law in the German Constitution" (Sontheimer et al. 2007, p. 140f.). The constitution makers thus established that state action not only has to follow formal rules but also respect fundamental values derived from human dignity, captured as the principle of a "material" rule of law (ibid.).

While (re)gaining sovereignty, transitioning to democracy and a market economy on the one hand and integrating in the Euro-Atlantic space on the other triggered different transformative effects, they were all theorised as supporting the establishment of the (liberal) rule of law. Thus, for the period since the early 1990s, it seems plausible that actors within the region have infused their rhetoric with EU-compatible rule of law frames. Particularly in the political sphere, there could have been a break with 'state-socialist' legality that prioritised public law and order over private law and individual rights, administrative provisions over constitutionality and due process, and the instrumental use of law for the social organisation over the protection of rights against infringement by the government (Heydebrand 2002, p. 28). At the same time, the impact of such changes was potentially dependent on actors supporting, implementing and protecting them. It is unlikely that all the actors socialised under communist legality shed these imprints entirely and immediately. Thus, legal positivism centred on the state and its administration potentially may have remained effective in parts of society.

As another problem, system change brought about the enormous challenges related to transitional justice—an issue of high relevance in the post-communist space, including in all countries under study (see Chap. 3). However, institutional theories seldom address this topic. It has mainly received attention in case studies on post-transition countries. Scholars argued that the structural difficulties of transitional justice cannot be adequately solved by means of the rule of law alone, which causes frustration. Cases related to transitional justice may end up in court, making the judges the ultimate arbiter of how to deal with the past. Dissatisfaction with their judgments in these cases can lead to dissatisfaction with the work of judges more generally, especially when actors perceive a lack of lustration[25] in the judiciary. This might also affect the narratives regarding the role of the judiciary for the rule of law.

We can explain the challenges of system change to the rule of law for the example of lustration measures. The very idea of lustration is retrospective justice, while the rule of law does not permit retroactive lawmaking. Therefore, it is difficult to sanction collaboration with the communist secret services in a state under the rule of law because such collaboration had not been "in breach of any positive law" (Williams et al. 2005, p. 22). Similarly, the change of personnel of the judiciary contradicts the idea of judicial independence. Also, general lustration laws contradict the logic of the rule of law by reversing the burden of proof, requiring officials to prove their innocence. They risk new injustice since part of the evidence might have been falsified. Moreover, it struggles with the rule of law logic if a lustration process is based on assessments of former secret policy staff (Michnik and Havel 1993, p. 23). It also suffers from a lack of completeness of the files, since more explosive documents were destroyed by former executives, while others were fully available. This gives an advantage to higher-ranking former officials (von Beyme 1994, p. 188f.). Law is also somehow inadequate to evaluate personal ambiguities and changes of action in the course of a long life, where people could be supporters of an oppressive regime in one situation and victims of observation and sanctions by this very regime in another. Therefore, any lustration or de-communisation law that builds on a person's intent fails to satisfy the rule of law based on individual responsibility and to reflect the logic of socialist regimes where an autonomous life with individual decisions was possible only to a limited extent (Verdery 2012, p. 78).

Other functional problems of democratisation and liberalisation that may have led to frustration in parts of societies and parliamentarians and thus might have resulted in changing narratives about how the new system works were economic losses, a downsizing of the state (Agarin 2020; Bohle and Greskovits 2012), regulatory gaps and legal grey areas, informal practices, patronage networks, corruption and the shadow economy, attempted 'state capture', conflicts between constitutional bodies, and corresponding instabilities and deficits in administrative efficiency (de Raadt 2009; Malová 2001; Dăianu 2000, Dvořáková 2019). For the 1990s, case studies for

[25] Lustration is the "systematic vetting of public officials for links to the communist-era security services" (Williams et al. 2005, p. 23).

Romania point to a "loot economy" (Murgescu 2010, p. 467), to patronage in the party structure for the "distribution of the socialist legacy" (Pasti 2004, p. 323) with strong involvement of members of the former Securitate secret service by illegal (Oprea 2004, p. 148ff.) or legal means. Legacies of the past and such problems of system change caused struggles between different actors over the authority to make and to interpret laws and influenced thinking about the functionality of the rule of law and its main elements.

As mentioned, EU accession was interpreted as a factor contributing to the rapid anchoring of new institutions like the rule of law despite such problems accompanying the transition. In fact, in the area of law the EU required candidate countries to adopt and implement many norms before entering the Union. The strong interest in EU accession and the required commitment to EU principles were plausibly theorised as keeping actors on track even in difficult transformation phases (Dimitrova and Pridham 2004; Sadurski 2004; Schimmelfennig and Sedelmeier 2004, p. 678; Börzel and Sedelmeier 2017; Buzogány 2021) and to create "incentives and reassurances to a vast array of social forces" in a cumulative and irreversible process of economic and political transformation (Whitehead 1996, p. 19). Thus, the transfer of EU law was expected to impact on national legal cultures and judicial practices (Cserne 2017, p. 40).

However, earlier backlashes against "elements of the post-1989 consensus" (Lach and Sadurski 2008, p. 2015) and the ongoing conflicts between the EU and some governments in the region suggest that the conditionality has mainly been effective in the short term by ensuring a rapid formal institutional change. In the medium term, it may have proved problematic that the context conditions—traditional notions of norms, established practices as well as actor constellations[26]—differed from countries with established liberal models of the rule of law and democracy (Zielonka 2013, p. 47; Krygier 2009; Blokker 2016, p. 250; Pridham 2005; Micklitz 2017, p. 10ff.). Some critics have therefore argued that the way in which EU accession was prepared had weakened the "internal morality of law", i.e. being stable, coherent and accepted (Mendelski 2016, p. 376; Slapin 2015). They further argue that it contradicted the liberal spirit of negotiating and deliberating common norms even against the will of governing majorities, as it was done with the establishment of these norms in the regions of their origin, but strengthened the view that institutions can be changed rapidly according to the political will. For example, the judicial councils promoted by the EU to ensure judicial independence were quickly politicised in some East Central European countries, and their independence allowed them to act in an opaque and unaccountable manner (Mendelski 2016; Bobek and Kosař 2014).

Retrospectively, therefore, some actors have changed their view of the rapid post-1989 transition and the adoption of institutions and policies from the EU. This also

[26] For example, Pogány (2006) questions the functionality of liberal minority protection based on cultural rights, as propagated by the EU, for the needs of the Roma in East Central Europe, who were primarily socially and economically marginalised.

might have changed narratives on the functionality of the rule of law and other new institutions. Adding to this, the awareness of the complexity of rule of law developments also may have increased when the new institutions were put into practice, dampening the previous euphoria. At any rate, new political forces spread such views, some of them from the outset, others to a growing extent (Karolewski and Benedikter 2017, p. 519). Tendencies of a backlash against decisions taken in early stages of transformation may have resulted in parliamentary struggles with those supporting and demanding certain norms and institutions, be it inside the countries or beyond.

After the accession of the countries under study, the EU repeatedly took measures against policies in Hungary, Romania and Poland that it considered to undermine the rule of law (Sect. 3.4). According to observers, this reinforced an already widespread sense of a lack of political self-efficacy due to the asymmetrical relation with the EU (e.g. Rybář 2011). Criticism of "soft colonisation" and devaluation, "inner peripheralisation", and an outsider status despite EU membership, as well as the perception of unfulfilled promises of "the West" in general, spread (Krastev and Holmes 2019, p. 106ff.; Fomina 2016).

In the wake of a changing political and social atmosphere and the reinterpretation of the post-1989 processes, parliamentarians might have adopted a more sceptical view of the rule of law, constitutionalism and other liberal institutions and the EU and changed their narratives.[27] They may have no longer regarded the concept of the rule of law or its elements as a "neutral" or "universal" institutional arrangement but as part of a general conflict. Since there were fewer incentives after EU accession had been accomplished to comply with the rules (Sedelmeier 2014, p. 105), the risks of such changes were less pronounced than before accession. This is why it is necessary to understand the context of politicians in parliaments speaking about the rule of law, including the international environment (Sect. 3.4).

In summary, while there are valid arguments for national differences in how actors addressed the rule of law (as discussed in Sect. 2.2), we cannot necessarily expect stable national patterns of narratives over time. This is because actors were immersed in significant changes in their environment, such as democratisation and Euro-Atlantic integration. They may have reacted to perceived benefits or dysfunctions, been influenced by power shifts in the context of these major developments and/or socialised under a new system. Changing narratives in parliamentary debates might also simply result from changes in the composition of the parliament. This may have resulted in a changing focus over time on certain aspects of the rule of law (such as lustration), as well as changing narratives about the general importance of the rule of law. Moreover, national differences might have been strong one period and less pronounced in another.

[27] Compare for a similar line of argument, albeit focused on the role of the United States, Bâli and Rana (2018), p. 290.

2.4 Discussing Differences in Political Actors' Rule of Law Narratives

The mechanisms described in the previous sections relate to general national developments that form the general context of the parliamentarians' action. This section zooms in to the countries and focuses on the speakers in parliaments. They are key actors for the development of political systems governed by the rule of law. According to most theories on the functioning of liberal democracy, the actions and rhetoric of politicians are driven by party competition. As Ilie (2015, p. 7) puts it, "(t)he rationale of parliamentary debate lies in the existence of opposite political camps and, implicitly, in the confrontation between different, and sometimes contradictory, standpoints and representations of reality." And further, "parliaments provide public arenas that instantiate the polarization of political power; this power is disputed among political representatives who are expected to comply with particular institutional constraints involving procedural regulations and debating rules."

What distinguishes this perspective from those presented in Sects. 2.2 and 2.3 is that actors can use terms such as the rule of law and references to history, culture or changes in the environment strategically and that the networks of carriers and multipliers of particular narratives can change for strategic reasons or because of changing opportunity structures. Even if one assumes that actors are influenced by a certain environment and culture (structure of norms), actors can make "strategic use of norm-based arguments" because they "are concerned about their reputation" and "about the legitimacy of their preferences and behavior. Actors who can justify their interests on the grounds of the community's standard of legitimacy are therefore able to shame their opponents into norm-conforming behavior and to modify the collective outcome", as Schimmelfennig (2001, p. 48) puts it regarding actors at EU level.

According to this perspective, there are no national or stable narratives. What politicians present as national traditions or specificities might be a politically motivated attempt to "manipulate collective identity" (Schimmelfennig 2001, p. 68) by changing framing and sense-making. This idea is also present in rationalist and constructivist variants of neo-institutionalism (Hay 2009). As Bucholc (2019) has elaborated for Poland, PiS has engaged in a selective commemorating of certain aspects of Polish legal and political history in the name of national values which is used for defending national peculiarities against a dominating 'West'. Political actors thus actively revitalise and recombine institutional and rhetorical fragments of the past, including the notion of the necessary moral subordination of law to the will of the people present in the communist legal culture (Agarin 2020). Concepts like the rule of law or terms like 'corruption' can become part of and an instrument in political battles, thus losing their original 'neutral' character and becoming politicised (Iancu 2018).

The relevance of competition for political actors' action and rhetoric is based on the institutional logic of parliamentarism in liberal democracies where parties act as policy seekers. They represent different societal groups, interests and ideologies and

strive to realise their policy goals.[28] To achieve their goals, parties need to be interested in holding mandates and offices and thus to legitimise their goals and action before the public.[29] Parties in government are mostly theorised as being interested in improving the prospect of being re-elected and enlarging their overall influence while parties in opposition attack the government in public to come to power (Granat 2023).

This reasoning informs several current studies of rule of law developments in Poland and Hungary. Many scholars conceptualise the dismantling of the rule of law as the result of the populist ideas of the governments, particularly their populist and anti-pluralist and illiberal positions, which collide with core components of the rule of law (Lacey 2019; Halmai 2019; Cianetti and Hanley 2021) and lead them to interpret electoral "victories as a mandate to exercise absolute power" (Bakke and Sitter 2022). Recent studies speak of "a counter-hegemonic strategy that aims at replacing the liberal order with a new, nationalist, ultraconservative, Christian order on domestic and European levels" (Bohle et al. 2023, p. 18) or of a 'populist agenda' of PiS and Fidesz, who try to consolidate their power through limiting freedom of the media or changing electoral systems (Pappas 2019, p. 190; Sajó 2021, p. 576ff.). Similarly, for example Kochenov and Grabowska-Moroz describe "anti-institutional actions [as] resulting from the populist narrative in the EU Member States" (2021, p. 22).

However, it has not been systematically investigated if only parties in government or parties with certain ideologies try to weaken counter-majoritarian institutions. In a case study on Poland, Sadurski (2018, p. 7) described that even in formally established democracies, a "catastrophic drop of the norms of civility of discourse, and an accompanying lack of trust" can occur where all actors, not just the government parties, change their rhetoric. "As a result, there are no shreds of mutual respect, of recognition that while the government and the opposition differ in their interpretation of the public good, they are equally sincere in the quest for common interest. The mutual self-restraint is missing, and the situation cannot be reached where (in the words of János Kis in the Hungarian context) 'the party in opposition can safely expect the party in government to refrain from taking advantage of its majority in order to permanently exclude its rival from power, while the party in government can safely expect the party in opposition not to strive toward debilitating day-to-day governance'." In such a climate, all sides also exaggerate the risks caused by others (ibid.: 57).

Due to such factors, but also cultural legacies or experiences of the transition to democracy and a market economy (Sects. 2.2 and 2.3), ideologies may not always

[28] Traditionally, the left–right axis was the main line of party competition, with an increasing role of the culturalist line (Kitschelt 2004). For rule of law issues, 'GAL' parties representing green, alternative and liberal positions were contrasted by 'TAN' parties with traditional, authoritarian and nationalist positions (Meijers and van der Veer 2019). Others highlighted a competition along the culturalist line between populist parties on the right and other parties (Vachudova 2021).

[29] Sometimes vote-seeking is mentioned as a third core interest. However, this is not an end, but a means to pursue the other two interests (Strøm and Müller 1999, p. 9; von Beyme 2000, p. 25).

explain behaviour adequately. While electoral victories of parties broadly described as '(right-wing) populist', 'conservative' or 'EU-sceptical' have been the proximate causes of illiberal reforms, not all the populist or conservative parties acted illiberally. At the same time, also non-populist governments sought to restrict the judiciary (see Sects. 3.2 and 3.3). Also, formally leftist parties, like PSD in Romania and Smer in Slovakia, tried to undermine elements of the rule of law. Problems with treating the ideology of a party as a relevant factor also arise from the fact that in some East Central European countries, 'left' and 'right' positions are not the same as in Western European countries, with culturally right positions often associated with economically leftist positions and culturally left positions associated with economically rightist policies (Rupnik and Zielonka 2013).[30] Besides, many parties defy clear labelling as pro-EU or Eurosceptic. The party competition differs from Western models (Kitschelt et al. 2008; Balík and Hloušek 2020; Mișcoiu 2022). In her analysis of parliamentary debates in Romania on lifting immunity from prosecution or arrest of ministers in political corruption cases, Iancu (2018, p. 415) found an "absence of politically driven logic that one encounters in the sense of party politics", even though the debates were very strongly polarised.[31]

In addition, the role of 'populist' programmes and rhetoric for rule of law issues is contested. For some, it serves to disguise the pure striving for power (Scheppele 2019, p. 329). Others interpret the populist rhetoric and the dismantling of the rule of law as evidence of an illiberal ideology (Buzogány and Varga 2018; Bohle et al. 2023; Coman and Volintiru 2021). Still others find that there was no 'populist wave' because the commitment of the other parties to liberal democracies has mainly had a rhetoric character while there has always been a clash between monism and pluralism in politics (for Poland Bill and Stanley 2020). Country experts question the ability of Western concepts of 'populism' to adequately capture the parties in the region. For Slovakia, for example, practically all relevant parties could be labelled as 'populist' (Antal 2023). It is also unclear to what extent politicians willing to dismantle counter-majoritarian authorities are critical of all elements of the rule of law. In theory, all democratic parties—regardless of their individual positions—should share an interest in a mechanism for protecting their own rights in the long run. It is also unclear how illiberal parties balance their ideology with other aims. The desire for EU membership, for example, might have motivated or be motivating for a compatible rule of law narration.

As mentioned, along with ideological party competition, a government–opposition divide is another well-established assumption in neo-institutionalist thinking. Theory states that opposition parties are interested in uncovering or inciting intra-

[30] There is often no precise equivalent to Western conservatism, and parties that could be described as left-wing in the economic dimension often have positions that differ from their Western counterparts on issues such as nationhood, sovereignty, gender, minority rights, climate protection and migration. Manifestos are usually not very suitable to measure the actual positions of parties and politicians.

[31] She mentions that the issues are not explicitly covered by the party platforms, which meant that there existed no particular party positions on the matter.

government tensions and presenting themselves as the better alternative (Whitaker and Martin 2022). How opposition and government actors address rule of law problems and what the government is accused of doing in this regard may therefore be constant (to a certain extent), with only the parties speaking changing. At the same time, it is an empirical question how the government–opposition divide interacts with the parties' ideologies, e.g. if conservative parties really use the same narratives as leftist parties when they are on the opposition bench. In her analysis of party positions regarding the rule of law, Granat (2023) found PiS supported by its coalition partners and the 'populist' opposition parties, while 'mainstream opposition parties' were critical of PiS's positions. This pattern was less visible in the European Parliament regarding its policy in relation to rule of law deficiencies in Poland.

On the other hand, it is also questionable whether governing parties always strive for maximum freedom of action. They might also be interested in leaving controversial and unpopular decisions to courts (Whittington 2003; Graber 1993, p. 38; Burley and Mattli 1993), especially when court positions coincide with their own ones (Hirschl 2008) or if intra-coalition conflicts prevent government decisions. This allows them to enforce policies through judicialisation from above, independently of democratic processes (Hirschl 2007).

As this discussion shows, there is no universal theory on how different political actors position themselves towards the rule of law. Existing empirical studies usually focus on a few established democracies with their specific patterns of functional differentiation and relatively stable actor constellations, and it remains unclear how these contextual factors affect political action. It is unclear, for example, how politicians act and argue when their parties are not strong organisations with deeply rooted programmatic positions, but rather groups around individuals with a loose agenda, as was often the case in East Central European countries in certain times during the period of investigation (1990/1992 to 2021). Moreover, it is not clear how economic or other interests affect political action. Especially during the post-1989 transition, but also since 2010 and later (depending on the country), MPs' turnover was high, and they might have been interested in securing a job and material well-being outside parliaments (Sect. 3.1). However, corruption, patronage and clientelist networks are not a big issue in theorising party action and rhetoric in democracies. Thus, we do not know if and how the outlined assumptions about political action apply to post-communist states.

The assumption that politicians are guided by calculus around political competition and lawmaking legitimised by the demos does not necessarily conflict with the assumptions made in Sects. 2.2 and 2.3 if one assumes that they can share certain ideas or strive to comply with others' expectations of sharing these ideals. This is because functional elites are interested in maintaining the "ideals and practices of the societies at whose apex they stand" in order to secure the stability of the whole system (Keller 1963, p. 82). Parliamentarians engage not only in confrontation but "also in collaborative work, establishing party political alliances and developing relationships across party lines and ideological commitments". They are expected by the public "to act and to interact with each other both in adversarial and in

collaborative ways, which contributes to creating a special sense of communion and togetherness" (Ilie 2015, p. 2).

In addition, the rule of law is beneficial to all actors, irrespective of their ideology, societal basis and government or opposition status, because it provides a rules-based general framework for pursuing one's interests and making the anticipation of others' actions possible, especially when future majority constellations are unclear. It also safeguards their peaceful long-term interaction. Therefore, political competition does not, in general, make shared arguments and narratives around the rule of law impossible.

Along with this, cross-party experiences in struggles with third parties could form the basis for shared views and narratives. For example, throughout the history of liberal democracies, a latent conflict has existed between the democratic primacy of parliamentary legislation and its review by courts (Kneip 2006, p. 259). Courts inevitably make decisions unwelcome by political actors, for example when their interpretation strengthens positions that do not correspond with those of the majorities, when they reject complaints by politicians, when they invalidate legislation or when they limit the powers of parliament, the government or the president. Due to the weakness of social participation typical of East Central Europe (Agarin 2016), with relatively weak public control, this role as a powerful counterbalance to politicians might have been particularly salient.

The influence of the courts can be particularly strong when a new legal system is not yet fully established, and when the rules are open to interpretation due to a lack of legislation and precedent. Court rulings can influence the new constitutional order and the powers of the various political actors, legal issues related to the system change (*transitional justice*) and the change of property rights. Moreover, the newly independent judicial bodies can be interested in expanding their influence and autonomy. All this can result in conflicts with politicians.

Another possible cause of struggles, also mentioned in Sect. 2.1, is that through ratifying the European Convention on Human Rights and EU accession, national actors acquired the right to invoke the European Court of Human Rights or the ECJ or to refer to the case law of these courts. These courts can exert considerable influence on national law and policies (Stone Sweet and Caporaso 1998, p. 129; Grimm 2016; Höreth 2009, p. 183; Weiler 1994; Popelier et al. 2016; Goldston and Adjami 2009; Sadurski 2006, p. 30; Gutan 2024). Especially in rule of law conflicts, the ECJ is known to be an available supporter, having ruled that many measures taken by the Hungarian and Polish governments violated EU law (Kochenov and Bárd 2019).

The growing importance of courts at the level above the nation state may have affected politicians' rhetoric of the rule of law. On the one hand, these courts may have been seen as a welcome new venue for the resolution of political conflicts, particularly by opposition parties, who now had the opportunity to challenge government policies by legal means. Along these lines, Stone Sweet has summarised that it is "one of the basic driving forces of legal integration that those who lose in domestic politics have sought to Europeanize policy, to change national rules and practices in their favour, through court action" (2010, p. 51). On the other hand, the

work of these courts could also be interpreted across party lines as a form of de-parliamentarisation, weakening elected actors who can claim a higher direct democratic legitimacy, as underlined by some legal theorists (Bickel 1962; Waldron 2006).

Perceptions of judicial overreach—amply discussed under the terms judicialisation and judicial activism (Stone Sweet 2002, 2007, p. 91; Kneip 2015, p. 6)[32]—can prompt politicians to express scepticism about an independent judiciary. Possible counter-strategies of political actors can include changes in the appointment of judges, the length of terms of office and the competences or judicial structures in general (Sieberer 2006, p. 1304; Kosař and Šipulová 2020; Stone Sweet 2002, p. 94f.; Maravall 2003).

At the same time, even unpopular court decisions can be accepted if politicians have normatively endorsed and internalised the idea of judicial review or simply calculate that courts will continue to be needed to monitor the law and arbitrate their conflicts with political opponents (Bartlett 1997, p. 263; for the EU Burley and Mattli 1993; Höreth 2009; Kelemen 2012). Such general acceptance of court rulings can nevertheless combine with public criticism of individual decisions.

In sum, political action is often theorised as driven by ideology, the government–opposition divide and institutional interests of parliaments vis-à-vis counter-majoritarian institutions. However, this does not tell us much about what kind of rule of law narratives we can expect from politicians in our cases because we do not know how much the context matters. Therefore, it is crucial to combine relatively broad assumptions with an inductive, differentiated analysis which is open to new insights.

References

Abromeit, Heidrun. 1995. Volkssouveränität, Parlamentssouveränität, Verfassungssouveränität: Drei Realmodelle der Legitimation staatlichen Handelns. *Politische Vierteljahresschrift* 36 (1): 49–66.

Agarin, Timofey. 2016. Introduction to the Special Issue: Citizens' Participation in Post-Communist Europe. *Communist and Post-Communist Studies* 49: 201–206. https://doi.org/10.1016/j.postcomstud.2016.06.008.

———. 2020. The (Not So) Surprising Longevity of Identity Politics: Contemporary Challenges of the State-Society Compact in Central Eastern Europe. *East European Politics* 36: 147–166. https://doi.org/10.1080/21599165.2020.1714598.

Almond, Gabriel, and Sidney Verba. 1963. *The Civic Culture: Political Attitudes and Democracy in Five Nations*. In *A Century in Books*. Princeton: Princeton University Press.

Anders, Lisa H. 2018. Europäische Integration als Ausdruck einer Strategie zur Ausweitung exekutiver Handlungsspielräume? *Zeitschrift für Politikwissenschaft* 28: 343–357. https://doi.org/10.1007/s41358-018-0157-9.

[32] This refers to courts' excessive shaping of law and pre-emptive compliance of policymakers with anticipated rulings (Stone Sweet 2002). As courts accept cases for adjudication and interpret the law to protect it, the likelihood that they will not only interpret legal rules but also develop them increases.

Antal, Hana. 2023. Populismus in der Slowakei: Ideologisch heterogen und politisch bedeutsam. In *Das politische System der Slowakei: Konstante Kurswechsel in der Mitte Europas*, ed. Astrid Lorenz and Dirk Dalberg, 85–103. Wiesbaden: Springer Fachmedien Wiesbaden.

Arthur, W. Brian. 1994. *Increasing Returns and Path Dependence in the Economy*. Ann Arbor: University of Michigan Press.

Aust, Helmut Philipp, and Georg Nolte. 2012. International Law and the Rule of Law at the National Level. In *Rule of Law Dynamics in an Era of International and Transnational Governance*, ed. Michael Zürn, André Nollkaemper, and Randall Peerenboom, 48–67. Cambridge: Cambridge University Press.

Avbelj, Matej. 2017. Transformation in the Eye of the Beholder. In *Central European Judges Under the European Influence: The Transformative Power of the EU Revisited*, ed. Michal Bobek, 275–291. Oxford/Portland: Hart Publishing.

Bakke, Elisabeth, and Nick Sitter. 2022. The EU's Enfants Terribles: Democratic Backsliding in Central Europe Since 2010. *Perspectives on Politics* 20: 22–37.

Bâli, Aslı, and Aziz Rana. 2018. Constitutionalism and the American Imperial Imagination. *The University of Chicago Law Review* 85: 257–292.

Balík, Stanislav, and Vít Hloušek. 2020. Permanent Campaigning and Pitfalls of Proportional Representation with Fragile Parties. Elections and Party System in Czechia. In *Czech Democracy in Crisis*, ed. Astrid Lorenz and Hana Formánková, 89–110. Cham: Palgrave Macmillan.

Bartlett, David L. 1997. *The Political Economy of Dual Transformation. Market Reform and Democratization in Hungary*. Ann Arbor: University of Michigan Press.

Berman, Shari. 2019. *Democracy and Dictatorship in Europe: From the Ancien Régime to the Present Day*. Oxford: Oxford University Press.

Beyer, Jürgen. 2005. Pfadabhängigkeit ist nicht gleich Pfadabhängigkeit! Wider den impliziten Konservatismus eines gängigen Konzepts/Not All Path Dependence Is Alike-A Critique of the 'Implicit Conservatism' of a Common Concept. *Zeitschrift für Soziologie* 34: 5–21.

Bickel, Alexander. 1962. *The Least Dangerous Branch*. New York: Bobbs-Merrill Co.

Bill, Stanley, and Ben Stanley. 2020. Whose Poland Is It To Be? PiS and the Struggle Between Monism and Pluralism. *East European Politics* 36: 378–394. https://doi.org/10.1080/21599165.2020.1787161.

Blauberger, Michael, and Dorte Sindbjerg Martinsen. 2020. The Court of Justice in Times of Politicisation: 'Law as a Mask and Shield' Revisited. *Journal of European Public Policy* 27: 382–399. https://doi.org/10.1080/13501763.2020.1712460.

Blokker, Paul. 2016. EU Democratic Oversight and Domestic Deviation from the Rule of Law. Sociological Reflections. In *Reinforcing the Rule of Law Oversight in the European Union*, ed. Carlos Closa and Dimitry Kochenov, 249–269. Cambridge: Cambridge University Press.

Bobek, Michal, and David Kosař. 2014. Global Solutions, Local Damages: A Critical Study in Judicial Councils in Central and Eastern Europe. *German Law Journal* 15: 1257–1292. https://doi.org/10.1017/S2071832200019362.

Böckenförde, Ernst-Wolfgang. 1991. [1969]. Entstehung und Wandel des Rechtsstaatsbegriffs. In *Recht, Staat, Freiheit. Studien zur Rechtsphilosophie, Staatstheorie und Verfassungsgeschichte, Ernst-Wolfgang Böckenförde*, 143–169. Frankfurt am Main: Suhrkamp.

Bohle, Dorothee. 2009. Race to the Bottom? Transnational Companies and Reinforced Competition in the Enlarged European Union. In *Contradictions and Limits of Neoliberal European Governance. From Lisbon to Lisbon*, ed. Bastiaan van Apeldoorn, Jan Drahokoupil, and Laura Horn, 163–186. London: Palgrave Macmillan.

Bohle, Dorothee, and Bela Greskovits. 2012. *Capitalist Diversity on Europe's Periphery*. Cornell University Press.

Bohle, Dorothee, Béla Greskovits, and Marek Naczyk. 2023. The Gramscian Politics of Europe's Rule of Law Crisis. *Journal of European Public Policy* 1–24. https://doi.org/10.1080/13501763.2023.2182342.

Börzel, Tanja A., and Thomas Risse. 2004. One Size Fits All! EU Policies for the Promotion of Human Rights, Democracy, and the Rule of Law. In *Workshop on Democracy Promotion,*

October 4–5, Center for Development, Democracy, and the Rule of Law. Stanford University. https://www.polsoz.fu-berlin.de/polwiss/forschung/international/atasp/Publikationen/4_artikel_papiere/18/tandt_stanford_final.pdf. Accessed 19 February 2024.

Börzel, Tanja A., and Ulrich Sedelmeier. 2017. Larger and More Law Abiding? The Impact of Enlargement on Compliance in the European Union. *Journal of European Public Policy* 24: 197–215.

Brandt, Peter, Martin Kirsch, Artur Schlegelmilch, and Werner Daum, eds. 2006. *Handbuch der europäischen Verfassungsgeschichte im 19. Jahrhundert. Institutionen und Rechtspraxis im gesellschaftlichen Wandel. Band 1: Um 1800*. Bonn: Dietz.

Brier, Robert. 2009. Transnational Culture and the Political Transformation of East-Central Europe. *European Journal of Social Theory* 12: 337–357. https://doi.org/10.1177/1368431009337350.

Brunner, Georg, and Boris Meisner, eds. 1980. *Verfassungen der kommunistischen Staaten*. Paderborn, München, Wien, Zürich: Schöningh.

Buchanan, James M., and Gordon Tullock. 1962. *The Calculus of Consent. Logical Foundations of Constitutional Democracy*. Michigan: University of Michigan Press.

Bucholc, Marta. 2019. Commemorative Lawmaking: Memory Frames of the Democratic Backsliding in Poland After 2015. *Hague Journal on the Rule of Law* 11: 85–110. https://doi.org/10.1007/s40803-018-0080-7.

Buchstein, Hubertus. 2013. The Concept of 'Self-Binding' in Constitutional Theory. In *Critical Theory and Democracy*, ed. Enrique Peruzzotti and Martin Plot, 56–80. Oxford/New York: Routledge.

Bugaric, Bojan. 2015. A Crisis of Constitutional Democracy in Post-Communist Europe: 'Lands in-Between' Democracy and Authoritarianism. *International Journal of Constitutional Law* 13: 219–245. https://doi.org/10.1093/icon/mov010.

Buhr, Manfred, and Alfred Kosing. 1979. *Kleines Wörterbuch der Marxistisch-Leninistischen Philosophie*. Berlin: Dietz Verlag.

Burley, Anne-Marie, and Walter Mattli. 1993. Europe Before the Court: A Political Theory of Legal Integration. *International Organization* 47: 41–76. https://doi.org/10.1017/S0020818300004707.

Bútora, Martin, Zora Bútorová, and Olga Guarfášová. 1994. From Velvet Revolution to Velvet Divorce? Reflecions on Slovakia's Independence. In *Transition to Capitalism? The Communist Legacy in Eastern Europe*, ed. János Mátyás Kovács, 229–258. New Brunswick/London: Transaction Publishers.

Buzogány, Aron. 2021. Beyond Balkan Exceptionalism. Assessing Compliance with EU Law in Bulgaria and Romania. *European Politics and Society* 22: 185–202. https://doi.org/10.1080/23745118.2020.1729048.

Buzogány, Aron, and Mihai Varga. 2018. The Ideational Foundations of the Illiberal Backlash in Central and Eastern Europe: The Case of Hungary. *Review of International Political Economy* 25: 811–828. https://doi.org/10.1080/09692290.2018.1543718.

Campbell, Janet M. 1997. The Rule of Law: A Lesser of Two Evils. In *Rule of Law: Political and Legal Systems in Transition*, ed. Werner Krawietz, Enrico Pattaro, and Alice Erh-Soon Tay, 161–167. Berlin: Duncker & Humblot.

Carothers, Thomas. 2006. The Rule-of-Law Revival. In *Promoting the Rule of Law Abroad: In Search of Knowledge*, ed. Thomas Carothers, 3–14. Washington, D.C.: Carnegie Endowment for International Peace.

Chesterman, Simon. 2008. An International Rule of Law? *American Journal of Comparative Law* 56: 331–362. https://doi.org/10.5131/ajcl.2007.0009.

Cho, Youngho. 2015. How Well Are Global Citizenries Informed About Democracy? Ascertaining the Breadth and Distribution of Their Democratic Enlightenment and Its Sources. *Political Studies* 63: 240–258. https://doi.org/10.1111/1467-9248.12088.

Cianetti, Licia, and Seán Hanley. 2021. The End of the Backsliding Paradigm. *Journal of Democracy* 32 (1): 66–80.

Collier, Ruth Berins, and David Collier. 1991. *Shaping the Political Arena: Critical Junctures, the Labor Movement, and Regime Dynamics in Latin America*. Princeton: Princeton University Press.

Coman, Ramona. 2022. *The Politics of the Rule of Law in the EU Polity: Actors, Tools and Challenges*. Cham: Palgrave Macmillan.

Coman, Ramona, and Clara Volintiru. 2021. Anti-Liberal Ideas and Institutional Change in Central and Eastern Europe. *European Politics and Society* 24: 5–21. https://doi.org/10.1080/23745118.2021.1956236.

Conant, Lisa, Andreas Hofmann, Dagmar Soennecken, and Lisa Vanhala. 2018. Mobilizing European law. *Journal of European Public Policy* 25: 1376–1389. https://doi.org/10.1080/13501763.2017.1329846.

Cserne, Peter. 2017. Formalism in Judicial Reasoning: Is Central and Eastern Europe a Special Case? In *Central European Judges Under the European Influence: The Transformative Power of the EU Revisited*, ed. Michal Bobek, 23–42. Oxford: Hart Publishing.

Dăianu, Daniel. 2000. *Încotro se îndreaptă ţările postcomuniste? Curente economice în pragul secolului*. Bucureşti: Polirom.

Dahl, Robert A. 1982. *On Democracy*. New Haven/London: Yale University Press.

Dalton, Russel J., and Martin P. Wattenberg, eds. 2000. *Parties Without Partisans: Political Change in Advanced Industrial Democracies*. Oxford: Oxford University Press.

Daum, Werner, Peter Brandt, Martin Kirsch, and Arthur Schlegelmilch, eds. 2012. *Handbuch der europäischen Verfassungsgeschichte im 19. Jahrhundert. Institutionen und Rechtspraxis im gesellschaftlichen Wandel. Band 2: 1815–1847*. Bonn: Dietz.

———, eds. 2020. *Handbuch der europäischen Verfassungsgeschichte im 19. Jahrhundert Institutionen und Rechtspraxis im gesellschaftlichen Wandel, Band 3: 1848-1870*. Bonn: Dietz.

David, Paul A. 2000. Path Dependence, Its Critics, and the Quest for 'Historical Economics'. In *Evolution and Path Dependence in Economic Ideas*, ed. Pierre Garrouste and Stavros Ioannides, 15–40. Edward Elgar Publishing.

De Raadt, Jasper. 2009. Contested Constitutions. Legitimacy of Constitution-Making and Constitutional Conflict in Central Europe. *East European Politics and Societies* 23: 315–338.

De Wilde, Peter, Ruud Koopmans, Wolfgang Merkel, Oliver Strijbis, and Michael Zürn. 2019. *The Struggle Over Borders: Cosmopolitanism and Communitarianism*. Cambridge: Cambridge University Press.

Dilger, Clara. 2023. Divided Over Globalisation. Measuring the idEological Divide Between Cosmopolitans and Communitarians in Europe Using a Classification Approach. *Social Science Research* 109: 1–14. https://doi.org/10.1016/j.ssresearch.2022.102776.

Dimitrova, Antoaneta L. 2010. The New Member States of the EU in the Aftermath of Enlargement: Do New European Rules Remain Empty Shells? *Journal of European Public Policy* 17 (1): 137–148.

Dimitrova, Antoaneta, and Geoffrey Pridham. 2004. International Actors and Democracy Promotion in Central and Eastern Europe: The Integration Model and Its Limits. *Democratization* 11: 91–112. https://doi.org/10.1080/13510340412331304606.

Dvořáková, Vladimíra. 2019. Regime Change as a Trigger of Corruption: Experience from Postcommunist Countries. *Politologická Revue (Czech Political Science Review)* 25: 101–126.

Easton, David. 1965. *A System Analysis of Political Life*. New York: Free Press.

Elgie, Robert, and Jan Zielonka. 2001. Constitutions and Constitution-Building: A Comparative Perspective. In *Democratic Consolidation in Eastern Europe 1: Institutional Engineering*, ed. Jan Zielonka, 25–47. Oxford/New York: Oxford University Press.

Elster, Jon. 2000. *Ulysses Unbound: Studies in Rationality, Precommitment, and Constrains*. New York: Cambridge University Press.

Ferrin, Monica, and Hanspeter Kriesi. 2016. *How Europeans View and Evaluate Democracy*. Oxford: Oxford University Press.

Finer, Samuel Edward. 1979. *Five Constitutions*. London: Penguin Books.

Flathman, Richard. 1994. Liberalism and the Suspect Enterprise of Political Institutionalization: The Case of the Rule of Law. In *The Rule of Law*, ed. Ian Shapiro, 297–328. New York/London: New York University Press.

Fomina, Joanna. 2016. European Integration as Self-Colonization? The Appropriation of Postcolonial Theory by Polish Eurosceptics. *CzasKultury/English* 4: 18–31.

Forsthoff, Ernst. 1964. Begriff und Wesen des sozialen Rechtsstaates. In *Rechtsstaat im Wandel*, ed. Ernst Forsthoff, 42–86. Stuttgart: Kohlhammer Verlag.

Fuchs, Gesine. 2013. Strategic Litigation for Gender Equality in the Workplace and Legal Opportunity Structures in Four European Countries. *Canadian Journal of Law and Society/La Revue Canadienne Droit et Société* 28: 189–208. https://doi.org/10.1017/cls.2013.21.

Fukuyama, Francis. 2010. Transitions to the Rule of Law. *Journal of Democracy* 21: 33–44.

Gardos-Orosz, Fruzsina. 2021. Two Influentual Concepts: Socialist Legality and Constitutional Identity and Their Impact on the Independence of the Judiciary. *German Law Journal* 22 (7): 1327–1343. https://doi.org/10.1017/glj.2021.70.

Garlicki, Leszek. 1977. Aktuelle Entwicklungstendenzen der Gerichtsordnung in den Europäischen Sozialistischen Ländern. *Der Staat* 16: 55–74.

Garrett, Geoffrey, R. Daniel Kelemen, and Heiner Schulz. 1998. The European Court of Justice, National Governments, and Legal Integration in the European Union. *International Organization* 52: 149–176. https://doi.org/10.1162/002081898550581.

Ghergina, Sergiu, Alexandra Iancu, and Sorina Soare. 2018. Party Membership and Its Conceptualization in Democratizing European Countries: An Introduction. In *Party Members and Their Importance in Non-EU Countries: A Comparative Analysis*, ed. Sergiu Gherginga, Alexandra Iancu, and Sorina Soare, 1–20. London: Routledge.

Goldston, James A., and Mirna Adjami. 2009. The Opportunities and Challenges of Using Public Interest Litigation to Secure Access to Justice for Roma in Central and Eastern Europe. In *Marginalized Communities and Access to Justice*, ed. C.B.E. Yash Ghai and Jill Cottrell, 205–231. London: Routledge-Cavendish.

Graber, Mark A. 1993. The Nonmajoritarian Difficulty: Legislative Deference to the Judiciary. *Faculty Scholarship* 518. https://digitalcommons.law.umaryland.edu/fac_pubs/518/. Accessed 16 May 2024.

Granat, Katarzyna. 2023. The Parliamentary Politics of the Rule of Law Crisis in the EU. *Journal of European Integration* 45: 1017–1034. https://doi.org/10.1080/07036337.2023.2220879.

Grimm, Dieter. 1994. *Die Zukunft der Verfassung*. Frankfurt am Main: Suhrkamp Verlag.

———. 2016. *Europa ja – aber welches? Zur Verfassung der europäischen Demokratie*. München: C.H. Beck.

Grogan, Joelle. 2020. Unity and Diversity in National Understandings of the Rule of Law in the EU. *Bingham Centre for the Rule of Law*. May 18. https://policycommons.net/artifacts/1577875/unity-and-diversity-in-national-understandings-of-the-rule-of-law-in-the-eu/2267644/. Accessed 15 May 2024

Gutan, Bianca. 2024. *Are Rights of Judges Becoming Rule of Law Standards in Europe?* Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No. 2024–05. February 14. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4726426. Accessed 16 May 2024

Habermas, Jürgen. 1962 [1990]. *Strukturwandel der Öffentlichkeit. Untersuchungen zu einer Kategorie bürgerlicher Gesellschaft.* Frankfurt am Main: Suhrkamp

———. 1992. *Faktizität und Geltung. Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats*. Frankfurt am Main: Suhrkamp.

Hall, Peter A., and Rosemary C.R. Taylor. 1996. Political Science and the Three New Institutionalisms. *Political Studies* 44: 936–957. https://doi.org/10.1111/j.1467-9248.1996.tb00343.x.

Halliday, Terrence C., and Lucien Karpik. 1997. *Lawyers and the Rise of Western Political Liberalism: Europe and North America from the Eighteenth to Twentieth Centuries*. New York: Oxford University Press.

Halliday, Terence C., and Bruce G. Carruthers. 2007. The Recursivity of Law: Global Norm Making and National Lawmaking in the Globalization of Corporate Insolvency Regimes. *American Journal of Sociology* 112 (4): 1135–1202.

Halmai, Gabór. 2019. Populism, Authoritarianism and Constitutionalism. *German Law Journal* 20: 296–313. https://doi.org/10.1017/glj.2019.23.

Hay, Colin. 2009. Constructivist Institutionalism. In *The Oxford Handbook of Political Institutions*, ed. Sarah A. Binder, Rod A.W. Rhodes, and Bert A. Rockman, 56–74. Oxford: Oxford University Press.

Helmke, Gretchen, and Steven Levitsky. 2004. Informal Institutions and Comparative Politics: A Research Agenda. *Perspectives on Politics* 2: 725–740.

Heydebrand, Wolf. 2002. Die Dynamik des rechtlichen Wandels in Mittel- und Osteuropa. In *Recht in der Transformation*, ed. Christian Boulanger, 13–35. Berlin: Wissenschaftsverlag.

Hirschl, Ran. 2007. *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism*. Cambridge: Harvard University Press.

———. 2008. The Judicialization of Mega-Politics and the Rise of political Courts. *Annual Review of Political Science* 11: 93–118. https://doi.org/10.1146/annurev.polisci.11.053006.183906.

Höreth, Marcus. 2009. Der Europäische Gerichtshof: Verfassungsgericht oder nur ein 'Agent' der Mitgliedsstaaten. In *Die Verfassung Europas. Perspektiven des Integrationsprojekts*, ed. Frank Decker and Marcus Höreth, 165–200. Wiesbaden: VS Verlag für Sozialwissenschaften.

Hueglin, Thomas O., and Alan Fenna. 2006. *Comparative Federalism: A Systematic Inquiry*. Ontario: Broadview Press.

Husa, Jaakko. 2010. Nordic Constitutionalism and European Human Rights-Mixing Oil and Water? *Scandinavian Studies in Law* 55: 101–124.

Iancu, Alexandra. 2018. Questioning Anticorruption in Postcommunist Contexts. Romanian MPs from Commitment to Contestation. *Südosteuropa* 66: 392–417. https://doi.org/10.1515/soeu-2018-0030.

Ilie, Cornelia. 2015. Parliamentary Discourse. *The International Encyclopedia of Language and Social Interaction*: 1–15.

Inglehart, Ronald. 1979. Wertwandel in den westlichen Gesellschaften: Politische Konsequenzen von materialistischen und postmaterialistischen Prioritäten. In *Wertwandel und gesellschaftlicher Wandel*, ed. Helmut Klages and Peter Kmieciak, 279–316. Frankfurt am Main: Campus Verlag.

Jakab, András, and Eszter Bodnár. 2020. The Rule of Law, Democracy, and Human Rights in Hungary. Tendencies from 1989 Until 2019. In *Rule of Law, Common Values, and Illiberal Constitutionalism Poland and Hungary within the European Union*, ed. Tímea Drinóczi and Agnieszka Bień-Kacała, 105–118. London: Routledge.

Jedlicki, Jerzy. 1999. *A Suburb of Europe: Nineteenth-Century Polish Approaches to Western Civilization*. Budapest: Central European University Press.

Jepperson, Ronald. 1991. Institutions, Institutional Effects, and Institutionalism. In *The New Institutionalism in Organizational Analysis*, ed. Walter W. Powell and Paul J. DiMaggio, 143–163. Chicago: University of Chicago Press.

Johnson, Nevil. 1993. Constitutionalism in Europe Since 1945: Reconstruction and Reappraisal. In *Constitutionalism and Democracy: Transitions in the Contemporary World*, ed. Douglas Greenberg, Stanley N. Katz, Melanie Beth Oliviero, and Steven C. Wheatley, 26–45. New York/Oxford: Oxford University Press.

Kaiser, André. 2001. Die politische Theorie des Neo-Institutionalismus: James March und Johan Olsen. In *Politische Theorien der Gegenwart II: Eine Einführung*, ed. André Brodocz and Gary S. Schaal, 253–282. Opladen: Leske + Budrich.

Karolewski, Ireneusz Paweł, and Roland Benedikter. 2017. Poland's Conservative Turn and the Role of the European Union. *European Political Science* 16: 515–534. https://doi.org/10.1057/s41304-016-0002-x.

Kelemen, R. Daniel. 2003. The EU Rights Revolution: Adversarial Legalism and European Integration. In *Law, Politics, and Society*, ed. Tanja Börzel and Rachel A. Cichowski, 221–234. Oxford: Oxford University Press.

———. 2012. The Political Foundations of Judicial Independence in the European Union. *Journal of European Public Policy* 19: 43–58. https://doi.org/10.1080/13501763.2012.632127.

Kelle, Udo, and Susann Kluge. 2010. *Vom Einzelfall zum Typus: Fallvergleich und Fallkontrastierung in der qualitativen Sozialforschung*. Wiesbaden: VS Verlag für Sozialwissenschaften.

Keller, Helen, and A. Stone Sweet. 2018. Assessing the Impact of the ECHR on National Legal Systems. In *A Europe of Rights: The Impact of the ECHR on National Legal Systems*, ed. Helen Keller and Alec Stone Sweet, 677–712. Oxford: Oxford University Press.

Keller, Suzanne. 1963. *Beyond the Ruling Class: Strategic Elites in Modern Society*. New York: Random House.

Kessel, Robert. 2021. Skandinavische Länder. In *Konfliktlösung im 19. und 20. Jahrhundert*, ed. Peter Collin, 705–728. Heidelberg: Springer.

Kitschelt, Herbert. 2004. Diversification and Reconfiguration of Party Systems in Postindustrial Democracies. *Europäische Politik* 3: 1–23.

Kitschelt, Herbert, Zdenka Mansfeldová, Radoslaw Markowski, and Gabór Tóka. 2008. *Post-Communist Party Systems: Competition, Representation, and Inter-Party Cooperation*. Cambridge: Cambridge University Press.

Kneip, Sascha. 2006. Demokratieimmanente Grenzen der Verfassungsgerichtsbarkeit. *Politik und Recht, Sonderheft* 36: 259–281.

———. 2015. Verfassungsgerichte in der Vergleichenden Politikwissenschaft. In *Handbuch Vergleichende Politikwissenschafft*, ed. Hans-Joachim Lauth, Marianne Kneuer, and Gert Pickel, 361–372. Wiesbaden: Springer VS.

Kochenov, Dimitry, and Petra Bárd. 2019. The Last Soldier Standing? Courts vs. Politicians and the Rule of Law Crisis in the New Member States of the EU. In *European Yearbook of Constitutional Law: Judicial Power: Safeguards and Limits in a Democratic Society*, ed. Ernst Hirsch Ballin, Gerhard van der Schyff, and Maarten Stremler, 243–287. The Hague: T.M.C. Asser Press.

Kornai, János. 1992. *The Socialist System. The Political Economy of Communism*. Oxford: Oxford University Press.

Koselleck, Reinhart. 1984. 'Erfahrungsraum' und 'Erwartungshorizont' – zwei historische Kategorien. In *Vergangene Zukunft. Zur Semantik geschichtlicher Zeiten*, ed. Reinhart Koselleck, 3rd ed., 349–375. Frankfurt am Main: Suhrkamp.

Krastev, Ivan, and Stephen Holmes. 2019. *The Light That Failed: A Reckoning*. London: Penguin.

Krygier, Martin. 2009. The Rule of Law: Teleology, Sociology and the Rule of Law. In *Re-Locating the Rule of Law*, ed. Gianluigi Palombella and Neil Walker, 45–70. Oxford: Hart Publishing.

Krygier, Martin, and Adam Czarnota. 2006. After Postcommunism: The Next Phase. *Annual Review of Law and Social Science* 2: 299–340.

Küpper, Herbert. 2005. *Einführung in die Rechtsgeschichte Osteuropas*. Frankfurt am Main: Peter Lang.

Lacewell, Onawa Promise. 2017. Beyond Policy Positions: How Party Type Conditions Programmatic Responses to Globalization Pressures. *Party Politics* 23: 448–460. https://doi.org/10.1177/1354068815603241.

Lacey, Nicola. 2019. Populism and the Rule of Law. *Annual Review of Law and Social Science* 15: 79–96.

Lach, Kasia, and Wojciech Sadurski. 2008. Constitutional Courts of Central and Eastern Europe: Between Adolescence and Maturity. *Journal of Comparative Law* 3: 212–233.

Lange, Felix. 2019. Coercion, Internalization, Decolonization: A Contextual Reading of the Rise of European International Law Since the Seventeenth Century. In *The International Rule of Law: Rise or Decline?* ed. Heike Krieger, Georg Nolte, and Andreas Zimmermann, 66–89. Oxford: Oxford University Press.

Lepsius, M. Rainer. 2013. *Institutionalisierung politischen Handelns. Analysen zur DDR, Wiedervereinigung und Europäischen Union*. Wiesbaden: Springer VS.

Lübben, Lukas Wolfgang. 2021. *Ursprünge richterlicher Normenkontrolle im Verfassungsrecht der Vereinigten Staaten, 1761-1803*. Tübingen: Mohr Siebeck.

Magen, Amichai, and Leonardo Morlino. 2009. Hybrid Regimes, the Rule of Law, and External Influence on Domestic Change. In *International Actors, Democratization, and the Rule of Law: Anchoring Democracy?* ed. Amichai Magen and Leonardo Morlino, 1–25. London: Routledge.

Mahoney, James. 2000. Path Dependence in Historical Sociology. *Theory and Society* 29: 507–548.

Malová, Darina. 2001. Slovakia: From the Ambiguous Constitution to the Dominance of Informal Rules. In *Democratic Consolidation in Eastern Europe 1: Institutional Engineering*, ed. Jan Zielonka, 347–377. New York: Oxford University Press.

Maravall, José Maria. 2003. The Rule of Law as a Political Weapon. In *Democracy and the Rule of Law*, ed. José Maria Maravall and Adam Przeworski, 261–301. Cambridge University Press.

March, James G., and Johan P. Olsen. 1989. *Rediscovering Institutions*. New York: Free Press.

———. 1995. *Democratic Governance*. New York: Free Press.

———. 2008. Elaborating the 'New Institutionalism'. In *The Oxford Handbook of Political Institutions*, ed. Sarah A. Binder, Rod A.W. Rhodes, and Bert A. Rockman, 3–20. Oxford: Oxford University Press.

———. 2011. The Logic of Appropriateness. In *The Oxford Handbook of Political Science*, ed. Robert E. Goodin, 478–497. Oxford: Oxford University Press.

Martini, Stefan. 2009. Die Pluralität von Rule-of-Law-Konzeptionen in Europa und das Prinzip einer europäischen Rule of Law. In *Normative Pluralität ordnen*, ed. Matthias Kötter and Gunnar Folke Schuppert, 303–344. Baden-Baden: Nomos Verlagsgesellschaft.

Meier, Katja, Astrid Lorenz, and Mattias Wendel. 2023. *Rule of Law and the Judiciary*. Baden-Baden: Nomos.

McCann, Michael W. 2009. Interests, Ideas, and Institutions in Comparative Analysis of Judicial Power. *Political Research Quarterly* 62: 834–839. https://doi.org/10.1177/1065912909347204.

Meijers, Maurits, and Harmen van der Veer. 2019. MEP Responses to Democratic Backsliding in Hungary and Poland: An Analysis of Agenda-Setting and Voting Behaviour. *Journal of Common Market Studies* 57: 838–856. https://doi.org/10.1111/jcms.12850.

Mendelski, Martin. 2016. Das europäische Evaluierungsdefizit der Rechtsstaatlichkeit. *Leviathan* 44: 366–398.

Merkel, Wolfgang. 2010. *Systemtransformation. Eine Einführung in die Theorie und Empirie der Transformationsforschung*. Wiesbaden: Springer VS.

Mertens, Bernd. 2009. *Rechtsetzung im Nationalsozialismus. Beiträge zur Rechtsgeschichte des 20. Jahrhunderts 62*. Tübingen: Mohr Siebeck.

Michnik, Adam, and Václav Havel. 1993. Justice or Revenge. *Journal of Democracy* 4: 20–27.

Micklitz, Hans-W. 2017. Prologue: The Westernisation of the East and the Easternisation of the West. In *Central European Judges Under the European Influence. The Transformative Power of the EU Revisited*, ed. Michal Bobek, 1–12. Oxford/Portland: Hart Publishing.

Mişcoiu, Sergiu. 2022. Political Parties and Elections in Romania. In *Das politische System Rumäniens*, ed. Astrid Lorenz and Daniela-Maria Mariş, 143–167. Wiesbaden: Springer VS.

Müller, Dietmar. 2021. Verfassungsgebung und Staatlichkeit im östlichen Europa der Zwischenkriegszeit. In *Demokratie versuchen: Die Verfassung in der politischen Kultur der Weimarer Republik*, ed. Dirk Schumann, Christoph Gusy, and Walter Mühlhausen, 107–134. Göttingen: Vandenhoeck & Ruprecht.

———. 2022. Rumänische Politik in Europa in historischer Perspektive: Verflechtungen, Transfers und nationale Selbstbehauptung. In *Das politische System Rumäniens: Entwicklungen und Herausforderungen in Europa*, ed. Astrid Lorenz and Daniela-Maria Mariş, 13–30. Wiesbaden: Springer VS.

Murgescu, Bogdan. 2010. *România şi Europa. Acumularea decalajelor economice (1500-2010)*. Bucureşti: Polirom.

North, Douglass C., and Barry R. Weingast. 1989. Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England. *The Journal of Economic History* XLIX (4): 803–832.

North, Douglass C. 1998. Economic Performance Through Time. In *The New Institutionalism in Sociology*, ed. Mary C. Brinton and Victor Nee, 247–257. Stanford: Stanford University Press.

Olgiati, Vittorio. 2006. The Eastern EU Enlargement and the Janus-Headed Nature of the Constitutional Treaty. In *Spreading Democracy and the Rule of Law? The Impact of EU Enlargement on the Rule of Law, Democracy and Constitutionalism in Post-Communist Legal Orders*, ed. Wojciech Sadurski, Adam Czarnota, and Martin Krygier, 51–71. Wiesbaden: Springer.

Oprea, Marius. 2004. *Moştenitorii Securităţii*. Bucureşti: Humanitas.

Osiatynski, Wiktor. 1994. Rights in New Constitutions of East Central Europe. *Columbia Human Rights Law Review* 26: 111–166.

Osterberg-Kaufmann, Norma, Toralf Stark, and Christoph Mohamad-Klotzbach. 2020. Challenges in Conceptualizing and Measuring Meanings and Understandings of Democracy. *Zeitschrift für Vergleichende Politikwissenschaft* 14: 299–320. https://doi.org/10.1007/s12286-020-00470-5.

Pappas, Takis S. 2019. *Populism and Liberal Democracy: A Comparative and Theoretical Analysis*. Oxford: Oxford University Press.

Pasti, Vladimir. 2004. *Sociologie politică*. Bucureşti: Editura Ziua.

Piana, Daniela. 2010. *Judicial Accountabilities in New Europe: From Rule of Law to Quality of Justice*. Burlington: Ashgate.

———. 2017. Réformes judiciaires et État de droit. Analyse comparée des pays de l'Union européenne. *Droit et société* 95: 177–198.

Pickel, Susanne, and Gert Pickel. 2006. *Politische Kultur- und Demokratieforschung. Grundbegriffe, Theorien, Methoden. Eine Einführung*. Wiesbaden: VS Verlag.

Pierson, Paul. 2000. Increasing Returns, Path Dependence, and the Study of Politics. *American Political Science Review* 94: 251–267.

———. 2004. *Politics in Time*. Princeton: Princeton University Press.

Pogány, István. 2006. Minority Rights and the Roma of Central and Eastern Europe. *Human Rights Law Review* 6: 1–25.

Popelier, Patricia, Sarah Lambrecht, and Koen Lemmens, eds. 2016. *Criticism of the European Court of Human Rights. Shifting the Convention System: Counter-Dynamics at the National and EU Level*. Cambridge: Intercentia.

Pridham, Geoffrey. 2005. *Designing Democracy: EU Enlargement and Regime Change in Post-Communist Europe*. London: Palgrave Macmillan.

Priebus, Sonja, and Lisa H. Anders. 2023. Fundamental Change Beneath the Surface: The Supranationalisation of Rule of Law Protection in the European Union. *Journal of Common Market Studies* 62: 224–241.

Raz, Joseph. 1979. *The Authority of Law: Essays on Law and Morality*. Oxford: Clarendon Press.

Rech, Walter. 2018. Some Remarks on the EU's Action on the Erosion of the Rule of Law in Poland and Hungary. *Journal of Contemporary European Studies* 26: 334–345.

Rodríguez-Garavito, César. 2011. Toward a Sociology of the Global Rule of Law Field: Neoliberalism, Neoconstitutionalism, and the Contest Over Judicial Reform in Latin America. In *Lawyers and the Rule of Law in an Era of Globalization*, ed. Yves Dezalay and Bryant G. Garth, 164–190. London: Routledge.

Rousseau, Jean Jacques. 1762 [1923]. *The Social Contract and Discourses*. London/Toronto: J.M. Dent and Sons.

Rybář, Marek. 2011. National determinants of international preferences in post-communist Europe: The case of Slovakia in the European Union. *Communist and Post-Communist Studies* 44: 161–171.

Sadurski, Wojciech. 2004. Accession's Democracy Dividend: The Impact of the EU Enlargement Upon Democracy in the New Member States of Central and Eastern Europe. *European Law Journal* 10: 371–401.

———. 2006. EU Enlargement and Democracy in New Member States. In *Spreading Democracy and the Rule of Law? The Impact of EU Enlargement on the Rule of Law, Democracy and Constitutionalism in Post-Communist Legal Orders*, ed. Wojciech Sadurski, Adam Czarnota, and Martin Krygier, 27–49. Wiesbaden: Springer.

———. 2018. *How Democracy Dies (in Poland): A Case Study of Anti-Constitutional Populist Backsliding*. Sydney Law School Research Paper No. 18/01

———. 2019. *Poland's Constitutional Breakdown*. Oxford/New York: Oxford University Press.

Sajó, András. 1990. New Legalism in East Central Europe: Law as an Instrument of Social Transformation. *Journal of Law and Society* 17: 329–344.

———. 2021. *Ruling by Cheating: Governance in Illiberal Democracy*. Cambridge: Cambridge University Press.

Sanders, Elizabeth. 2008. Historical Institutionalism. In *The Oxford Handbook of Political Institutions*, ed. Sarah A. Binder, Rod A.W. Rhodes, and Bert A. Rockman, 39–55. Oxford: Oxford University Press.

Scheppele, Kim Lane. 2019. The Opportunism of Populists and the Defense of Constitutional Liberalism. *German Law Journal* 20: 314–331. https://doi.org/10.1017/glj.2019.25.

Schimmelfennig, Frank. 2001. The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union. *International Organization* 55: 47–80.

———. 2012. A Comparison of the Rule of Law Promotion Policies of Major Western Powers. In *rule of Law Dynamics: In an Era of International and Transnational Governance*, ed. Michael Zurn, André Nollkaemper, and Randy Peerenboom, 111–132. Cambridge: Cambridge University Press.

Schimmelfennig, Frank, and Ulrich Sedelmeier. 2004. Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe. *Journal of European Public Policy* 11: 661–679.

Schmidt, Susanne K. 2003. Die nationale Bedingtheit der Folgen der Europäischen Integration. *Zeitschrift für Internationale Beziehungen* 10: 43–67.

Schmidt, Vivian A. 2008. Discursive Institutionalism: The Explanatory Power of Ideas and Discourse. *Annual Review of Political Science* 11: 303–326.

Sedelmeier, Ulrich. 2014. Anchoring Democracy from Above? The European Union and Democratic Backsliding in Hungary and Romania after Accession. *Journal of Common Market Studies* 52: 105–121.

Shanahan, Elizabeth A., Michael D. Jones, Mark K. Mcbeth, and Claudio M. Radaelli. 2018. The Narrative Policy Framework. In *Theories of the Policy Process*, ed. Christopher M. Weible and Paul A. Sabatier, 173–213. New York: Routledge.

Shane, Peter. 2008. Constitutions. In *The Oxford Handbook of Political Institutions*, ed. Sarah A. Binder, Rod A.W. Rhodes, and Bert A. Rockman, 191–216. Oxford: Oxford University Press.

Shapiro, Ian. 1994. Introduction. In *The Rule of Law*, ed. Ian Shapiro, 1–10. New York/London: New York University Press.

Shin, Doh Chull, and Hannah June Kim. 2018. How Global Citizenries Think About Democracy: An Evaluation and Synthesis of Recent Public Opinion Research. *Japanese Journal of Political Science* 19: 222–249. https://doi.org/10.1017/S1468109918000063.

Sieberer, Ulrich. 2006. Strategische Zurückhaltung von Verfassungsgerichten Gewaltenteilungsvorstellungen und die Grenzen der Justizialisierung. *Zeitschrift für Politikwissenschaft* 16: 1299–1323. https://doi.org/10.5771/1430-6387-2006-4-1299.

Šipulová, Katarína. 2020. The Supreme Court – The Story of a (Post)Communist Cinderella. In *Domestic Judicial Treatment of European Court of Human Rights – Beyond Compliance*, ed. David Kosař, Jan Petrov, Katarína Šipulová, Hubert Smekal, Ladislav Vyhnánek, and Jozef Janovský, 103–138. London/New York: Routledge.

Slapin, Jonathan B. 2015. How European Union Membership Can Undermine the Rule of Law in Emerging Democracies. *West European Politics* 38 (3): 627–648.

Smith, Mitchell P. 1997. The Commission Made Me Do It: The European Commission as a Strategic Asset in Domestic Politics. In *At the Heart of the Union. Studies of the European Commission. Basingstoke*, ed. Neill Nugent, 167–186. Hampshire: Palgrave Macmillan.

Smith-Walter, Aaron, and Michael D. Jones. 2020. Using the Narrative Policy Framework in Comparative Policy Analysis. In *Handbook of Research Methods and Applications in Comparative Policy Analysis*, ed. B. Guy Peters and Guillaume Fontaine, 348–365. Cheltenham/Northampton: Edward Elgar Publishing.

Sontheimer, Kurt, Wilhelm Bleek, and Andrea Gawrich. 2007. *Grundzüge des politischen Systems Deutschlands*. München/Zürich: Piper.

Stein, Tine. 2021. Selbstbindung durch Recht im demokratischen Verfassungsstaat. *Aus Politik und Zeitgeschichte* 71: 4–11.

Steinmo, Sven, Kathleen Thelen, and Frank Longstreth. 1992. *Structuring Politics: Historical Institutionalism in Comparative Analysis*. Cambridge: Cambridge University Press.

Stolleis, Michael. 1994. *Recht im Unrecht. Studien zur Rechtsgeschichte des Nationalsozialismus*. Frankfurt am Main: Suhrkamp Verlag.

———. 2001. *Konstitution und Intervention. Studien zur Geschichte des öffentlichen Rechts*. Frankfurt am Main: Suhrkamp Verlag.

Stone Sweet, Alec. 2002. Constitutional Courts and Parliamentary Democracy. *West European Politics* 25 (1): 77–100.

———. 2007. The Politics of Constitutional Review in France and Europe. *International Journal of Constitutional Law* 5 (1): 69–92.

Strøm, Kaare, and Wolfgang C. Müller. 1999. Political Parties and Hard Choices. In *Policy, Office, or Votes? How Political Parties in Western Europe Make Hard Decisions*, ed. Kaare Strøm and Wolfgang C. Müller, 1–35. Cambridge: Cambridge University Press.

Sweet, Alec Stone, and James A. Caporaso. 1998. From Free Trade to Supranational Polity: The European Court and Integration. In *Wayne Sandholtz, and Alec Stone Sweet*, ed. European Integration and Supranational Governance, 92–133. Oxford: Oxford University Press.

Tamanaha, Brian Z. 2004. *On the Rule of Law: History, Politics, Theory*. Cambridge: Cambridge University Press.

Thelen, Kathleen. 2003. Insight from Comparative Historical Analysis. In *Comparative Historical Analysis in the Social Sciences*, ed. James Mahoney and Dietrich Rueschemeyer, 208–240. Cambridge: Cambridge University Press.

Trubek, David M. 2006. The Rule of Law in Development Assistance: Past, Present, Future. *The New Law and Economic Development: A Critical Appraisal* 74.

Vachudova, Milada Anna. 2021. Populism, Democracy, and Party System Change in Europe. *Annual Review of Political Science* 24: 471–498.

Verdery, Katherine. 2012. Postsocialist Cleansing in Eastern Europe: Purity and Danger in Transitional Justice. In *Socialism Vanquished, Socialism Challenged: Eastern Europe and China, 1989-2009*, ed. Nina Bandelj and Dorothy J. Solinger, 63–82. New York/Oxford: Oxford University Press.

Von Beyme, Klaus. 1994. *Systemwechsel in Osteuropa*. Frankfurt am Main: Suhrkamp.

———. 2000. *Parteien im Wandel: Von den Volksparteien zu den professionalisierten Wählerparteien*. Wiesbaden: Westdeutscher Verlag.

Vorländer, Hans. 2007. Europas Multiple Konstitutionalismen. *Zeitschrift für Staats- und Europawissenschaften* 5: 160–189.

———. 2017. Constitutions as Symbolic Orders: The Cultural Analysis of Constitutionalism. In *Sociological Constitutionalism*, ed. Paul Blokker and Chris Thornhill, 209–240. Cambridge: Cambridge University Press.

Waldron, Jeremy. 2006. The Core of the Case Against Judicial Review. *The Yale Law Journal* 115: 1346–1406.

———. 2008. The Concept and the Rule of Law. *Georgia Law Review* 43.

Walsch, Christopher. 2014. Visegrad Four in the European Union. An Efficient Regional Cooperation Scheme? *International Issues & Slovak Foreign Policy Affairs* 23: 25–41.

Weiler, Joseph H.H. 1994. A Quiet Revolution: The European Court of Justice and Its Interlocutors. *Comparative Political Studies* 26: 510–534. https://doi.org/10.1177/0010414094026004006.
Whitaker, Richard, and Shane Martin. 2022. Divide to Conquer? Strategic Parliamentary Opposition and Coalition Government. *Party Politics* 28: 999–1011.
Whitehead, Laurence. 1996. The International Dimensions of Democratization. In *The International Dimensions of Democratization: Europe and the Americas*, ed. Laurence Whitehead, 3–25. Oxford: Oxford University Press.
Whittington, Keith E. 2003. Legislative Sanctions and the Strategic Environment of Judicial Review. *International Journal of Constitutional Law* 1: 446–474.
Williams, Kieran, Brigid Fowler, and Aleks Szczerbiak. 2005. Explaining Lustration in Central Europe: A 'Post-Communist Politics' Approach. *Democratization* 12: 22–43. https://doi.org/10.1080/1351034042000317943.
Wischmeyer, Thomas. 2015. Nationale Identität und Verfassungsidentität. Schutzgehalte, Instrumente, Perspektiven. *Archiv des öffentlichen Rechts* 140: 415–460.
Zakaria, Fareed. 1997. The rise of illiberal democracy. *Foreign Affairs* 76: 22–43.
Zielonka, Jan. 2013. Introduction: The State of Democracy 20 Years on: Domestic and External Factors. *East European Politics and Societies* 27: 3–25.
———. 2018. *Counter-Revolution: Liberal Europe in Retreat*. Oxford: Oxford University Press.
Zürn, Michael. 2022. How Non-Majoritarian Institutions Make Silent Majorities Vocal: A Political Explanation of Authoritarian Populism. *Perspectives on Politics* 20: 788–807. https://doi.org/10.1017/S1537592721001043.

Beyond Theory. Understanding Rule of Law Narratives from Their Empirical Context

3

As outlined in Chap. 2, we consider actors as highly relevant for the development of the rule of law. They are embedded in their respective contexts, and while their institutional environment influences their actions it does not predetermine them as they can selectively re-interpret institutions. This assumption has far-reaching consequences for our research design. It implies that abstract theories of political action and narratives cannot fully predict or explain rule of law narratives in all cases. It also implies that factors potentially relevant for rule of law narratives in our cases may have been overlooked by theories developed in light of other countries or regions. If we take these implications seriously, we need to move beyond existing theories and be open to new and potentially relevant information about the cases. Moreover, we need to be aware of the context to adequately comprehend what speakers in parliament were referring to (explicitly or implicitly) in the particular setting (cf. Smith-Walter and Jones 2020).

This chapter, therefore, introduces the dynamics in parliaments, legislation around the rule of law (as potential occasions to refer to it), the experiences with an independent judiciary and linkages to the European level during our period of investigation, 1990/1992 to 2021.[1] Based on empirical studies on the countries, we consider four aspects to be potentially relevant for analysing rule of law narratives which complement the general theoretical framework outlined in Chap. 2.

Firstly, party ideologies might be less relevant to rule of law narratives than conventional approaches in comparative politics suggest. Parties are relevant for the recruitment of MPs. However, the party systems have often changed, parties have split and merged, and due to a lack of internal coherence the official party labels often were (and are) not suitable to adequately capture what party members think. Due to power shifts within and between parties, personnel turnover in parliaments

[1] In line with our assumption that actors influence which facets, events and 'legacies' of the past they address, we refrain from presenting a separate history of the rule of law in our five countries. In this respect, our study is primarily interested in whether and how actors refer to national specifics, not whether these specifics existed historically.

A. Lorenz et al., *Narrating the Rule of Law*, The Future of Europe,
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was high and this might have hampered socialisation into a party ideology. In some cases, the parties were more stable in organisational terms, but their positions changed considerably over time, such as in Hungary. Also, adjectives used to describe party positions, such as 'populist' or 'anti-elitist', often seem too broad to capture differences within and across parties.

Secondly, conflicts over the post-1989 political developments and the consequences of institutional choices during the transition have endured and intensified since the 2010s. This might also have influenced both how actors referred to the rule of law and the discourse coalitions. Lustration/vetting and privatisation measures, for example, were contentious and not universally supported. In Poland, even the adoption of the 1997 constitution lacked broad public support. In all five countries, successive governments adjusted and readjusted the legal frameworks, and these reforms resulted in winners and losers. Only temporarily were these conflicts overshadowed by the widespread desire to join the EU, which required political stability and the adoption of numerous laws to comply with the EU legal framework.

Thirdly, there were struggles between politicians and judges that only partly conform to the patterns and rationales described in the general literature on the rule of law. Some of the struggles were rooted in the post-1989 transition and its consequences, centring around limited legal certainty, contradictions in law and the frequent legal readjustments and the power shifts described above. Others emerged in the context of EU accession. Judges used their new scope for action provided by parliamentary legislation and invoked the principle of judicial independence to protect themselves from criticism. Politicians tried to use legislation to protect themselves from the judiciary and to reform a self-protecting judiciary.

Fourthly, the post-1989 transformation and EU accession caused massive power shifts between the political realm and other spheres, e.g. the judiciary, and between the national and European levels. These processes were accompanied by "competition over the authority to create the structured framework of policy creation and implementation" (Grzymala-Busse and Jones Luong 2002, p. 537). The 1989 revolutions centred on empowering the people and their representatives in parliaments, which initially gained importance for designing democratic institutions. However, their scope for action was quickly constrained—not only by judicial review (which theory adequately takes note of), but also in favour of rapid EU accession. Prior to EU accession, it was mainly the executives, experts and EU actors who formulated the numerous reforms. Later, politicians were bound by the legal obligations of the EU and other organisations which they had voluntarily joined. For sense-making and narratives related to the rule of law it may also be relevant to note that in the 1990s the Council of Europe and the EU, which played important roles in domestic processes concerning the rule of law, did not have a clearly spelled-out rule of law concept. They developed it incrementally during the period of investigation, but not always in a coherent manner. Linkages to both organisations are also more complex than suggested by media coverage, and the degree of conflict with the countries under study differed. All this might have affected how politicians relate to the rule of law in general and rule of law institutions in particular.

In the following, we present and discuss these developments and their potential implications for rule of law narratives in more detail. We start with the dynamics in the parliaments (Sect. 3.1) and proceed by looking at the three waves of rule-of-law-related legislation since 1989 as occasions to refer to the rule of law (Sect. 3.2). In Sect. 3.3, we provide information on the judiciary and the struggles between courts and politicians and in Sect. 3.4, we turn to the Council of Europe and the European Union.

3.1 Actor Dynamics in Parliaments and the Relevance of Rule of Law Issues for Party Competition

In the decades since 1989, parliaments in the countries under study have experienced considerable dynamics in terms of membership and parties. Political conflicts have varied over time and nationally. Especially in the 1990s, the number of parties competing for seats was high, parliaments were fragmented, and the political forces in parliament, the individual MPs, party positions and coalition formats changed frequently. At the same time, party institutionalisation was low, partisan loyalty limited, and many parties were umbrella organisations around one or a few personalities with agendas that were fluid and difficult to grasp. Defections to other parliamentary groups were common (Kopecký 2004; Ghergina et al. 2018, p. 3). These dynamics might have limited the impact of parties on the narratives used in the parliaments during this time.

Since the second half of the 1990s, the number of parliamentary parties and changes in parliamentary factions have decreased in all countries (Semenova et al. 2013).[2] One reason for this was that new rules made it more difficult "for an MP to leave a party and/or to set up a completely new party" (Kopecký 2005, p. 367). Parties stabilised and "distinct parliamentary cultures, settled institutional structures and parliamentary routines" (ibid.) emerged. Opposition parties enjoyed relatively strong parliamentary rights everywhere, especially in the committees, while government parties controlled the agenda of plenary debates more strongly than before (von Steinsdorff 2011, p. 186ff). The stability has declined since the 2010s. Partly as a result of these dynamics and the ambiguity of party positions, most states have seen changes of government before the end of the term and shifts in the electorate over the three decades.

Majorities in parliaments also changed. In the transition phase starting in 1989/90, democratic reformers gained influence almost everywhere,[3] but only in the Czech Republic did they dominate politics. The first changes of government took

[2] Nevertheless, there were still party defections, and in the Czech Republic party discipline was poor, with dissenting votes even on important decisions. Party groups in Poland and Slovakia were less stable than in the other three states (Kopecký and Spirova 2008).

[3] In Romania, however, there was an opposite trend, with post-communist and nationalist forces dominating until 1996 when a conservative-civic coalition replaced them.

place from the mid-1990s onwards. In the second decade after 1989, new parties entered the parliaments and after EU accession, elite-critical (social) conservative forces such as the Polish PiS gained importance, striving to strengthen national structures and majoritarian politics. Such a programme had already been popular in Slovakia in the 1990s under Vladimír Mečiar, where it was, however, strongly linked to the unique process of building an independent nation state. From the 2010s, the new conservative governments in Poland and Hungary and other populist parties have gained electoral support with appeals to community sentiment, redistributive measures in response to previous 'neoliberal' governments, and criticism of the 'corrupt' political class (Kucharzyk 2010, p. 8; Karolewski and Benedikter 2017, p. 526).

Changes in political majorities and the high turnover of MPs might have hampered the emergence of stable frames of the rule of law that seem plausible for established systems (Chap. 2). Given the risks and uncertainties associated with a political career under these circumstances, some MPs might have been interested in seeking professional and financial security outside politics or they might simply have been less focused on political issues, thus following an economic rather than ideological rationale for action.[4] Likewise, the sometimes high dynamics of political personnel, the presence of conflicts related to the former system and old elites, and a less pronounced left–right competition influenced the composition of coalitions. This might have made rule-of-law-related calculations of parties or of government and opposition forces different from those described in Chap. 2 as typical assumptions in party theories.[5]

Looking at the countries individually, **Hungary**—once a frontrunner of democratisation—has long been among the countries in the region with stable parliamentary parties.[6] Many important steps towards democracy and a market economy were made during a centre-right coalition composed of the Hungarian Democratic Forum (MDF), the Independent Smallholders, Agrarian Workers and Civic Party (FKgP) and the Christian Democratic People's Party (KDNP), elected in 1990 but voted out after four years. In 1994, the communist successor party Hungarian Socialist Party (MSZP) won 54 per cent of the seats with 33 per cent of the votes. Seeking greater legitimacy for the budget cuts required by the dire economic situation and trying to appease foreign investors, it formed a coalition

[4] Such an effect could occur, although introducing state subsidies for parties is often seen as an instrument to diminish parties' propensity for patronage and corruption (Ghergina et al. 2018, p. 12).

[5] In systems with high volatility and parliamentary fragmentation, parties calculate how they could form a government in the future and pursue their interests differently than in other parliaments. Similarly, under these conditions, which promote high career uncertainty and sometimes minor differences in party positions, MPs may be more inclined to switch to another party or parliamentary group than in established party systems with less volatility and fragmentation. These factors can reinforce each other's effects.

[6] See Lendvai and Major (2021, p. 466f.) for a detailed overview of the party dynamics and different cabinets since 1990.

government with the Alliance of Free Democrats (SZDSZ). It was in sharp contrast to Poland and Czechia that the former democratic opposition entered a coalition with the post-communists. Towards the end of the 1990s, two opposing and highly polarised camps of parties emerged, with roughly equal strength. On the one hand, the MSZP with a social-democratic-liberal programme, on the other hand, the Hungarian Civic Party (formerly Alliance of Young Democrats, Fidesz), a party that had started with centre-left positions, then shifted to liberal and later conservative-national positions.[7] From 1998 to 2002, Fidesz led a coalition government with MDF and FKgP. Afterwards, the MSZP together with the SZDSZ took over again until 2010. The proportion of re-elected, thus experienced MPs has been very high since the late 1990s. In 2010, however, Fidesz won a landslide electoral victory. This was mainly due to a leaked speech by the MSZP leader stating that the party had lied to the people for years. While the long-time ruling party MSZP dramatically lost influence, a new force, the nationalist Movement for a Better Hungary (Jobbik) entered parliament with 12 per cent of the seats. Since 2010, Fidesz with its conservative list partner KDNP has become the hegemonic political force. The opposition has remained heterogenous and split.

Like in Hungary, the party system in the **Czech Republic** was relatively stable for a long time. The main parties, the liberal-conservative Civic Democratic Party (ODS) and the centre-left Czech Social Democratic Party (ČSSD), governed alternately. However, there were no antagonistic blocs. This was because, in addition to the left–right conflict, there was a cleavage related to the former system and the Communist Party remained unreformed (which was a national peculiarity in the region). This cleavage meant that the Communist Party was not accepted as a coalition partner and the ČSSD had to cooperate with centre-right parties to be able to form a government. In consequence, it faced opposition from both the left and the right. Both ODS and the ČSSD cooperated with two junior coalition partners each or formed a tolerated minority government.[8] While the ODS governed from 1992 to 1997 and 2006 to 2013, the ČSSD led governments from 1998 to 2006 and 2014 to 2017. From 2017 to 2021, it was in government as a junior coalition partner. Like in Hungary, many MPs had been re-elected to parliament since the late 1990s, but the situation has changed considerably since 2010. The political conflicts now also revolved around the interpretation of the political developments since 1989. There had already been government crises before (e.g. in 2002 to 2006, 2006 to 2009 or in 2013), but now there was a more substantial change in the party system (Balík and Hloušek 2020). The ODS massively lost support and the new party Action of

[7] It has to be noted that the agendas of many parties were and still are rather vague. Fidesz, for example, presented no election manifesto in 2014, 2018 and 2022 (Bos 2022).

[8] Among the small coalition partners was the Christian and Democratic Union—Czechoslovak People's Party (KDU-ČSL), which therefore formed part of many governments. From 1998 to 2002, the ODS tolerated a ČSSD minority government in return for concessions regarding policy and appointments. The lines between government and opposition typical for parliamentary systems were blurred in this way. In 1996, the ČSSD had already tolerated a minority government of the ODS and two other parties, but without support for its legislative work.

Dissatisfied Citizens (ANO) led by Andrej Babiš emerged. It was often described as a business-firm party without an ideological foundation, seeking to win votes with anti-corruption and anti-establishment rhetoric (Hájek 2017). Legitimised by strong voter support, the new party became part of a ČSSD-led government (2014 to 2017) and led a minority coalition government itself between 2017 and 2021. A complete change of government followed in 2021 when no less than five centre-right parties formed a counter-coalition under Petr Fiala (ODS). All these changes have, of course, been reflected in changes in the composition of parliament.

In **Poland**, the party system has been less stable, although for a long time the political scene was "still largely shaped by Solidarity – broadly defined – and the former communist establishment" (Krok-Paszkowska 2001). In the early 1990s, the number of parties in parliament and in government was very high, but a new electoral law then reduced the number of parliamentary parties. A right-wing coalition was only of short duration from December 1991 until June 1992, and from 1993, a post-communist coalition of the Democratic Left Alliance (SLD), now with a social-democratic programme, and the former satellite social-conservative Peasant Party (PSL) succeeded in returning to power with almost two thirds of the mandates (based, however, on only one third of the votes). The more heterogenous post-Solidarity centre-right forces were almost not present in parliament but strategically formed Solidarność Electoral Action (AWS). AWS won the 1997 elections and governed together with the liberal Unia Wolności, which left the coalition in June 2000. In 2001, the SLD post-communists and the Peasant Party took over again, now together with the social-democratic Unia Wolności and the PSL (until March 2003). In this time, a raft of scandalous revelations involving politicians and officials from the SLD "were felt to exemplify the corrupt and cronyistic network that had allegedly colonised Polish capitalism and led to calls for more radical lustration and revelation of former communist security service networks as a means of breaking this corrupt nexus", as Szczerbiak (2017, p. 328) notes. In this climate, the social-conservative Law and Justice Party (PiS), which had emerged in 2001 from AWS,[9] won the elections in 2005 with its vision of a "state of Solidarity" and a new, fourth Republic.[10] It was supported by the conservative Self-Defence of the Republic of Poland (SRP) and the League of Polish Families (LPR). In all legislative periods so far, more than half of the MPs had been elected for the first time. In 2007, an alliance between the liberal-conservative Civic Platform (PO), a split from Unia Wolności, and the Peasant Party (PSL) took over. Over 90 per cent of MPs now had experience of at least one political position, especially in local or regional politics (Semenova et al. 2013, p. 295).[11] The liberal phase ended in 2015 with PiS winning

[9] It stood above all for a law-and-order policy, welfare state, a Europe of nations, robust state-owned enterprises, the renationalisation of the media, stronger control of the judiciary and against networks of former regime supporters.

[10] Kucharzyk (2010, p. 8f.) characterised PiS as a populist party and mentioned economic inequalities, corruption and xenophobic nationalism as driving forces of populism in Poland.

[11] It is important to note, however, that on 10 April 2010, the President of the Republic of Poland and a number of high-ranking politicians and state officials died in a plane crash.

the Sejm elections and being able to form single-party governments. This resulted in a new reshuffling of MPs.

In **Slovakia**, nationally oriented populists and conservative-liberal parties alternated in government after 1992. The Movement for a Democratic Slovakia (HZDS) was the strongest political force until the mid-2000s. It had seceded from the 1989 opposition movement Public against Violence (VPN) and formed the governments from 1992 to 1998. Among the most important political conflicts were the economic left–right cleavage, the attitude towards the Catholic Church's role, and the question of treatment of ethnic minorities, especially the Hungarians. Like with other parties, HZDS's party profile was ambiguous and changing and de facto determined by its party leader Vladimír Mečiar. Many Slovak parties declined to cooperate with HZDS because of Mečiar's authoritarian style, his informal networks and alleged linkages to organised crime (Leška 2013, p. 76ff.; Sect. 3.2). In 1998, a large and heterogeneous government coalition succeeded in replacing HZDS in government under a conservative prime minister, Mikuláš Dzurinda (SDKÚ). From 2002 to 2006, he led a government more narrowly composed of liberal-conservative parties. The successor party to the communists, the Party of the Democratic Left (SDL), which was a vocal opponent of Mečiar's rule in the 1990s, gradually lost electoral support after joining the predominantly right-wing Dzurinda cabinet. It later merged with Direction—Social Democracy (Smer), a party founded in 1999 by Robert Fico, a former SDL member. Smer was critical towards neoliberal reforms of the second Dzurinda cabinet and strongly pro-European and progressive. In 2006, it won nearly one third of the votes and formed a coalition with HZDS and the nationalist SNS. After a short phase of a multiparty coalition led by the conservative-liberal SDKÚ-DS to circumvent the strongest party (2010–2012), Smer formed the first single-party government (2012–2016). From 2016, it led a heterogenous coalition with Most–Híd (a party also addressing the Hungarian minority), Siet' and the Slovak Nationalist Party (SNS). Since the 2000s, several liberal anti-establishment parties have emerged, for instance Freedom and Solidarity (SaS), often linked to prominent businesspeople. In 2011, Ordinary People and Independent Personalities (OĽaNO) was founded with an anti-elite and anti-corruption profile and conservative positions, and formerly relevant parties lost electoral support. In 2020, OĽaNO won a quarter of the votes and ruled a coalition with three centre-to-right parties, but the cabinet collapsed (Mesežnikov and Gyárfášová 2018; Sekerák and Němec 2023).

Romania differed from the other states in several points. Here, the former communist ruling party vanished but reappeared under the name of National Salvation Front (FSN). Former communist cadres had carried out a 'revolution from above' by appropriating the political discontent of street protest and by temporarily incorporating dissidents. The communist (and FSN) successor Social Democratic Party (PSD) succeeded in remaining a key actor since 1989, now with a social-democratic programme. Other parties were marked by constant reshufflings and formed around single personalities and their networks, and not around clear

manifestos.[12] PSD governed from 1992 to 1996, from 1994 together with the nationalist Romanian National Unity Party (PUNR) and Greater Romania Party (PRM) and the neo-communist Socialist Labour Party (PSM). The party changes meant a relatively constant turnover of over 50 per cent of MPs until the 2000s (Semenova et al. 2013, p. 294). Since many parties were small and gained little electoral support, PSD could only be ousted from government by forming a heterogeneous alliance. This occurred for the first time in 1997 when the Christian Democratic National Peasants' Party (PNȚ-CD), the Democratic Party (PD, with an ambiguous profile), the National Liberal Party (PNL), the Democratic Alliance of Hungarians in Romania (UDMR) and the Romanian Social Democratic Party (PSDR) formed a coalition. However, PSD came back in 2000—until 2004 with the support of the Conservative Party (PC) and PSDR. As can be seen, there was again no clear leftist coalition profile. In 2005, another upheaval against PSD led to a cabinet ruled by the PNL with various parties. From 2009/10, the Democratic Liberal Party (PD-L) ruled the government, but in 2013 PSD returned to power, now together with the PNL and PC. Technocratic governments were in office from 2015 to 2017, followed again by a PSD-led coalition, now with the Alliance of Liberals and Democrats (ALDE). In 2020, the PNL, which in the meantime had merged with the PD-L and was now more conservative, governed first alone, then in coalition with the emphatically pro-European Save Romania Union (USR) and UDMR.

Generally, across all countries, former communists were mainly active in the communist successor parties and other left parties after 1989. Former dissidents were mainly found among conservative, Christian democratic and liberal MPs (Semenova et al. 2013, p. 287). The proportion of first-time MPs was consistently very high in the 1990s and fell towards the end of the decade, when it still amounted to 40 per cent or more (Semenova et al. 2013). In Romania, where the proportion of professional politicians was particularly low (Semenova et al. 2013, p. 291), politicians facing a high risk of not being renominated or re-elected often looked for a second source of income (Iancu 2022).

In all countries, rule-of-law-related issues were relevant for party competition. From the early 2000s, and especially after EU accession, frustration with the results of reform policies and integration into the EU grew in many countries (e.g. for Poland Cichocki 2012). A major concern was the considerable gap in living conditions between the East and the West that persisted despite all efforts. Another matter of concern was a perceived state capture by political elites, i.e. clientelist entanglement with business networks (Koryś and Tymniński 2016; Mesežnikov and Gyárfášová 2018; Klíma 2020; Dvořáková 2020; Naxera 2013; Ágh 2014), and the persistence of old elites in the public sphere (O'Dwyer 2006; Horne 2009). Even in

[12] From 1991 a 'government of national unity' was formed that was still dominated by FSN but included other parties as well (Mişcoiu 2022). The FSN then faced several splits, e.g. of the reform wing Democratic Party (PD). Through several intermediate steps, some former FSN members founded the Party of Social Democracy in Romania (PDSR) and later the Social Democratic Party (PSD).

the two states with a 'pacted transition', Hungary and Poland, the exclusive style of the first post-1989 years was criticised as having squandered social trust (Puchalska 2005). Public discussions centred around the topic that former security service and other functionaries had preserved much of their networks and informal channels (Polish: *układ*) and it was argued that they had used them to maintain de facto power even beyond politics and elections, e.g. in business (Szczerbiak 2016).

In all countries, the economic context favoured grey zones of legality in the second decade of post-1989 transformation. According to Karolewski and Benedikter (2017, p. 522), "after 1989, basically all Polish governments used state agencies and state enterprises for cronyism and politico-economic clientelism". Hungary was described as "a hostage of various informal groups, accessible only to selected social and family groups over which there is no public control" (Avbelj 2017, p. 281) and with legal enforcement favouring partisan political interests (Rupnik and Zielonka 2013). For the Czech Republic, economic policy corrections, party funding scandals, a pact between government and opposition (the 'opposition agreement') and other controversial events in the 1990s impacted on the attitudes towards politics (Linek 2010). In Romania and Slovakia, allegations of corruption were relevant for party competition, and anti-corruption measures were also used as an instrument to combat opponents.

The parties that had governed in the first decade of transition were often blamed for clientelism, political cronyism and corruption, or at least they were not expected to solve the problems. Support for post-communist or social-democratic parties decreased in Poland and Hungary—in Poland, it virtually collapsed—and some centre-right parties disappeared from parliaments. At that time, only a few former dissidents were still engaged as MPs (Semenova et al. 2013, p. 287). Parties whose public appearance focused on criticism of the phenomena mentioned above and who promised to bring politics closer to the interests of 'ordinary people' gained strength. From their point of view, the people were given too little attention by politicians despite formal democratisation. These included newly founded parties such as PiS in Poland, ANO in the Czech Republic or OĽaNO in Slovakia, but also parties that had previously only briefly held government responsibility, such as Fidesz in Hungary.

Unlike in Poland and Hungary, the constellation of parliamentary forces in the other three countries diverged. In Slovakia, centre-left parties gained more support, with a peak in the parliament elected in 2012. From 2006 onwards, Smer-SD repeatedly led cabinets in Bratislava. Despite its pro-welfare state rhetoric, the party de facto pursued "fairly strict austerity policies with occasional 'social packages'", and "unlike Western social democratic parties the leaders of Smer-SD are prone to using national and populist appeals" (Malová 2017, p. 1). In the Czech Republic, social democrats and communists still earned every third mandate in the second decade after transition but did not move towards open cooperation. In Romania, the fragmented and unstable conservative-liberal government coalitions were criticised for the poor socio-economic situation and austerity measures, and after EU accession significantly more voters than in the other countries opted for programmatically leftist parties, with as many as 72.6 per cent in 2012. However, in

the subsequent parliamentary elections, the share fell sharply to under half of the seats (2016) or just over one in four mandates (2020).

Since around 2010, nationally oriented, communitarian and plebiscitary sentiments, which had been present but less visible before, have become stronger, especially in Hungary and Poland (Blokker 2020; Stroschein 2019; Enyedi and Linek 2008). This was mirrored by the composition of the parliaments. Electoral dynamics made some parties disappear from parliaments that had previously mobilised large shares of the vote and had been relevant for political debate and decision-making, even in the apparently stable countries like Hungary and Czechia. In the Czech Republic, for example, the leftist parties lost considerable support in the 2017 elections and disappeared from parliament in 2021. In contrast, an existing party (Fidesz, Hungary) or a new one (ANO, Czechia) received substantial electoral support.

Corruption and patronage have continued to be important issues in party competition, with parties repeatedly accusing each other of such practices. 'Integrity politics' was also used as a weapon against political opponents (Kiss and Székely 2021), but parties could be successful despite such accusations. For instance, Smer-SD in Slovakia held power for many years thanks to its popularity. However, their "murky relations with oligarchs and high levels of corruption" formed part of the public perception of the party (Malová 2017, p. 1). Another example is ANO, which won the Czech parliamentary elections in 2017, despite allegations of the misuse of EU subsidies against its leader and former finance minister Andrej Babiš (although these related to the period before he entered politics). Romania's PSD also performed strongly despite allegations of corruption and patronage (Iancu 2018).

Since around 2010, the governing parties often set goals for more effective governance, promising to strengthen the nation state, the middle class and national ownership in the economy and the media.[13] PiS and Fidesz presented an illiberal agenda but argued that they strive to foster democratisation and to 'finish' the 1989 system change (Szczerbiak 2017). The Czech and Slovak ruling parties did not openly adhere to illiberalism; ANO's declared goal was to organise the state in a more efficient way as well as the fight against corruption (Havlík and Hloušek 2020).

While political scientists and media mostly focus on parties and their patterns and dynamics as described above, the professional background of MPs might also be relevant for rule of law narratives. It differed considerably across countries. In Czechia, according to an analysis for 1992–2006, almost two-thirds of the MPs had a university degree in natural sciences. It was more than half in Romania, in Poland 41.5 per cent (1991–2007) and in Hungary just over one in three. On the other hand, almost half of the MPs in the Budapest parliament had a degree in humanities, 40.9 per cent in Poland, 31.9 in Romania and 23.7 in Czechia. Law was less widespread as a degree. Only in Hungary and Poland did about one in five MPs have a law degree, which was substantially higher than in the other countries

[13] On Fidesz promoting these goals in collaboration with think tanks, foundations and other party-affiliated organisations, see, for instance, Tóth (2012), p. 148 and Buzogány and Varga (2021).

(Semenova et al. 2013, p. 289). However, this law degree had mostly been earned before 1989 when rule of law issues, if at all, had been taught in a socialist perspective.

3.2 Occasions to Debate the Rule of Law in Parliaments: 3 Waves of Rule-of-Law-Related Legislation

The legislation that shaped rights, legal structures and the judiciary during our period of analysis can be roughly divided into three waves (cf. Piana 2010). These waves may be reflected in the narratives on the rule of law (Chaps. 5 and 6).

The first wave of legislation, from 1989 to the mid-1990s, was embedded in the democratisation project. The constitutional, legal and judicial transition included lustration and restitution, as well as changes to criminal law. In the second wave, which began in the second half of the 1990s,[14] politicians revised numerous legal provisions in response to perceived deficiencies of the laws passed during the early 1990s and prepared for EU accession. Again, lustration played a role, and the fight against corruption gained importance as an officially declared concern of many politicians. The third wave began around 2005[15] after the countries had joined the EU (with Romania joining in 2007). It started in 2006 in Czechia and Slovakia, in 2007 in Romania, in 2010 in Hungary and 2015 in Poland, mirroring the dramatic changes in the party composition of parliaments during that time (Sect. 3.1). During this phase the countries diverged in terms of the content of the reforms and the actors involved. In Czechia, Romania and Slovakia, corruption continued to be an important issue. In Hungary and Poland, politicians justified reforms by referring to flaws in post-1989 development, while many observers have identified these two countries as "obvious cases of backsliding" (Dimitrova 2010, p. 137).

[14] In four countries, this wave started with electoral changes. In Czechia, it began in 1997/1998 when the Social Democrats came to power after the fall of the Klaus government and early elections. In Poland, it began in 1997 when a conservative-liberal government was established. In Hungary, it started in 1998 with the first Fidesz-led government. In Slovakia, it also started in 1998 when the elections ousted Vladimír Mečiar from power. In Romania, the wave began in 1999 when the Isărescu cabinet took office after the CDR coalition with the Democratic Party and PSDR and UDMR/RMDSZ had fallen apart. Elections took place in 2000.

[15] In Czechia, this wave ended with the Social Democrats-led cabinet, under which EU accession was achieved. In Hungary, it ended with Fidesz coming back to power in 2010 because the legislative period before differed much less from the pre-EU accession legislative term than this caesura. In Poland, the second wave also included a brief conservative-right turn after EU accession with the PiS-LPR-Samoobrona government from 2005 to 2007. This government initiated a new lustration law and the establishment of an anti-corruption bureau. While it would also be possible to end the wave in 2007, we prefer to include the legislative period under the PO-PSL liberal-conservative coalition (until 2015) because the policy did not change remarkably during that time but was followed by a caesura with PiS gaining power in 2015. In Slovakia, the wave began with the end of the pro-European centre-right governments of Dzurinda, under which EU accession was achieved. In Romania, it began with EU accession.

In the **first wave of legal restructuring** from 1989/90 onwards, the drafting of new constitutions or amendments to old ones was crucial. Democratic reformers sought to introduce free elections, pluralism, fundamental rights and the separation of powers, as well as economic liberalisation. The overarching aim was to empower people by granting them individual rights against the abuse of state power, thus making them real citizens. The acquisition of national sovereignty through detachment from the Soviet Union was seen as an essential prerequisite. The strong orientation towards the nation state, which was widespread throughout the region, therefore did not collide with the aspiration to 'return to Europe' (von Beyme 1994, p. 124ff., 144). Since reform-oriented parts of old political forces also supported these ideas in response to public pressure, the commitment to the rule of law as a constitutional principle was quickly adopted everywhere and in all countries with hardly any public debate.

As mentioned in the introduction, several constitutional specifics in East Central Europe were introduced in reaction to the pre-1989 arbitrary exercise of power. They included a detailed charter of fundamental rights, rule of law safeguards and entrenched constitutional review (Albi and Bardutzky 2019). In all constitutions, the rule of law was mentioned in tandem with other principles of equal importance, above all democracy (all five), but also social justice (Poland, Romania) or human and civil rights (Czechia).[16] In Poland,[17] Hungary and Romania, an ombudsman as a parliamentary protector of individual rights was also established. The new constitutional features were introduced but not fully elaborated. In general, MPs—often new to politics—were strongly involved as legislators in this phase. Even though governments were very influential—e.g. they introduced the draft constitutions in Czechia and Slovakia—ministries were described as having played a somewhat less important role for legislation than in established democracies (Ágh 2002, p. 48).

Apart from these general commonalities, the concrete measures and policies differed. In Hungary, democratisation took place without adopting a new constitution. The socialist constitution was revised between autumn 1989 and spring 1990 and thus before the first free elections. The revisions codified the roundtable agreements between representatives of the old and new forces, which the young

[16] "The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice" (Art. 2 Constitution of Poland); "The Czech Republic is a sovereign, unitary and democratic state governed by the rule of law, founded on respect for the rights and freedoms of man and of citizens" (Art. 1 [1] Constitution of the Czech Republic); "The Slovak Republic is a sovereign, democratic state governed by the rule of law. It is not bound to any ideology or religion" (Art. 1 [1] Constitution of Slovakia); "The Hungarian Republic is an independent, democratic state governed by the rule of law" (Art. 2 [1] Constitution of Hungary); "Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizens' rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and shall be guaranteed" (Art. 1 [3] Constitution of Romania).

[17] In 1987, the ombudsman was introduced by a legislative act. With the 1997 constitution, it was constitutionalised.

Fidesz party did not agree to because it wanted broader democratisation (Elster et al. 1998, p. 70ff.; Pogány 1993, p. 339).

In Romania, due to its overwhelming majority the post-communist National Salvation Front did not face substantial opposition in parliament and could design a new constitution primarily according to its own ideas. The main contention pertaining to the state form (monarchy or republic) had been settled previously. Hence the bicameral parliamentary structure, the semi-presidential form of government and presidential powers were decided in the Constituent Assembly with only minimal debate. In key constitutional controversies, the majority prevailed (Göllner 2022; Hein 2013; Gallagher 2008, p. 89ff.; Blokker 2017, p. 447f.; Lungu 2002, p. 403). The constitution also borrowed from foreign constitutions, e.g. in the fundamental rights section (Iancu 2019, p. 1049), and stipulated a high formal hurdle for constitutional amendments. It was not only endorsed by the parliament but also in a referendum. Seventy-seven per cent approved it in 1991, with a turnout of 66 per cent (Adamovich 2004, p. 240).

In Czechoslovakia, the Federal Assembly failed to agree on a new constitution—not even in the form of a small constitution (Kahl 1994, p. 51ff.). Instead, it made numerous amendments to the 1960 constitution and other regulations with constitutional quality (Slapnicka 1991).[18] The structure of the federation and the relations between government, parliament and president remained subject of controversies. Slovak Prime Minister Vladimír Mečiar initially aimed for a confederation, but in 1992, he and Czech Prime Minister Václav Klaus agreed on the separation of the republics as of 1 January 1993 (Elster et al. 1998, p. 71ff.).

In Slovakia, the parliament adopted the declaration of sovereignty in July 1992 and the constitutional proposal of Mečiar's government on 1 September 1992.[19] It was solemnly signed after a heated two-day parliamentary debate.[20] The new constitution contained a charter of fundamental rights and mainly the ideas of the majority party (Kahl 1994, p. 51ff.; Elster et al. 1998, p. 74). As for its content, some prominent Slovak legal experts criticised the "*étatist* and paternalist ambitions, the authoritarian tendencies, the nonfunctional ties among the organs, and the general obsolescence of the approved concept" of the constitutional text (Holländer 1992).

The Czech constitution, adopted shortly after, differed from the Slovak one. The legislature had particularly debated the division of powers. The shared idea of returning to the 1920 Czechoslovak constitution helped to ease tensions between the government and the opposition. Prime Minister Klaus and two of the government

[18] They concerned the fundamental rights, the competences of the Federation and the constituent republics, the establishment of the constitutional court and the introduction of referendums.

[19] Since 1990, some Slovak politicians had already tried several times to adopt a Slovak constitution based on a federal constitutional provision from 1968 that allowed national legislative bodies to do so.

[20] Neither of the two political parties representing the Hungarian minority supported the new constitution since it did not guarantee minority rights as collective rights. The Christian Democratic Movement voted against it, arguing that its entry into force on the date of publication would clash with the still-valid federal constitution (Stein 1997).

parties (ODS and ODA) were against the incorporation of the already existing (federal) Charter of Fundamental Rights and Freedoms into the new Czech constitution. However, to mobilise the votes from the opposition necessary for the adoption of the constitution, they agreed to declare the Charter as part of the Czech 'constitutional order', meaning that these rights were indirectly constitutionalised. In contrast to the Slovak case, the new constitution was adopted without a solemn ceremony and entered into force after the Czechoslovak federation was legally dissolved (Stein 1997).

In Poland, the parliament laid the foundations for democracy and the rule of law by amending the socialist constitution. The first freely elected, extraordinarily fragmented and polarised parliament could not agree on a new document or a Charter of Fundamental Rights.[21] The 'small constitution' of 1992 was de facto an amendment of the socialist constitution and the fundamental rights of the socialist constitution remained in force (Sajó 1995, p. 144; Kahl 1994, p. 41ff.). In the following years, constitutional questions raised "an ever more ferocious debate" (Blokker 2020, p. 344). A post-communist coalition compromised with Unia Wolności across the parliamentary government–opposition line about a new full-text constitution. While there was large support in the Sejm for the constitution (including centre-right and post-communist forces), relevant Solidarność forces were not involved in the compromises because of the effects of the electoral law.[22] The new constitution was endorsed by 53 per cent in the subsequent referendum. Although the referendum did not meet the minimum threshold of 50 per cent of eligible voters for validity, the constitutional court endorsed the result (Gönenç 2002, p. 132ff.; Górski 2014).

Despite the shared references to democracy and the rule of law and comprehensive fundamental rights sections, no country adopted a specific Western constitutional model after 1989 (Elster et al. 1998, p. 80). The sets of rights and the institutions differed. There were now unicameral (Hungary, Slovakia) and bicameral parliaments (Czechia, Poland, Romania), as well as purely parliamentary systems (Czechia, Hungary, Slovakia) and premier-presidential systems, which ensure "that the cabinet depends only on assembly confidence", yet provide "certain powers to a popularly elected president" (Shugart and Carey 1992, p. 7; Poland, Romania). Some constitutional courts were strong, as in Hungary, while in Poland[23] and

[21] In the autumn of 1990, the parliament, still with the Communist PZPR as the strongest party, determined a two-thirds parliamentary majority and a referendum as a legal prerequisite for adoption. The next parliament confirmed this procedure as constitutional law (Elster 1991, p. 463, 1993, p. 212).

[22] In the parliament elected in 1993—the second freely elected one—the successor party to the former state party, the SLD, and the PSL, the successor to the former satellite Peasant Party, held almost two-thirds of the seats, although their share of the vote had been only one-third. The Solidarność successor parties—mainly centre-right—did not found an electoral platform and thus received only a small number of mandates, which changed in 1997 when the constitution was already adopted.

[23] In Poland, this was the case until 1999 for decisions of the constitutional court determining the lack of compliance of a statute or a part of a statute with the constitution.

Romania, qualified parliamentary majorities could overrule constitutional court decisions (Malová and Haughton 2002, p. 115).

The decision makers enshrined the rule of law in the new or amended constitutions before they agreed on legal provisions on elite change to deal with the authoritarian past. Later, they adopted lustration laws to minimise the influence of old elites on the young democracies by keeping incriminated representatives of the previous regime out of public positions. These laws were controversial and some of them, or parts of them, were annulled by constitutional courts (for an overview, see Nalepa 2010, p. 3; Sect. 3.3). That is one of the reasons why the elite change remained incomplete.[24] Already in 1991, Czechoslovakia had passed a far-reaching and detailed lustration law. After the split of the federation, the Czech parliament modified the law in 1993 after the constitutional court had partially objected to it. In Slovakia, Prime Minister Mečiar wanted to abolish the Czechoslovak lustration law but was stopped by his coalition partners (von Beyme 1994, p. 188). In Hungary, the parliament passed a lustration law in 1994, which affected a relatively wide range of people but with almost no sanctions (Williams et al. 2005, p. 37).[25] Poland was the last country in the region to adopt a lustration law. Bills for more extensive lustration measures had failed to gain majorities, partly due to the 'thick line' (*gruba kreska*) agreed upon by Solidarność and the communists in 1989, or they were stopped by the constitutional court. A moderate lustration law adopted in 1997 was "directed solely at those individuals with links to the communist-era security services", without automatic effects (Szczerbiak 2002, p. 567f.; see also Williams et al. 2005, p. 36f.). In Romania, initiatives from civil society to ban mid-level and leading communist politicians and members of the political police Securitate from running for democratic office were unsuccessful. Lustration regulations were particularly modest and sparsely implemented (Halmai 2007; Petrescu 2007).

Although many other legislative changes were carried out relatively smoothly, the transition to a new system in many areas was associated with a loss of political control and, in some cases, a dismantling of the state. The new democratic institutions were fragile (Malová and Haughton 2002). Given the extensive need for new regulations with the temporary continuation of old legal norms, legal gaps, contradictions or ambiguities also around the government system, conflicts between constitutional bodies, political instabilities and deficits in administrative efficiency

[24] In the Czech Republic, for example, about 30 per cent of the functionaries were still former communists in 1996 (Srubar 1998, p. 29). In addition, because of the protection of fundamental rights, the lustration laws were only allowed to apply to selected public areas and types of incrimination, which is why former functionaries were able to make perfect use of the knowledge and skills they had acquired in the old system in the areas that were exempt and had favourable starting conditions (Sterbling 2003; von Beyme 1994, p. 208).

[25] In 1997, then socialist Prime Minister Gyula Horn, for example, remained in office after being sanctioned by the vetting committee for having received secret police reports and having been a member of a counter-insurgency squad in 1956 (Williams et al. 2005, p. 38). As David (2006) argued, the accommodation of the elite in Hungary was relatively successful because collaborationists were widely spread across all political parties.

occurred everywhere (de Raadt 2009; Beichelt 2001; Göllner 2022). New informal political practices and rules deviated from the legal texts. In some cases, such informal practices even helped to enable action and decisions in an environment which constrained the functioning of the new legal framework (e.g. Malová 2001). In other cases, they simply undermined the effectiveness of the law.

Regulatory gaps and legal grey zones in the political and economic reforms, as well as the uncertainties of the future exercise of political offices, also promoted the emergence or strengthening of patronage networks, corruption and a shadow economy. In the post-1989 period, attempts at state capture or patronage occurred everywhere (Innes 2014; Hellman et al. 2000). However, corruption varied among the countries studied. In Romania, political and economic corruption was particularly pronounced (Vachudova 2009, p. 45ff.; Gallagher 2008). Slovakia was also criticised in this respect (Rhodes 2001). Its trajectory in the 1990s was often compared to the South-East European countries due to the "disrespect for the principles of constitutionalism, a tendency to centralize executive power, and movement towards the establishment of a powerful, oligarchic, property-owing class" (Szomolányi 2004, cf. Duleba 1997). The granting of amnesty to his people by Prime Minister Vladimír Mečiar, at that time exercising presidential powers due to the vacancy of the post of head of state, became symbolic of the highly personalised majority rule abusing legal instruments for their own power interests.[26]

From the mid-1990s onwards, the consequences and side effects of the transition became visible. Often this was accompanied by changes in government. A large part of the parliamentary work in many countries now consisted of amending the legal texts that had been introduced before (von Steinsdorff 2011, p. 179).

In contrast to the first wave of post-1989 legislation, actors in the **second wave of legal and judicial transformation** did not assume the task of building new institutions and legislation paving the way to democracy and a market economy. From the second half of the 1990s, they concentrated on preparing for EU accession by changing many regulations as required by the EU. One goal of the EU legal advisors was to give the judiciary more powers and institutional autonomy to ensure that it could enforce the EU *acquis* even if it conflicted with national laws (Parau 2015, p. 409f.).[27] Accordingly, the judiciary and the constitutional courts were strengthened, and their autonomy massively increased (Piana 2017; Issacharoff

[26] The legal act, which was later labelled Mečiar amnesties', was an abolition, i.e. an order not to initiate or to terminate a criminal prosecution for the thwarted referendum in 1997 (here it concerned mainly Mečiar's interior minister Gustáv Krajči) and for the kidnapping of the son of the President of the Republic in 1995, where everything indicated that the Slovak secret services were involved (here the main suspect was their chief Ivan Lexa). Soon after Mečiar was removed from power, a number of attempts began to repeal these controversial decisions in a constitutional manner, which was only achieved in 2017 (see Mazák and Orosz 2018).

[27] The advisors were legal or administrative experts who had little knowledge of the national contexts and little understanding of how suitable certain legal concepts and operational logic were to the given environment. This factor and the low consideration of stability, coherence, generalisability and enforceability of law were criticised by some scholars and practitioners (Mendelski 2016, p. 371f.; Gaul 2002).

2015; Parau 2013). The competence of the constitutional courts to make the final, binding decision on the constitution's interpretation was promoted by the European Commission and the Council of Europe. They also strongly recommended the establishment of judicial councils as self-governing bodies[28] as well as specialised legal and, in particular, judicial training (Parau 2015; Kosař 2017). Ensuring judicial accountability, by contrast, was not a goal (Bobek and Kosař 2017, p. 185).

In Czechia and Slovakia, the institution of an ombudsperson was introduced in 1999 and in 2001 respectively. In both countries, this was related to their EU accession. There was also a drive for consistent, efficient case law. In this context, all countries realised judicial reforms that had previously been planned but never implemented. For example, in 2002, the Czech Parliament passed a law on administrative jurisdiction, which, among other things, established the supreme administrative court already provided for in the 1993 constitution. It was not always clear to what extent the individual regulations really resulted from EU requirements. According to Piana (2017), the winners of the first wave of legislation used their better starting position to expand their influence in the second wave even further or at least to protect it from restrictions.

It was to the advantage of governing majorities that there was little political dissent in the parliaments over North Atlantic integration. In several countries, conflicts between the parties, the government and the opposition were recurrent. Nevertheless, the common desire for rapid accession to the EU and other international treaties overshadowed unresolved questions about the direction and form of democracy, disputes between constitutional bodies and problems of transformation (Bos 2022; Lorenz and Formánková 2020; Lorenz and Mariş 2022; Lorenz and Dalberg 2023). Even the qualified majorities needed for constitutional amendments, which were otherwise difficult to obtain, were achieved to enable EU accession.

The rush to prepare for accession narrowed the scope for negotiations (Toshkov 2012). Many legislative reforms were introduced without much parliamentary debate and lawyers played a prominent role in the drafting of laws (Grzymala-Busse and Innes 2003; Kosař and Spáč 2021, p. 112; Bobek and Kosař 2014; Malová and Haughton 2002, p. 112). This contradicted the post-1989 tendency to weighting (democratic) politics higher than law (Sadurski 2006, p. 47). One of the causes of the "court-centred, rights-based, and depoliticised account of constitutional democracy" could have been the lack of understanding of how constitutionalism works in Western democracies (Bugaric 2015, p. 235f.). Critics argue that the institutional transfer did not occur in a critically reflective way, but within the tradition of legalism, meaning that a positivist perception of law as a body of text dominated as opposed to the idea of law as an embodiment of particular values (Krygier and Czarnota 2006).

Parallel to the pre-EU accession changes in the early noughties, some parliaments adopted new lustration regulations. New parties in several countries took up arms

[28] The institution of the judicial council does not exist in all old EU member states and in the countries where it was in place it does not take the form that was promoted.

against corruption and what they viewed as clientelist networks of old and new elites. Such measures not only affected the political arena, but various "public, quasi-public and even private economic positions" in the cultural and economic spheres (Horne 2009, p. 364f.). They reacted to the mentioned "public frustration" about the perceived continued privileging of the former communist elites in science, economy, politics and media and the weak "institutional capacity and integrity of public and quasi-public institutions" (Horne 2009, p. 365). In Poland, the new conservative-liberal majority in parliament established an Institute of National Remembrance (Instytut Pamięci Narodowej) which, inter alia, gave access to the communist security service files to researchers and journalists (Szczerbiak 2017, p. 328). In Slovakia, free access to files was now guaranteed by law. In Hungary, the parliament extended lustration to media professionals and granted access to files to the general public in 2003 (Halmai 2007).

In Romania, these developments began later. Initially, the Romanian regulations on corruption did not meet the EU standards—despite a constitutional amendment in 2003 that created provisions for an independent judiciary and for combating political corruption (Iancu 2022). As a result, Romania (like Bulgaria) was not admitted to the EU together with the other candidate countries in 2004. After a change of government in 2004, the new centre-right coalition planned comprehensive institutional and personnel changes to increase the independence and accountability of the judiciary as demanded by the EU. Reforms of the criminal code, a new National Anticorruption Directorate, and measures against corruption in the political realm were parts of the programme. Many legal amendments were adopted due to EU conditionality, including the Law on the Status of Judges and Prosecutors, the Law on the Organisation of the Judiciary and the Law on the Superior Council of Magistracy (Iancu 2022; Coman and Dallara 2012; Selejan-Guțan 2016). Justice Minister Monica Macovei faced severe resistance from senators and MPs of all parties (including her own coalition) and was called on to resign. In 2007 she was dismissed. The EU supported the anti-corruption reforms and allowed Romania to enter the Union in 2007, but due to persistent problems with corruption and organised crime, it established a new Cooperation and Verification Mechanism for regular monitoring in this area even after accession (CVM, 2006/928/EC).

The **third wave of legal and judicial reform** began in the years after EU accession (in Hungary in 2010 and in Poland 2015) and was accompanied by a change in the composition of parliaments. In this phase, there was a general tendency to review previous reforms that had been made before EU accession and to slow down EU-related policy transfer. In the words of Dimitrova (2010, p. 137), "Slovakia and Poland abolished their newly created Civil Service Authorities, the Czech Republic postponed implementation of civil service reform [. . .], and Poland slid down to the bottom of the European Commission's transposition scoreboard." At the same time, there were two different foci of new discussions and measures supported by legislation—one mainly political and one more corruption-oriented. These discussions were heated and the measures very controversial.

In Hungary and Poland, legal and judicial reforms were based on *political* arguments. Here, the procedural aspects of the post-1989 system change and the

question of whether it met the interests of the 'ordinary citizens' received more political attention. Influential actors who were not elected by the people—e.g. the judiciary, media, civil society, partly foreign companies or the European Commission—were viewed more critically. Fidesz-KDNP used its constitutional majority in parliament to systematically transform the system through a new constitution, constitutional amendments and various cardinal laws that can only be changed by two-thirds majorities. PiS, by contrast, had a more coherent ideology, but not a constitutional majority to be able to realise it straight away. The reforms affected, inter alia, the appointment of judges to leading positions in the judicial sector (Sect. 3.3) and the constitutional courts (Poland, Hungary), the general structure and organisation of the judicial system (Hungary) as well as the dismissal of judges (Hungary) or new provisions to sanction judges by disciplinary law (Poland).[29]

More precisely, the Hungarian Fidesz revived its old thesis of an "unfinished system change" (Bozóki 2008, p. 213). Starting in 2010, the party used its two-thirds majority in parliament (together with its partner KDNP) to adopt a new constitution that is similar to the old one but places national and Christian values at the centre of state action (Tóth 2013). The new constitution also affected the election of the constitutional judges, the composition of the judiciary and its leadership (see Sect. 3.3). The constitutional court was led "away from being part of the governance landscape linked to the legislature to that of part of the judiciary" by limiting its review powers, abolishing the constitutional appeal (*actio popularis*) and annulling the validity of its previous rulings (Tatham 2017, p. 356). In 2018, a separate administrative jurisdiction was established. The supreme administrative court, like the Kúria, the existing Supreme Court, is responsible for ensuring more consistency of case law (Kovács and Scheppele 2018). Further reforms weakened potential counterweights to the parliamentary majority, for example by amending the laws on elections, party financing, independent media and NGOs. All this was done by legal means (Scheppele 2019; Priebus and Lorenz 2015; Bos 2022).[30]

Similarly, PiS in Poland used its new majority in both chambers of parliament since 2015 to work on a 'good turn' (*dobra zmiana*) (Solska 2018). In order to restore what it saw as society's lost trust in the courts, PiS wanted to 'decommunise' them, i.e. remove leftist judges or people who had been supporters of the communist system from their posts. At the same time, they wanted to increase 'democratic control over judges' and make them more accountable.[31] Like the outgoing Civic Platform (PO)-PSL government, which before the elections had unconstitutionally amended the law on the election of the constitutional court to allow for the

[29] In Hungary and Czechia, the minister of justice can initiate disciplinary proceedings (CoE [Council of Europe] 2018).

[30] In other countries, illiberal tendencies were also found in ANO, Smer and PSD, but these parties acted more pragmatically or technocratically and they could not always assert themselves due to the coalition and veto structures (Havlík and Hloušek 2020).

[31] This was how the Polish government explained the reforms to the Council of Europe (CoE 2017, p. 8ff.).

appointment of two more constitutional judges in addition to the three regular ones, PiS passed legislation to do so. In a dispute with the constitutional court over the interpretation of the law on the election of constitutional judges—PiS considered three appointments made by the previous parliament invalid—it changed its procedures and competences by law.[32] It also amended the laws on the judicial council and the selection procedure for the president of the Supreme Court following annulments by the constitutional court and it tightened disciplinary rules in the judicial sector. The parliament made new appointments to critical judicial posts possible by lowering the retirement age for judges, among other things. Indirectly, they could now be politically influenced through the newly established election of judges in the judicial council by parliament. In addition, the minister of justice began to lead the public prosecutor's office (Kovács and Scheppele 2018).

In contrast to the political arguments used in Poland and Hungary, in Romania and Slovakia legal discussions and judicial reforms were argued to fight corruption and clientelist networks. Here, the measures for more independence of the judiciary from politics introduced under EU conditionality were critically re-evaluated. According to some observers, they had given the courts too much influence (Smilov 2006; Parau 2013, 2015) and excessively reduced their political accountability (Mungiu-Pippidi 2010; Coman 2014; Bobek 2007, p. 112). Full self-administration of the sector was viewed critically (Bobek and Kosař 2014). Reforms followed since the mid-2000s. Government majorities of different political orientations attempted to enable court packing through legislative amendments (Iancu 2022); judicial reforms were carried out, and anti-corruption bodies were established or reshaped. While new reforms were officially legitimised by the fight against corruption in the judiciary and other sectors, opponents criticised that the reforms were used by political parties to discredit political opponents or judges, instrumentalised by "empowered but unchecked reformers" for their own goals (Mendelski 2020, p. 120) or to restrict the independence of the judiciary in general (for Romania Vachudova 2009, p. 52f., 58; for Slovakia Bojarski and Stemker Köster 2011).

In Romania, the matter became the subject of profound domestic conflicts. PSD-led social-democratic-liberal coalitions launched controversial counter-reforms to the previous reforms of the judiciary, leading to struggles between the branches of government. Since 2012, PSD governments have proposed bills to exempt politicians from punishment or to raise the threshold for corruption. They have also sought to reshape the distribution of competences in judicial matters. The conservative president Traian Băsescu (2004–2014) tried to stop the counter-reforms. This led to impeachment proceedings initiated by PSD and ALDE politicians in response. The government, the parliament and the president each tried to overstep their respective competences to achieve their political goals, and the constitutional court repeatedly intervened. Klaus Iohannis, who succeeded Băsescu in 2014, questioned constitutional court decisions which contradicted his

[32] The amendments concerned, among other things, the quorum for decisions of the constitutional court, the period within which it may review laws for their constitutionality, the order of review, and the designation of the constitutional court leadership.

views. He accused the constitutional court of unconstitutional behaviour, repeatedly resubmitted legislative amendments which the court was to validate, and even turned to the Venice Commission of the Council of Europe in this matter.

The large number of corruption cases and the proceedings surrounding them "generated not only a discourse on good practices in politics but also (...) a critical discourse against anticorruption, leading to the denial of the possibility of reconciling anticorruption with the rule of law or individual rights and freedoms" (Iancu 2018, p. 417). The intra-parliamentary anti-corruption consensus collapsed when the anticorruption measures became most effective (ibid.). Since 2018, PSD has again planned legislative changes concerning the judiciary, a decriminalisation of corruption and an amnesty to offenders. President Iohannis reacted in 2019 by launching a constitutional referendum that was supposed to prevent the planned option of amnesties in corruption offences as well as emergency orders by the government in the area of criminal offences, punishments and judicial organisation. Legal readjustments followed, and after the change of government in 2020 the new government launched counter-reforms (Göllner 2022; Iancu 2022; Venice Commission 2018; EC 2018). In line with Poland and Hungary, in Romania too the independence of the judiciary and the constitutional court was attacked and there were attempts at restricting their competencies. These attacks caused significant protest and mobilisation from judges and prosecutors in 2013–2015 and in 2017–2019, but as this contestation of government policies was not unanimous, it left a divided body of judiciary (Puleo and Coman 2024).

In Slovakia, legislative efforts since 2010 have also focused on fighting corruption, including in the judicial sector. The parliament, under a Smer government, amended the constitution in 2014 to allow mandatory background checks on judges and judicial candidates based on information from the Slovak National Security Agency. However, the constitutional court stopped the reform. In 2020, following high-profile allegations of corruption against the 'Kočner network' and the murder of an investigative journalist, the parliament passed extensive legislative amendments concerning the composition of the judicial council, the establishment of a supreme administrative court, constitutional court procedures, the retirement age for judges, asset declarations for judges and the removal of judicial immunity from the constitution. Criminal cases against judges, politicians and business people backed up these measures for more robust control of judges' actions.

Czechia shared some similarities with the other countries, albeit to a limited extent. Here, legislation was amended to clarify the competences of the courts, which also helped to resolve political conflicts. President Václav Klaus actively used vetoes, e.g. against an anti-discrimination law, or opposed certain positions supported by the EU. On the 20th anniversary of the Czech Republic in 2013, he declared a comprehensive amnesty, covering also cases of severe economic crime and corruption with a penalty of up to ten years' imprisonment, which had been pending for more than eight years. According to Klaus, the amnesty was supposed to ease the burden on the prosecution authorities. Although the amnesty was endorsed by the prime minister, it came as a surprise. The Senate (the only organ authorised to do so) began impeachment proceedings against Klaus which were stopped by the

constitutional court, which declined to consider the case because Klaus's term of office had expired. His successor Miloš Zeman (centre-left party SPOZ), a former prime minister (1998–2002), who was the first head of state that was directly elected, decided to test the limits of the presidential powers, including interventions in the judiciary.

3.3 Experiences with an Independent Judiciary: Post-1989 Reforms and Conflicts

An independent judiciary is a fundamental element of most rule of law concepts. Therefore, to comprehend rule of law narratives, it is crucial to understand how it has been implemented in practice. As will be demonstrated below, during a first wave of rule of law legislation, the parliaments in all five countries under study explicitly granted the judiciaries and judges independence from politics. The strengthening of the judiciary was widely accepted, although some politicians occasionally complained in the 1990s about individual judicial decisions or an overly powerful or activist judiciary. In the late 1990s a second wave of reforms significantly strengthened the self-governance of judges (Sect. 3.2). Political controversies arose over the influence of courts and judges in leading positions. However, the conflicts varied in intensity and motivation, and did not correspond clearly with the waves of legislation. Since 2010 politicians in some countries have attempted to limit judicial independence, officially to increase accountability and to curb judicial overreach, corruption and clientelism. In response, judges have established new judicial organisations that are more politically active. They have also engaged in on- and off-bench mobilisation at national and European levels (Matthes 2022; Doroga and Bercea 2023). These reforms and the surrounding conflicts will be discussed in greater depth in the following.

In socialist times, the power to appoint and dismiss judges was formally vested in the parliament (Czechoslovakia, Hungary, Romania) or in the Council of State, officially subordinate to parliament (Poland). De facto it was under control of the ruling party or its executive office (Bobek 2015). With the post-1989 transition, professional judges in Czechia, Hungary, Poland and Romania were appointed on a permanent basis by the president, after nomination by different bodies of judicial self-regulation or, in Czechia, by the minister of justice.[33] The new or reformed constitutions stipulated the impartiality of judges[34] and the independence of judges

[33] In Slovakia, the parliament continued to elect judges for four-year terms with a tenure-track option, but with a 2001 constitutional amendment it followed the model in the neighbouring states.

[34] It is mentioned in the Czech and Slovak constitutions or operationalised in specific requirements. For example, judges were not allowed to belong to a party or political movement or to engage in political activity (§50 [3] Constitution of Hungary of 1949, Art. 145a Constitution of Slovakia since 2001; Art. 178 [3] Constitution of Poland; Art. 37 [3] Constitution of Romania). Sometimes, they were not allowed to hold public office or mandate (Romania, Slovakia, Hungary) or to engage in entrepreneurial or other economic activity.

(Czechia, Poland, Romania, Slovakia, Hungary) or courts (Czechia, Poland, Slovakia). The most comprehensive provisions regarding judicial independence were enshrined in the 1997 Polish constitution.[35] In Hungary, too, judges were granted "extensive autonomy" compared to other European countries (Kühn 2010, p. 186; Kovács and Lane 2018).[36] At the same time, their decisions were bound by law (as interpreted by courts).

Despite these changes, the judicial personnel largely remained the same.[37] Most judges in ordinary courts had started their careers in the old system, where their rulings had contributed to stabilising the regime (Bobek 2015; Sajó and Losonci 1993, p. 322). People close to the regime before 1989 usually served in higher positions. The high retirement age of 70 in Hungary, Poland, Romania and (from 2002) in Czechia combined with the requirement of many years of service in the judiciary as a prerequisite for filling higher positions ensured that 'old judges' had a long-term influence.[38] They often stood for a positivist perception of the law (Zirk-Sadowski 2006; Krygier and Czarnota 2006). The continuity of judges was particularly strong in Romania (Iancu 2022), Hungary (Kosař 2013, p. 253) and Slovakia. 'Old judges' also filled many positions in the Czech Republic and Poland (Wagnerová 2003, p. 163, 170; Bodnar 2010, p. 34; Sabados 1998, p. 234ff.), while judges in top positions in these two countries were replaced as a result of lustration measures (Beers 2010, p. 37).

In Poland (1989) and Romania (1991/2004[39]), and later in Hungary (1997) and Slovakia (2001), parliaments introduced judicial councils for key administrative decisions. They were composed of judges and sometimes also politicians.[40] Court presidents played a significant role in issues related to the judiciary and, in Romania

[35] Art. 178–181, 186, 195–196, 199–200 of the Constitution of Poland.

[36] According to Kaminski and Nalepa (2006, p. 391f.), the former communists who negotiated the transition were interested in creating a strong judiciary and establishing a constitutional court for slowing down the system change and saving themselves from retroactive justice (also Verdery 2012, p. 71).

[37] When judges and prosecutors switched to private-sector legal services, this was due to low wages and a simultaneous sharp increase in cases to be handled (Kosař 2013, p. 254; Kühn 2010, p. 181).

[38] In Slovakia, the President of the Republic was empowered to dismiss a judge who has reached the age of 65 on the proposal of the judicial council. From 2021 (based on a constitutional amendment adopted in 2020), 67 is the automatic retirement age. In Czechia, a similar provision as in Slovakia before 2021 was in place, but in 2002, 70 years was installed as the automatic retirement age by an amendment of the law on judges.

[39] While the Superior Council of Magistracy (CSM) was enshrined in Art. 132–133 of the constitution in 1991, only in 2004 did a proper law on the CSM enter into force (317/2004). In the meantime, the most important functions and jurisdictions of the CSM were inserted as Art. 133–134 in the amended constitution of 2003.

[40] Since 1990, the formal procedures of appointment and promotion of judges have been frequently changed in connection with changes in government and EU accession.

and Slovakia (even after 2001), the ministries of justice as well[41] (Coman and Dallara 2012, p. 837f.; Parau 2015, p. 427; Iancu 2022). In Czechia, despite repeated efforts to establish an independent institution of judicial self-government, the model emphasising the role of the minister of justice in organisational and appointment issues has persisted (Vachudova 2009, p. 45f.; Hein 2013, p. 326f.; Němec 2023).

For public-law matters, all five states established constitutional courts. The constitutional judges were and are elected by the parliament (Hungary), its first chamber (Poland, Romania 1/3) or second chamber (Romania 1/3), or appointed by the president (Czechia, Slovakia, Romania 1/3). In Czechia, the Senate must consent to the candidate proposed by the president. In Slovakia, the parliament nominates twice as many candidates as the president has to appoint. Only in Hungary did the election of constitutional judges require a two-thirds majority of MPs. This made it a matter of political debate, with the opposition being able to prevent the election of constitutional judges (CoE 1997, p. 7, 48). In most countries, the newly appointed constitutional judges were law scholars (Kühn 2010, p. 195) who had not belonged to the ruling parties in the former regime (Kosař 2013, p. 253).[42] Only in Romania did appointed constitutional judges often have close ties to political parties or were former politicians with offices and mandates, contrary to the spirit of the constitutional text (Selejan-Guțan 2012, p. 330; cited in Göllner 2022). This was because in Romania (and Slovakia), the clear majority constellation in the transition period helped the governing parties to actively shape the composition of the constitutional court.[43] Importantly, in all countries except Romania, there have been situations where political actors have been able to fill almost all or a large number of constitutional judge vacancies at once.[44]

The strengthening of the judiciary after 1989 was also reflected in the increased number of court cases (Kühn 2010, p. 179f.), which boosted the courts' relevance in resolving conflicts. The adoption of legislative changes while some old provisions continued to exist led to legal conflicts and increased the need for interpretation by

[41] During the 1990s in Romania, both PSD and the Romanian Democratic Convention introduced appointment rules that indirectly allowed them or the Ministry of Justice to influence the composition of the courts and replace people in top positions who had played an important role under the previous government (Iancu 2022). For Slovakia, Čuroš (2021, p. 1274) observed that ministers of justice claimed to depoliticise the judiciary, but all tried to "fight politicization with their candidates as court presidents".

[42] In Czechia, the first generation of constitutional judges included several former members of the parties in power at the time of their appointment, plus two former members of the Communist Party (CoE 1997, p. 42).

[43] Also, in 2005, the Romanian court was "staffed mostly by former socialist politicians who took the side of the Socialist Party" (Lach and Sadurski 2008, p. 223).

[44] It happened, for instance, in Hungary in 1998/99 (nine positions), regularly in Czechia (2003–2005 twelve vacancies, 2013–2015 fourteen, in 2023 seven), or Slovakia (for instance in 2019–2020 ten judges). This was due to the combination of three factors: the simultaneous filling of all judge positions of the constitutional courts when the court was established, the equal term of the judges' office and the lack of an upper age limit. Moreover, enlargements of constitutional courts allowed ruling majorities to fill additional posts and thus to influence their composition. This was the case in Poland in 1997 and Slovakia in 2001 (with three additional judges in each case).

the courts. The ordinary courts interpreted laws in a rather formalistic manner, i.e. in continuation of the judicial practices of the late socialist period (Kühn 2004, Kühn 2010, p. 179; Cserne 2017, p. 23; Ajani 1995; Fogelklou 2002). This meant that even though judges applied the legislation enacted after 1989, they did not take into account the values and overall intentions associated with them but had "a purely instrumental attitude towards them" (Zirk-Sadowski 2006, p. 306; also Mańko 2017, p. 78f.). Nevertheless, most of the rulings of ordinary courts went unnoticed by the public and have not been systematically researched (Cserne 2017).[45]

More public attention was paid to the new constitutional courts (Schwartz 2000; Procházka 2002; Sadurski 2002). They interpreted the new or revised constitutions extensively, leading observers to speak of "excessive" judicial activism (Sadurski 2008). Mobilised by diverse plaintiffs,[46] they "have established themselves as powerful activist players" (Koncewicz 2017, p. 295; Sadurski 2008). In many cases, their rulings were decisive for clarifying fundamental rights, constitutional issues, matters of elite selection (in the form of lustration-related case law), private property, the handling of transitional justice and other topics of particular importance. Especially the broad fundamental rights catalogues which listed rights but typically did not define them in detail were clarified through judicial interpretation by constitutional courts.[47] Since the decisions of the constitutional courts differed from the formalist decisions of the ordinary courts, the latter often ignored them in Romania (Gutan 2024, p. 567; Tănăsescu and Selejan-Guțan 2018, p. 420).

In Poland, in the absence of a new constitution until 1997, the Constitutional Tribunal created a quasi-constitutional framework (Safjan 2017, p. 376). It developed a concrete interpretation of the principle of the rule of law, as well as certain rights and freedoms (Diemer-Benedict 1998, p. 206f.). It also established principles for legislation and had to decide in the repeated conflicts between directly elected presidents and prime ministers elected by the Sejm (Krok-Paszkowska 2001). The "main grounds for declaring unconstitutionality" were the violation of the rule of law, the right to a fair trial, the principle of proportionality and the exceeding of the powers conferred upon the executive (Biernat and Kawczyńska 2019, p. 746).[48] In

[45] There are only a few analyses for the selected countries, periods and court branches, e.g. Matczak et al. 2010.

[46] In Hungary, Art. 32(a)(3) of the constitution stipulated "that 'anyone' could challenge the constitutionality of any active legal norm in Hungary" (*actio popularis*), leading to thousands of petitions by citizens (Scheppele 2003, p. 222) and virtually leaving it up to the judges as to what they wanted to decide (Boulanger 2006, p. 277).

[47] Bobek and Kosař (2017, p. 404) argues that in the post-1989 period, the new constitutional courts demanded "for the judges to do (on the level of judicial method) essentially the same as what the Communist Party asked them to do before in the Stalinist period: To interpret the old Communist laws in the light of new values, disregarding their text", which has caused reluctance with the more seasoned judges in the other courts.

[48] It also prevented the provision in the draft 1997 constitution that the constitutional ruling must be confirmed by parliament (Safjan 2017, p. 379). While the active role of the Tribunal was frequently criticised (Blokker 2020, p. 342), other observers argued that it has been restrained because the Sejm could overrule its decisions in certain cases by a two-thirds majority (Procházka 2002, p. 86), a situation that changed slightly with the 1997 constitution (ibid.: 95).

Hungary, the powers of the constitutional court were much more extensive. Under its chief justice László Sólyom (1990–1998) the court established an "open and creative interpretation" of the constitution (Safjan 2017, p. 376) and began to "aggressively challenge the legislature about new legislation" (Boulanger 2006, p. 265) with an "unprecedentedly high annulment rate" (Sajó 1995, p. 256).[49] Other constitutional courts were less powerful.[50]

The constitutional courts' jurisdiction was relevant for sensitive political issues, including lustration, retroactivity, elections and EU accession. The constitutional courts in Czechoslovakia and its successor states Czechia and Slovakia, as well as in Poland and Hungary, repeatedly ruled relevant parts of lustration laws unconstitutional, allowed checks and clearances only for a narrow range of positions and individuals and rejected more general regulations (Nalepa 2010, p. 3). This was because of the structural problems of the rule of law for coming to terms with past political injustice described in Sect. 3.3.[51] To name a few other sensitive decisions, the Slovak Constitutional Court ruled several times on retroactive legal norms and declared that they can be constitutionally acceptable under certain conditions. It also repeatedly ruled Prime Minister Mečiar's attempts to reduce the influence of the opposition unconstitutional.[52] The Polish Constitutional Tribunal interpreted the result of the 1997 referendum on a new constitution as valid, even though the 1995 Referendum Act stipulated a 50 per cent turnout for a referendum to be valid (Górski 2014). It also repeatedly ruled on abortion (Bucholc 2022).

[49] Mainly due to the *actio popularis* it was involved in almost all issues in politics and, arguably, "practically ran Hungary" through the 1990s (Scheppele 2003, p. 222). While Sajó (1995, p. 257) notes "bitter criticism of the Court in Parliament", Boulanger (2006, p. 278) argues there were "few public critics of the court" until the late 1990s. Studies on constitutional adjudication in Hungary, but also in Czechia and Romania, suggest that the legislator's room of manoeuvre was not too heavily constrained (Kuti 2019; Šipulová 2019; Pócza et al. 2019; Pócza 2021).

[50] In Romania, until 2003 a two-thirds majority of both houses of parliament could overturn decisions of the constitutional court based on abstract review and taken before a legislative act had been promulgated (Brunner 1992, p. 548; Lach and Sadurski 2008, p. 222). In Czechia and in Slovakia there were sometimes months-long vacancies in the constitutional courts, restricting the courts' ability to decide. In Czechia, this was, for example, because of conflicts between the president and the Senate over new appointments from 2003 onwards (Pospíšil 2020, p. 137).

[51] The Polish Constitutional Tribunal held that lustration measures may only relate to protection against human rights violations or a blockade of the democratisation process and must be limited in time. This was done with reference to the principle of the democratic rule of law and the fundamental rights. In Czechia, Slovakia and Romania, the constitutional courts upheld the (narrower and weaker) lustration laws (David 2000, p. 409; Nalepa 2010, p. 3; Kosař 2008, p. 468f.). In the 2000s, provisions in new lustration laws were repealed in Hungary in 2005, in Poland in 2007 and in Romania in 2008 (Halmai 2007; Horne 2009, p. 360) but upheld in Czechia in 2003 and in Poland in 2001 (Nalepa 2010, p. 3). In Poland, the General Assembly of Voivodeship and Appellate Courts did not nominate enough candidates to the panel that was supposed to examine the credibility of lustration statements, thus undermining respective measures (Grajewski 2007; Szczerbiak 2002).

[52] Between 1994 and 1998 the court ruled 16 times against the Mečiar government, which responded with attempts to undermine the court's prestige (Lach and Sadurski 2008, p. 226).

All constitutional courts were receptive to their countries' EU accession but to varying degrees reserved the right to be the ultimate guardian of the constitution and fundamental rights (Bříza 2009; Přibáň 2017; Bobek 2015; Koncewicz 2017; Tatham 2017).[53] EU accession was also a milestone for ordinary courts. They received the "revolutionary new competence" (Połtorak 2017, p. 227; also Koncewicz 2017, p. 296; Kühn 2010, p. 179) to assess the compatibility of national law with EU law and to directly refer cases to the ECJ and ask for an interpretation of the EU provision in question.[54] Some courts referred substantially to relevant EU and constitutional law (Matczak et al. 2010, 2017; Połtorak 2017, p. 225) while others did not (Mańko 2017, p. 94).

Since around 2000, several occasions have led politicians to pay closer attention to the role of the judiciary. For example, judicial boards often opposed further judicial reforms (Bobek and Kosař 2017, p. 166) while at the same time, mechanisms of judicial recruitment were not without problems.[55] However, the concrete relations between politics and the judiciary varied across countries. In Czechia, courts repeatedly blocked judges' salary cuts (Ústavní soud 2003) and in 2006, the president of the Supreme Court successfully challenged her dismissal by the president before the constitutional court.[56] While there were no other such cases, President Klaus considered the mentioned decision by the constitutional court "a dangerous shift in our post-1989 system from a parliamentary democracy to a judicial autonomy not limited by anything, which does not exist anywhere in the world in this way" (Loužek 2006). In this climate, all parties in the Czech parliament opposed more judicial autonomy. In 2015, the government ignored the outcome of the appointment process for the vice-president of the Supreme Court and dissolved the commission to

[53] Bobek and Kosař (2017, p. 413) distinguishes a "wait and see" tactic of Hungary's constitutional court, a "re-assertion of its own habitat" in Poland and "a rather explicit and belligerent tone" of the Czech constitutional court.

[54] In a few cases, this had far-reaching consequences. For example, in Czechia, the supreme administrative court did not accept a judgment of the constitutional court in a case related to pensions and referred the issue to the ECJ to assert its own legal position, but the constitutional court ignored the ECJ's opinion (Šlosarčík 2023).

[55] The selection of judges tended to replicate existing personnel (for Slovakia see Spáč 2020) or was "opaque, non-transparent, and prone to nepotism" (for Czechia see Bobek 2015). In Czechia and Romania, "personal contacts" were mentioned by many judges as relevant for "hiring and promotion decisions" (Beers 2010, p. 44). In Romania and Slovakia, "political connections" were also important (Beers 2010, p. 44; Spáč et al. 2018). This was particularly evident in the person of Štefan Harabin, who held important positions in the judiciary and politics and made personnel decisions (Čuroš 2021, p. 1249, 1269; Bojarski and Stemker Köster 2011).

[56] Based on a clause in the Law on Courts, Klaus had complied with the recommendation of the minister of justice. The constitutional court interpreted the corresponding power in the Law on Courts as an inadmissible interference in the independence of the judiciary and thus as unconstitutional (Kühn 2010, p. 188f.). Shortly after, the president of the Supreme Court also successfully defended herself against a disciplinary action brought by the minister of justice.

create a judicial council (CoE 2016, p. 22, 29). However, there was no general political interference in the judiciary (Němec 2023[57]).

More systematic attempts to increase political control over the judiciary continued in Romania (although under a new coalition government) and started in Slovakia. In both countries, governments invoked the fight against corruption and clientelism as the reason for various measures, including the creation and filling of additional judgeships in high courts (Romania), disciplinary innovations (Slovakia) or anti-corruption measures (Slovakia, Romania).

In Romania, the anti-corruption strategy of the conservative-liberal government has heavily influenced the judiciary since 2004. Alongside legislative changes, Justice Minister Monica Macovei, a former human rights and democratisation activist backed by the Democratic Party (PD), directed a large-scale campaign against corrupt judges (and politicians and civil servants). Her measures to force top judges to retire and to change the appointment rules for judges helped younger cohorts rise to top positions and set in motion "a hidden and comprehensive process of lustration" (Iancu 2022). In order to accelerate elite change in the judiciary, since 2005 magistrates can retire after 25 years of service irrespective of their age. Following the adoption of a law in 2004, complaints and investigations against judges, who continued to enjoy no immunity, could lead to lengthy suspensions by the judicial council without pay (Iancu 2022). Macovei, who had the backing of President Băsescu, faced severe resistance from some, especially old-aged judges, while a good part of the younger cohort supported her programme. Essentially, the Macovei reforms remained in force for some time, despite two parliamentary initiatives in 2007 and 2012 to oust President Băsescu from office. In 2017, when PSD returned to government, it specifically targeted the anti-corruption prosecution agency (DNA) for alleged abuse of state powers. Under Liviu Dragnea, the PSD government created a specialised department within the Public Prosecutor's Office for the investigation of crimes committed by judges and prosecutors (SIIJ), which remained ineffective due to determined opposition from some judges, prosecutors and legal activists (Iancu 2022).

In Slovakia, the government attempted in 2000 to dismiss the president of the Supreme Court. Since then, there have been repeated judicial reforms under different governments aimed at either removing or installing specific groups of judges. In 2009, "a considerable number of court presidents were removed in a relatively short time by two successive ministers of justice" by legal means[58] (European Commission 2014, p. 4). The Smer-led government extended the competences of the judicial council while its outgoing minister of justice was appointed the president of the Supreme Court, automatically assuming the role of the chairman of the judicial

[57] In 2019, the parliamentary subcommittee on justice dealt with the alleged attempt by high-ranking aides of President Miloš Zeman to trade the power to appoint judicial officials for favours in certain court proceedings. The Senate initiated a procedure of removing Zeman from office based on this allegation.

[58] In Slovakia, the minister of justice could dismiss court presidents and vice-presidents without the persons concerned being able to take legal action against it.

council. In this capacity, he initiated disciplinary measures against judges who had criticised him (Kosař and Spáč 2021; Bobek and Kosař 2017, p. 191). After the 2010 election, a new right-wing government attempted to reduce the influence of the president of the Supreme Court and the judicial council on the judiciary (Spáč et al. 2018); however, after Smer returned to power in 2012, the judiciary "continued to experience troubling government influence" (Učeň 2018; Láštic 2019).[59] Following the 2020 elections, a new right-wing government used a corruption scandal in the judiciary (which led to the detention of several judges, including the vice-president of the Supreme Court) as an opportunity to push for major judicial reforms, for instance the creation of the supreme administrative court, a modification of the appointment process for constitutional court judges, and the redrawing of the judicial map (Čuroš 2023).

In contrast to Slovakia and Romania, new measures in Poland (2005–2007 and since 2015) and in Hungary since 2010 were more clearly linked with specific parties and their declared political aim to dismantle 'political networks' in the judiciary.

In Poland, under a PiS-LPR-Samoobrona government in 2005–2007 the parliament curtailed the independence of the courts, blaming them for "the high level of criminality and general disorder in the country" (Bodnar 2010, p. 36). Legislative amendments to the law on ordinary courts (June 2007) threatened the independence of the judiciary—giving the minister of justice the power to move judges without their consent and to appoint court presidents. Legal amendments of the constitutional court (changing the term of its president and others) were not adopted because of new elections. Also in 2007, for the first time in history the president of Poland refused to appoint all persons nominated by the NCJ as judges to several courts.

In Hungary, the new Fidesz-KDNP coalition adopted transitional provisions for the new constitution, which linked the end of the Supreme Court's term of office to the introduction of the Kúria to influence the composition of the courts. It also passed the new Law on the Organisation and Administration of the Courts, which stipulated that to chair the Kúria one must have served as a judge in Hungary for at least five years. Under this law, then President of the Supreme Court and (by virtue of his office) Chairman of the National Council of the Judiciary András Baka became ineligible (Cannoot 2016).[60] The parliament also limited the competences of the constitutional court and lowered the retirement age from 70 to 62 years, forcing 10 to 15 per cent of the judges (274), many of them in top positions of the courts, immediately out of their job (Kovács and Scheppele 2018; Halmai 2017, p. 471).[61] Increasing the number of constitutional judges by three allowed four new appointments to be made by the two-thirds parliamentary majority of Fidesz-KDNP.

[59] In 2019, Robert Fico, a former three-term prime minister from Smer, made an unsuccessful attempt to become a constitutional judge and eventually the president of the constitutional court. This episode well documents the importance of control of the judiciary for the ruling parties.

[60] Baka appealed to the European Court of Human Rights against the premature termination of his mandate brought about by the reforms (Kosař and Šipulová 2020).

[61] The ECJ condemned the sudden retirement, but the most prominent former office holders did not return to their positions (Kovács and Scheppele 2018).

Thus, in spring 2013, most of the incumbent constitutional judges had been appointed by the government parties. Moreover, constitutional judges could now serve as ordinary judges, which allowed the 2020 parliament to elect Fidesz supporter Zsolt András Varga to become president of the important Kúria.

Conflicts resurfaced in Poland in 2015, when two successive governments tried to push through further candidates in addition to regular appointments to vacant posts on the constitutional court bench. Civic Platform (PO) tried to do so before the election, PiS afterwards. Months of tug of war between the new PiS majority and the constitutional court followed, some of whose rulings PiS ignored. In 2016, judges elected by PiS and those close to it were in the majority in the constitutional court (Kobyliński 2016). The parliament adopted several judicial reforms, including a lowering of the retirement age for judges. As a result, approximately 10 per cent of all positions of Polish judges becoming vacant in 2018, including many top positions in courts and one third of the posts (27 judges) in the Supreme Court. A new chamber with expanded judicial review powers and a new disciplinary chamber at the Supreme Court were established to further upset the power relations in the judiciary. The judicial council was replaced by new judges elected by parliament. This allowed for political influence or, as PiS argues, more democratic legitimation. Furthermore, lay judges[62] elected by the Polish Senate became part of the new chambers (Kovács and Scheppele 2018).

Judges resisted what they perceived as political interferences in the judiciary. New judges' organisations emerged in Romania,[63] Slovakia[64] and Poland.[65] Unlike the apolitical professional organisations founded after 1990,[66] they harshly criticised certain policies as well as colleagues inside the judiciary. In Poland, many judges (and citizens) protested against the PiS judicial reforms, and several judges opposed new regulations, including judges in the Constitutional Tribunal and the Supreme Court. The latter requested preliminary rulings from the European Court of Justice, as did some lower courts and the supreme administrative court (Matthes 2022). In Hungary, the judicial council rejected in 2020 the president of state's candidate for the Supreme Court presidency, a Fidesz loyalist.[67] In Slovakia, judges refused to

[62] As mentioned, in all the studied countries there was a tradition of lay judges.

[63] These are the Romanian Forum of Judges and the Romanian Union of Judges, both founded in 2007, and the Association of Judges for the Defence of Human Rights, founded in 2019.

[64] A smaller of these groups branded an "atmosphere of fear" in which a judge was no longer allowed to express a "controversial and provoking opinion" publicly (ZOJ 2010). In 2011, the new organisation *For an Open Judiciary* (ZOJ) emerged (ZOJ 2013; Bojarski and Stemker Köster 2011, p. 77f.).

[65] They include the judges' association Themis, founded in 2010, and Wolne Sądy, founded in 2020.

[66] The professional organisations in all five countries present themselves as mainly apolitical. These are the Union of Judges of the Czech Republic (SÚ ČR), the Hungarian Judges Association, Iustitia in Poland, the Association of Slovak Judges and the Association of Magistrates of Romania. Around 30 to 50 per cent of the national judges are members of these organisations.

[67] Later, Zsolt Andras Varga was nevertheless elected by parliament.

participate in disciplinary panels, thereby undermining their functionality (Mesežnikov et al. 2014, p. 565). In Romania, the Macovei reforms failed due to opposition from senior judges, including those in the constitutional court. Later, there were strikes and protests against the PSD reforms and policies (Iancu 2022).[68]

During this phase of legal mobilisation against political measures related to the judiciary, constitutional courts ruled on several cases concerning legal texts or matters directly related to the judiciary or to themselves. In Romania, for example, the constitutional court repeatedly ruled on planned or adopted judicial reforms—15 times in 2018 alone (Iancu 2022). In Poland, the constitutional court repeatedly annulled judicial reforms adopted by PiS, including the law on the national judicial council and the law on the selection procedure for the president of the Supreme Court. This ended after 2016 when PiS-elected judges were in the majority[69] (Sadurski 2018; Kovács and Scheppele 2018). In Hungary, too, the constitutional court has not annulled any major parliamentary decisions since it became dominated by judges nominated or elected by the Fidesz majority.

The rule-of-law-related conflicts also resulted in conflicting judgments when the Court of Justice of the European Union ruled that national constitutional court rulings or legal provisions in Hungary, Poland and Romania violated EU law (Połtorak 2017, p. 229).[70] Domestic courts, including the constitutional courts in Poland and Romania, reacted with rulings stating that the CJEU does not have the authority to decide on certain national provisions.[71] Thus, the relation between national courts and European judiciary became a more "complicated story" (Safjan 2017, p. 379). Since the beginning of these conflicts between the CJEU and national courts, even constitutional courts that had previously been receptive to international law became more hesitant.[72]

Due to these conflicts large parts of the population of all five countries perceived independence of the judiciary as being threatened by political interference but also

[68] For example, in 2019 the Supreme Council of the Magistracy blocked the appointment of the chief prosecutor in a new special prosecutor's office for judicial criminal offences set up by PSD.

[69] In 2021, the constitutional court even removed from office the ombudsman who had advocated for the independence of the judiciary and minority rights.

[70] The CJEU formulated criteria for national courts to test the 'appearance of independence' of the judiciary, established the primacy of EU law against national regulations for the appointment of judges and recommended overriding national law regarding the legality of chambers and the transfer of judges to other chambers (Matthes 2022, p. 7).

[71] In Poland, government-friendly judges of the Supreme Court and among the highest courts "questioned the authority of the CJEU's decision" and sent the issue to the Constitutional Tribunal (Matthes 2022, p. 8). The same was true for the Romanian constitutional court. It reacted to a decision made by the CJEU on 18 May 2021 on aspects of Romanian justice laws by a judgment on 8 June 2021, which questioned the principle of primacy of EU law (European Commission 2021).

[72] This was without any growing political influence on its composition and impact, as in Poland or Hungary (Šipulová 2019). The Czech constitutional court, for example, which had initially strongly supported the ECtHR, was said to have "become more assertive and increasingly aware of and willing openly to advance the distinctive Czech constitutional identity" (Kosař and Petrov 2017, p. 616).

by economic and other influences. Most people also agreed that the status and position of judges did not sufficiently guarantee their independence.[73] This is in stark contrast to the early post-1989 developments and to the high (formal) standards of protection of the judiciary in the constitutions.

3.4 The European Context: Membership Requirements and an Evolving Rule of Law Framework

The processes described above did not exist in isolation. Accession prospects and membership in the Council of Europe, the European Union, NATO and other organisations[74] had considerable repercussions on the form and content of legislation and the interpretation of laws. In the early 1990s the Council of Europe experts provided constitutional assistance. Later, in the pre-accession phase the "EU and the European Commission were omnipresent, with "whole ministries (. . .) transformed in law-writing and law-making institutions, which were rubber stamped by national parliaments" (Micklitz 2017, p. 5) at a "fast and furious rate" (Scheppele 2003, p. 220). The countries fulfilled the membership requirements, adopted EU law, and had to comply with it. Later, as conflicts arose over the rule of law and the question of who should have the competence to identify and remedy rule of law problems in member states, various EU actors and European courts[75] contributed to developing rule-of-law-related normative frameworks (Coman 2022; Lorenz and Wendel 2023; Priebus and Anders 2023).[76] Besides, domestic actors intensified and used their relations with European bodies to challenge national policies or court decisions. At the same time the inclusion of national actors in European networks and transnational mobility affected the outlook and action of courts (Cserne 2017, p. 40f.). However, the relations with European organisations varied from country to country. All these developments might have influenced how MPs narrated the rule of law.

[73] In Czechia and Romania, at best just over half of the respondents in Eurobarometer representative surveys on judicial independence conducted between 2016 and 2021 considered the courts and judges to be independent; in Hungary, Poland and Slovakia the number was much lower. In Czechia, the share increased in a 2023 survey to 65 per cent. The reasons cited for non-independence were interference or pressure from government and politicians but also interference or pressure from economic or other specific interests (e.g. European Commission 2023).

[74] The Organization for Security and Co-operation in Europe is also active in the field of the rule of law. See OSCE ODIHR (2024).

[75] The ECtHR and the CJEU continue to develop their approaches to questions around the rule of law. For example, triggered by individual complaints, "recent caselaw reveals an important shift in the Strasbourg Court's approach to cases concerning independence and impartiality" (Braithwaite et al. 2021, p. 5).

[76] It was the Venice Commission of the Council of Europe which first elaborated a concept of the rule of law. The EU, which cooperated with the Council of Europe in the matter, referred to this concept but added certain features of democracy. It legitimised this with reference to the EU treaties which name both the rule of law and democracy as foundational values of the Union.

In the early 1990s, the five countries signed the legally binding European Convention on Human Rights and became members of the Council of Europe. Its Venice Commission provided advice on reorganising the legal systems. Soon after, the countries lost the first cases issued by their citizens before the European Court of Human Rights (ECtHR). The ECtHR judgments had a direct impact on pensions and equal opportunities policies, for example. In view of these effects, civil society organisations from the five countries, supported by foreign or transnational actors and partly professionalised through this support, started to systematically and successfully bring cases to the ECtHR to enforce rights (Şerban 2018, p. 186f.; Selejan-Guțan and Rusu 2006).[77] By 2022, 1541 ECtHR judgments found at least one violation of the European Convention on Human Rights by Romania. For Poland, the number of judgments on such violations was 1057, for Hungary 621, for Slovakia 378 and for Czechia 197 (ECtHR 2023). The ECHR case law went beyond individual cases and required adaptation of the national law (Kosař and Petrov 2017; Bodnar 2014). The countries were also involved in Council of Europe activities by the Group of States against Corruption (GRECO), founded in 1999, and the Council of European Judges, established in 2000.

The application for EU membership was also highly relevant for rule of law issues. Parties across the ideological spectrum broadly supported EU accession in the first decade after the system change (Mair 1997), among them Fidesz (Benoit and Laver 2006).[78] The motivation for Western integration was not always driven by pronounced cosmopolitanism, a willingness to delegate sovereignty to the EU level, or a deep sympathy for EU legal configurations. At times, it was based on a pragmatic or utilitarian approach. The 'Europragmatists' were primarily interested in protecting national sovereignty from Russia, integrating into the global economy through access to the EU's single market, and receiving extensive financial support from EU funds (e.g. Kopecký and Mudde 2002). Most decision makers considered EU membership as a natural part of transatlantic integration into international organisations such as the Council of Europe, the WTO and NATO, and a partnership with the USA.

Unlike the Council of Europe, which combined "soft conditionality with post-accession monitoring" and membership socialisation, the EU combined hard pre-accession conditionality with soft measures, including twinning (Dimitrova and Pridham 2004, p. 99, 91). Concerning the rule of law, the EU Commission, the twinning activities and, after accession, the European Court of Justice were important, as was the European Parliament and its Civil Liberties, Justice and Home Affairs Committee (LIBE) since about 2010. Political parties coordinated their

[77] External support was provided to the NGO sector, but also to new parties through their sister organisations. Due to the scarcity of resources in the societies of the five countries, such support could have a strong structuring effect, as it put the actors receiving support in a better position than others. Thus, which issues and actors received support and which did not possibly had a more significant impact than in wealthier societies.

[78] In Romania, a broad consensus for EU accession emerged since the mid-1990s.

activities horizontally, within the European Parliament or European party families.[79] Given the party dynamics of the countries under study described above, there were conflicts within party families or the political groups of the European Parliament. Over time, national parties belonged to different European parties or factions. Such party affiliations could stimulate dialogue even in times of dissent between European and national actors.

Since the 1990s, EU actors have progressively formulated normative standards through regular reports and recommendations to be met by the five countries. The EU accession conditions, established by the heads of state and government at the Copenhagen summit, included the political criteria of institutional stability, democratic order and the rule of law, respect for human rights as well as respect for and protection of minorities. The protection of minorities, which was repeatedly called for, was understood primarily in terms of ethnic minorities, especially the Roma (Ram 2003; Sasse 2005). The EU now expected candidate countries to take steps towards protecting minorities which had not been explicitly laid down in EU law before (Schwarz 2010, p. 120).

Over the years, the EU political accession criteria became increasingly comprehensive, including also "the strengthening of state capacity and the independence of judiciaries, the pursuit of anti-corruption measures and the maintenance and strengthening of a whole range of both human and minority rights" (Dimitrova and Pridham 2004, p. 97). Regarding the judiciary, the criteria were based, among other things, on positions on judicial independence that had been developed in the meantime by European judges' organisations and subsequently presented as standards to the Council of Europe (Venice Commission) and the EU.[80] Considerable attention was paid to the fight against corruption, especially in public administration. For this reason, Romania was only allowed to join the EU in 2007, after the Cooperation and Verification Mechanism (CVM) had been introduced the year before (Carp 2014, p. 235f.). At that time, most of these measures were not systematically discussed with reference to the rule of law, although the Commission did establish a link between the rule of law and corruption when introducing the CVM.[81]

[79] Likewise, judges were integrated in transnational networks, including the Association of the Councils of State and Supreme Judicial Courts of the European Union (ACA Europe), the European Judicial Training Network founded in 2000, the European Network of Councils of the Judiciary founded in 2004 and the Network of the Presidents of the Supreme Judicial Courts of the European Union, also founded in 2004.

[80] Accordingly, judges may only be suspended in exceptional cases based on established standards of conduct and in cases of gross violation of the independence, impartiality and integrity of the judiciary. Disciplinary proceedings should be taken up, dealt with and decided on a statutory basis independently of the legislature and the executive by a court or bodies elected by a majority of judges (ENCJ 2015, p. 40ff.).

[81] In 2007, the Commission argued that rule of law "implies for all Member States the existence of an impartial, independent and effective judicial and administrative system properly equipped, inter alia, to fight corruption and organised crime" (see https://eur-lex.europa.eu/eli/dec/2006/928/oj).

As observers noticed, the EU's approach to certain normative standards has changed over time. Concerning its accession criteria, it "has shifted decisively into areas of substantive democracy", but without "consciously following any clear conception of liberal democracy" (Dimitrova and Pridham 2004, p. 97). Instead, "the commission's thinking evolved in a way that may be described as bureaucratic incrementalism based on the checklist approach" (ibid.).[82] Progress reports for individual candidate countries regularly assessed the countries' achievements and demanded broader reforms. In 1999, for instance, the Czech Republic was criticised "for failing to make progress with judicial reform", and "the then Zeman government was forced to act fairly promptly to remedy this situation" (ibid.: 106). Once a reform was achieved, "the 'mission accomplished flag' was hung" (Bobek and Kosař 2017, p. 180). At that time, there was no systematic EU-wide monitoring of the state of the rule of law in member states.

With EU accession (which did not come with prompt access to the single market and Schengen), conditionality ended. Contrary to the fears of some EU actors, this did not result in delayed transposition of EU directives (Toshkov 2012). However, there were some setbacks in civil service reforms (Meyer-Sahling 2009), with "little progress on corruption and repeated attempts at interference with the work of independent regulatory agencies and boards" (Toshkov 2012). The CVM mechanism for Romania was continued until 2023 due to remaining concerns regarding corruption.

Since 2010 and 2015 respectively, EU actors have paid close attention to developments in Hungary and Poland. Governing majorities in both countries intended to expand the power of elected majorities at the expense of liberal freedoms and to curb the power of courts. They also implemented "economic reforms running counter the recommendations of international financial institutions and the austerity discourse that has prevailed since the global financial crisis" (Rech 2018, p. 338). Besides, there were attempts to stop privatisation and to renationalise major media, banks and other companies, many of which were in foreign hands.[83] In some cases, governing majorities also targeted civil rights NGOs supported from abroad (external or international foundations or the EU) to strengthen EU values, as the Hungarian government did in 2017. The government's rhetoric in this context focused on regaining sovereignty and agency and often referred to the interwar period as a

[82] For a more positive assessment, see Janse (2019).

[83] According to Toplišek (2020), studies had already found "a far more protectionist and statist orientation in the economic programs of right-wing populist and radical right parties" in Central and Eastern Europe during the post-communist transition (referencing Markowski 1997; Mudde 2007). After the electoral victory of Fidesz-KDNP in 2010 and PiS in 2015, "analyses of the economic policies of the two populist governments have noted elements of left-wing economics (in the case of Poland) and market-constraining state interventionism (in both cases) (see Kornai 2015; Johnson and Barnes 2015; Szanyi 2016; Moses 2017, pp. 147ff.; Miszerak and Rohac 2017; Voszka 2018)." High taxes for sectors dominated by foreign investors were part of this agenda.

post-imperial golden age with institutions based on democracy and the rule of law, and political pluralism.[84]

Opposition to EU initiatives and the recourse to national sovereignty, however, was not limited to Eurosceptics. The 'Nice or death' slogan, for instance, "implying that Poland should veto [the] EU constitutional Treaty it had previously helped to negotiate—was uttered in the Polish Sejm by a would-be prime minister from a liberal-conservative party rather than one of the representatives of the hardline Eurosceptics" (Kucharzyk 2010, p. 8). Václav Klaus, in his time as Czech president (2003 to 2013), "was one of the most radical critics of the EU" (Přibáň 2017, p. 334), and also refused to sign the ratification of the Lisbon Treaty, at least without an opt-out from the Charter of Fundamental Rights of the EU.[85]

The conflicts since 2010 varied in style and subject matter and gained an additional dimension with the political dispute over the allocation of migrants in the EU since 2015. All governments of the Visegrád countries which had accommodated migrants from Balkan states or from Ukraine before were unwilling to welcome a substantial number of Muslim asylum seekers from the Maghreb and Middle East. They criticised the EU's attempts to relocate them outside their countries of arrival as a breach of EU law. An example of the heated disputes in the following years was a 'national consultation' in Hungary in 2017, initiated by the Fidesz government to let citizens vote on EU measures it considered harmful, and a broad 'Stop Brussels' campaign that accompanied the referendum. However, despite their common opposition to the EU relocation scheme, the EU-related positions of many parties or governments in East Central Europe at that time cannot be classified as exclusively Eurosceptic, as they varied by topic or were fluid (Lorenz and Anders 2021).

In view of conflicts over the rule of law, the European Commission increasingly referred to case law of the European Court of Justice to show that elements of the rule of law had been established early on, e.g. the principle of legality and the principle of legal certainty (1981, 2004), the prohibition of arbitrariness in executive powers (1986, 1989), and the separation of powers (2010).[86] Additionally, it initiated several infringement proceedings against the Hungarian and Polish reforms criticised for damaging the rule of law (see Anders and Priebus 2021). When launching these

[84] After the First World War, the states in the region were all established on the basis of a constitution, and a spirit of social awakening prevailed, which, however, ended for the most part in the 1930s with a new wave of constitutions (Schmale 2001; Müller 2021).

[85] Klaus and his party ODS had always held a somewhat hesitant, partly Eurosceptic position (contrary to their voters). They were critical of the direction the EU has taken and, prior to accession, they criticised the social democratic government for not negotiating better accession conditions that would have granted more national power. Demanding an opt-out (that was eventually negotiated) enabled Klaus to relieve the pressure on him caused by his refusal to sign the treaty. See also Přibáň (2017), p. 334ff.

[86] See, for instance, the annexes to the communication from the Commission to the European Parliament and the Council concerning the new EU framework to strengthen the rule of law (COM (2014) 158 final).

procedures, its line of reasoning changed over time. For example, the lowering of the retirement age in Hungary (Sect. 3.3) was first brought before the European Court of Justice as a case of age discrimination and later, in the case of Poland, as impairments to the rule of law.

In response to new rule-of-law-related infringement cases the ECJ defined additional elements of the EU rule of law in greater detail, among them judicial independence (Pech and Kochenov 2021). Besides, it stressed the "constitutional significance of the EU's values" and ascertained "its own jurisdiction in areas where this is not always straightforward" (Van Elsuwege and Gremmelprez 2020, p. 31). To do so, the Court "discovered" in 2018, according to Krajewski (2018a), "a justiciable rule of law clause in Article 19(1) TEU, which enshrines the principle of effective judicial protection before national courts". This article, which had rarely gained lawyers' and legal scholars' attention before, was now used for granting the Court jurisdiction to verify member states' organisation of the national judiciary. Shortly after, the ECJ allowed for horizontal review of judicial independence by courts of other EU member states (Krajewski 2018b).

In this phase, EU actors, the Council of Europe, its institutions and other organisations also had to position themselves in relation to the increasingly politicised judicial councils and the various new organisations of judges that were actively reaching out to the European level. For example, the Romanian Judges Forum since 2018 has engaged the Venice Commission, GRECO and the ECJ against legislative changes and several rulings of the Romanian Constitutional Court. The Commission took a critical position on the judicial reforms here, although other Romanian organisations—namely the Association of Magistrates of Romania, the Romanian Union of Judges and the Association of Judges for the Defence of Human Rights—defended parts of the reforms[87] (Iancu 2022; UNJR 2020). In the case of Poland, the European Network of Councils of the Judiciary suspended the membership of the Polish judicial council in 2018 and expelled it in 2021 for not fulfilling its obligation to defend the independence of the judiciary in Poland. Hungary, on the other hand, continued to be represented. Slovakia and Czechia received less attention. For example, the EU Commission reacted relatively late to accusations against the then Czech finance minister and later prime minister Andrej Babiš which first appeared in 2014.[88]

The PiS and the Fidesz governments blamed the EU for exceeding its competences. They further criticised the incoherence and 'double standards' vis-à-vis old and new EU members, and a biased, ideologically driven activism

[87] They spoke out in favour of maintaining the newly established Section for the Investigation of Crimes against Justice and against "unprecedented attacks against the Romanian Constitutional Court" and called on the EU Commission to reconsider its position on various infringement procedures against Romania.

[88] He was alleged to have illegally profited from EU subsidies as a businessman before entering politics, and also accused of an ongoing conflict of interest since he still owned a large firm consortium (Agrofert) which also included media outlets. The Commission was pushed by members of the European Parliament to adopt a tougher stance (EP 2018).

against governments that dared to oppose EU asylum and migration policies. To debunk such accusations and to strengthen its own approach, the EU defined its concept of the rule of law with increasing precision and more comprehensively. In 2020 the Commission's definition of the rule of law included the principles of legality, legal certainty, the prohibition of arbitrary exercise of power, effective legal protection, including access to justice by independent and impartial courts, separation of powers, and the exercise of any public authority within the applicable law—i.e. primarily the Council of Europe criteria. These principles must also be in line with the values of democracy and respect for fundamental rights as set out in the EU Charter of Fundamental Rights (with a particular emphasis now placed on LGBTIQ rights) and other legal instruments (EU 2020; European Commission 2021, p. 2).

Since 2010 EU actors have also applied various tools to address the rule of law conflicts. The so-called Article 7 procedure for cases with "a clear risk of a serious breach by a Member State of the values of the EU" (Article 7 TEU), for example, was initiated against Poland in 2017 by the Commission and in 2018 against Hungary by the EP. In the same year, the EU Commission threatened to deny Romania Schengen accession if it did not respect the rule of law, including anti-corruption measures. Pressure from the EU and the Council of Europe led to adjustments in the country's legislative plans.

Since 2020, the European Commission launches yearly rule of law reports covering all member states. The reports start from the assumption that "effective justice systems and robust institutional checks and balances are at the heart of the respect for the rule of law" and deal with the justice system, anti-corruption measures, media pluralism and other institutional checks and balances. This comprehensive approach is based on the argument that "the rule of law requires an enabling ecosystem based on respect for judicial independence, effective anti-corruption policies, free and pluralistic media, a transparent and high-quality public administration, and a free and active civil society" (European Commission 2020, p. 4).

This expanded rule of law concept resulted in a growing number of possible deficiencies. In the first report, Slovakia, the Czech Republic and Hungary were criticised for corruption (European Commission 2020, p. 19).[89] Hungary, Poland and Romania were also criticised for restricting media freedom.[90] The Commission had invited many actors to give input for the report, including executives, judges' organisations and civil society actors, but it was not made transparent how exactly these sources were considered in the Commission's assessments. The 2021 rule of law report criticised all five countries under study. In Czechia, it underlined the lack of progress in anti-corruption legislation or its implementation, high-level corruption, problems of media independence and minor deficiencies in the other pillars. For Slovakia it certified progress regarding judicial independence and anti-corruption

[89] Apart from the former socialist states, deficits were only noted for Malta.

[90] Problems with media freedom were otherwise only identified in Malta, Greece and Luxembourg.

measures, but problems with corruption, media ownership transparency and the involvement of stakeholders and civil society in the legislative process. Romania was reported to have problems with judicial independence, independent and pluralistic media and the quality of legislation. Hungary and Poland were criticised for problems with judicial independence, limited anti-corruption and anti-clientelism measures, deficient media pluralism and severe problems with checks and balances (European Commission 2021).

More recently, rule of law standards were also defined by ordinary EU legislation. In a regulation adopted in 2020, the EU tied the disbursement of EU funds to complying with specific rule of law requirements and for that purpose also defined the rule of law.[91] This resulted in the first official rule of law definition jointly agreed by the Commission, the European Parliament and the Council. Later the Commission froze the post-Covid support measures for Hungary in 2022, arguing that ineffective prosecutions and problems in public procurement endangered the proper use of funds. With its clear stance, the EU supported member states' opposition forces committed to the rule of law. At the same time, it continued to use soft law and dialogue around the rule of law reports (Bossong 2020).

Despite the broadened approach, many politicians and academics have criticised the EU measures as insufficient and have called for more decisive action (Scheppele et al. 2021). Repeatedly, European Parliament resolutions called the Commission to act. In 2021, the EP sued the Commission before the ECJ for inaction for the first time ever. In 2022, some European judges' associations also seized the instrument of a lawsuit. They challenged the decision to approve Poland's recovery and resilience plan in the General Court of the EU.[92]

Among the governments of the five countries studied, the PiS and Fidesz cabinets regularly rejected "Brussels'" measures as inadmissible interference in domestic affairs. While implementing the minimum requirements of the ECJ decisions they did not fundamentally change their policies (Anders and Lorenz 2021). In addition, they criticised the "undemocratic" EU legal integration, which in their view was dominated by non-majoritarian bodies (ECJ and Commission) and double standards in the evaluation of old and new EU members. They further accused the EU of confusing democracy with a decline in values and loss of national identity. Both governments unsuccessfully challenged the new rule of law mechanism before the ECJ.[93] The Polish Constitutional Tribunal also became a relevant actor in the conflicts surrounding the rule of law with the EU. The court, in a composition

[91] While the Czech, the Slovak and the Romanian governments supported the project, representatives of Hungary and Poland rejected it.

[92] These were the Association of European Administrative Judges, the European Association of Judges, Rechters voor Rechters and the Magistrats Européens pour la Démocratie et les Libertés (Reuters 2022).

[93] A different interpretation of that money became apparent in the conflict over the conditionality mechanism for the disbursement of EU funds. Prime Minister Viktor Orbán argued that the old EU member states would see them as charity measures while they were actually a legitimate "compensation for the profit that the other EU countries make from us" (Orbán 2020, p. 6).

determined by PiS, ruled in October 2021 that Articles 1 and 2 (which mention the rule of law as one of the EU's core values) and 19 (which defines the powers of the Court of Justice of the European Union) of the Treaty on European Union unconstitutional under Polish law (Constitutional Tribunal case K 3/21).

In sum, the Council of Europe and the EU have played a vital role for processes around the rule of law. While the Council of Europe was the first to define a rule of law concept, the EU used a broader checklist, based on its evolving rule of law framework. Over the course of the last decades the EU has gradually refined the concept of the rule of law, it has regularly commented on developments in its member states and become a crucial point of reference for domestic actors. At the same time, the relations between the countries and the EU vary, as do their domestic politics. The countries under study do not form a coherent regional bloc within or against the EU. Despite their coordination within the Visegrád-4 framework, studies on decision-making in the EU reveal that the Visegrád group "rarely opposes or abstains as a coalition" (Novak et al. 2021, p. 487) and the countries also do not always vote in the same way in the Council on issues relevant to the rule of law, as the vote on the rule of law conditionality revealed.

References

Adamovich, Ivan Baron. 2004. *Entstehung von Verfassungen: ökonomische Theorie und Anwendung auf Mittel- und Osteuropa nach 1989*. Vol. 46. Tübingen: Mohr Siebeck.

Ágh, Attila. 2002. Parliamentarization as a Region-Specific Way of Democratization in East Central Europe. In *Parlamente und Systemtransformation im postsozialistischen Europa*, ed. Susanne Kraatz and Silvia van Steinsdorff, 43–61. Opladen: Leske+Budrich.

———. 2014. The Roller-Coaster Ride of the Hungarian Administrative Elite: Politico-Administrative Relations in East-Central Europe. *Revue française d'administration publique* 3: 663–679. https://doi.org/10.3917/rfap.151.0663.

Ajani, Gianmaria. 1995. By Chance and Prestige: Legal Transplants in Russia and Eastern Europe. *American Journal of Comparative Law* 43: 93–117. https://doi.org/10.2307/840578.

Albi, Anneli, and Samo Bardutzky. 2019. *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law: National Reports*. The Hague: Springer Nature.

Anders, Lisa H., and Astrid Lorenz. 2021. Examining Illiberal Trends and Anti-EU Politics in East Central Europe from a Domestic Perspective: State of Research and Outline of the Book. In *Illiberal Trends and Anti-EU Politics in East Central Europe*, ed. Astrid Lorenz and Lisa H. Anders, 1–25. Cham: Springer Nature.

Anders, Lisa H., and Sonja Priebus. 2021. Does it Help to Call a Spade a Spade? Examining the Legal Bases and Effects of Rule of Law-Related Infringement Procedures Against Hungary. In *Illiberal Trends and Anti-EU Politics in East Central Europe*, ed. Astrid Lorenz and Lisa H. Anders, 235–262. Cham: Palgrave.

Avbelj, Matej. 2017. Transformation in the Eye of the Beholder. In *Central European Judges Under the European Influence: The Transformative Power of the EU Revisited*, ed. Michal Bobek, 275–291. Oxford/Portland: Hart Publishing.

Balík, Stanislav, and Vít Hloušek. 2020. Permanent Campaigning and Pitfalls of Proportional Representation with Fragile Parties. Elections and Party System in Czechia. In *Czech Democracy in Crisis*, ed. Astrid Lorenz and Hana Formánková, 89–110. Cham: Palgrave Macmillan.

Beers, Daniel J. 2010. A Tale of Two Transitions: Exploring the Origins of Post-Communist Judicial Culture in Romania and the Czech Republic. *Demokratizatsiya* 18: 28–55.

Beichelt, Timm. 2001. *Demokratische Konsolidierung im postsozialistischen Europa: die Rolle der politischen Institutionen*. Opladen: Leske+Budrich.

Benoit, Kenneth, and Michael Laver. 2006. *Party Policy in Modern Democracies*. London/New York: Routledge.

Biernat, Stanisław, and Monika Kawczyńska. 2019. The Role of the Polish Constitution (pre-2016): Development of a Liberal Democracy in the European and International Context. In *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law*, ed. Anneli Albi and Samo Bardutzky, 745–793. The Hague: T.M.C. Asser Press.

Blokker, Paul. 2017. The Romanian Constitution and Civic Engagement. *ICL Journal* 11: 437–455. https://doi.org/10.1515/icl-2017-0038.

———. 2020. Building Democracy by Legal Means? The Contestation of Human Rights and Constitutionalism in East-Central Europe. *Journal of Modern European History* 18: 335–351. https://doi.org/10.1177/1611894420925756.

Bobek, Michal. 2007. Iudex Ex Machina: Institutional and Mental Transitions of Central and Eastern European Judiciaries. In *Judicial Reforms in Central and Eastern European Countries*, ed. Ramona Coman and Jean-Michael de Waele, 107–134. Brugge/Baden-Baden: Vanden Broele/Nomos.

———. 2015. Judicial Selection, Lay Participation, and Judicial Culture in the Czech Republic: A Study in a Central European (Non)Transformation. In *Fair Reflection of Society in Judicial Systems – A Comparative Study*, ed. Sophie Turenne, 121–146. Springer Cham.

Bobek, Michal, and David Kosař. 2014. Global Solutions, Local Damages: A Critical Study in Judicial Councils in Central and Eastern Europe. *German Law Journal* 15: 1257–1292. https://doi.org/10.1017/S2071832200019362.

———. 2017. 'Euro-products' and Institutional Reform in Central and Eastern Europe: A Critical Study in Judicial Councils. In *Central European Judges Under the European Influence: The Transformative Power of the EU Revisited*, ed. Michal Bobek, 165–196. Oxford/Portland: Hart Publishing.

Bodnar, Adam. 2010. The Judiciary in Poland After 20 Years of Transformation. In *Democracy in Poland 1989–2009: Challenges for the Future*, ed. Jacek Kucharczyk and Jarosław Zbieranek, 31–50. Warsaw: Institute of Public Affairs.

———. 2014. Res Interpretata: Legal Effect of the European Court of Human Rights' Judgments for Other States than Those Which Were Party to the Proceedings. In *Human Rights and Civil Liberties in the 21st Century*, ed. Yves Haeck and Eva Brems, 223–262. Dordrecht: Springer Netherlands.

Bojarski, Lukasz, and W. Stemker Köster. 2011. *The Slovak Judiciary: Its Current State and Challenges*. Bratislava: Open Society Foundation.

Bos, Ellen. 2022. Macht zementiert. Orbáns Fidesz gewinnt die Wahlen in Ungarn. *Osteuropa* 72: 133–153.

Bossong, Raphael. 2020. Rechtsstaatlichkeit in der EU: die Debatte über eine Einschränkung von Finanzzahlungen und ungelöste Grundsatzkonflikte. *SWP-Aktuell 72*. https://doi.org/10.18449/2020A72.

Boulanger, Christian. 2006. Europeanization Through Judicial Activism? The Hungarian Constitutional Court's Legitimacy and the 'Return to Europe'. In *Spreading Democracy and the Rule of Law? The Impact of EU Enlargement on the Rule of Law, Democracy and Constitutionalism in Post-Communist Legal Orders*, ed. Wojciech Sadurski, Adam Czarnota, and Martin Krygier, 263–280. Dordrecht: Springer.

Bozóki, András. 2008. Consolidation or Second Revolution? The Emergence of the New Right in Hungary. *Journal of Communist Studies and Transition Politics* 24: 191–231. https://doi.org/10.1080/13523270802003046.

Braithwaite, Biljana, Catharina Harby, and Goran Miletić, eds. 2021. *Independence and Impartiality of the Judiciary. An Overview of Relevant Jurisprudence of the European Court of Human Rights*. AIRE Centre. https://www.rolplatform.org/publications/. Accessed 13 February 2024.

Bříza, Petr. 2009. The Czech Republic: The Constitutional Court on the Lisbon Treaty Decision of 26 November 2008. *European Constitutional Law Review* 5: 143–164. https://doi.org/10.1017/S1574019609001436.

Brunner, Georg. 1992. Developments of Constitutional Judiciary in Eastern Europe. *Review of Central and East European Law* 18 (6): 535–553.

Bucholc, Marta. 2022. Abortion Law and Human Rights in Poland: The Closing of the Jurisprudential Horizon. *Hague Journal on the Rule of Law* 14: 73–99. https://doi.org/10.1007/s40803-022-00167-9.

Bugaric, Bojan. 2015. A Crisis of Constitutional Democracy in Post-Communist Europe: 'Lands in-Between' Democracy and Authoritarianism. *International Journal of Constitutional Law* 13: 219–245. https://doi.org/10.1093/icon/mov010.

Buzogány, Aron, and Mihai Varga. 2021. Illiberal Thought Collectives and Policy Networks in Hungary and Poland. *European Politics and Society* 24: 40–58. https://doi.org/10.1080/23745118.2021.1956238.

Cannoot, Pieter. 2016. Baka v. Hungary: Judicial Independence at Risk in Hungary's New Constitutional Reality. *Strasbourg Observers*. https://strasbourgobservers.com/2016/07/12/baka-v-hungary-judicial-independence-at-risk-in-hungarys-new-constitutional-reality/. Accessed 30 March 2022.

Carp, Radu. 2014. Mecanismul de Cooperare şi Verificare, principiile subsidiarității, proporționalității şi statul de drept – armonie perfecta sau acomodare imcompletă? *Judicial Doctrine & Case-Law* 3: 211–232.

Cichocki, Piotr. 2012. Polish Attitudes Towards the European Union. *Przegląd Zachodni* 340: 265–277.

CoE [Council of Europe, Venice Commission]. 1997. *The Composition of Constitutional Courts*. CDL-STD(1997)020. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD(1997)020-e. Accessed 16 May 2024

———. 2017. CDL-AD(2017)031. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282017%29031-e. Accessed 16 May 2024

CoE [Council of Europe]. 2016. Challenges for Judicial Independence and Impartiality in the Member States of the Council of Europe, Information Document SG/Inf(2016)3rev. https://rm.coe.int/sginf-2016-3rev-challenges-judicial-independence-/16807778b9. Accessed 16 May 2024

———. 2018. *European Judicial Systems. Efficiency and Quality of Justice*. CEPEJ STUDIES No. 26. https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c. Accessed 16 May 2024

Coman, Ramona. 2014. 'Quo Vadis' Judicial Reforms? The Quest for Judicial Independence in Central and Eastern Europe. *Europe-Asia Studies* 66: 892–924.

———. 2022. *The Politics of the Rule of Law in the EU Polity: Actors, Tools and Challenges*. Cham: Palgrave Macmillan.

Coman, Ramona, and Cristina Dallara. 2012. Judicial Independence in Romania. In *Judicial Independence in Transition*, ed. Anja Seibert-Fohr, 835–881. Berlin/Heidelberg: Springer.

Cserne, Peter. 2017. Formalism in Judicial Reasoning: Is Central and Eastern Europe a Special Case? In *Central European Judges Under the European Influence: The Transformative Power of the EU Revisited*, ed. Michal Bobek, 23–42. Oxford: Hart Publishing.

Čuroš, Peter. 2021. Panopticon of the Slovak Judiciary-Continuity of Power Centers and Mental Dependence. *German Law Journal* 22: 1247–1281. https://doi.org/10.1017/glj.2021.62.

———. 2023. Attack or Reform: Systemic Interventions in the Judiciary in Hungary, Poland, and Slovakia. *Oñati Socio-Legal Series*: 1–33. https://doi.org/10.35295/osls.iisl/0000-0000-0000-1393.

David, Paul A. 2000. Path Dependence, Its Critics, and the Quest for 'Historical Economics'. In *Evolution and Path Dependence in Economic Ideas*, ed. Pierre Garrouste and Stavros Ioannides, 15–40. Edward Elgar Publishing.

David, Roman. 2006. From Prague to Baghdad: Lustration Systems and Their Political Effects. *Government and Opposition* 41: 347–372. https://doi.org/10.1111/j.1477-7053.2006.00183.x.

De Raadt, Jasper. 2009. Contested Constitutions. Legitimacy of Constitution-Making and Constitutional Conflict in Central Europe. *East European Politics and Societies* 23: 315–338.

Diemer-Benedict, Tanja. 1998. Die Grundrechte in der neuen polnischen Verfassung. *Zeit-schrift für ausländisches öffentliches Recht und Völkerrecht AOERV* 58: 205–238.

Dimitrova, Antoaneta L. 2010. The New Member States of the EU in the Aftermath of Enlargement: Do New European Rules Remain Empty Shells? *Journal of European Public Policy* 17 (1): 137–148.

Dimitrova, Antoaneta, and Geoffrey Pridham. 2004. International Actors and Democracy Promotion in Central and Eastern Europe: The Integration Model and Its Limits. *Democratization* 11: 91–112. https://doi.org/10.1080/13510340412331304606.

Doroga, Sorina, and Raluca Bercea. 2023. The Role of Judicial Associations in Preventing Rule of Law Decay in Romania: Informal Communication and Strategic Use of Preliminary References. *German Law Journal* 24: 1393–1411. https://doi.org/10.1017/glj.2023.69.

Duleba, Alexander. 1997. Democratic Consolidation and the Conflict Over Slovakian International Alignment. In *Slovakia: Problems of Democratic Consolidation and the Struggle Over the Rules of the Game, Bratislava*, ed. Soňa Szomolányi and John A. Gould, 209–230. Bratislava: Slovak Political Science Association and Friedrich Ebert Foundation.

Dvořáková, Vladimíra. 2020. *O prostoru korupčních příležitostí. Kdy, kde a jak se vytváří v České republice*. Praha: Sociologické nakladatelství.

Elster, Jon. 1991. Constitutionalism in Eastern Europe: An Introduction. *University of Chicago Law Review* 58 (2): Article 3.

———. 1993. Constitution-Making in Eastern Europe: Rebuilding the Boat in the open Sea. *Public Administration* 71 (1–2): 169–2017.

Elster, Jon, Claus Offe, and Ulrich K. Preuss. 1998. *Institutional Design In Post-Communist Societies: Rebuilding the Ship at Sea*. Cambridge: Cambridge University Press.

ENCJ. 2015. *Minimum Judicial Standards V. Disciplinary Proceedings and Liability of Judges*. ENCJ Report 2014-2015. https://www.encj.eu/images/stories/pdf/GA/Hague/encj_report_minimum_standards_v_adopted_ga_june_2015.pdf.

Enyedi, Zolt, and Lukáš Linek. 2008. Searching for the Right Organization: Ideology and Party Structure in East-Central Europe. *Party Politics* 14: 455–477. https://doi.org/10.1177/1354068808090255.

European Commission. 2014. *Annex 25 Slovakia to the EU Anti-Corruption Report*. COM(2014) 38 Final, Brussels, 3.2.2014.

European Commission. 2018. *Report on Progress in Romania Under the Cooperation and Verification Mechanism, COM(2018) 851 Final*. Strasbourg, 13th November 2018.

———. 2020. *2020 Rule of Law Report. The rule of law situation in the European Union*. COM (2020) 580 final.

———. 2021. *2021 Rule of Law Report*. COM/2021/700 final.

———. 2023. *Perceived Independence of the National Justice Systems in the EU Among the General Public*. Flash Eurobarometer 519. Report.

Fogelklou, Anders. 2002. East European Legal Thinking. *Riga Graduate School of Law Working Papers* 4, 8, 20, 21

Gallagher, Tom. 2008. *Modern Romania: The End of Communism, the Failure of Democratic Reform, and the Theft of a Nation*. New York: New York University Press.

Gaul, Wolfgang. 2002. Sinn und Unsinn internationaler Rechtsberatung. In *Recht in der Transformation: Rechts- und Verfassungswandel in Mittel- und Osteuropa: Beiträge zur Debatte*, ed. Christian Boulanger, 102–124. Berlin: Berliner Debatte Wissenschaftsverlag.

Ghergina, Sergiu, Alexandra Iancu, and Sorina Soare. 2018. Party Membership and Its Conceptualization in Democratizing European Countries: An Introduction. In *Party Members and Their Importance in Non-EU Countries: A Comparative Analysis*, ed. Sergiu Gherginga, Alexandra Iancu, and Sorina Soare, 1–20. London: Routledge.

Göllner, Ralf Thomas. 2022. Verfassungsgebung und Verfassungsentwicklung: Systemische Pathologien in Text und Praxis. In *Das politische System Rumäniens: Entwicklung und Herausforderungen in Europa*, ed. Astrid Lorenz and Daniela-Maria Maris, 121–141. Wiesbaden: Springer.

Gönenç, Levent. 2002. *Prospects for Constitutionalism in Post-Communist Countries*. The Hague/London/New York: Martinus Niijhoff Publishers.

Górski, Grzegorz. 2014. Constitutional Changes in Poland Between 1989 and 1997. *Law and Administration in Post-Soviet Europe* 1: 5–15. https://doi.org/10.2478/lape-2014-0001.

Grajewski, Andrzej. 2007. Lustration in Polen – der Umgang mit der Volksrepublik. *Polen-Analysen* 17: 2–4.

Grzymala-Busse, Anna, and Abby Innes. 2003. Great Expectations: The EU and Domestic Political Competition in East Central Europe. *East European Politics and Societies* 17: 64–73. https://doi.org/10.1177/0888325402239684.

Grzymala-Busse, Anna, and Pauline Jones Luong. 2002. Reconceptualizing the State: Lessons from Post Communism. *Politics and Society* 30: 529–554. https://doi.org/10.1177/003232902237825.

Gutan, Bianca. 2024. *Are Rights of Judges Becoming Rule of Law Standards in Europe?* Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No. 2024–05. February 14. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4726426. Accessed 16 May 2024

Hájek, Lukáš. 2017. Left, Right, Left, Right... Centre: Ideological Position of Andrej Babiš's ANO. *Politologický časopis/Czech Journal of Political Science* 24: 275–301.

Halmai, Gábor. 2007. Lustration and Access to the Files in Central Europe. In *Lustration and Consolidation of Democracy and the Rule of Law in Central and Eastern Europe*, ed. Vladimira Dvořáková and Anđelko Milardović, 19–43. Zagreb: Political Science Research Centre.

Halmai, Gabór. 2017. The Early Retirement Age of Hungarian Judges. In *EU Law Stories: Contextual and Critical Histories of European Jurisprudence*, ed. Fernanda Nicola and Bill Davies, 471–488. Cambridge: Cambridge University Press.

Havlík, Vratislav, and Vít Hloušek. 2020. Differential Illiberalism: Classifying Illiberal Trends in Central European Party Politics. In *Illiberal Trends and Anti-EU Politics in East Central Europe*, ed. Astrid Lorenz and Lisa H. Anders, 111–136. Cham: Palgrave Macmillan.

Hein, Michael. 2013. *Verfassungskonflikte zwischen Politik und Recht in Südosteuropa. Bulgarien und Rumänien nach 1989 im Vergleich*. Baden-Baden: Nomos.

Hellman, Joel S., Geraint Jones, and Daniel Kaufmann. 2000. *Seize the State, Seize the Day: State Capture, Corruption and Influence in Transition*. *Policy research Working Paper 2444*. Washington, D.C.: World Bank.

Holländer, Pavol. 1992. The New Slovak Constitution: A Critique. *East European Constitutional Review* 1: 16–17.

Horne, Cynthia M. 2009. Late Lustration Programmes in Romania and Poland: Supporting or Undermining Democratic Transitions? *Democratization* 16: 344–376. https://doi.org/10.1080/13510340902732581.

Iancu, Alexandra. 2018. Questioning Anticorruption in Postcommunist Contexts. Romanian MPs from Commitment to Contestation. *Südosteuropa* 66: 392–417. https://doi.org/10.1515/soeu-2018-0030.

———. 2022. Die Unabhängigkeit der Justiz in Rumänien – Narrative und politische Polarisierung. In *Das politische System Rumäniens: Entwicklungen und Herausforderungen in Europa*, ed. Astrid Lorenz and Daniela-Maria Maris, 197–217. Wiesbaden: Springer.

Iancu, Bogdan. 2019. Romania – The Vagaries of International Grafts on Unsettled Constitutions. In *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law National Reports*, ed. Anneli Albi and Samo Bardutzky, 1047–1095. The Hague: Asser Press.

Innes, Abby. 2014. The Political Economy of State Capture in Centrale Europe. *Journal of Common Market Studies* 52: 88–104.

Issacharoff, Samuel. 2015. *Fragile Democracies: Contested Power in the Era of Constitutional Courts*. New York: Cambridge University Press.

Janse, Ronald. 2019. Is the European Commission a Credible Guardian of the Values? A Revisionist Account of the Copenhagen Political Criteria During the Big Band Enlargement. *International Journal of Constitutional Law* 17: 43–65. https://doi.org/10.1093/icon/moz009.

Johnson, Juliet, and Andrew Barnes. 2015. Financial Nationalism and Its International Enablers: The Hungarian Experience. *Review of International Political Economy* 22: 535–569. https://doi.org/10.1080/09692290.2014.919336.

Kahl, Wolfgang. 1994. *Das Grundrechtsverständnis der postsozialistischen Verfassungen. Eine Studie am Beispiel von Polen, Ungarn, Tschechien, Slowakei und Rußland*. Berlin: Duncker & Humblot.

Kaminski, Marek M., and Monika Nalepa. 2006. Judging Transitional Justice: A New Criterion for Evaluating Truth Revelation Procedures. *Journal of Conflict Resolution* 50: 383–408. https://doi.org/10.1177/0022002706287046.

Karolewski, Ireneusz Paweł, and Roland Benedikter. 2017. Poland's Conservative Turn and the Role of the European Union. *European Political Science* 16: 515–534. https://doi.org/10.1057/s41304-016-0002-x.

Kiss, Tamás, and István Gergő Székely. 2021. Populism on the Semi-Periphery: Some Considerations for Understanding the Anti-Corruption Discourse in Romania. *Problems of Post-Communism* 69: 514–527. https://doi.org/10.1080/10758216.2020.1869907.

Klíma, Michal. 2020. *Informal Politics in Post-Communist Europe: Political Parties, Clientelism and State Capture*. London/New York: Routledge.

Kobyliński, Konrad. 2016. The Polish Constitutional Court from an Attitudinal and Institutional Perspective Before and After the Constitutional Crisis of 2015–2016. *Wroclaw Review of Law, Administration & Economics* 6: 94–107.

Koncewicz, Tomasz Tadeusz. 2017. Invalidity of EU Law Before the Polish Constitutional Tribunal: Court of Old Closure(s) or New Opening(s)? In *Central European Judges Under the European Influence: The Transformative Power of the EU Revisited*, ed. Michal Bobek, 295–322. Oxford: Hart Publishing.

Kopecký, Petr. 2004. Power to the Executive! the Changing Executive–Legislative Relations in Eastern Europe. *The Journal of Legislative Studies* 10: 142–153.

Kopecký, Petr. 2005. Parliaments in Central and Eastern Europe: Changing Legislative Institutions. *Sociologický časopis/Czech Sociological Review* 41: 361–373.

Kopecký, Petr, and Cas Mudde. 2002. The Two Sides of Euroscepticism. Party Positions on European Integration in East Central Europe. *European Union Politics* 3 (3): 297–326.

Kopecký, Petr, and Maria Spirova. 2008. Parliamentary Opposition in Post-Communist Democracies: Power of the Powerless. *The Journal of Legislative Studies* 14: 133–159.

Kornai, János. 2015. Hungary's U-Turn: Retreating from Democracy. *Journal of Democracy* 26: 34–48.

Koryś, Piotr, and Maciej Tymniński. 2016. The Unwanted Legacy. In Search of Historical Roots of Corruption in Poland. *Sociologija* 58: 203–219.

Kosař, David. 2008. Lustration and Lapse of Time. *European Constitutional Law Review* 4: 460–487.

———. 2013. The Least Accountable Branch. *International Journal of Constitutional Law* 11: 234–260. https://doi.org/10.1093/icon/mos056.

———. 2017. Politics of Judicial Independence and Judicial Accountability in Czechia: Bargaining in the Shadow of The Law Between Court Presidents and the Ministry of Justice. *European Constitutional Law Review* 13: 96–123.

Kosař, David, and Jan Petrov. 2017. The Architecture of the Strasbourg System of Human Rights: The Crucial Role of the Domestic Level and the Constitutional Courts in Particular. *Heidelberg Journal of International Law* 77: 585–621.

Kosař, David, and Samuel Spáč. 2021. Post-Communist Chief Justices in Slovakia: From Transmission Belts to Semi-Autonomous Actors? *Hague Journal on the Rule of Law* 13: 107–142. https://doi.org/10.1007/s40803-021-00150-w.

Kovács, Kriszta, and Kim Lane Scheppele. 2018. The Fragility of an Independent Judiciary: Lessons from Hungary and Poland – and the European Union. *Communist and Post-Communist Studies* 5: 189–200. https://doi.org/10.1016/j.postcomstud.2018.07.005. ISSN 1873-6920.

Krajewski, Michał. 2018a. Associação Sindical dos Juízes Portugueses: The Court of Justice and Athena's Dilemma. *European Papers* 3: 395–407.

———. 2018b. Who Is Afraid of the European Council? The Court of Justice's Cautious Approach to the Independence of Domestic Judges: ECJ 25 July 2018, Case C-216/18 PPU, The Minister for Justice and Equality v LM. *European Constitutional Law Review* 14: 792–813.

Krok-Paszkowska, Ania. 2001. Divided Government in Poland. In *Divided Government in Comparative Perspective, Comparative Politics*, ed. Robert Elgie, 127–145. Oxford: Oxford University Press.

Krygier, Martin, and Adam Czarnota. 2006. After Postcommunism: The Next Phase. *Annual Review of Law and Social Science* 2: 299–340.

Kucharzyk, Jacek. 2010. Introduction: Polish Democracy and the Challenge of Populism. In *Democracy in Poland 1989-2009: Challenges for the Future*, ed. Jacek Kucharczyk and Jaroslaw Zbieranek, 7–11. Warszawa: Institute of Public Affairs.

Kühn, Zdeněk. 2004. Worlds Apart: Western and Central European Judicial Culture at the Onset of the European Enlargement. *The American Journal of Comparative Law* 52 (3): 531–567.

———. 2010. The Democratization and Modernization of Post-Communist Judiciaries. In *Central and Eastern Europe After Transition: Towards a New Socio-Legal Semantics*, ed. Alberto Febbrajo and Wojciech Sadurski, 177–200. Farnham: Ashgate.

Kuti, Csongor. 2019. Muddling Through Democratic Transition. In *Constitutional Politics and the Judiciary: Decision-Making in Central and Eastern Europe*, ed. Kálmán Pócza, 155–183. London/New York: Routledge.

Lach, Kasia, and Wojciech Sadurski. 2008. Constitutional Courts of Central and Eastern Europe: Between Adolescence and Maturity. *Journal of Comparative Law* 3: 212–233.

Láštic, Erik. 2019. Slovakia: Political Developments and Data in 2018. *European Journal of Political Research Political Data Yearbook* 58: 241–247.

Lendvai, Paul, and Ann Major, eds. 2021. *The Hungarians: A Thousand Years of Victory in Defeat*. Princeton: Princeton University Press.

Leška, Dušan. 2013. Hlavné etapy formovania systému politických strán na Slovensku po roku 1989. *Sociológia* 45: 71–88.

Linek, Lukáš. 2010. *Zrazení snu? Struktura a dynamika postojů k politickému režimu a jeho institucím a jeho důsledky*. Praha: Sociologické nakladatelství.

Lorenz, Astrid, and Lisa H. Anders, eds. 2021. *Illiberal Trends and Anti-EU Politics in East Central Europe*. Cham: Palgrave Macmillan.

Lorenz, Astrid, and Daniela-Maria Mariş, eds. 2022. *Das politische System Rumäniens: Entwicklung und Herausforderungen in Europa*. Wiesbaden: Springer VS.

Lorenz, Astrid, and Dirk Dalberg, eds. 2023. *Das politische System der Slowakei. Konstante Kurswechsel in der Mitte Europas*. Wiesbaden: Springer VS.

Lorenz, Astrid, and Hana Formánková, eds. 2020. *Czech Democracy in Crisis*. Cham: Palgrave Macmillan.

Loužek, Marek. 2006. *Soudcokracie v ČR - fikce, nebo realita? Sborník textů*. Praha: Centrum pro ekonomiku a politiku.

Lungu, Ioana. 2002. Romanian Constitutional Nationalism. *Polish Sociological Review* 140: 397–412.

Malová, Darina. 2001. Slovakia: From the Ambiguous Constitution to the Dominance of Informal Rules. In *Democratic Consolidation in Eastern Europe 1: Institutional Engineering*, ed. Jan Zielonka, 347–377. New York: Oxford University Press.

———. 2017. *Strengthening Social Democracy in the Visegrad Countries*. Limits and Challenges Faced by Smer-SD. FES Prague/Bratislava Analysis. https://library.fes.de/pdf-files/bueros/prag/13217.pdf. Accessed 15 May 2024

Malová, Darina, and Tim Haughton. 2002. Making Institutions in Central and Eastern Europe, and the Impact of Europe. *West European Politics* 25: 101–120.

Mańko, Rafal. 2017. The Impact of EU Membership on Private Law Adjudication in Poland: A Case Study of the Polish Supreme Court's Case Law on Unfair Terms in Consumer Contracts. In *Central European Judges Under the European Influence: The Transformative Power of the EU Revisited*, ed. Michal Bobek, 73–97. Oxford: Hart Publishing.

Markowski, Radoslaw. 1997. Political Parties and Ideological Spaces in East Central Europe. *Communist and Post-Communist Studies* 30: 221–254.

Matczak, Marcin, Matyas Bencze, and Zdenek Kühn. 2010. Constitutions, EU Law and Judicial Strategies in the Czech Republic, Hungary and Poland. *Journal of Public Policy* 30: 81–99.

Matthes, Claudia-Y. 2022. Judges as Activists: How Polish Judges Mobilise to Defend the Rule of Law. *East European Politics* 38: 468–487. https://doi.org/10.1080/21599165.2022.2092843.

Mazák, Ján, and Ladislav Orosz. 2018. Quashing the Decisions on Amnesty in the Constitutional System of the Slovak Republic: Opening or Closing Pandora's Box? *The Lawyer Quarterly* 8: 1–21.

Mendelski, Martin. 2016. Das europäische Evaluierungsdefizit der Rechtsstaatlichkeit. *Leviathan* 44: 366–398.

———. 2020. The Rule of Law. In *The Routledge Handbook of East European Politics*, ed. Adam Fagan and Petr Kopecký, 113–125. London/New York: Routledge.

Mesežnikov, Grigorij, and Ol'ga Gyárfášová. 2018. Slovakia's Conflicting Camps: Explaining Eastern Europe. *Journal of Democracy* 29: 78–90.

Mesežnikov, Grigorij, Miroslav Kollár, and Martin Bútora. 2014. Slovakia. In *Nations in Transit 2014*, 563–584. Freedom House.

Meyer-Sahling, Jan-Hinrik. 2009. Varieties of Legacies: A Critical Review of Legacy Explanations of Public Administration Reform in East Central Europe. *International Review of Administrative Sciences* 75 (3): 509–528.

Micklitz, Hans-W. 2017. Prologue: The Westernisation of the East and the Easternisation of the West. In *Central European Judges Under the European Influence. The Transformative Power of the EU Revisited*, ed. Michal Bobek, 1–12. Oxford/Portland: Hart Publishing.

Miszerak, Martin and Dalibor Rohac. 2017. *Poland's Rush to Banking Sector Socialism*. The Financial Times, 30 June. https://www.ft.com/content/f7283548-5cd1-11e7-b553-e2df1b0c3220. Accessed 9 April 2018

Moses, Jonathon. 2017. *Eurobondage: The Political Costs of Monetary Union in Europe*. Colchester: ECPR Press.

Mudde, Cas. 2007. *Populist Radical Right Parties in Europe*. Cambridge: Cambridge University Press.

Müller, Dietmar. 2021. Verfassungsgebung und Staatlichkeit im östlichen Europa der Zwischenkriegszeit. In *Demokratie versuchen: Die Verfassung in der politischen Kultur der Weimarer Republik*, ed. Dirk Schumann, Christoph Gusy, and Walter Mühlhausen, 107–134. Göttingen: Vandenhoeck & Ruprecht.

Mungiu-Pippidi, Alina. 2010. A House of Cards? Building the Rule of Law in East Central Europe. *Building the Rule of Law in East Central Europe*. https://doi.org/10.2139/ssrn.1686644.

Nalepa, Monika. 2010. *Skeletons in the Closet: Transitional Justice in Post-Communist Europe*. Cambridge: Cambridge University Press.

Naxera, Vladimir. 2013. Pattern of Corruption, Clientelism, and Party Patronage in Central European Communist and Post-Communist Societies. *Politics in Central Europe* 9: 47–68.

Němec, Jan. 2023. Judicial Independence in the Czech Republic – Walking on a Tightrope. In *Rule of Law and the Judiciary*, ed. Astrid Lorenz and Mattias Wendel, 79–98. Baden-Baden: Nomos.

Novak, Stéphanie, Olivier Rozenberg, and Selma Bendjaballah. 2021. Enduring Consensus: Why the EU Legislative Process Stays the Same. *Journal of European Integration* 43: 475–493. https://doi.org/10.1080/07036337.2020.1800679.

O'Dwyer, Conor. 2006. Reforming Regional Governance in East Central Europe: Europeanization or Domestic Politics as Usual? *East European Politics and Societies* 20: 219–253.

Orbán, Viktor. 2020. *Meine kleine Handgranate reicht dafür nicht*. Interview. ZEIT 49/2020, 25. November 2020. https://www.zeit.de/2020/49/viktor-orban-ungarn-europa-corona-hilfe-angela-merkel-menschenrechte.

Parau, Cristina E. 2013. The Dormancy of Parliaments: The Invisible Cause of Judiciary Empowerment in Central and Eastern Europe. *Representation* 49: 267–280. https://doi.org/10.1080/00344893.2013.830480.

———. 2015. Explaining Governance of the Judiciary in Central and Eastern Europe: External Incentives, Transnational Elites and Parliamentary Inaction. *Europe-Asia Studies* 67: 409–442. https://doi.org/10.1080/09668136.2015.1016401.

Pech, Laurent, and Dimitry Kochenov. 2021. *Respect for the Rule of Law in the Case Law of the European Court of Justice: A Casebook Overview of Key Judgments Since the Portuguese Judges Case*, 3. *SIEPS*.

Petrescu, Dragoş. 2007. Dilemmas of Transitional Justice in Post-1989 Romania. In *Lustration and Consolidation of Democracy and the Rule of Law in Central and Eastern Europe*, ed. Vladimira Dvořáková and Anđelko Milardović, 127–151. Zagreb: Political Science Research Centre.

Piana, Daniela. 2010. *Judicial Accountabilities in New Europe: From Rule of Law to Quality of Justice*. Burlington: Ashgate.

———. 2017. Réformes judiciaires et État de droit. Analyse comparée des pays de l'Union européenne. *Droit et société* 95: 177–198.

Pócza, Kálmán. 2021. Umkämpftes Terrain. Politik und Verfassungsgericht in Ungarn seit 1990. In *Das politische System Ungarns. Nationale Demokratieentwicklung, Orbán und die EU*, ed. Astrid Lorenz and Ellen Bos, 75–91. Wiesbaden: Springer VS.

Pócza, Kálmán, Gábor Dobos, and Attila Gyulai. 2019. The Hungarian Constitutional Court: A Constructive Partner in Constitutional Dialogue. In *Constitutional Politics and the Judiciary. Decision-Making in Central and Eastern Europe*, ed. Kálmán Pócza, 96–125. London/New York: Routledge.

Pogány, István. 1993. Constitutional Reform in Central and Eastern Europe: Hungary's Transition to Democracy. *International and Comparative Law Quarterly* 42: 332–355.

Połtorak, Nina. 2017. Changes in the Level of the National Judicial Protection Under the EU Influence on the Example of the Polish Legal System. In *Central European Judges Under the European Influence: The Transformative Power of the EU Revisited*, ed. Michal Bobek, 223–240. Oxford: Hart Publishing.

Pospíšil, Ivo. 2020. Activist Constitutional Court as Utility Tool for Correcting Politics: Structure, Composition and Case-Law. In *Czech Democracy in Crisis*, ed. Astrid Lorenz and Hana Formánková, 133–155. Basingstoke: Palgrave Macmillan.

Přibáň, Jiří. 2017. Constitutional Sovereignty in Post-Sovereign Jurisprudence of the Czech Constitutional Court: From the Lisbon Judgments to the Landtová Ultra Vires Controversy. In *Central European Judges Under the European Influence: The Transformative Power of the EU Revisited*, ed. Michal Bobek, 323–348. Oxford: Hart Publishing.

Priebus, Sonja, and Lisa H. Anders. 2023. Fundamental Change Beneath the Surface: The Supranationalisation of Rule of Law Protection in the European Union. *Journal of Common Market Studies* 62: 224–241.

Priebus, Sonja, and Astrid Lorenz. 2015. Strategische Institutionenpolitik. Inhalte, Effekte und Risiken der Parlamentsreformen in Ungarn seit 2010. *Zeitschrift für Parlamentsfragen* 46: 254–271.

Procházka, Radoslav. 2002. *Mission Accomplished. On Founding Constitutional Adjudication in Central Europe*. Budapest/New York: Central European University Press.

Puchalska, Bogusia. 2005. Polish Democracy in Transition? *Political Studies* 53: 816–832. https://doi.org/10.1111/j.1467-9248.2005.00558.x.

Puleo, Leonardo, and Ramona Coman. 2024. Explaining Judges' Opposition When Judicial Independence Is Undermined: Insights from Poland, Romania, and Hungary. *Democratization* 31: 47–69.

Ram, Melanie H. 2003. Democratization Through European Integration: The Case of Minority Rights in the Czech Republic and Romania. *Studies in Comparative International Development* 38: 28–56.

Rech, Walter. 2018. Some Remarks on the EU's Action on the Erosion of the Rule of Law in Poland and Hungary. *Journal of Contemporary European Studies* 26: 334–345.

Reuters. 2022. European Judges Challenge EU Approval of Poland's Recovery Plan. August 28. https://www.reuters.com/world/europe/european-judges-challenge-eu-approval-polands-recovery-plan-2022-08-28/. Accessed 3 September 2022

Rhodes, Matthew. 2001. Slovakia after Mečiar: A Midterm Report. *Problems of Post-Communism* 48: 3–13.

Sabados, Michael David. 1998. *The Influence of the Judiciary Upon the Development of the Rule of Law in Post-Communist Poland*. Ann Arbor: Ohio State University.

Sadurski, Wojciech. 2002. *Constitutional Justice, East and West: Democratic Legitimacy and Constitutional Courts in Post-Communist Europe in a Comparative Perspective*. The Hague: Kluwer Law International.

———. 2006. EU Enlargement and Democracy in New Member States. In *Spreading Democracy and the Rule of Law? The Impact of EU Enlargement on the Rule of Law, Democracy and Constitutionalism in Post-Communist Legal Orders*, ed. Wojciech Sadurski, Adam Czarnota, and Martin Krygier, 27–49. Wiesbaden: Springer.

———. 2008. *Rights Before Courts: A Study of Constitutional Courts in Post-Communist States of Central and Eastern Europe*. Dordrecht: Springer.

———. 2018. *How Democracy Dies (in Poland): A Case Study of Anti-Constitutional Populist Backsliding*. Sydney Law School Research Paper No. 18/01

Safjan, Marek. 2017. Central and Eastern European Constitutional Courts Facing New Challenges: Ten Years of Experience. In *Central European Judges Under the European Influence: The Transformative Power of the EU Revisited*, ed. Michal Bobek, 375–389. Oxford: Hart Publishing.

Sajó, András. 1995. Reading the Invisible Constitution: Judicial Review in Hungary. *Oxford Journal of Legal Studies* 15: 253–268.

Sajó, András, and Vera Losonci. 1993. Rule by Law in the East Central Europe: Is the Emperor's New Suit a Straightjacket? In *Constitutionalism and Democracy. Transition in the Contemporary World*, ed. Douglas Greenberg, Stanley N. Katz, Melanie Beth Oliviero, and Steven C. Wheatley, 321–335. Oxford: Oxford University Press.

Sasse, Gwendolyn. 2005. *EU Conditionality and Minority Rights: Translating the Copenhagen Criterion into Policy*. EUI Working Papers RSCAS No. 2005/16.

Scheppele, Kim Lane. 2003. Constitutional Negotiations. Political Contexts of Judicial Activism in Post-Soviet Europe. *International Sociology* 18: 219–238.

———. 2019. The Opportunism of Populists and the Defense of Constitutional Liberalism. *German Law Journal* 20: 314–331. https://doi.org/10.1017/glj.2019.25.

Scheppele, Kim Lane, Dimitry Vladimirovich Kochenov, and Barbara Grabowska-Moroz. 2021. EU Values are Law, After All: Enforcing EU Values Through Systemic Infringement Actions by the European Commission and the Member States of the European Union. *Yearbook of European Law* 39: 3–121. https://doi.org/10.1093/yel/yeaa012.

Schmale, Wolfgang. 2001. *Geschichte Europas*. Wien: Böhlau.

Schwartz, Herman. 2000. *The Struggle for Constitutional Justice in Post-Communist Europe*. Chicago: Chicago University Press.

Schwarz, Nerissa. 2010. Minderheitenschutz in der Europäischen Union unter besonderer Berücksichtigung der Roma. In *Migrations- und Integrationsforschung in der Diskussion:*

Biografie, Sprache und Bildung als zentrale Bezugspunkte, ed. Gudrun Hentges, Volker Hinnenkamp, and Almut Zwengel, 111–140. Wiesbaden: VS Verlag für Sozialwissenschaften.

Sekerák, Marián, and Jan Němec. 2023. Slovak Political Parties and Party System: Between Cleavages and Strong Leaders. In *Das politische System der Slowakei*, ed. Astrid Lorenz and Dirk Dalberg, 141–164. Wiesbaden: Springer VS.

Selejan-Guțan, Bianca. 2012. Constitution in Time of Crisis: The Romanian Constitutional Court and Its Enemies. *Revista Român˘a de Drept Comparat* 2: 321–347.

———. 2016. *The Constitution of Romania. A Contextual Analysis*. Oxford: Hart Publishing.

Selejan-Guțan, Bianca, and Horațiu Alexandru Rusu. 2006. *Hotărârile C.E.D.O. în cauzele împotriva Româßniei (1998–2006)*. Bucureşti: Editura Hamangiu.

Semenova, Elena, Michael Edinger, and Heinrich Best. 2013. Patterns of Parliamentary Elite Recruitment in Central and Eastern Europe: A Comparative Analysis. In *Parliamentary Elites in Central and Eastern Europe. Recruitment and Representation*, ed. Elena Semenova, Michael Edinger, and Heinrich Best, 298–321. London/New York: Routledge.

Şerban, Mihaela. 2018. Stemming the Tide of Illiberalism? Legal Mobilization and Adversarial Legalism in Central and Eastern Europe. *Communist and Post-Communist Studies* 51: 177–188.

Shugart, Matthew Soberg, and John M. Carey. 1992. *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*. Cambridge: Cambridge University Press.

Šipulová, Katarína. 2019. The Czech Constitutional Court: Far Away from Political Influence. In *Constitutional Politics and the Judiciary: Decision-Making in Central and Eastern Europe*, ed. Kálmán Pócza, 32–60. London/New York: Routledge.

———. 2020. The Supreme Court – The Story of a (Post)Communist Cinderella. In *Domestic Judicial Treatment of European Court of Human Rights – Beyond Compliance*, ed. David Kosař, Jan Petrov, Katarína Šipulová, Hubert Smekal, Ladislav Vyhnánek, and Jozef Janovský, 103–138. London/New York: Routledge.

Slapnicka, Helmut. 1991. Das tschechoslowakische Verfassungsprovisorium. *Osteuropa-Recht* 37: 257–271.

Šlosarčík, Ivo. 2023. The Future of Rule of Law in the European Union Beyond Polish and Hungarian Controversies. A Czech View. In *Rule of Law and the Judiciary*, ed. Katja Meier, Astrid Lorenz, and Mattias Wendel, 61–78. Baden-Baden: Nomos.

Smilov, Daniel. 2006. EU Enlargement and the Constitutional Principle of Judicial Independence. In *Spreading Democracy and the Rule of Law? The Impact of EU Enlargement on the Rule of Law, Democracy and Constitutionalism in Post-Communist Legal Orders*, ed. Wojciech Sadurski, Adam Czarnota, and Martin Krygier, 313–334. Dordrecht: Springer Netherlands.

Smith-Walter, Aaron, and Michael D. Jones. 2020. Using the Narrative Policy Framework in Comparative Policy Analysis. In *Handbook of Research Methods and Applications in Comparative Policy Analysis*, ed. B. Guy Peters and Guillaume Fontaine, 348–365. Cheltenham/Northampton: Edward Elgar Publishing.

Solska, Magdalena. 2018. The Politics of 'Good Change' in Poland. In *Illiberal and Authoritarian Tendencies in Central, Southeastern and Eastern Europe*, ed. Magdalena Solska, Florian Bieber, and Dane Taleski, 97–122. Peter Lang.

Spáč, Samuel, Katarína Šipulová, and Marína Urbániková. 2018. Capturing the Judiciary from Inside: The Story of Judicial Self-Governance in Slovakia. *German Law Journal* 19: 1741–1768.

Srubar, Ilja. 1998. Elitenwandel in der Tschechischen Republik. *Aus Politik und Zeitgeschichte* 46 (8): 21–32.

Stein, Eric. 1997. Out of Ashes of a Federation. Two New Constitutions. *The American Journal of Comparative Law* 45: 45–59.

Sterbling, Anton. 2003. Eliten in Südosteuropa. Rolle, Kontinuitäten, Brüche. *Aus Politik und Zeitgeschichte* 51 (10–11): 10–17.

Stroschein, Sherrill. 2019. Populism, Nationalism, and Party Politics. *Nationalities Papers* 47: 923–935.

Szanyi, Miklós. 2016. *The Emergence of Patronage State in Central Europe. The Case of FDI-Related Policies in Hungary*. IWE Working Papers 222. Institute for World Economics: Centre for Economic and Regional Studies.

Szczerbiak, Aleks. 2002. Dealing with the Communist Past or the Politics of the Present? Lustration in Post-Communist Poland. *Europe-Asia Studies* 54: 553–572.

———. 2016. Deepening democratIsation? Exploring the Declared Motives for 'Late' Lustration in Poland. *East European Politics* 32: 426–445. https://doi.org/10.1080/21599165.2016.1218333.

———. 2017. Communist-Forgiving or Communist-Purging? Public Attitudes Towards Transitional Justice and Truth Revelation in Post-1989 Poland. *Europe-Asia Studies* 69: 325–347.

Szomolányi, Soňa. 2004. Slovakia: From a Difficult Case of Transition to a Consolidated Central European Democracy. In *Democracy and Market Economics in Central and Eastern Europe: Are New Institutions Being Consolidated?* ed. Tadayuki Hayashi, 149–188. Sapporo: Slavic Research Center, Hokkaido University.

Tănăsescu, Elena Simina, and Bianca Selejan-Guțan. 2018. Formal and Informal Constitutional Amendment Report on Romania. *Romanian Journal of Comparative Law* 9: 389–429.

Tatham, Allan Francis. 2017. 'Keeping the Faith': The Trials and Tribulations of the Hungarian Constitutional Court in Following Its European Vocation. In *Central European Judges Under the European Influence: The Transformative Power of the EU Revisited*, ed. Michal Bobek, 349–374. Oxford: Hart Publishing.

Toplišek, Alen. 2020. The Political Economy of Populist Rule in Post-Crisis Europe: Hungary and Poland. *New Political Economy* 25: 388–403.

Toshkov, Dimiter. 2012. Compliance with EU Law in Central and Eastern Europe: The Disaster that Didn't Happen (Yet). *L'Europe en Formation* 364: 91–109. https://doi.org/10.3917/eufor.364.0091.

Tóth, András, László Neumann, and Hortenzia Hosszú. 2012. In *Hungary's Full-Blown Malaise. In A Triumph of Failed Ideas: European Models of Capitalism in the Crisis*, ed. Steffen Lehndorff, 137–157. Brussels: European Trade Union Institute (ETUI).

Tóth, Gábor Attila, ed. 2013. *Constitution for a Disunited Nation: On Hungary's 2011 Fundamental Law*. Budapest: Central European University Press.

Učeň, Peter. 2018. Slovakia. Freedom House Nations in Transit 2018 Report. https://freedomhouse.org/country/slovakia/nations-transit/2018. Accessed 4 March 2024

UNJR 2020: Four associations of magistrates condemn the attacks against the Constitutional Court that undermine the rule of law and democracy in Romania. https://www.unjr.ro/2020/05/13/four-associations-of-magistrates-condemn-the-attacks-against-the-constitutional-court-that-undermine-the-rule-of-law-and-democracy-in-romania/. Accessed 3 September 2022

Ústavní soud. 2003. Decision 2003/06/11 - Pl. ÚS 11/02: Judges' Salaries. https://www.usoud.cz/en/decisions/2003-06-11-pl-us-11-02-judgessalaries. Accessed 16 May 2024

Vachudova, Milada Anna. 2009. Corruption and Compliance in the EU's Post-Communist Members and Candidates. *Journal of Common Market Studies* 47: 43–62.

Van Elsuwege, Peter, and Femke Gremmelprez. 2020. Protecting the Rule of Law in the EU Legal Order: A Constitutional Role for the Court of Justice. *European Constitutional Law Review* 16: 8–32.

Venice Commission. 2018. *Opinion on Amendments to the Criminal Code and the Criminal Procedure Code*. 116th Plenary Session. October 2018. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)021-e. Accessed 16 May 2024

Verdery, Katherine. 2012. Postsocialist Cleansing in Eastern Europe: Purity and Danger in Transitional Justice. In *Socialism Vanquished, Socialism Challenged: Eastern Europe and China, 1989-2009*, ed. Nina Bandelj and Dorothy J. Solinger, 63–82. New York/Oxford: Oxford University Press.

Von Beyme, Klaus. 1994. *Systemwechsel in Osteuropa*. Frankfurt am Main: Suhrkamp.

Von Steinsdorff, Silvia. 2011. Parlamente: Binnenorganisation im Spannungsfeld von Inklusion und Effizienz. In *Regierungssysteme in Mittel- und Osteuropa: Die neuen EU-Staaten im*

Vergleich, ed. Florian Grotz and Ferdinand Müller-Rommel, 171–193. Wiesbaden: VS Verlag für Sozialwissenschaften.

Voszka, Éva. 2018. Nationalisation in Hungary in the post-crisis year: A specific twist on a European trend? *Europe-Asia Studies* 70: 1281–1302.

Wagnerová, Eliška. 2003. Position of Judges in the Czech Republic. In *Systems of Justice in Transition: Central European Experiences Since 1989*, ed. Jiří Přibáň, Pauline Isobel Roberts, and James Young, 163–179. Burlington: Ashgate Publishing.

Wendel, Mattias. 2023. Enforcing the Independence of National Courts by Means of EU Law: Standards, Procedures and Actors as Exemplified by the Crisis of the Polish Judiciary. In *Rule of Law and the Judiciary*, ed. Katja Meier, Astrid Lorenz, and Mattias Wendel, 123–142. Baden-Baden: Nomos.

Williams, Kieran, Brigid Fowler, and Aleks Szczerbiak. 2005. Explaining Lustration in Central Europe: A 'Post-Communist Politics' Approach. *Democratization* 12: 22–43. https://doi.org/10.1080/1351034042000317943.

Zielonka, Jan. 2013. Introduction: The State of Democracy 20 Years on: Domestic and External Factors. *East European Politics and Societies* 27: 3–25.

Zirk-Sadowski, Marek. 2006. Transformation and integration of legal cultures and discourses – Poland. In *Spreading Democracy and the Rule of Law?: The Impact of EU Enlargement on the Rule of Law, Democracy and Consitutionalism in Post-Communist Legal Orders*, ed. Wojciech Sadurski, Adam Czarnota, and Martin Krygier, 299–311. Dordrecht: Springer Netherlands.

ZOJ ed. 2010. *Five Sentences*. Published on 28 March 2010. http://sudcovia.sk/en/documents/archive/202-five-sentences. Accessed 08 May 2021

———. 2013. http://sudcovia.sk/en/about-us. Accessed 08 May 2021.

Context-Sensitive Mapping of Rule of Law Narratives. Sources and Methods

4

In our study, we define a narrative as a non-episodic way of talking about a subject and relating it to other themes. Therefore, to qualify as a narrative, a statement must be made in several speech acts by different actors in different contexts. Narratives can thus only be identified by systematically searching for recurring definitions, typical justifications and figures of argumentation or repeated acts of linking different subjects in a significant number of speech acts of different actors. In line with this and our research interest, our study covers a period of three decades.

We focus on what has been called a 'social narrative', defined as "a narrative embraced by a group that also tells, in one way or another, something about that group" (Shenhav 2015, p. 19). To distinguish between narratives that can be classified as 'social' and those with limited significance, we used the following selection criteria across all five cases: a narrative had to be used in at least two distinct legislative periods by at least two different actors on at least three occasions. For some of our cases these minimum criteria proved to be too lax, i.e. they resulted in too many social narratives, and we had to apply additional contextual criteria to identify the most important ones. Rather than focusing on the *frequency*, we instead concentrated on the *intensity* of a particular narrative's usage by considering various factors, such as the institutional setting of parliamentary debates, the level of interaction between MPs, and the turnover of speakers representing one party.

While defining a narrative and the period of investigation is relatively straightforward, selecting and analysing the empirical material is methodologically more challenging. Actors may refer to rule of law issues without explicitly naming the concept, or if they do name it, they may associate different meanings with it, depending on the culture and context. In this chapter, we describe how we combined a rigorous comparative inquiry which defines the subject of investigation in line with the current state of research with a sensitivity to the fact that the subject of investigation may not always be immediately apparent in the speech acts and may be understood very differently in our cases.

As mentioned in the introduction and in Chap. 2, we assume that existing theories and concepts on narratives and rule-of-law-related matters provide a valuable point

A. Lorenz et al., *Narrating the Rule of Law*, The Future of Europe,
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of departure, but one fraught with risks. Ways of thinking and speaking are shaped by the "cultural and historical environment" of individuals (Buchanan 2003, p. 145; Kelle and Kluge 2010). Moreover, there is always a risk of confirmation bias, as "(o)ur natural tendency seems to be to look for evidence that is directly supportive of hypotheses we favor and even, in some instances, of those we are entertaining but about which are indifferent" (Nickerson 1998, p. 211). Hence, an inherent risk of deductive research designs is that concepts developed against the background of particular empirical cases become the 'universal' standard for studying other cases. Inquiries may ignore relevant sources or semantic equivalents simply because they do not fit the existing concepts and theories. External analysts might also ignore or misinterpret ideas and references in the empirical material that are specific to a particular context and highly relevant in that case, but are unknown or irrelevant in their context.

A purely inductive approach, in turn, can result in accepting all empirical phenomena that claim to be cases of the rule of law as manifestations of the object under study. As mentioned in Chap. 1, nearly all countries—including autocracies—purport to be guided by the rule of law. In our case, even illiberal actors refer to the rule of law, but this does not necessarily imply that they share a particular understanding of it. The fight for a new order beyond the 'liberal Western model' is explicitly conceived by its supporters as a fight for reinterpreting terms and concepts such as democracy, the people and the rule of law (e.g. Fodor 2021). An inductive approach taking all statements and assertions in the empirical materials at face value can result in conceptual relativism, thus rendering universal values, yardsticks and also criticism impossible (Zapf 2015, p. 98). Supporters of the deductive methodology therefore criticise inductive or contextual approaches, prominent in history, area studies and ethnography, for ignoring normative standards or what has already been 'sufficiently established' theoretically or what has already been elaborated in the form of 'established tools' for operationalising theoretical concepts (Koskenniemi 2013, p. 229; Orford 2017; Feinberg 2007).

In his seminal work on the problems of cross-area conceptual travelling and stretching, Sartori (1970) discussed related trade-offs. While it is clear that the analysis of new cases can motivate researchers to adapt their analytic categories (see also Collier and Mahon Jr. 1993), such attempts to adjust a concept tend "to be matched by losses in connotative precision" (Sartori 1970, p. 1035).

To overcome these obstacles, we combine deductive and inductive elements. We aim to explore and map the rule of law narratives in a way that is open to speakers' references, emphases and explanations, but, at the same time, considers established operationalisations of the rule of law. In doing so, we strive to capture both actors' explicit references to the rule of law, as well as their reference to aspects that they do not explicitly associate with the concept of the rule of law, but which have been defined in comparative research as elements of it. This also allows us to identify both the rule of law references that are and are not in line with established approaches and to be sensitive to the narratives' meaning in a given context.

The following sections provide an overview of our methods. After presenting our sources,[1] we explain how we reconstructed the rule of law narratives employing qualitative content analysis. Finally, we reflect on the limitations of our methodological approach and discuss what conclusions can be drawn from our empirical findings. More detailed information is available in a separate Sources and Method Handbook (Anders et al. 2024).

4.1 Identifying Relevant Parliamentary Debates and Speech Acts

In qualitative research projects, selecting meaningful sources is of utmost importance and often deemed more important than collecting *representative* information (or 'data'), which is more relevant in quantitative research. We tried to combine the best of both worlds, balancing the needs for context sensitivity, comparability and the systematic collection of sources. We invested one and a half to two years in systematically compiling the corpus of primary sources and identifying their relevant parts, with two analysts per country.

To explore parliamentarians' narratives, we gathered speeches from plenary debates[2] stored in digital parliamentary archives. In contrast to many studies of the rule of law, which often focus on a narrow range of sources, mostly government statements, our final collection comprises written verbatim records of hundreds of plenary speeches. Our approach also differs from typical policy analysis using the Narrative Policy Framework (Smith-Walter and Jones 2020). These studies often focus on a particular policy field and debates on issues originating in that field. The rule of law, in contrast, is a cross-sectoral issue. It can be addressed in debates on diverse topics and policy fields. As a result, statements related to the rule of law do not necessarily follow the logic of actors addressing a certain speech setting, plot, characters and favourite policy solutions, a pattern observed in the Narrative Policy Framework, but focus on various issues. To understand how actors in parliaments address and narrate the rule of law in practice, we need to take into account this reality by covering a broader set of debates.

When choosing the relevant sources, we have sought to provide a valid, that is case-sensitive, basis for cross-country comparisons. This necessitated case-specific strategies. Paying due attention to the context of our cases meant, for example, adjusting the periods covered by our analysis in two cases. In general, the period of study starts in the year following the beginning of the transition to democracy and the rule of law, after the Soviet Union had relinquished its hegemonic power in the

[1] We do not use the term 'data' to emphasise the qualitative nature of our research.

[2] For Romania, we included also the so-called "MPs' political statements and interventions" (*Declarații politice şi intervenții ale deputaților*), which differ from standard plenary debates in that they are not interactive. However, they are still a valuable source of information on speakers' views and positions.

macro-region, allowing for independent political rhetoric and action. It was only after 1989 that the new democracies in Central and Eastern European countries removed "communist 'pseudoparliamentary' constraints" (Ilie 2015, p. 6). Accordingly, our body of documents covers the period from 1990 to the end of 2021 for Poland, Hungary and Romania. As Czechia and Slovakia emerged from the split of Czechoslovakia into two independent states in 1993, it was appropriate to analyse each republic's parliamentary discourse from the moment of its newly defined statehood while also considering the constitution-making processes that prepared its founding in late 1992.

We also had to be aware of the different structures of the parliaments, which are unicameral in the case of Hungary and bicameral in the other four cases. For Poland and Czechia, we did not include speeches from the second chambers because bicameralism in both countries is asymmetrical. Essential legislative and oversight powers are vested in the first chamber (Andrews 2014).[3] In Romania, in contrast, the Camera Deputaților and the Senate fulfil almost the same tasks (although this has changed slightly since 2003 (Szabó and Küpper 2021, p. 90)) and are elected similarly, with members of the lower chamber later often elected to the upper chamber. In consequence, debates in both chambers fulfil an equivalent role in the legislative process, and the speech contexts of the deputies and the senators are rather similar. Therefore, we included speeches from both parliamentary chambers.

All the parliamentary debates examined deal with the rule of law in one way or another. However, political debates usually focus on a particular legal or political issue and less on theoretical problems or concepts. Moreover, "parliamentary discourse is audience-oriented", with MPs speaking "in front of a wide (present and virtual) audience" (Ilie 2015, p. 13). In their interventions, speakers may refer to a specific occasion or audience, which does not necessarily require the use of elaborated terms for a detailed rule of law discussion. Nevertheless, they can still refer to established analytical concepts of the rule of law, such as judicial independence or the principles of legality and non-retroactivity. In doing so, individuals may associate different meanings with the rule of law, depending on their "standpoints and representations of reality" and their belonging to different parties or camps (Ilie 2015, p. 7). We aimed to include such implicit references and different understandings when analysing narratives on the rule of law. For this reason, we paid particular attention to identifying speech acts that were relevant to our analysis.

We used two strategies to select the material for our analysis (Fig. 4.1). First, we collected debates in which MPs explicitly referred to the rule of law. Second, considering that political actors may talk about the rule of law and related issues without explicitly referring to the term, we collected debates on key constitutional provisions and legislative proposals regulating the rule of law. These laws

[3] In Czechia, for instance, the Senate cannot veto the passage of legislation, it is excluded from budgetary decisions and from voting on the (non-)confidence in the government. Moreover, it has no question time session with the members of government and no powers to establish a commission of inquiry.

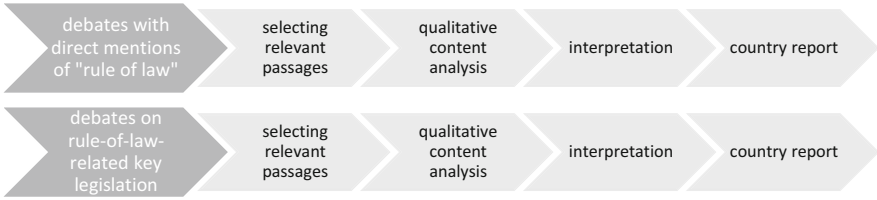

Fig. 4.1 Process of selecting and analysing the empirical material

institutionalise the rule of law or its elements; thus, they represent key legislation related to the subject of our study (even if the speakers do not mention the rule of law explicitly).

Debates with direct mentions of the rule of law. To identify parliamentary speeches with explicit references, we used the search engines available on official parliamentary websites and the official digitalised full-text transcripts of parliamentary debates. We collected all debates on a specific item on the day's agenda in which speakers directly used the term 'rule of law' or its grammatical variations (e.g. all declinations) at least three times. For Slovakia, for example, this meant searching for nine variations of the term '*právny štát*'. We additionally considered relevant derived terms such as '*materiálnoprávny štát*', '*formálnoprávny štát*', '*neprávny štát*', '*právny charakter štátu*' and '*právny a demokratický štát*'. In the following, we also refer to such grammatical and semantical variations when we write about 'mentions of the rule of law'.

In some cases, depending on how parliamentary debates are archived, the search engines allowed us to identify debates on a specific item on the day's agenda with at least three mentions of specific terms. If such a procedure was impossible because the transcribed debates were stored for an entire sitting day or even an entire multi-day plenary session without a machine-readable internal structure, we first retrieved all potentially relevant documents and then extracted relevant passages from them by individual searches.

In Poland, the digital parliamentary archives did not allow the identifying of debates on a specific item of the agenda with at least three mentions of specific terms. Here, we relied on a list from the team of researchers from the Polish Academy of Sciences, who prepared a corpus of all Sejm debates for quantitative text analysis, the Korpus Dyskursu Parlamentarnego.[4] As it revealed that there were considerably more direct mentions than in other countries, we decided to include a selection in our corpus of sources. For Romania, the digital archive of the Camera Deputaților only covers the period from 1996 to 2021. Therefore, it was beyond our capabilities to

[4]For the years 1990 to 2021, this list indicates how many times per day the term 'rule of law' or its grammatical variations were mentioned in Sejm debates. We would like to thank Maciej Ogrodniczuk from the Institute of Computer Science from the Polish Academy of Sciences for providing us with this list based on the Korpus Dyskursu Parlamentarnego. For a description of the corpus see: https://kdp.nlp.ipipan.waw.pl/query_corpus/2/.

systematically include speeches with three references to the '*stat de drept*' for the period of 1990–1995[5] (for further information, see Anders et al. 2024).

Debates on key legislation. To collect debates with implicit references to the rule of law or elements of it in a context-sensitive way, we started by reviewing laws and plenary debates, identified debates on rule of law issues, familiarised ourselves with these debates, and derived a list of the typical rule-of-law-related topics in the five countries. We then supplemented this list based on information from various background interviews[6] and a review of indicators from common rule of law indices (Freedom House, V-Dem, Democracy Barometer and the WJP Rule of Law Index).[7] Guided by this list, we identified key constitutional provisions, constitutional amendments, laws and amendments related to the (institutionalisation of the) rule of law or its elements and identified the respective bills and parliamentary debates (i.e. all readings) for our period of analysis.[8]

After reviewing and comparing the lists of debates on key legislation in our five countries, we selected the debates that touched upon several key aspects of the rule of law. These were debates on constitutions, constitutional laws and laws related to fundamental rights (including anti-discrimination and minority rights), constitutional laws and laws on the appointment of judges, the competences and procedures of the courts of the different branches of the judiciary (constitutional court, administrative court, ordinary courts), the public prosecutor's office and judicial councils, and constitutional laws and laws on corruption as well as on lustration. We also included debates on laws on restitution, lay judges and the ombudsperson. In this way, we sought to capture the broadest possible thematic perception of the rule of law. In order to be able to trace narratives over the whole period of analysis, we aimed to include laws from each legislative term, with an optimal number of one law

[5] We included randomly selected speech acts from days on which key legislation for the rule of law was discussed as well, that the Library of the Camera Deputaților scanned especially for this research. However, this procedure cannot guarantee that we systematically captured all speeches with references to the rule of law for 1990 to 1995.

[6] We approached local MPs, parliamentary staff and academic researchers. In Czechia, we interviewed an MP, a member of the Committee on Constitutional and Legal Affairs of the Chamber of Deputies and experts of the Parliamentary Institute, a research service unit of the Czech Parliament; in Poland members of the Sejm Library and the Sejm Information Centre, as well as members of the Committee on Justice and Human Rights; in Hungary, we spoke with various MPs; in Slovakia with experts of the Parliamentary Institute, a research service unit of the Slovak Parliament, other members of the parliamentary staff and scholars from the Slovak Academy of Sciences; in Romania, we consulted political and judicial experts from academia.

[7] The keywords included: fundamental law, basic rights, constitution, court, corruption, court(s), court procedure, judge(s), judiciary, judicial reform, jurisdiction, legal system, lustration, minority, ombudsman, ordinary court, police, prosecution, restitution, Roma, separation of powers/checks and balances, Supreme Court. These keywords served as a tool to facilitate the search for relevant pieces of legislation.

[8] To ensure that we did not miss any debates on key legislation, we additionally checked the country reports from the East European Constitutional Review, the yearbooks of the European Journal of Political Research, Freedom House reports, and, in the case of Romania, the European Commission's reports on progress under the Cooperation and Verification Mechanism.

per year on average. We analysed between 25 and 33 debates on key legislation in each country[9] and usually focused on the first reading (see Anders et al. 2024 for an overview).

The process described resulted in a collection of plenary debates selected using both inductive and deductive logic. The next step was to identify the relevant passages/speech acts within these debates (see Fig. 4.1). We did this by examining the explicit use of the term 'rule of law' and other terms that might be used synonymously. At the same time, we searched for implicit references by looking at the context of the statements (we examined, for instance, whether the preceding paragraphs mentioned the rule of law) and by checking for references to elements of the rule of law. To prevent individual researchers from relying on their personal understanding of the elements of the rule of law, we jointly developed and inductively compiled a non-exhaustive list of examples of elements or aspects of the rule of law. In addition, our research team regularly exchanged information on the issues related to the rule of law and its elements debated in the five countries. The idea was to gain a common understanding of the multifaceted debates in the five parliaments and to ensure that we all searched for relevant passages in a similar way.

Having identified the relevant paragraphs, we systematised all themes related to the rule of law within these paragraphs. For this purpose, we developed thematic categories to mark the issues addressed in a statement. Drawing on conceptual works on the rule of law (Chap. 2), but also on literature about our region with its distinctive features of transition to democracy (Chap. 3), we first developed provisional categories, systemising all the aspects of or related to the rule of law found in the relevant paragraphs. For example, we created the category 'Judiciary' for all rule-of-law-related statements on the judiciary or the broad category 'RoL' for all statements containing an explicit or implicit definition of the rule of law as well as statements concerning its elements, function and purpose. More context-related categories were 'Lustration' or 'Transition' for statements referring to rule of law issues with post-1989 personnel checks or problems of democratisation and economic liberalisation.

In a pilot phase, we tested whether the provisional categories captured all the rule-of-law-related themes in the sources and supplemented the categories inductively where necessary. This led us, for example, to include the additional category 'value' to capture statements about the rule of law as a value and a precious good worth protecting.[10] We also created technical categories to capture aspects such as the

[9] In Czechia 33, Hungary 25, Poland 32, Romania 32 and Slovakia 33. The lower number of laws in the case of Hungary is related to the lower number of laws adopted in the area of the rule of law after the Hungarian government fundamentally changed the constitutional system and related laws soon after 2010.

[10] For some of the categories that covered broad subject areas, we developed subcategories where these emerged naturally from the empirical material. For example, a closer reading of the text passages that fell under the aforementioned category 'Judiciary' revealed that they focused on the rule of law and the independence of the judiciary, the rule of law and the state of the judicial sector, or the relationship between the political and the judicial realms. Thus, to systematise these statements, we created three subcategories.

occasion of the speech acts, and speaker categories to capture the party affiliation of speakers and whether they were members of the executive.

To ensure a common understanding of which passages of the collected speeches were relevant and how they should be categorised, we regularly tested the consistency of the categorisation across all five cases and team members. We also discussed the meaning and further specified our definitions of the categories to guarantee that they were applied as consistently as possible across our five countries (see Anders et al. 2024 for an overview of the categories).

Again, we had to react to country specifics. For Romania and Czechia, we went through all selected parliamentary debates with at least three direct mentions of the rule of law. For Hungary, Poland and Slovakia, where the term was used much more frequently, this was neither possible nor desirable for the sake of comparability. Thus, in these cases, we categorised only parts of the selected debates.[11]

The result of this process was a selection of parliamentary debates (chosen for their direct mentions of or implicit references to the rule of law) with all the relevant passages categorised by thematic categories. The final step was to decide which of these categorised passages to include in our qualitative content analysis. For the debates with direct mentions of the rule of law, we chose a more technical criterion: for all countries, we decided to code speeches by MPs in which the term 'rule of law' was explicitly mentioned at least once. Within these speeches, we categorised each paragraph explicitly or implicitly related to the rule of law.

For the debates on key legislation, this approach made little sense because these debates by definition revolved around rule-of-law-related constitutional provisions and their amendments, as well as laws and amendments related to rule of law institutions. Using the approach used for the debates with direct mentions of the rule of law would technically have meant that we would have had to consider every paragraph as relevant to our analysis. Therefore, we focused on the most relevant parts of the speeches. We considered parts from speeches in debates on key legislation as relevant only if two conditions were met: (1) if they contained statements on the definition, functions or properties/elements of the rule of law and thus could be assigned to the category 'RoL', and (2) if at least two additional content categories could be assigned (see Anders et al. 2024).

Overall, the process served two goals. First, it provided a selection of relevant sources and prepared them for further analysis by identifying the relevant passages. For Slovakia, for instance, we identified 1573 segments. Second, this procedure allowed the team to develop a shared understanding of the various issues related to the parliamentary discourses around the rule of law in each country under study and thus laid the foundation for our qualitative content analysis.

[11] We thereby tried to keep the corpus of coded debates in each country comparable in terms of the volume. When selecting debates with at least three direct mentions, we ensured that we coded at least four debates per year and at least 20 per cent of the debates per legislative period. In the Polish case, where the debates were exceptionally dense, we selected one debate per year.

4.2 Conducting the Qualitative Content Analysis and Comparing The Results

Because of our time-consuming identification and preparation of the relevant documents and passages, the qualitative analysis of the narratives in the five countries took less time. Nevertheless, this stage of the analysis was methodologically demanding. As outlined above, narratives are neither used systematically nor presented in a single speech act but taken up by various speakers in different contexts. From a methodological point of view, therefore, the crucial question was how "to unravel the form and content of a narrative, especially in circumstances where the narrative might be contained in multiple (. . .) documents" (Prior 2020, p. 550).

To explore and map the rule of law narratives, we analysed all the segments we had identified as relevant. We looked systematically for recurring patterns (typical definitions, justifications, argumentative patterns) that cut across the individual speech acts. To do so in a context-sensitive way, we conducted a *qualitative* content analysis, a text-based method described as a "qualitative data reduction and sense-making effort that (. . .) attempts to identify core consistencies and meanings" (Patton 2002, p. 453). It is particularly useful for the qualitative analysis of a large number of parliamentary debates because it combines two features. On the one hand, it allows for the systematic analysis of selected aspects of large amounts of text. On the other hand, it leaves room for the qualitative interpretation of both the explicit and the deeper meanings of the text, i.e. the (often context-dependent) implicit content (Devi Prasad 2019; Schreier 2012).

Our analysis is rooted in the interpretive strand of qualitative content analysis, which sees the inductive and contextual identification and interpretation of implicit meanings, themes and narratives as the main aim of the method. In this logic, the credibility of findings is guaranteed through 'thick description' rather than intersubjective replicability, as would be the case with quantitatively oriented content analyses (Devi Prasad 2019; Tracy 2010, p. 843).

The central device for structuring the empirical material in every content analysis is the coding scheme, which provides the basis for the rule-guided analysis of textual sources. It contains the main codes that represent the aspects one wants to focus the analysis on and the subcodes that help to specify what is said about the main codes (Schreier 2012, p. 60).[12] As laid out in Chap. 1, we were particularly interested in (1) the meaning and purpose that speakers ascribe to the rule of law and (2) what they say about its constitutive elements, (3) how speakers relate the rule of law and elements of it to democracy, (4) what they see as the central source of legitimacy of the rule of law, (5) how they talk about rule-of-law-related rights and (6) what challenges to the rule of law they identify. Accordingly, our coding scheme

[12] Schreier (2012) writes about categories and subcategories rather than codes and subcodes. We consider these terms to be interchangeable.

contained six main codes ('Purpose', 'Elements', 'Relation to democracy', 'Legitimation', 'Rights' and 'Challenges') and several subcodes. They served to systematise the narratives.

To develop subcodes, we proceeded inductively. Based on our sources, we selected all the categorised paragraphs from which we expected statements related to the six main codes. Starting with one country, we then read all these paragraphs and wrote down keywords to capture the main themes or arguments within these paragraphs as well as the aspects that surprised us, disturbed us or intruded (Sunstein and Chiser-Strater 2012, p. 115, cited in Saldaña 2016, p. 23). Next, we jointly grouped the keywords thematically to generate provisional subcodes that captured the different narratives within the empirical material. With these ideas in mind, we then read the paragraphs for the other countries, again captured their content through keywords and, based on that, revised and refined the provisional subcodes.

For two of the main codes ('Purpose', 'Legitimation'), our inductive procedure yielded a handful of subcodes that directly captured the narratives' essence. With regard to the main code 'Relationship to democracy', the material could be covered by two subcodes—one reflecting a liberal understanding of democracy and the other expressing a majoritarian understanding of democracy. For the main codes 'Rights' and 'Challenges', the statements made were far more multifaceted and diverse. Here, we used the subcodes to systematise the themes addressed by speakers, and the narratives were identified later through qualitative interpretation of the text passages that fell into a particular subcode. We read the passages, looked for typical definitions, justifications and argumentative patterns and then grouped the empirical material accordingly. A similar procedure was employed for the last main code 'Elements', where we first identified all the elements of the rule of law as mentioned by the speakers in the analysed debates and then grouped these elements into a few thematically distinct groups that served to interpret the statements and identify narratives.

In our qualitative content analysis of selected parliamentary debates, all text passages identified as relevant to the rule of law narratives formed our sources. The units of coding were paragraphs. They could be assigned to multiple codes if their content referred to different issues, e.g. the purpose of the rule of law or its legitimation. To ensure reliable coding, we produced a codebook describing all codes and providing detailed coding instructions. During the coding process, all codes and subcodes were discussed repeatedly within the team to check that they were sufficiently abstract to reflect the statements made in all five countries. In addition, we regularly compared the content of the text segments coded with the residual subcodes to see if we needed new subcodes to capture all the topics mentioned in the empirical material (Schreier 2012, p. 77). Since identifying the narratives required scholarly interpretation, it was important for us to have country experts perform a context-sensitive reading of the speech acts instead of relying on more technical coder-independent coding.

This stage of the investigation resulted in a refined selection of text segments with attributed codes and subcodes.[13] These systematically categorised text passages were then interpreted by individual experts to identify significant narratives in a country under study. For every main code, the country experts elaborated a report providing information on identified narratives and their contextual features.

Firstly, we were interested in the prevalence or contentiousness of certain narratives among political parties. Therefore, we analysed whether particular narratives were *overlapping*, *diverging* or *one-sided*. Overlapping narratives refer to those used by representatives of different political parties, regardless of their competitive or cooperative relationships and ideological or programmatic backgrounds. Although there may be slight differences in their wording, the core messages of overlapping narratives are identical. Therefore, there is no substantive conflict between the speakers, even though, depending on the circumstances of the debate, particularly the relations between the government and opposition, these narratives can serve ad hoc political struggles. Diverging narratives represent narratives that are not linked to the current political issue but rather to party ideology, a party's agenda or to long-term inter-party competition. Counter-narratives used by other actors can mirror this conflict. *One-sided* narratives are used by only one party or a group of like-minded parties without their counterparts taking an explicit position on them in favour of focusing on other issues.

Secondly, we also sought to capture the evolution of the use of the identified narratives over time. Within the framework of a temporal comparison within each case (country), we focused on whether changes in the intensity of the use of the narratives in question can be observed at specific periods (legislative terms, periods of cohabitation, waves of legislation etc.). The temporal aspect of our analysis intersected with the dimension mentioned above, where we also looked at whether the type of a particular narrative changed over time, e.g. from diverging to overlapping or vice versa.

The 30 reports produced for the six thematic categories (main codes) for each of the five examined countries served as the basis for a cross-country comparison. Figure 4.2 illustrates the framework of the comparative analysis presented in Chap. 5.

To ensure the trustworthiness and plausibility of our interpretative work, the empirical chapters rely on ample direct quotations to provide evidence for our findings. In doing so, we enable readers to gain insights into the various discourses and narratives we have identified and allow them "to evaluate the evidence without relying entirely on the author's own authority" (Gerring 1998, p. 298).

To understand the proceedings in parliaments and the statements of the MPs in more detail, we also conducted interviews with ten politicians per country. We also interviewed 50 judges to get an insight into typical characteristics of rhetoric and

[13] For example, in the sources from the Slovak parliament, we marked 613 passages with the code 'Challenges', 270 with the code 'Elements', 164 with 'Rights', 72 with 'Legitimation', 64 with 'Purpose' and 49 with 'Relation to Democracy'.

Fig. 4.2 Dimensions of Comparison

lines of political argumentation perceived by the judicial sector. The 100 interviews also served as a good foundation for determining to what extent politicians' statements differ and whether the commonalities and differences are valid for all countries under study. Among the politicians interviewed were interlocutors from the whole ideological spectrum of party politics. However, since the interviews tend to reflect how political and judicial actors *nowadays* perceive the rule of law and its elements, and we do not want to accentuate present narratives, this book relies on them only as background information.

4.3 How to Interpret the Findings

Overall, our sources provide a novel basis for analysing rule of law narratives and perceptions. The principal added value of our collection of documents is that it allows for a context-sensitive exploration of the wide variety of meanings and issues related to the rule of law, covering both the explicit and the context-specific implicit references to the rule of law. Based on this, we can systematically analyse narratives on the rule of law in the parliaments of East Central Europe and, for the first time, make the relevant debates accessible to a broader public.

At the same time, the particularities of our collection of primary documents need to be taken into account when interpreting the results, as they limit the possibility of generalising from our analysis. They arise from (1) the strategy of compiling the relevant sources, (2) the particular institutional contexts, (3) the specific party organisation and (4) the peculiarities of politicians' rhetoric.

For this reason, we recommend that readers, firstly, read our analysis as a description of narratives, not of policies or political activities surrounding the rule of law. Our strategy for compiling the sources was not geared to explaining policy

decisions, but to observing the use of terms and related arguments. This can entail that particularly polarised debates (which might have been relevant for decisions on certain rule-of-law-related issues) are not included in our corpus. Also, since we first identified the most important constitutional provisions, laws and amendments related to the rule of law or its elements and then collected the corresponding parliamentary debates, our corpus does not contain debates on rule-of-law-related bills that were not passed because MPs could not reach a consensus.[14] This means that the sampled material does not represent the full range of opposition activities, which generally did not succeed in getting their own bills passed.

Secondly, one needs to be aware that the relevance of certain narratives cannot be assessed by calculating how often certain statements are made. Instead, we classified statements as relevant based on case interpretation. This is because the speeches analysed are given by speakers embedded in very different institutional contexts. These have an impact on who has the right to speak in the plenum, for instance. The rules of procedure regulate the order of speakers and the time allocated to speeches differently. Under standard procedures, the speaking time of MPs in Czechia is not subject to any time limitations, unlike the other four cases. Furthermore, the importance of the plenary and the committees differs across countries. In two of our five cases (Chechia and Slovakia), committees only consider bills after the basic principles of a bill have been agreed in the plenary first reading (Kopecký 2004, p. 147), which influences what is discussed in plenary and in what detail.

Other factors also affect the issues that are raised and the emphasis placed on them. In Poland, for example, the ombudsperson (officially called Commissioner for Citizens' Rights) is constitutionally obliged to "annually inform the Sejm and the Senate about his activities and report on the degree of respect accorded to the freedoms and rights of persons and citizens" (Constitution of the Republic of Poland, Article 212). These reports are regularly followed by debates in the plenary. As a result, the Polish case is likely to have more debates related to citizens' freedoms and rights than the other cases in our sample, which does not necessarily imply that these issues are more critical for Polish MPs.[15] Furthermore, as amply discussed in Chap. 2, specific events such as the upcoming EU accession or the logic of party competition may also affect the emphasis on the rule-of-law-related issues and the ways in which they are discussed. A greater number of references to matters relating to the rule of law does not necessarily mean that the level of attention paid to the rule of law was higher.

Thirdly, it is important to bear in mind that the narratives described in this book do not represent every individual MP and were sometimes used in a context of fluid party memberships. Our study intends to describe everyday speaking in parliament and accordingly our selection of quotes/speakers aims to reflect the discourse on the

[14] We only included these debates if actors referred directly to the rule of law at least three times.

[15] Similar yearly reports are submitted and debated in the Czech and Slovak parliaments. They did not enter our corpus in such a scale probably because MPs did not use the term 'rule of law' as often as the Polish MPs.

rule of law in parliaments. This everyday speaking is influenced by party organisation, such as internal functions and hierarchies. Therefore, quotes were not evenly distributed among MPs. We found more quotes from certain people simply because they were specialists in their party on issues around the rule of law or were particularly high-ranking in their party. For the governing parties, it was primarily the responsible ministers who made the relevant speeches. Although we tried to provide a relatively broad picture of statements, it would be inaccurate to cite more backbenchers if the few high-ranking politicians were the more relevant ones. We consider their statements to represent social narratives because their parties supported them as holders of the key functions. However, we cannot rule out the possibility that people who did not speak might have described the purpose, elements and other features of the rule of law differently. These few people per country have sometimes belonged to different parties over the course of time, which means that inferring party positions from quotes in this book might be somewhat misleading.

Fourthly, one needs to remember what we have already mentioned in the introduction—the narratives that we reconstruct do not necessarily reflect the individual speakers' perceptions. Political actors, reacting to their particular environments, can communicate strategically (Chaps. 2 and 3). As politicians they can be expected to debate controversial issues rather than the uncontroversial ones or the issues everyone takes for granted. If, for example, the independence of the courts is not discussed at length in parliaments, this does not mean that it is irrelevant to the speakers but might indicate that the actors agree that this independence is a necessary element of the rule of law. Again, this underlines that the frequency of specific statements does not tell us anything about the importance that speakers in the five countries attach to certain topics. In our study we do not pay too much attention to the frequency, but more to the content of statements, basing our interpretation on in-depth knowledge of the cases.

References

Anders, Lisa H., Astrid Lorenz, Dietmar Müller, and Jan Němec. 2024. *Rule of Law in East Central Europe (Re-Act) – Sources and Methods Handbook*. Vol. V1. GlobeData. https://doi.org/10.48736/GD1ZDKDRH.

Andrews, Josephine T. 2014. Legislatures in Central and Eastern Europe. In *The Oxford Handbook of Legislative Studies*, ed. Shane Martin, Thomas Saalfeld, and Kaare W. Strøm, 647–660. Oxford: Oxford University Press.

Buchanan, James M. 2003. The Constitutional Way of Thinking. *Supreme Court Economic Review* 10: 143–155. https://doi.org/10.1086/scer.10.1147142.

Collier, David, and James E. Mahon Jr. 1993. Conceptual "Stretching" Revisited: Adapting Categories in Comparative Analysis. *American Political Science Review* 87: 845–855.

Devi Prasad, Bammidi. 2019. Qualitative Content Analysis: Why Is It Still a Path Less Taken? *Forum Qualitative Sozialforschung / Forum: Qualitative Social Research* 20. https://doi.org/10.17169/fqs-20.3.3392.

Feinberg, Richard. 2007. Dialectics of Culture: Relativism in Popular and Anthropological Discourse. *Anthropological Quarterly* 80: 777–790.

Fodor, Gábor G. 2021. *Az Orbán-szabály: tíz fejezet az Orbán-korszak első tíz évéről. Közép-és Kelet-európai Történelem és Társadalom Kutatásáért Közalapítvány*. Kkettk Alapítvány.

Gerring, John. 1998. *Party Ideologies in America, 1828-1996*. Cambridge: Cambridge University Press.

Ilie, Cornelia. 2015. Parliamentary Discourse. *The International Encyclopedia of Language and Social Interaction*: 1–15.

Kelle, Udo, and Susann Kluge. 2010. *Vom Einzelfall zum Typus: Fallvergleich und Fallkontrastierung in der qualitativen Sozialforschung*. Wiesbaden: VS Verlag für Sozialwissenschaften.

Kopecký, Petr. 2004. Power to the Executive! The Changing Executive–Legislative Relations in Eastern Europe. *The Journal of Legislative Studies* 10: 142–153.

Koskenniemi, Martti. 2013. Histories of International Law: Significance and Problems for a Critical View. *Temple International and Comparative Law Journal* 27: 215–240.

Nickerson, Raymond. 1998. Confirmation Bias: A Ubiquitous Phenomenon in Many Guises. *Review of General Psychology* 2: 175–220.

Orford, Anne. 2017. International Law and the Limits of History. In *The Law of International Lawyers: Reading Martti Koskenniemi*, ed. Werner Wouter, Marieke de Hoon, and Alexis Galán, 297–320. Cambridge: Cambridge University Press.

Patton, Michael Q. 2002. *Qualitative Research & Evaluation Methods*. Thousand Oaks: Sage Publications Ltd.

Prior, Lindsay. 2020. Content Analysis. In *The Oxford Handbook of Qualitative Research*, ed. Patricia Leavy, 540–568. New York: Oxford University Press.

Saldaña, Johnny. 2016. *The Coding Manual for Qualitative Researchers*. Los Angeles: Sage Publications Ltd.

Sartori, Giovanni. 1970. Concept Misformation in Comparative Politics. *American Political Science Review* 64: 1033–1053.

Schreier, Margit. 2012. *Qualitative Content Analysis in Practice*. London: Sage Publications Ltd.

Shenhav, Shaul R. 2015. *Analyzing Social Narratives*. New York/London: Routledge.

Smith-Walter, Aaron, and Michael D. Jones. 2020. Using the Narrative Policy Framework in Comparative Policy Analysis. In *Handbook of Research Methods and Applications in Comparative Policy Analysis*, ed. B. Guy Peters and Guillaume Fontaine, 348–365. Cheltenham/ Northampton: Edward Elgar Publishing.

Sunstein, Bonnie Stone, and Elizabeth Chiseri-Strater. 2012. *FieldWorking: Reading and Writing Research*. 4th ed. Boston: Badford/St. Martin's.

Szabó, Zsolt, and Herbert Küpper. 2021. Legislation and Legislative Process in Eastern Europe. *International Journal of Parliamentary Studies* 1: 73–108.

Tracy, Sarah J. 2010. Qualitative Quality: Eight 'Big-Tent' Criteria for Excellent Qualitative Research. *Qualitative Inquiry* 16: 837–851.

Zapf, Holger. 2015. Die Relativismus-Universalismus-Debatte: Argumente in einem ungelösten Streit. In *Transkulturelle politische Theorie: Eine Einführung*, ed. Sybille de La Rosa, Sophia Schubert, and Holger Zapf, 87–111. Wiesbaden: Springer.

What the Rule of Law Is About. Narrating Its Foundations

5

The term 'rule of law' has been present in the parliamentary debates analysed since the beginning of our period of investigation in all countries. Our study of the hundreds of documents for Czechia, Hungary, Poland, Romania and Slovakia shows that the term was often used interchangeably with concepts such as '(national) constitution', 'constitutional state' or 'constitutionality' (in Czech, for example, *ústavnost*). In general, national constitutions were used as a point of reference and symbol of the rule of law, often combined with an invocation of the political self-empowerment of 1989. When MPs spoke about the purpose of the rule of law, they often considered the historical context and the significance of the democratic transition, emphasising that the constitution and the rule of law have meaning beyond technical and legal aspects. In such cases, a reference to the constitution was much more than a remark about a specific legal document. Politicians associated the constitution with the choice of a particular political regime, as could be deduced from the reference context.

In this chapter we present our analysis of how MPs referred to the foundations of the rule of law, more specifically their narratives about the purpose, elements and sources of legitimacy of the rule of law. We show that in their speeches parliamentarians in these countries agreed on relevant aspects of the foundations of the rule of law and that the mentions of these aspects followed a similar pattern (e.g. that mostly opposition parties used them when criticising the government), although concrete narratives varied. The high proportion of overlapping narratives implies that party ideology only partially structured the way parliamentarians spoke about the purpose, elements and legitimation of the rule of law. Obviously, other factors also influenced the narratives.

Summarising the detailed country reports on the use of narratives in this chapter by country, we found overlaps around a liberal (democratic) conception of the rule of law in the Czech parliament, with narratives established across parties focusing on individual citizens' rights, the limitation of power and the functioning of the system (for the citizens) since the second wave of rule of law legislation outlined in Chap. 3. Throughout the three waves the constitutionality of law or the legality of measures as

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an essential element of the rule of law were mentioned most often, and the codified law tended to rank first when actors spoke about the sources of legitimacy of the rule of law. A greater number of (mostly uncontroversial) narratives were used in the second and third waves of legislation.

Parliamentary discourse in Hungary was characterised by a 'silence' on the foundations of the rule of law during the second wave of post-1989 rule-of-law-related legislation (1998–2010). Before and after, the narratives centred around the limitation of power and the functioning of the system as the principal purposes of the rule of law. Legal stability and certainty, as well as the constitution as a source of legitimacy for the rule of law, received recognition across party lines. There was also rhetorical support for the separation of powers. However, MPs from different parties disagreed on whether the transition beginning in 1989 had led to real system change and whether the rule of law and the legal principles enshrined in the constitution were respected in practice. In the course of these disputes, some established narratives became one-sided, particularly after Fidesz-KDNP took office in 2010.

The discourse in the Polish Sejm shifted from emphasising the purpose of the rule of law of limiting power to its role in making the system work (since the early 2000s). In this context, more attention was paid to effective institutions, the need to fight corruption, and the improvement of the efficiency of the judiciary. From the 1990s onwards, conservative and right-wing parties highlighted the importance of justice and moral values for the rule of law and questioned the legitimacy of the 1989 transition, with its perceived lack of lustration, and the 1997 referendum on the constitution. While the expressed consensus had been fragile before, after 2015 most previously overlapping narratives collapsed along the lines of government and opposition. In a deeply divided discursive climate, the only overlapping narratives on the legitimacy of the rule of law related to procedures.

In the Romanian parliament, speakers stressed the importance of the rule of law for the functioning of the system since the 1990s and linked this to EU accession since the second wave of rule of law legislation. During the first cohabitation under President Traian Băsescu (2007), the limitation of power as the purpose of the rule of law and the separation of powers as an element of it received greater attention. In the 1990s, the rule of law was often legitimised with reference to the constitution, which was described as the result of the 1989 revolution. After the turn of the millennium, however, more emphasis was placed on legal processes as a source of legitimacy of the rule of law. Most narratives were used across party lines, including those typically associated with criticism of the government.

Members of the Slovak parliament focused on the limitation of power as the primary purpose of the rule of law, followed by the functioning of the system to attract foreign investment and promote prosperity in general. Constitutionality was emphasised as an element of the rule of law. While, in general, the narratives were shared by all relevant parties, the discourse was marked by repeated controversies between the liberal-conservative bloc and other parties over the relevance of morality and justice in relation to the amnesties granted by Prime Minister Vladimír Mečiar in the 1990s. In addition, overlapping narratives were often linked to

Table 5.1 Focus of the key narratives on the foundations of the rule of law

	CZ	HU	PL	RO	SK
Purpose of the RoL	Limiting power and ensuring the functioning of the system for the citizens	Limiting power and ensuring the functioning of the system	Limiting power and ensuring the functioning (and justice) of the system	Convincing the EU and limiting the president	Limiting power and ensuring the functioning of the system for prosperity
Elements of the RoL	Legal certainty, (equal) rights and effective institutions	Legal certainty, separation of powers and effective institutions	Effective institutions and legality	Separation of powers and legality	Legal certainty and effective institutions
Sources of legitimacy	Codified law and procedures	Codified law and (partly contested) ideas	Procedures and (increasingly contested) ideas	Ideas and procedures	(Contested) ideas and procedures

opposition criticism of the government. The rule of law was perceived to be legitimised mainly through its effective procedures.

A cross-country comparison reveals similarities between parliaments in the way MPs talked about the purpose of the rule of law and its elements. At the same time, we found differences in the legitimation of the rule of law (Table 5.1).

Concerning the **purpose**, parliamentarians emphasised in many statements that the rule of law is about limiting power and ensuring that the system as a whole functions. Particularly with regard to the functioning of the system, MPs from different parties all used similar overlapping narratives. The same cannot be said about the narratives about the limitation of power as the purpose of the rule of law, which were often voiced by opposition parliamentarians criticising the government. This constellation seems to be a dominant pattern of rule of law narratives. It suggests that overlapping narratives should not be interpreted as a lack of competition between the speakers.

When addressing **elements** of the rule of law, MPs in all the parliaments studied paid much attention to legal certainty (or constitutionality and legality in general). Moreover, they frequently emphasised the need for effective institutions across party lines, and there was little dispute about the importance this has for the rule of law. This finding is important because effective institutions receive little attention in various concepts of the rule of law, which often focus on legal principles or norms and at best capture effective institutions indirectly. Another general pattern was that narratives about the separation of powers were more likely to be associated with opposition criticism of the government and with one-sided or divergent narratives than narratives relating to other elements of the rule of law.

In sum, ensuring the functioning of the state or the whole system and limiting power as the purpose of the rule of law and constitutionality of law and legal certainty as an element of it were parts of the key narratives in all parliaments. Despite being highly esteemed, the purpose to limit power and also the separation of powers as elements of the rule of law were typically associated with criticism of government action by opposition parties. Thus, they became strongly connected to inter-party competition.

The patterns of narrating the **legitimation** of the rule of law, by contrast, differed across national parliaments (Table 5.1). While MPs in Czechia tended to emphasise codified law—more precisely, the national constitution—as the primary source of legitimacy, in Romania, Slovakia and Poland ideas played a more prominent role (even though the narratives on legitimation often included different types of ideas). In Hungary, both codified law and ideas were emphasised. At the same time, certain narratives on the relevance of ideas were not supported by some actors in the Slovak, Hungarian and Polish parliaments. Such ideological differences overshadowed domestic politics (see also Chap. 6).

Other differences included that in our selected sources parliamentarians did not express disagreement about the purpose of the rule of law in Czechia, less disagreement about elements of the rule of law in Romania, and no general disagreement about the sources of legitimacy of the rule of law in the Czech and Hungarian parliaments. In general, the intensity with which the foundations of the rule of law were addressed was lower in the Czech and Romanian parliaments than in the other parliaments.

Concerning the temporal dimension of the narratives of the foundations of the rule of law, the patterns in the five parliaments again exhibited some similarities, namely an increasing number of one-sided or divergent narratives used with high intensity during the second and third waves of legislation described in Sect. 3.2. This reflects the political conflicts of that time (Sects. 3.1 to 3.4). A high intensity of use means that MPs actively addressed a narrative that was also more elaborated and not just briefly or superficially mentioned. Regarding the purpose of the rule of law, we found a few narratives used intensively in the first wave of legislation after 1989. After that, the number of narratives used with particular intensity in a certain wave increased, with most of them being used in the third wave of rule of law legislation. As mentioned, this was accompanied by an increase in one-sided or divergent narratives. The most intensively used and one-sided or divergent narratives on the purpose of the rule of law were found in the parliaments of Hungary, Poland and Slovakia in the third wave of rule of law legislation.

Regarding the elements of the rule of law we identified intensively used narratives mainly in the first and third waves of rule of law legislation. In contrast to the narratives on the purpose of the rule of law, the number of intensively used narratives about elements of the rule of law decreased significantly during the interim period. The number of one-sided or divergent narratives on elements of the rule of law increased in the second wave and was especially high in the third period of rule of law legislation, with particular intensity in that time in Hungary, Poland and Slovakia.

Most narratives on the sources of legitimacy of the rule of law were used with particularly high intensity in the third wave of rule of law legislation, followed by the first and then the second waves. Overall, this shows that narratives about the foundations of the rule of law were used most intensively in the third period. The increased use of narratives on the sources of legitimacy of the rule of law was not accompanied by a notable change of the number of overlapping, one-sided or divergent narratives.

On closer inspection, the temporal dimension of the narratives about the foundations of the rule of law was also influenced by country specifics, such as the recurring debate about the admissibility of retroactive action with regard to the 'Mečiar amnesties' in Slovakia, the relevance of the judiciary in Poland and the alleged need to complete the system change that began in 1989 in Hungary, or the independence of the judiciary as an element of the rule of law in Romania. In relation to such issues, the dynamics of the composition of the parliaments described in Sect. 3.1 contributed to the weakening, disappearance, re-emergence or strengthening of certain narratives over time.

5.1 The Purpose of the Rule of Law

When politicians in the different parliaments referred to the purpose of the rule of law, they often focused on its importance in ensuring checks and balances or, more generally, the limitation of power. At the same time, the specific narratives varied from country to country. *Within* national parliaments, narratives about the purpose of the rule of law overlapped for a considerable time, regardless of the different party affiliations of those using them. This makes the differences in the concrete narratives between countries all the more striking. As mentioned above, the rhetorical consensus eroded after 2006.

As statements on the purpose of the rule of law, we coded those speech acts that referred to its purpose for citizens, society or the political system. We also included statements that addressed the purpose of key elements of the rule of law, such as judicial independence or the separation of powers in general. This approach allowed us to gain a comprehensive understanding of the way MPs addressed the purpose of the rule of law, as arguments about the purpose of the rule of law were often intertwined with arguments about its elements. While, for example, checks and balances were cited as a purpose of the rule of law, the separation of powers was sometimes also named as an element of the rule of law (Sect. 5.2). In such cases, the rule of law was argued to be an end in itself, rather than serving other purposes, and the particular element of the rule of law mentioned was perhaps most closely associated with what the rule of law is about.

MPs in our five countries rarely explicitly stated what they saw as the purpose of the rule of law. Instead, they often made implicit statements, highlighting the relevance of the rule of law (or its specific elements) in relation to other issues. Speakers thus tried to clarify the 'spirit' of the rule of law and its essence. Signal words and phrases that helped us to identify notions of the purpose of the rule of law

in a comparable way across cases included the "function" of the rule of law, and phrases such as the rule of law "should", "serves", "is a basis/guarantee/foundation for", "can provide", "fulfils a certain role" or similar expressions.

Three subcodes were identified based on the state of research and the empirical material. They capture the most frequent themes mentioned in the hundreds of statements related to the purpose of the rule of law.[1] They are broad enough to group most statements and prepare them for comparison yet nuanced enough to capture different lines of argumentation. Under the subcode 'System functioning', we collected all statements in which speakers argued that the rule of law maintains or improves the functioning of the system, provides certainty of expectations, or guarantees security, stability, predictability or legal certainty. The subcode 'Limitation of power' encompasses statements regarding the function of the rule of law in limiting political power or the dominance of specific groups, ensuring the separation of powers (checks and balances), or any other form of restraint of power. We also used this subcode for statements about the existence of equal and individual rights, as well as their exercise and protection. The subcode 'Morality and justice' was assigned to statements that mentioned the role of the rule of law in upholding or enhancing morals or values, such as justice.

Table 5.2 presents the narratives that politicians in parliament used when discussing the purpose of the rule of law. They mostly appeared across the sources over time, but often with greater intensity in a specific period (wave of legislation), as indicated in the table.

The comparative analysis uncovers distinct national temporal patterns. In general, narratives on the limitation of power were used with highest intensity and in all five countries in the third wave of legislation in all parliaments. Narratives about the functioning of the system were particularly significant in the second wave for four of the five cases. Morality and justice was only relevant in three of the cases and without a general temporal pattern.

When speaking about the purpose of the rule of law to limit power, parliamentarians mostly argued that it ensures checks and balances among government branches, especially in the initial legislative terms after 1989, as shown in Table 5.3. This group of narratives on the purpose of the rule of law was utilised by both government and opposition parties. Although specific narratives were almost identical in their content, their users often employed them for political purposes by accusing the government of shortcomings concerning this function of the rule of law. Since the second wave of rule of law legislation, one-sided narratives in this category emerged or were strengthened in Hungary, Poland, Romania and Slovakia.

As Table 5.4 shows, narratives relating the purpose of the rule of law to the functioning of the system were more diverse across the countries. At the same time, we did not find one-sided or diverging narratives in this category.

[1] All statements that mentioned a purpose other than the three mentioned were coded with a 'Remainder' subcode.

Table 5.2 Narratives on the purpose of the rule of law by topic

	1st wave					2nd wave					3rd wave				
	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK
Limitation of power		✓	✓		✓	✓			✓	✓	✓	✓	✓	✓	✓
System functioning		✓		✓		✓		✓	✓	✓	✓	✓			✓
Morality and justice				✓				✓					✓		✓

1st wave: CZ 1992–1998, HU 1990–1998, PL 1990–1997, RO 1990–2004, SK 1992–1998
2nd wave: CZ 1998–2006, HU 1998–2010, PL 1997–2015, RO 2004–2014, SK 1998–2006
3rd wave: CZ 2006–2021, HU 2010–2021, PL 2015–2021, RO 2014–2021, SK 2006–2021

Table 5.3 Narratives on the rule of law as limiting power

	CZ	HU	PL	RO	SK
Overlapping narratives					
RoL serves to ensure checks and balances among government branches.		✓ (1, 3)	✓ (1)	✓ (2)	✓ (1, 3)
RoL serves to limit the state power by law to protect individual rights.	✓ (2, 3)				✓ (2)
RoL is to ensure that everyone is treated equally before the law.	✓ (3)				
One-sided or diverging narratives					
RoL serves to ensure checks and balances and to prevent the abuse of power/to limit the ruling majority/the president.		✓ (3)	✓ (3)	✓ (2)	
RoL serves to limit the state power by law to protect individual rights.					✓ (3)

Waves of rule of law legislation where a particular narrative was used most intensively are indicated in brackets

Table 5.4 Narratives on the rule of law as ensuring the functioning of the system

	CZ	HU	PL	RO	SK
Overlapping narratives					
RoL is to maintain or improve the functioning of the (political) system by ensuring legal stability and predictability.	✓ (2, 3)	✓ (1, 3)			
The EU's recognition of the country's compliance with the RoL in itself serves to stabilise the functioning of the system.				✓ (2, 3)	
RoL creates conditions that attract foreign investors and foster economic development.					✓ (2, 3)
RoL (in terms of effective law enforcement, a well-functioning judiciary and legal stability) underpins citizens' security, public trust and compliance with constitutional principles.			✓ (2)		
RoL provides norms and procedures for a stable functioning of the post-communist society.				✓ (1)	
RoL is to enable the functioning of society and ensure the prosperity of its members.					✓ (3)
One-sided or diverging narratives					
No established narratives were identified in the analysed sources.					

Waves of rule of law legislation where a particular narrative was used most intensively are indicated in brackets

Morality and justice as goals of the rule of law were less frequently mentioned in parliamentary debates. When we identified such narratives, they were often one-sided, with only a few actors using them. It was only during the early 1990s, when actors framed the new rule of law as a means to safeguard the values linked to

Table 5.5 Narratives on the rule of law as ensuring morality and justice

	CZ	HU	PL	RO	SK
Overlapping narratives					
RoL is to safeguard the moral values and justice of the 1989 revolution as enshrined in the constitution.				✓ (1)	
One-sided or diverging narratives					
A just state under the RoL guarantees justice for 'ordinary people' and implies the need for morality and impartiality on the part of the judiciary.			✓ (2, 3)		
RoL has to achieve justice and, if necessary, rectify injustice caused through legal means.					✓ (3)

Waves of rule of law legislation where a particular narrative was used most intensively are indicated in brackets

the departure from the previous communist system, that such narratives overlapped. Table 5.5 displays overlapping narratives on morality and justice solely for Romania during the transition phase. We found no established narratives regarding morality and justice in the analysed sources in Czechia and Hungary.

As Table 5.6 summarises, one-sided or diverging narratives were related to issues around the limitation of power and morality and justice. Is shows that they were mainly used in the third wave of rule of law legislation. We usually did not identify counter-narratives, i.e. with a competing argumentation. Instead, the actors continued with their established narratives or disregarded the new one-sided narratives (or they officially/rhetorically shared the view despite policy differences, as in Hungary).

5.1.1 Czechia: Limiting Power and Ensuring the Functioning of the System for the Citizens

In the Czech parliament, narratives about the purpose of the rule of law centred around citizens' rights, their effective exercise and protection. Statements most frequently referred to the limitation of power and the functioning of the system (for the citizens), and less to issues around morality and justice. In our empirical material, narratives on the purpose of the rule of law dated particularly to the period since the late 1990s, i.e. the second and the third waves of legislation related to the rule of law. Narratives concerning the limitation of power were the most prominent, and they were used across parties. Statements emphasising the functioning of the system as a purpose of the rule of law also overlapped across parties. References to morality and justice were the least frequent, with only episodic appearances across all three waves, which is why they do not qualify as a narrative. Table 5.7 provides an overview of the narratives found in the sources.

Limitation of power. One of the most prominent narratives referring to the limitation of power addressed **the importance of the rule of law in safeguarding citizens' rights**. In general, the law-related speech acts analysed in Czechia centred

Table 5.6 One-sided or diverging narratives on the purpose of the rule of law by general theme

	1st wave					2nd wave					3rd wave				
	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK
Limitation of power									✓			✓	✓		✓
System functioning															
Morality and justice								✓					✓		✓

See Table 5.2 for temporal specification of the waves

Table 5.7 Narratives on the purpose of the rule of law in the Czech Republic

	1992–1998	1998–2006	2006–2021
Limitation of power		RoL safeguards citizens' rights. (overlapping)	RoL is to ensure that everyone is treated equally before the law. (overlapping)
System functioning		RoL promotes legal certainty through the clarity, transparency, predictability and enforcement of rules. (overlapping)	
Morality and justice	*No established narrative identified in the analysed sources*		

around citizens. Despite the wording of Article 1 (1) of the Czech constitution adopted by the parliament in 1992, which stipulates that "The Czech Republic is a sovereign, unitary, and democratic state governed by the rule of law, founded on respect for the rights and freedoms of man and of citizens", in the founding days of the Czech Republic, statements on the relevance of the rule of law in safeguarding citizens' rights appeared sporadically in our selected documents. They became prominent from the late 1990s to the mid-2000s, when the constitution, the Charter of Fundamental Rights and Freedoms and relevant international human rights documents were often referred to in this context.

> In the area of the rule of law, the legislation, the government has sought to ensure that citizens are assured of justice within a reasonable time, (. . .) that the justice system successfully fulfils its role as guarantor of citizens' rights and freedoms, and that the authority of the law is consistently upheld. (Václav Klaus, ODS, government, Prime Minister, 7.7.1997, LP 2, Session 12)

While focusing on individual citizens is not surprising for a politician from a liberal-conservative party like the ODS, representatives of both leftist (KSČM) and centre-left (ČSSD) parties used similar arguments.

> According to Article 17 of the International Covenant on Civil and Political Rights and the provisions of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which is directly applicable, everyone has the right to respect for their private life. The state is obligated to not only respect this right but also to protect it. (Vojtěch Filip, KSČM, opposition, 13.1.1999, LP 3, Session 8)

> (I)f Article 3 (1) of the Charter of Fundamental Rights and Freedoms says "fundamental rights and freedoms are guaranteed", it means not only that the state undertakes not to prevent anyone from exercising their rights and freedoms but also that it has an obligation to take all necessary steps to ensure that everyone actually enjoys their fundamental rights and freedoms, including the establishment of effective mechanisms for protection against their infringement in the relevant legal regulations. (Pavel Dostál, ČSSD, government, Minister of Culture, 2.7.1999, LP 3, Session 15)

The subject of such speeches changed over time, including debates on public officials' conflicts of interest, but the argument that the rule of law means limiting power and serving individual rights was still used.

> So, where is the procedural protection of the rights of participants, their right to defence, the right to have the possibility of representation etc.? These are rights that even a public official in a democratic state governed by the rule of law should have guaranteed. (Jiří Pospíšil, ODS, opposition, 17.8.2005, LP 4, Session 46)

MPs also argued that the **rule of law ensures equal treatment for all before the law**, establishing another narrative on the limitation of power. Again, this narrative emphasised individual citizens, and it was used by representatives of various political parties, often when they belonged to the opposition. Politicians addressed a broad range of issues, from rather technical legal arrangements to more political questions of limitation of parliamentary immunity. The narrative was most present in the period from the second half of the 2000s, i.e. in the third wave of the rule-of-law-related legislation.

> If my argumentation has been somewhat elaborate, let me summarise it into a few points. (. . .) I insist that, in a democratic rule of law, legal norms, however imperfect, apply at all times to everyone. (Miroslav Kalousek, KDU-ČSL, opposition, 5.1.2001, LP 3, Session 30)

When relating the purpose of the rule of law to equality before the law, speakers emphasised the need for a neutral or balanced effect of the law. This means that neither party in a dispute should be given an advantage. Achieving this requires high-quality laws and effective functioning of the institutions that apply them.

> What other protection can there be in a democratic rule of law if not judicial protection? The court is the only body that can provide such protection. (. . .) And if we proceed in the order of the law and potentially through legal means, then we must regulate the court process so that both parties have procedural rights and obligations. It is not possible to reward one party and shift the burden of proof, all obligations, and thus completely disrupt the principles of equal standing in the judicial process on the other side. (Jiří Pospíšil, ODS, government, Minister of Justice, 26.9.2007, LP 5, Session 21)

> Where the law was bent, it must be straightened. Prosecutors who allowed this must step down and be dismissed. This is not what Zaorálek and the Social Democrats want. This is what the public in this country necessarily demands. They want judges and prosecutors who administer justice fairly, who simply do not consider who holds what position, who does not care about how someone looks. Law means nothing, and a law is not a law, and it does not belong in the rule of law if it does not apply equally to everyone. (Lubomír Zaorálek, ČSSD, opposition, 3.3.2009, LP 5, Session 51)

The principle of equality before the law was also invoked in debates about the extent of parliamentary privileges, namely concerning the immunity of MPs. Its historically very extensive setting was criticised, mainly in the context of discussions on anti-corruption measures.

> We can consider limiting criminal liability to speeches made in the Chamber of Deputies, the Senate and the constitutional court, or even abolishing it altogether, which is what our Slovak colleagues have done, and no earthquake has taken place in Slovakia. When the going gets tough, virtually every legislator is stripped of his immunity in the relevant

> chamber of parliament. The wording of Article 1 of the Charter of Fundamental Rights and Freedoms, according to which people are equal in rights, gives me the right to do so. We are all to be equal before the law. (Jiří Paroubek, non-affiliated MP elected for ČSSD, opposition, 23.10.2012, LP 6, Session 47)

Arguments that politicians should not stand above the law were also raised in the context of discussions and votes on the admissibility of criminal prosecution of specific MPs.

> Perhaps in the discussion, we should very well clarify the purpose of political immunity. Its purpose is not to avoid criminal proceedings. It aims to prevent the blocking of the Chamber, to prevent MPs from being hindered in performing their mandate, to be harassed in this way for their political activities. (. . .) Simply put, we, as MPs, even if equipped with a certain immunity, are not superhumans who should avoid criminal prosecution. When justice takes its course, it is, of course, a chance for vindication, a relevant vindication that has a high level of credibility in the rule of law. The public should not have the impression that as someone's influence increases, their impunity also increases. (Jiří Dolejš, KSČM, opposition, 6.9.2017, LP 7, Session 60)

System functioning. In statements addressing the functioning of the system, speakers often argued that the **purpose of the rule of law is to promote legal certainty through clarity, transparency, predictability and enforcement of rules, regardless of whether they are laws or executive measures.** The usage of this narrative extended over the second and the third wave of rule of law legislation with similar intensity. However, the pattern of speakers using it changed. During the second wave (1998–2006), it was used by the leading government and the main opposition parties (ČSSD and ODS, respectively).

> The debate we are having here is a debate about whether it is in line with the principles and the regime of the rule of law to change, colloquially speaking, the rules of the game in the middle of the game itself. The debate we are having is about whether those affected by this law should respect the rules set by this law, just like those on whom this law will impact ex ante, meaning going forward, who had and acted in some faith, in some matter. In the midst of such conduct, we are changing the rules for them with the law and causing them property or other damage. (Ivan Langer, ODS, opposition, 8.3.2000, LP 3, Session 23)

> The alpha and omega of the rule of law is the guarantee and strengthening of legal certainty for individuals and legal entities to which the state primarily addresses its legal regulations. Individuals and legal entities can participate in legal relationships within a rule of law only if they are ensured the ability to properly and promptly become familiar with the content of legal regulations that directly concern them, or on the basis of which their rights and obligations are created, changed or terminated. (Václav Votava, ČSSD, government, 4.11.2004, LP 4, Session 37)

On several occasions, such statements mentioned problems which must be solved to secure the aim of the rule of law, including effective legal protection (Rychetský) or deficient legal certainty because of the growing relevance of international courts that can decide on a matter after national courts have ultimately done so (Pospíšil).

> I would like to say that the government of the Czech Republic is aware that a much more significant problem in the functioning of the law and the state of legal certainty in this country than the state of current legislation is the state of the judiciary. In most cases, the courts do not currently provide effective – meaning real-time – protection of rights, and unfortunately, it cannot always be said that they provide it at a sufficient level of quality. (Pavel Rychetský, ČSSD, government, Deputy Prime Minister for Legislation, 20.5.1999, LP 3, Session 13)

> I believe that as this amendment is drafted, it will mean a significant strengthening of the international court in relation to our national justice. More or less, it will be possible, based on the decision of the Strasbourg court, to indirectly re-examine a matter that has already been conclusively decided. (. . .) Legal theory has written stacks of books about two fundamental legal instruments or two fundamental legal values, namely legal certainty on the one hand and the correct decision of the matter. These two values conflict at some point (. . .). However, at some point, it must be said that the matter is conclusively decided for clarity and certainty for the participants in the proceedings. (Jiří Pospíšil, ODS, opposition, 16.5.2003, LP 4, Session 16)

During the third wave of rule-of-law-related legislation, most prominently after 2017, the narrative that the rule of law serves to promote legal certainty and the functioning of the whole system was used by a wide range of parties, mainly while in opposition to criticise the government. For example, it was argued that a functioning rule of law stimulates responsible behaviour of individuals.

> Improving the work of the police also means strengthening all the functions of the rule of law to create a legal environment that stimulates responsible individual behaviour in relation to other people and society as a whole. This implies tougher penalties for serious crimes, timely enforcement of the law, as some are harmed by protracted enforcement, and zero tolerance for corruption and organised crime. (Zdeněk Maršíček, KSČM, opposition, 19.1.2007, LP 5, Session 9)

MPs also argued that the eroding trust of people in the state resulted from deficiencies in the rule of law.

> Lawyers state that every judicial process or court decision must not only be impartial and objective but must also appear to be so. (. . .) This is an important principle that can be generalised and applied to our role and responsibilities as well. People have the right to trust the state, and we have the obligation to make decisions in a way that people can truly trust and have confidence in the state. (Petr Fiala, ODS, opposition, 23.11.2018, LP 8, Session 23)

> (. . .) even though there's a state of emergency and the threat to lives and health persists, some rule of law should still apply. I assume that the rule of law should be understandable, predictable and subject to review. The same must apply to government regulations (. . .). Unfortunately, it doesn't seem this way. (. . .) People's trust in the state, trust that things happen according to some presumed plan, is eroded. (Vojtěch Pikal, Pirates, opposition, 28.4.2020, LP 8, Session 47)

> How in the world, in a rule of law, in a democratic state governed by the rule of law, is it possible that some government decision is announced at 7 p.m. and becomes effective at midnight? (. . .) For heaven's sake, the law should be predictable! (Dominik Feri, TOP09, opposition, 28.4.2020, LP 8, Session 47)

Morality and justice. In statements on the rule of law serving morality and justice, it was not possible to identify an established narrative or clear differences over time. Nevertheless, MPs referred to a 'moral climate', 'justice', 'common interests of the people' or 'values' that the rule of law has to promote. Such statements were made by representatives of different political parties, both in government and in opposition, in several legislative terms.

As the following quotation shows, one concern was that the prohibition of retroactivity and other elements of the rule of law would make it difficult to sanction the actions of the previous regime, especially since creating a new 'moral climate' (Novák) had been among the principal goals of the 1989 Velvet Revolution (see Sect. 2.3). Condemning unjust action at least symbolically in a political declaration was seen as a way to cope with this problem.

> (I)n 1989, the citizens of Czechoslovakia made it clear that they wanted to build a democratic society in this country with an appropriate legal system. Part of such a society is the creation of a proper moral climate. It should be clear to everyone what is good and what is evil. (. . .) [The introduced bill] (. . .) is a declaratory assessment, an assessment that does not individually define (. . .) the guilt or the honour of any citizen of this country. But it says quite clearly that there was non-democracy, injustice, that crimes were committed here, that laws and international treaties were violated here, and that a decent citizen of this country had no right to express freely what kind of country he wanted. (Libor Novák, ODS, government, 9.7.1993, LP 1, Session 11)

Achieving the public perception that a legal system is just was also mentioned as a task for the rule of law. It was argued that the state and its institutions should always "defend the common interest of the people" (Paroubek).

> I believe that it is entirely evident that the foundation for the successful functioning of the legal system is that those sanctioned by criminal or administrative norms must at least fundamentally. . . or at least a significant majority of the public must be convinced that the punishment is just. Because the fundamental legal principle is that the law must be enforceable, respected by society, and based on a natural assessment that such punishment is just. (David Šeich, ODS, opposition, 25.3.2004, LP 4, Session 30)

> I urge constitutional judges to stop perceiving problems from the position of their inviolability and excellent security and to think about the people. (. . .) The constitutional court should always and foremost defend the common interests of the people. That's how I see it, and much more knowledgeable key figures in Czech legal science see it the same way. (Jiří Paroubek, ČSSD, supporting caretaker government, 8.9.2009, LP 5, Session 60)

Some argued that the national constitution embodies the fundamental guiding values, which implies that the law should be tested not only formally, but also against the "values underlying positive law and human rights". Such a test of constitutionality in the broader sense of the word means qualifying if the core of the rule of law was observed, as embodied in the constitution and in the Charter of Fundamental Rights and Freedoms.[2]

[2] Helena Válková (ANO, government, 11.1.2017, LP 7, Session 54), quoted in Sect. 5.3.1.

5.1.2 Hungary: Limiting Power and Ensuring the Functioning of the System

In the Hungarian parliament, narratives about the purpose of the rule of law referred mainly to the limitation of power and the functioning of the system (Table 5.8). In our empirical material, such narratives tended to date from the early 1990s and after 2010, with a gap in between. Narratives about the importance of the stability, legal certainty and, above all, predictability of the law for the functioning of the whole system overlapped across parties. The same was true of narratives linking the rule of law with checks and balances and the protection of individual rights. However, after Fidesz returned to power in 2010, government policies officially declared to serve these purposes were interpreted by opposition actors as damaging them, so that overlapping general narratives did not prevent political conflict between the parties. Like in Czechia, issues of morality and justice or other issues were mentioned only rarely. They had a general character and were mainly present in the early 1990s.

Limitation of power. Particularly in the post-1989 transition phase and after the 2010 parliamentary elections, the rule of law was described as serving primarily to limit power. Compared to the other countries, the rule of law was linked with diverse counterbalancing institutions. In the early 1990s, the newly elected deputies emphasised the **critical need to ensure checks and balances among the branches of government** and to separate legislative and executive powers due to their experience of the previous political system.[3]

Table 5.8 Narratives on the purpose of the rule of law in Hungary

	1990–1998	1998–2010	2010–2021
Limitation of power	RoL serves to ensure the checks and balances among the branches of government and at the local level. (overlapping)		RoL serves to ensure checks and balances and to prevent the abuse of power. (one-sided, opposition) Judicial independence as an essential element of the RoL is relevant for limiting the power of government. (overlapping)
System functioning	RoL is to maintain or improve the functioning of the (political) system by ensuring legal stability, security and predictability. (overlapping)		RoL, especially predictability, is a fundamental requirement of the democratic system. (overlapping)
Morality and justice	*No strong narrative identified in the analysed sources*		

[3] See also József Szájer (Fidesz, opposition, 22.5.1996, LP 35, Session 178), cited in Sect. 5.2.2.

> (T)he tripartite negotiations on the road to the rule of law have essentially failed to resolve several tasks. In order to move towards the rule of law in a way that is visible to everyone, it is obvious that the legislative and executive powers must be separated. If the current structure were to survive, this fundamental need would not be met. (József Torgyán, FKgP, government, 9.5.1990, LP 34, Session 3)

According to MPs both in government and opposition, ordinary courts and the constitutional court help to preserve the internal consistency of the legal system and to ensure that decisions are taken on a legal basis and in a fair and just manner. In this way, they were argued to contribute to the stability and security of the (political) system, to defend the constitution and to limit the power of the state. Notably the liberal SZDSZ emphasised that a state governed by the rule of law must entail a multifaceted system of checks and balances (Hack), including also local self-administration (Sect. 5.2.2) and rights for trade unions (*Haraszti*).

> We want to fight for a society in our country where the law is not the handmaiden of politics, and where it can continue to guarantee respect for the constitutional and human rights of all in the decades and centuries to come, and where state power remains within the limits set by the constitutional court's decision. (Gábor Fodor, Fidesz, opposition, 8.12.1992, LP 34, Session 254)

> I very sincerely hope that this consensus will be reached in such a way that the Parliamentary Commissioner for Citizens' Rights will be seen as a real check on the current government (. . .) and not just as a check on the future government (. . .) because we believe (. . .) that the majority in parliament (. . .) cannot do everything, unlike my fellow members of parliament who took part in the demonstrations, and we believe that the mandate of this majority, which sends you or the future majority in parliament, is not unlimited, not unconditional, not unhindered, but is subject to certain limits and obstacles. (Péter Hack, SZDSZ, opposition, 1.9.1992, LP 34, Session 220)

> However, it is precisely from the point of view of the rule of law, and in defence of the rule of law, that the position of the Free Democrats argues when it says that parliament should exercise self-limitation in the interests of the rule of law when it pursues an otherwise historically and legally correct objective, namely equal opportunities for trade unions. (Miklós Haraszti, SZDSZ, opposition, 19.11.1991, LP 34, Session 148)

Along with the constitutional court, the newly established State Audit Office, an independent prosecutor's office and the Commissioner for Citizens' Rights (ombudsperson) should provide support to ensure checks and balances and the protection of individual rights, rhetorically linking them to the rule of law. MPs also emphasised the **role of decentralised local authorities** in protecting the rights and interests of citizens and limiting the power of individual authorities (see Sect. 5.2.2).

Under the first Orbán government (1998–2002), the then opposition parties (MSZP and SZDSZ) were among the first to argue that the balance of power had shifted.[4] However, the purpose of the rule of law was not a major issue in parliament,

[4] In particular, they pointed to the weakening of parliament (e.g. Pál Vastagh, MSZP, opposition, 18.10.2001, LP 36, Session 233).

and there were no vibrant narratives during this period. This changed in 2010 when this criticism was restrengthened. Several opposition parties (mainly MSZP and LMP) strongly criticised Fidesz-KDNP for using its two-thirds majority mandate for political gain, for interlocking powers and for bringing the judiciary under its control. This criticism was accompanied by the argument that the **rule of law serves to ensure checks and balances and prevent the abuse of power**. No single branch of government should become dominant to protect society from government overreach. Such statements were made, for example, during the vote on the constitutional court bill and on amendments to the Fundamental Law.

> It is a characteristic of a state governed by the rule of law that none of the branches of power is dominant. (. . .) Whether you get a two-thirds mandate, a four-fifths mandate or whatever mandate you get from the electorate, you have to know that in a state under the rule of law, the functioning of parliament is also limited. (András Schiffer, LMP, opposition, 21.2.2012, LP 39, Session 165)

> The constitutional power is not an unlimited power in a state under the rule of law. The constituent power can indeed amend the constitution, but it cannot do so in such a way as to effectively annul or take over the role of another branch of power. And if it does so by simply overriding, in practice by constitutionalisation, the decisions of the constitutional court that it does not like, then it is not exercising its power, but abusing it (. . .) (Gergely Bárándy, MSZP, opposition, 7.3.2017, LP 40, Session 204)

The governing parties defended their policy. They highlighted that the **independence of the judiciary, as an essential element of the rule of law, was relevant for limiting the power of government**. This narrative was also used by the opposition forces, which, however, criticised the Fidesz-KDNP legislation as being completely different from their rhetoric.

> The constitutional court is the supreme body for the protection of the Fundamental Law, (. . .) in order to safeguard the democratic rule of law, the constitutional order and the rights guaranteed by the Fundamental Law, to preserve the internal consistency of the legal system and to enforce the principle of the separation of powers. Since its creation, the constitutional court has continued to perform its functions of protecting fundamental rights, ensuring the democratic functioning of the state and establishing and maintaining the balance of powers at the highest level (. . .) (Márta Mátrai, Fidesz, government, 14.11.2011, LP 39, Session 133)

Fidesz-KDNP also argued that the introduction of administrative courts (see Sect. 6.3.2 for more details) was an instrument for strengthening the system of checks and balances.

> Judicial independence – as I have long been saying and as I have recently stated within these walls during the debate on the proposal for the seventh amendment to the Fundamental Law – is the shining star of democracy, a constitutional principle and value that is in itself a priority. (László Trócsányi, Fidesz, government, 12.12.2018, LP 41, Session 50)

> (T)he rule of law itself can also be described as the binding nature of public power, i.e. it presupposes the existence of independent institutions that control the actions of state bodies that have legal effect. The most important such institution is the separate administrative court. The adjudication of administrative disputes requires special expertise and a particular judicial attitude, which is capable of defending the citizen against an authority that necessarily has a dominant position. Clearly, ladies and gentlemen, this raises the level of legal protection in Hungary. (Imre Vejkey, KDNP, government, 1.4.2019, LP 41, Session 64)

System functioning. Almost all political parties in the Hungarian parliament, when mentioning a purpose of the rule of law, argued that it is also to **maintain or improve the functioning of the (political) system by ensuring legal stability, security, certainty and predictability**. Especially in the first wave of rule of law reforms, the rule of law was mentioned as a goal to be achieved, one which would lead to a stable constitutional political system and a predictable legal order in Hungary, as in other European democracies. Against the background of the authoritarian past, (legal) security and stability were described as important not only for politicians but also for society (or the nation) as a whole. Representatives across parties stressed that society expected politicians to guarantee successful system change. They agreed that in order to create stability, security and a stable democratic system were necessary. The opposition linked such arguments with criticism of the government.

> The Hungarian nation elected this House (. . .) to implement the regime change. I emphasise that this is not a vague reorganisation which is good for some, but a change of system which is in the interests of the overwhelming majority. Hungarian society wanted sober, calm and considered politicians at the head of the country, whose integrity was a guarantee that their promises would be fulfilled within the framework of a state governed by the rule of law, on the basis of a democratic programme. Today, this same nation is increasingly disillusioned by the reality of a world without prosperity, social security or a secure future. (Péter Prepeliczay, FKgP, government, 4.3.1991, LP 34, Session 83)

> Democracy is the foundation of the rule of law, equal rights and equal opportunities for citizens, regardless of their nationality, religion or any other differences. Since the well-being of society depends to a large extent on the reality or lack thereof, and since even the slightest attack on this well-being damages the rule of law as a whole, it is essential that the legislature, through its responsible work, creates a legal framework for the rule of law that provides security for citizens. Just as every civilised, self-respecting country in the world declares the ideals of democracy and the rule of law in its laws, so in our country, too, this is done in agreement with the values of the overwhelming majority, almost the whole, of the population in this House. (Zoltán Hajdú, SZDSZ, opposition, 1.3.1993, LP 34, Session 274)

Since the transition period, both government and opposition parties gradually strengthened the rhetorical link between the rule of law and legal certainty for both the legislator and the citizens. In the majority of the speech acts, we found the narrative that the rule of law is not only about the existence of and compliance with the law but also about clear and predictable law. Related to these arguments, MPs criticised the practice in the early 1990s and again after 2011 of continuously amended legislation.

> We are of the opinion that amending the constitution for the umpteenth time in such a short space of time to such an extent, and back and forth, is unnecessary and even harmful, because it weakens hopes in the functioning of the rule of law. And without stable basic constitutional provisions, the rule of law and legal certainty are an illusion. (Csaba Hámori, MSZP, opposition, 9.5.1990, LP 34, Session 3)

> More generally, I want to point out that the much-vaunted rule of law is in stark contrast to the almost constant amendment of key laws. The rule of law is not characterised by a large number of laws, but by good laws, laws that are long-lasting, time-tested and that citizens voluntarily follow. (Miklós Gáspár, KDNP, opposition, 12.5.1997, LP 35, Session 268)

Legal predictability and certainty were regularly mentioned as goals to be achieved, especially when they were perceived as being under threat since the third wave of legal reforms. Rhetorically, however, the criticised governing parties Fidesz and KDNP also emphasised that the rule of law serves to ensure predictability as a fundamental requirement. As a result, both sides used this narrative despite opposing views of the current government's policies.

> Legal certainty is an indispensable element of the rule of law, a concept that has been given substance by the uninterrupted practice of the constitutional court. Legal certainty is the duty of the state, and primarily of the legislator, to ensure that the legal system as a whole, its individual subdivisions and individual pieces of legislation are clear, unambiguous, predictable and foreseeable in their operation for the addressees of the norm. (Pál Völner, Fidesz, government, 7.3.2017, LP 40, Session 204)

> The other important fact is that millions of Hungarians do not feel legal certainty in Hungary at the moment. And it is not just that a new structure, the administrative court, is being set up, but also that Hungary's current attorney general is a former candidate for parliament, a certain Péter Polt, who is now at the point of admitting in a response that electoral fraud was committed in Hungary with Ukrainian votes, and yet nothing is being done. (Zsolt Gréczy, DK, opposition, 1.4.2019, LP 41, Session 64)

Statements differed with regard to the relevance of legal or 'political' guarantees in a state governed by the principles of the rule of law. Opposition MPs criticised the lack of such guarantees, while KDNP, the minority party in government, confirmed the need for them.

> (T)he essence of the rule of law is that it is not your intentions, not the justifications that no one checks, not the government's intentions that are not subject to public debate, but the laws that have been debated and duly adopted that bind the lawmakers. (Gergely Arató, DK, opposition, 30.10.2018, LP 41, Session 35)

> Obviously, in a state governed by the rule of law, the most important and fundamental guarantees should be legal guarantees, but I would add two more: guarantees based on facts and political guarantees. (István Hollik, KDNP, government, 24.3.2020, LP 41, Session 114)

Morality and justice. We found few references to the **rule of law serving moral ends and justice** for Hungary. It was argued that constitutionalism must be "value-centred and value-based" (Bihari) in the sense of a liberal spirit, in contrast to the

previous authoritarian regime. Justice, in the sense of equal treatment, also played a role. However, the references were relatively general, without precise notions on causes, content and effects.

> The new constitution must be value-centred and value-based. Not only its spirit, but also its concrete provisions must incorporate universal human and political values of freedom, the specific legal values of a democratic state based on the rule of law, in such a way that this value system functions as a normative legal basis for both legislation and law enforcement, but also has a role in shaping legal culture and legal attitudes towards social legal consciousness. (Mihály Bihari, MSZP, government, 14.7.1994, LP 35, Session 4)

> (T)he role of the constitutional court today is rooted in the idea of the rule of law. Namely, the idea that everything in a modern state must be done justly or, more modestly, according to law and justice. In our country, the constitutional court, established in 1989, has an even more important role to play. After all, after decades of total dictatorship, it had to take decisions on the basis of a constantly patched-up constitution, in the wake of regime change, on sensitive and controversial constitutional issues, and the constitutional court's activities have contributed effectively to the establishment and consolidation of the rule of law. (Tamás Isépy, KDNP, opposition, 2.4.1996, LP 35, Session 163)

Fidesz-KDNP repeatedly criticised a lack of justice with regard to the old communist elites and Christian social values. Some if its politicians argued more intensively in this way after 2010. Jobbik has also employed this rhetorical figure since then. However, the statements did not form a strong narrative. The same was true for statements by opposition parties criticising Fidesz-KDNP for their agenda of establishing a Christian democracy to the detriment of equal rights.

> We believe that the heart and soul of constitutional identity is the common defence of these equal rights; you believe that constitutional identity is a mandate to restrict freedoms for some higher purpose. We cannot support that. You talk about Christian democracy; we want a democracy without adjectives that guarantees equal rights for all citizens of Hungary (. . .) (Gergely Arató, DK, opposition, 28.6.2018, LP 41, Session 14)

5.1.3 Poland: Limiting Power and Ensuring the Functioning of the System (and Justice)

Most statements covering the purpose of the rule of law that we found in our sources from the Polish Sejm were related to the limitation of power, followed by the functioning of the system and morality and justice. Until the end of the 1990s, the main narratives were overlapping. Actors emphasised the relevance of the rule of law for ensuring checks and balances and preventing arbitrariness (Table 5.9). Later narratives focused on its importance for the functioning of the system. Such statements were made in the early 2000s when judicial reforms were adopted to align the system with the constitution and to adjust it to EU requirements, but also in the mid-2000s when the PiS-led government planned anti-corruption and lustration reforms. However, the parliamentarians' justifications and perspectives on how to achieve these aims differed. From the end of the 1990s, right-wing conservative MPs

Table 5.9 Narratives on the purpose of the rule of law in Poland

	1990–1997	1997–2015	2015–2021
Limitation of power	RoL serves to ensure checks and balances, to limit the government by law and to prevent arbitrariness. (overlapping)		RoL (esp. judiciary) is to ensure checks and balances and to limit the ruling majority. (one-sided, opposition)
System functioning		RoL in terms of a functioning state (effective law enforcement, well-functioning judiciary and legal stability) underpins citizens' security, public trust and compliance with constitutional principles. (overlapping)	
Morality and justice		A just state under the RoL guarantees justice for 'ordinary people' and implies the need for morality, and guarantees impartiality on the part of the judiciary. (one-sided, PiS)	

linked the rule of law with morality and justice, especially under the PiS-led government (2005–2007) and when PiS was able to form a single-party government (2015–2021). This was visible, for example, in the disputes between the opposition and the government over judicial and other reforms after PiS won the parliamentary elections in 2015.

Limitation of power. The reference to the limitation of power as an aim of the rule of law was invoked by MPs in all legislative periods analysed, with most statements dating from the early and mid-1990s, when a new political system was shaped. In the debates on the new constitutional framework, actors argued that the **rule of law serves to ensure checks and balances, to limit government by law (including the constitution) as interpreted by the judiciary, and to prevent the arbitrary use of power**. In this sense, Janusz Korwin-Mikke (UPR), for example, stated during a debate on the 1992 amendment to the Judicial and Prosecutorial System that

> (T)he people want laws that would also guarantee and protect them against the tyranny of the majority, against sudden changes of the majority. The rule of law, not the rule of the people, is what Poland needs. (Janusz Korwin-Mikke, UPR, opposition, 6.3.1992, LP 1, Session 10)

Members of parliament, particularly from the liberal and left-wing parties, highlighted the need to decentralise political power in order to protect civil rights, for example in the debate on the draft Charter of Rights and Freedoms presented by then-President Lech Wałęsa (Szańkowski) and during the debate on the constitutional court in 1997 (Ciemniewski).

> We have not the slightest reason to question the principle that public authorities, all state, local, labour and professional bodies and economic actors should be guided primarily by respect for citizens' rights in order to achieve economic and social progress. They must guarantee security, legal and political security, protecting against bad laws and abuses of power. (Stefan Szańkowski, PSL-PL, government, 21.1.1993, LP 1, Session 35)

> I think it is very good that we begin the process of implementing the constitution in the life of our state with a law that essentially constitutes the basic guarantee of creating a state under the rule of law or strengthening a state under the rule of law, and not in some abstract way, but from the point of view of changing the status of the citizen in the state. I am speaking here primarily of the institution of the constitutional complaint. This is an institution (. . .) of defence against excessive temptations of the state towards his constitutional rights. (Jerzy Ciemniewski, UW, opposition, 6.6.1997, LP 2, Session 108)

These aspects were often discussed as a clear departure from the communist system, which was organised around a party-centred regime that did not allow for any separation of powers or institutions to control the legislative and executive.

> Giving the principle of separation of powers, the rank of a fundamental principle of the political system makes it possible to construct a coherent system of institutions of a democratic state under the rule of law. It also fulfils another role. It gives expression to the final break in the continuity of the constitutional system shaped by the 1952 constitution with its Jacobin-Leninist genealogy and the only ostensibly democratic construction of the supremacy of the representative body. (Jerzy Ciemniewski, UD, opposition, 2.4.1992, LP 1, Session 12)

> The constitutional principle that we consider fundamental for the future constitution is the idea of the state under the rule of law. Enshrining it in the new constitution must be a confirmation of the break with the system of the People's Republic of Poland, with the system of the party state. We understand the idea of the state under the rule of law as an expression of the primacy of legislated laws – and the constitution itself – over politics. (Longin Pastusiak, SdRP, government, 22.9.1994, LP 2, National Assembly Session 1)

> The principle of the state under the rule of law is the culmination of the aspirations of the advocates of a civic state, a state guaranteeing equal rights to all citizens without exception, a state which is, by extension, the common good of all citizens, i.e. the Republic.(. . .) Introduced after the memorable elections of June 1989 with a constitutional amendment in December, it marked a breakthrough in the history of Polish statehood, as it laid down the principle of the rule of law, constituting a far-reaching postulate for the construction of a system in which state organs act only with the explicit permission of the law, while citizens may do whatever the law does not prohibit them from doing. (Tadeusz Jacek Zieliński, UW, opposition, 23.9.1994, LP 2, National Assembly Session 1)

The rule of law was described as a framework of rules (and courts interpreting them) that assists in dealing with unstable governments and power struggles between branches of government, which were typical in the early and mid-1990s.

> By adopting a new constitution we want to confirm the new reality, strengthen democracy, but also, perhaps for a large part of society, an even more important matter – to create the necessary framework for strengthening the rule of law. Disputes at the highest levels of government, for example over electoral law, the questionable powers of the president, the

> unclear scope of the relationship between the government and the Sejm, the legislative hold-ups between the Sejm and the Senate, are just the most glaring examples. (Aleksander Łuczak, PSL, government, 10.10.1991, LP X, Session 77)

> Who is to ensure that Poland is a state under the rule of law and democracy? Obviously, the courts and tribunals, sometimes referred to as the judicial authority. All drafters agree that judges should be independent, non-removable and subject only to the law. (Katarzyna Maria Piekarska, UW, opposition, 21.9.1994, LP 2, National Assembly Session 1)

In addition to the courts, other limitations on power were highlighted, such as an independent civil service, the institution of the ombudsperson or the public prosecutor's office (see Sect. 5.2.3).

The independence of the courts remained a topical issue in the Sejm and was also mentioned in connection with the selection and election of judges and lustration laws. Later, from 2015, a one-sided narrative emerged that the **rule of law—especially the judiciary—should ensure checks and balances and limit the ruling majority**. The opposition used this narrative when it emphasised the need to limit the power of the PiS majority. The focus on the judiciary corresponded with the strong safeguards for its independence in the Polish constitution (Sect. 3.3). The constitution was also used as a synonym for the rule of law.

> (. . .) what is the principle of separation of powers for? That is also what this amendment is about. It is to protect citizens' freedoms, because citizens' freedoms are forged from a dialogue of authorities, and what you are proposing is a monologue by one political group. (Krzysztof Brejza, PO, opposition, 19.11.2015, LP 8, Session 1)

> An independent judiciary with a central role for the Constitutional Tribunal is supposed to guarantee citizens that the basic principles of democracy will not be violated, it is supposed to guarantee that there will never be a return to authoritarian or even totalitarian power in Poland. The role of the judiciary is particularly important in a situation where control of the executive or legislative authorities is taken over by one political option. (Kamila Gasiuk-Pihowicz, N, opposition, 19.11.2015, LP 8, Session 1)

> The constitution is an anchor, and the safeguards it provides are precisely intended to prevent this kind of situation, so that the institutions whose competences it defines are not juggled, their composition not changed, their term of office not shortened depending on who is currently in power. (Wojciech Wilk, PO, opposition, 10.2.2016, LP 8, Session 11)

System functioning. In our documents we also found many statements saying that the rule of law serves the general functioning of the system. However, this theme was mentioned much less frequently than the limitation of power. References were made particularly in the transition period, when actors stressed the need for a stable, effective constitution to clarify the legal system and guarantee legal certainty, but even more so in the early 2000s, when several judicial reforms and a draft amendment to the constitution were introduced (Sects. 3.2 and 3.3). During this period, the narrative that the **rule of law in terms of a functioning state (effective law enforcement, a well-functioning judiciary and legal stability) underpins citizens' security, public trust and compliance with constitutional principles**

was used very prominently. In the context of ensuring legal compliance with the constitution and EU requirements, MPs from different political groups stressed the need for a functioning judiciary.

> (. . .) the third reason for the necessity of rebuilding the system of the Polish judiciary – who knows whether it is not the most important one, but certainly an urgent one – is the low efficiency (. . .) of the currently functioning courts, or even their inefficiency. (. . .) Today we are dealing with a collapse or pre-crash state of the Polish courts. (Grzegorz Kurczuk, SLD, opposition, 3.3.2000, LP 3, Session 72)

> This is yet another piece of legislation tidying up the sphere of the Polish judiciary and adjusting its shape to the requirements of the 1997 constitution. The draft concerns an institution of fundamental importance for the functioning of a modern and efficient state under the rule of law, and at the same time concerns a special group of people – the judges of the Supreme Court (. . .). (Paweł Graś, PO, opposition, 6.6.2002, LP 4, Session 23)

A necessary condition for state security and stability was discussed with reference to the effective fight against corruption and crime. A well-functioning prosecutor's office, police force, law-abiding secret service and anti-corruption agency were seen as important to provide citizens with security and stability, to increase public trust in the state, to meet international and European standards and to make Poland more attractive to investors. Although MPs from different factions generally agreed on this rule of law purpose with regard to law enforcement and legal stability, some underlying party ideological differences were also evident in the statements.

In the mid-2000s, debates on the establishment of the Central Anti-Corruption Bureau (CBA) and the functioning of the prosecution service were shaped by statements by national-conservative MPs (though not exclusively) referring to the need to fight corruption more vigorously in order to, as they argued, "repair the state".

> The CBA is supposed to prosecute corruption, including in public institutions and local governments. (. . .) It is an imperative, a sine qua non condition for the restoration of hope and faith in the law and the rule of law, an indispensable condition for the repair of the state. How do I know this? From the electorate, from the inhabitants of the countryside, small and large towns, from entrepreneurs who have already lost faith and strength in pursuing their wrongs and who, psychologically broken, extremely exhausted, have come to believe anew in the law and in justice. (Czesław Hoc, PiS, government, 16.2.2006, LP 5, Session 10)

> The decision of the Banking Supervision Commission (. . .) is a decision which we must carry out in an appropriate and lawful manner, using all the institutions set up for this purpose, first and foremost so that all those investors who come to Poland and who invest their money here can be sure that the times in Poland when things could be done are over (applause) and that in Poland all state institutions which uphold the law operate efficiently and in accordance with the law. (Kazimierz Marcinkiewicz, PiS, government, Prime Minister, 10.3.2006, LP 5, Session 12)

The opposition also stated that the rule of law serves the functioning of the system. However, it often used the floor to criticise the government. It stated that the Fundamental Law should not be treated as a tool to be changed by legislation, nor

should the powers of important constitutional institutions be infringed, as this would undermine the effectiveness of the rule of law in ensuring the functioning of the system.

Morality and justice. Morality and justice as the purpose of the (state under the) rule of law or its components were mentioned by MPs on various occasions throughout the empirical material. From the late 1990s onwards, however, such themes played a more prominent role, with politicians frequently invoking them to support proposed legislation or to criticise the policies of the ruling majority, for example for failing to ensure social justice. The narrative used was that **a just state under the rule of law guarantees justice for 'ordinary people' and implies the need for morality and impartiality on the part of the judiciary**. This narrative was employed mainly by national-conservative MPs who argued that courts/judges would violate the principles of a just state.

In the preamble to the 1997 constitution and its Articles 1 and 2, human dignity and the character of the Republic as the "common good of all its citizens" and a "democratic state ruled by law and implementing the principles of social justice" were cited as guiding principles of the constitutional order. In our selected sources it was mainly conservative MPs who argued that legislation or the state under the rule of law should ensure social justice and the common good, emphasising the relevance of 'unwritten law' and the importance of the community rather than individual rights, or that the common good should be maintained in the exercise of individual rights. This argument was used when actors debated the aforementioned prosecution of crimes and corruption, which were intended to ensure a sense of justice in society, but also the contentious issue of abortion/right to life and protection of the family or religious rights.

> In the jurisprudence of our court, the conviction has already become firmly established that principle of a state under the rule of law cannot be reduced to the observance of democratic procedures, but also, and perhaps above all, implies a specific content of substantive law implementing fundamental values, the foremost of which is human life. (Teresa Liszcz, PC, elected via AWS, government, 17.12.1997, LP 3, Session 6)

A substantial part of the statements about the purpose of the rule of law in terms of morality and justice related to ensuring justice for citizens through an impartial, efficient and fair judiciary. In this sense, lengthy trials were framed not only as a form of ineffective statehood, as mentioned above, but also as a problem for citizens in "finding justice".

> The crisis of the judiciary is one of the greatest weaknesses of the Third Republic, a weakness exposed in all significant reports on the state of the law and the state of state institutions in Poland, and what is more, a weakness most strongly felt by citizens. The right of a citizen to have a case heard within a short period of time is becoming a fiction, the lengthiness of court proceedings in civil cases is undermining the very foundations of the law, and the high-profile criminal cases unsolved for years offend the elementary sense of justice. (Kazimierz Michał Ujazdowski, elected via AWS, government, 3.3.2000, LP 3, Session 72)

In contrast to liberal and left-wing parties (UD/UW, SdRP/SLD, PO, PSL), which emphasised the role of the rule of law and in particular of the courts in guaranteeing citizens a fair trial and the limitation of power, right-wing/conservative parties argued that the rule of law serves to protect a material core and justice for 'ordinary people', which implies the need for morality and independent judges. Statements about this impartiality were often combined with calls for the vetting of judges to establish justice and a just and lawful state (see also Sect. 6.3.3). For example, when the PiS-led majority introduced a (second) lustration law in 2006, it cited a perceived lack of lustration after 1989. It also repeatedly criticised judges for their decisions and introduced legislation that it claimed would allow citizens to challenge unjust decisions.

> Some judges – but only some, literally some – have decided that their independence in adjudicating includes independence from the applicable law. (. . .) That is why one hears more and more in private conversations that during the communist era an ordinary citizen who did not have a political case in court could count on a fairer verdict than today. (Wanda Łyżwińska, SRP, opposition, 27.7.2005, LP 4, Session 108)

> Taking up the matter in question, that is, the issue of disclosing the files of the SB and other services of the communist state, now in this parliament is yet another attempt to bring Polish law into line with normality, with a democratic, sovereign and, in addition, just state. (. . .) The history of the last dozen years or so shows that Poland, although it is a sovereign and democratic state, is at the same time deeply unjust. (Marek Suski, PiS, government, 9.3.2006, LP 5, Session 12)

> Today, after 27 years, we are working on a project which (. . .) provides for an extraordinary complaint. Today, ladies and gentlemen, we can say: at last we will be able to look at this independence, impartiality and infallibility of judges, and at last there will be an opportunity to look at the injustice in judgments, in decisions, which we have to deal with in the deputies' offices. Finally, it will be possible to help all these people. (Waldemar Buda, PiS, government, 22.11.2017, LP 8, Session 52)

5.1.4 Romania: Convincing the EU and Limiting the President

When addressing the purpose of the rule of law, actors in both chambers of the Romanian parliament most often spoke of its role in providing norms and procedures for a functioning system. The functioning of the system was particularly emphasised during the transition period in the early and mid-1990s. In the pre-EU accession period the need to meet the Copenhagen criteria became an end in itself which counted for more than substantive arguments related to the purpose of the rule of law (after 2000; Table 5.10). Only during Traian Băsescu's presidency from 2004 to 2014 was there a significant narrative on the purpose of the rule of law to limit power. In that period, actors accused the president of overreaching his powers in relation to the legislative and judicial branches. Morality, justice and values were of lesser importance for actors referring to the purpose of the rule of law. They were mentioned mainly at festive occasions as emanations of the 1989 revolution and the 1991 constitution, which aimed to decisively break with the communist past.

Table 5.10 Narratives on the purpose of the rule of law in Romania

	1990–2004	2004–2014	2014–2021
System functioning	RoL provides norms and procedures for a stable functioning of the post-communist society. (overlapping)	The EU's recognition of Romania's compliance with the RoL in itself serves to stabilise the functioning of the system. (overlapping)	RoL is a measure to escape the CVM. (overlapping)
Limitation of power		RoL is to ensure effective limitation of power, including the president. (one-sided, opposition)	
Morality and justice	RoL is to safeguard the moral values and justice of the 1989 Revolution as enshrined in the constitution of 1991. (overlapping)		

Compared to the other countries, Romanian speakers in parliament mentioned Romanian society more frequently than Romanian citizens, especially in the first two decades after 1989.

Table 5.10 shows that when actors in parliament referred to the rule of law, there was no principled dissent between government and opposition, even across ideological divides. MPs from the governing party or coalition were positively invoking laws or discussing the judicial and political realities of the country, while opposition actors referred to the rule of law when criticising the government for alleged rule of law deficiencies in these areas. Throughout the three decades studied, politicians communicated similar views of the purpose of the rule of law and warned of similar dangers when in opposition (Sect. 6.3.4).

System functioning. In both chambers of the Romanian parliament, many actors argued that the rule of law was important because it **provides norms and procedures for the stable functioning of the post-communist system**. The rule of law was described as a main pillar of the new system, which, in clear contrast to the previous authoritarian regime, responded to the aspirations and needs of the whole society.

> The Romanian Revolution was also characterised by the farsightedness and political horizon of the objectives it stated programmatically and which responded to the broadest aspirations of Romanian society. The communiqué to the country of the council of the National Salvation Front that I presented on the evening of 22 December 1989 (. . .) defined in unequivocal terms the essence of the revolution, envisaging the abandonment of the communist system and the monopoly exercised by the single party, the establishment, through free elections, of a democratic, pluralist system, respect for human rights and the rights of ethnic minorities, the separation of powers in the state and the restructuring of the economic system, the opening up of Romania to the world and its integration into European, democratic structures. (Ion Iliescu, PDSR/PSD, opposition, 20.12.1996, CD+S, LP 3)

During the period of analysis, this narrative was linked with a particular emphasis on the principle of legality (in Romanian, *domnia legii*, i.e. the law is supreme). Politicians stated that no one should be above the law, that citizens must have access to the courts, and that the judiciary must be provided with financial and administrative resources. When Alexandru Athanasiu, an MP from the then ruling PSDR (later renamed PSD), supported a law on judicial personnel, he argued as follows:

> (T)o materially reward loyalty to an institution is an obligation of any society that truly believes in the virtues of that institution. In fact, the fundamental question that we must ask ourselves is whether we consider justice to be one of the mandatory pillars supporting this new construction that we want to achieve in Romania, namely a truly democratic society governed by the rule of law. (Alexandru Athanasiu, PSDR/PSD, government, 14.3.1996, CD, LP 2)

Another narrative about the purpose of the rule of law emerged in the second wave of rule of law legislation. It focused on the **rule of law as a precondition for EU membership, ensuring the functioning of the system**. The desire to join the EU was shared across party lines. The need to meet the Copenhagen criteria, including the rule of law, became an end in itself, overshadowing arguments about the substance of the rule of law. In 2005, for example, Prime Minister Călin Popescu-Tăriceanu linked the freedom of Romanians to EU accession.

> Freedom is closely linked to the way society works. Romania is free if the rule of law is strong and really works. (. . .) If we do not reform the justice system from the ground up, as we committed to do for accession, then the rule of law will never work in Romania. Without a functioning rule of law, freedom is illusory. (Călin Popescu-Tăriceanu, PNL, government, Prime Minister, 17.5.2005, CD+S, LP 5)

In the same year, he stressed the importance of getting approval from the EU in a debate over a motion of non-confidence against his government and used the EU conditionality as an argument for getting support for measures against the "morass" of previous governments. This quotation also shows that despite the overlap of the general narrative, political competition was still present.

> It is not by chance that Brussels considers the reform of justice and property to be criteria for compatibility with the European community. I would like to stress here, before the Romanian parliament, that we are fighting for an independent and honest justice system, because we govern in Romania and we do not want to leave behind us something of the morass that you tried to sell to Romanians in 2004. The draft law on justice and property reform responds to Romania's need to have a functioning rule of law and to join the European Union in 2007. (Călin Popescu-Tăriceanu, PNL, government, Prime Minister, 22.6.2005, CD, LP 5)

In this period, statements on the purpose of the rule of law were often linked with references to how the EU assessed the functioning of the Romanian rule of law system and which parties or governments performed better in fulfilling the accession criteria. When together with Romania's accession to the EU the EU established a mechanism for monitoring the country's compliance to its recommendations (the Cooperation and Verification Mechanism (CVM)), the early CVM reports became a

yardstick for Romania's political system under the rule of law. The narrative was used now by different parties that **the rule of law is a measure to escape the CVM**. Throughout the 2010s, the PNL and later the USR accused the coalition government of PSD and ALDE of undermining the purpose of the rule of law of furthering the functioning of the political system.

> So, how long will it be before Romania's turn comes to receive sanctions like Hungary and Poland, when everything the PSD and ALDE are doing today is taking us further away from the European Union? The repeated attacks on justice and the rule of law by the PSD and ALDE will lead to Romania's isolation at European level, at a time when we should have demonstrated, with the Presidency of the EU Council, that we are an active, responsible, stable and reliable member of the European Union. (Ilie-D. Barnea, USR, opposition, 19.9.2018, CD, LP 8).

> The failure to achieve Romania's major domestic and international political objective in the field of justice, i.e. the lifting of the Cooperation and Verification Mechanism by the European Commission, has you at the forefront, as a champion of the PSD-ALDE. You are directly responsible not only for not having achieved the removal of any benchmark from the Cooperation and Verification Mechanism, but for having caused a regrettable setback. There are no longer just eight, there are now 20 benchmarks to meet. The CVM report shows that the Romanian justice system is still not up to the quality standards agreed in the European Union. (Ioan Cupşa, PNL, opposition, 5.3.2019, CD, LP 8)

However, PSD and ALDE MPs, including Tudorel Toader, Minister of Justice in a PSD-led government, stated that Romania had made significant progress under their rule. He requested that the EU should provide clear guidelines for Romania to be certified as a state under the rule of law. This (again) linked the purpose of the rule of law to the EU and its aspirations.

> The CVM – the Cooperation and Verification Mechanism – had four recommendations at the time of December 2016. Over time, the Ministry of Justice and the Romanian government have asked [the European Commission] that those recommendations be clarified, that they not be moving targets that change from one period to another, that we know exactly what we have to meet. This is why the Commission has explicitly specified the particularities, the content of the recommendations. And if one says generically – the laws on the administration of justice, strengthening the rule of law, this time the Commission tells us – the execution of final judgments in which the state is the debtor, the confiscation of criminal assets, the functioning of ANABI [National Agency for the Administration of Seized Assets[5]] and others. (Tudorel Toader, PSD, government, Minister of Justice, 5.3.2019, CD, LP 8)

Limitation of power. Limiting the power of the government and the state was not a major issue for the parliamentary parties until 2004. Some actors, including Ion Rațiu, a leading member of the National Peasant Party, stressed the importance of the rule of law in protecting citizens from the state, but this was not a widespread narrative.

[5] Agenția Națională de Administrare a Bunurilor Indisponibilizate.

> (. . .) in drafting the constitution we must never forget that the purpose of a constitution is the rule of law, the idea for which the state was created is the protection of the individual, not of the collective, the very defence of the collective that results from it is not the defence of each individual. (Ion Rațiu, PNȚ, opposition, 13.2.1991, AC, LP 1)

The parliament also introduced the ombudsperson (Avocatul Poporului—the People's Lawyer) to hold the executive and legislative branches of government accountable in the event that they acted against the law and thereby infringed on the rights of the citizens.[6] However, this was not linked with established narratives on the purpose of the rule of law to limit power.

It was mainly during the presidency of Traian Băsescu (supported by the PNL and the PD) that the limitation of power gained more attention. This was the first time since 1990 that a president was faced with governments led by parties other than his own. Until 2007, the Romanian presidents had worked alongside their respective governments to pursue their political agendas. Now, in times of cohabitation, major institutional political actors such as the president, the prime minister, ministers or the presidents of the two chambers of parliament were accusing each other of overreaching their constitutionally enshrined roles, damaging the separation of powers or blocking proper cooperation. A new—this time one-sided—narrative emerged that **the rule of law is to ensure effective limitation of power, including the president**. However, actors referred more often to the constitution and the constitutional limits than to the rule of law when speaking about the need to limit power.

> President Traian Băsescu began his mandate by repeatedly showing clear tendencies of authoritarian leadership, with serious overstepping of constitutional limits, behaviour incompatible with the role of a head of a constitutional state based on the principles of pluralist democracy, with the spirit and principles of the Romanian constitution, primarily with the provisions of Article 80 of the fundamental law. (Titus Corlățean, PSD, opposition, 28.2.2007, CD+S, LP 5)

> All they want is absolute power. Their most important goal is an all-powerful executive, using a weakened legislature to create a malleable judiciary in its own image. They strive to destroy the separation of powers in the state. And in place of the present system, they seek to establish a system in which power is unified and serves a narrow ideology in the service of a narrow set of interests. (Marian-Florian Săniuță, PSD, opposition, 6.10.2009, CD, LP 6)

After two failed attempts to remove Băsescu from the presidency, the narrative was established that the rule of law is about limiting power.

> In Romania, under the presidency of Traian Băsescu, there has been a serious erosion of the rule of law and democratic mechanisms, which we cannot passively witness. Political will and action have been concentrated in the hands of a single man, who dictates to the government, who has set up false majorities, who no longer accepts even the appearance of judicial power. In this context, the move to suspend Traian Băsescu is (. . .) a duty we

[6] See Ion Dinu, PNȚCD, opposition, 22.2.1996, CD LP 2.

> have, namely not to overlook the violation of fundamental law and to make every effort to restore a natural order in a state governed by the rule of law. (Radu E. Coclici, PSD, opposition, 29.11.2011, CD, LP 6).

The above-mentioned narrative had an especially sharp edge when MPs made semantic allusions to past communist or other authoritarian times. Allegations such as "authoritarian tendencies", seeking "all-power executive" (*executiv atotputernic*) were levelled against politicians in leading positions.[7] Accusations of treating Romania "as a feudum proprium" (*feudă proprie*)[8] were even reaching back to the times of Ottoman domination.

Morality and justice. Compared to references to the functioning of the system and the limitation of power, fewer statements about the purpose of the rule of law were related to issues of morality, justice and values. This theme was mainly present in the first wave of rule-of-law-related legislation. The parliament enshrined in the 1991 constitution that Romania is "a democratic and social state governed by the rule of law, in which human dignity, the rights and freedoms of citizens, the free development of the human personality, justice and political pluralism constitute the supreme values" (Article 1 (3)). As Ioan Muraru (FSN), for example, argued during the constitution-making process, the establishment of human rights was also linked to values. However, this statement did not explicitly contain the notion of the 'rule of law'.

> The evolution of the institution of human rights has seen declarations of undeniable moral, political and legal value, such as the Declaration of Independence of the United States (. . .). All these moral, political or legal rules consider that ignoring, forgetting or despising these natural, inalienable and sacred freedoms and rights are the only causes of public sufferings and the corruption of the governments, of the acts of barbarism which have revolted the conscience of the world; by these regulations they declare solemnly as the highest aspiration of men and the aim of all society organised into a state, the proclamation, preservation and protection the natural liberties and rights of man. (Ioan Muraru, FSN, government, 12.3.1991, AC, LP 1)

As mentioned above, later statements referring to morality, justice and values in relation to the purpose of the rule of law were mainly found in ceremonial speeches on occasions such as the anniversaries of the revolution and the constitution, but also on accession to NATO or the EU. They did not mark shifts or waves of understanding. Politicians contrasted the rule of law with communism and associated it with the Romanian revolution and its goals, which were enshrined in the constitution, and with the restoration of 'European values' in a broader sense. For example, when the Romanian parliament approved the country's accession to NATO in 2004, Prime Minister Adrian Năstase declared:

[7] Marian-Florian Săniuță, PSD, opposition, 6.10.2009, CD LP 6.

[8] Sorin Constantin Stragea, PSD, opposition, 22.11.2011, CD LP 6.

> It is worth emphasising here today that preparing for accession to the European Union and NATO meant for Romanians the rediscovery of our European values, of national harmony and reconciliation with the past, it meant a systematic action to cleanse Romanian society of facts and phenomena contrary to the rule of law, contrary to human values. And I recall my speech here in parliament in April 2002, when I made it clear that the action plan for NATO membership meant at the same time fighting discrimination, fighting corruption, taking firm action against the practices perpetuated over the last decade in child protection institutions, reforming access to classified information and definitively removing the shadows of the past. (Adrian Năstase, PSD, government, Prime Minister, 26.2.2004, CD+S, LP 4)

There was an overlap in the statements made on this point across the parties. Verginia Vedinaş from the far-right PRM party, for example, said:

> Moreover, this is also confirmed by the Romanian constitution, which, in Article 1(3), proclaims Romania as a democratic and social state governed by the rule of law, in which human dignity, citizens' rights and freedoms, justice and pluralism are supreme values in the spirit of the democratic traditions of the Romanian people and the ideals of the December Revolution and are guaranteed. (Verginia Vedinaş, PRM, opposition, 20.12.2006, CD+S, LP 5)

Over time, as Nicuşor Dan (USR) seemed to argue, Romanian and European moral values have become identical, and Romanian citizens are staunch defenders of them:

> (T)here is a strong attachment of Romanian citizens to European values. And we saw it at the beginning of this year, (. . .) when, spontaneously, hundreds of thousands of citizens demonstrated their belonging to the European area of values. For weeks, they demonstrated in the streets for the values of the rule of law, of democracy, demanding respect for a principle that says that no one is above the law. (Nicuşor Dan, USR, opposition, 11.5.2017, CD+S, LP 8)

5.1.5 Slovakia: Limiting Power and Ensuring the Functioning of the System for Prosperity

In the Slovak parliament, discussions about the purpose of the rule of law most frequently addressed the issue of limiting power, followed by the functioning of the system. MPs were much less likely to associate the rule of law with the pursuit of morality and justice. The narratives related to the limitation of power considered both the protection of individual rights vis-à-vis the state and checks and balances within the state. Unlike the other four cases, the narratives related to the functioning of the system emphasised the importance of the rule of law for foreign investment and the promotion of social order and prosperity in general. These narratives were used by representatives of different political parties, in some periods more than in others (Table 5.11). The pursuit of morality and justice was raised mainly in the context of the alleged need to rectify past injustices through legal means. Proponents of this narrative saw the achievement of justice as the primary purpose of the rule of law, even if it goes against formal law. The narrative emerged in the mid-2000s and

Table 5.11 Narratives on the purpose of the rule of law in Slovakia

	1992–1998	1998–2006	2006–2021
Limitation of power	RoL serves to ensure checks and balances among the branches of government. (overlapping)	RoL serves to limit the state power by law to protect individual rights. (overlapping)	RoL serves to limit the state power by law to protect individual rights. (one-sided, liberal-conservative parties) RoL serves to ensure checks and balances among the branches of government. (overlapping)
System functioning		RoL creates conditions that attract foreign investors and foster economic development. (overlapping)	RoL creates conditions that attract foreign investors and foster economic development. (overlapping) RoL is to enable the functioning of society and ensure the prosperity of its members. (overlapping)
Morality and justice			RoL has to achieve justice and, if necessary, rectify injustice caused by legal means. (one-sided, liberal-conservative parties)

was propagated by representatives of parties that opposed Prime Minister Vladimír Mečiar's rule in the 1990s.

Limitation of power. A strong narrative found in our documents was that the **purpose of the rule of law is to ensure that state power and authorities are effectively limited to what is permitted by law**. This narrative emerged after 1998. Statements often linked this limitation to the protection of individual rights and to the constitution, quoting its provisions or recalling its relevance. In so doing, they indirectly confirmed that this concept of the rule of law was enshrined in the constitution.

> The rule of law is characterised by the fact that it is the laws that govern over the citizens, not the other way around. In a state governed by the rule of law, authorities can only act within the bounds of the law and only to the extent permitted by the law. (Pál Csáky, MKDH, opposition, 19.6.1997, LP 1, Session 29)

> I genuinely want to remind you that many people in this assembly and very high-ranking officials have signed the valid Slovak constitution. And when Article 1 states that "the Slovak Republic is a sovereign, democratic and rule of law state", this right, dear colleagues, should be respected by all of us. And the authorities, including the National Council, state bodies, according to Article 2, act within the bounds of the constitution, within the scope and manner established by law. (Anton Poliak, ZRS, government, 5.2.1998, LP 1, Session 43)

The narrative on the purpose of the rule of law to bind authorities to the law was used on various occasions by representatives of both ruling and opposition parties across the political spectrum.

> The constitution of the Slovak Republic, adopted on 1 September 1992, introduced human rights and freedoms in a new way, which clearly and unequivocally declared a new relationship between the citizen and the state. Fundamental rights and freedoms are firmly based on the sovereignty of the citizen, from whom state power derives. As a sovereign democratic rule of law state, it explicitly stipulates that state bodies can act only on the basis of the constitution, within its limits, and in the scope and manner determined by law. (Jozef Kalman, HZDS, opposition, 27.4.2000, LP 2, Session 30)

After 2006, however, only representatives of the liberal-conservative parties used this narrative. Therefore, what was once an overlapping narrative became one-sided.

> The fundamental characteristic of the rule of law is the absolute supremacy of the law, which binds the state, that is, all state authorities, and the law governing the exercise of state power. (Pavol Minárik, KDH, government, 18.5.2005, LP 3, Session 42)

> In a truly compact legal system, (. . .) every individual can enter into a legal dispute, even against the state, and no one can overpower a citizen through any form of force, whether economic or official. Every participant in the dispute is entitled to equal justice under the same conditions (. . .). (Mária Ritomská, OĽaNO, opposition, 9.5.2012, LP 6, Session 2)

> In the rule of law, the legal order and the judiciary protect citizens and their individual rights and freedoms from the arbitrary exercise of state power. In contrast, in other systems where the law doesn't function, the legal order and the judiciary protect the arbitrary state power from citizens. (Andrej Hrnčiar, Most-Híd, opposition, 26.9.2012, LP 6, Session 7)

A second narrative, used mainly from 1992 to 1998 and again after 2006, was that the **purpose of the rule of law is to ensure checks and balances between the different branches of government**. This narrative was often used by representatives of opposition parties and linked to criticism of the actions of the governing majority. Its users emphasised that the rule of law serves to prevent the concentration of power, especially in the hands of the executive. Some MPs contrasted democracy and the rule of law, stressing that elections can potentially bring individuals with power-grabbing tendencies into positions of authority (see also Sect. 6.2.5). In this context, the primary objective of the rule of law was to protect against such tendencies.

> The fundamental prerequisite for the existence of the rule of law is the balance of power between the executive, legislative and judicial branches. The constitution should strictly secure this separation of powers to prevent any centralisation of power. (Árpád Duka-Zólyomi, Spolužitie-Együttélés, opposition, 1.9.1992, LP X, Session 5)

> In all developed countries, democracy is essentially based on the separation of state power into legislative, executive and judicial powers. (. . .) If one of these components dominates, or one is pushed into the background, their continuity is lost, the democratic system is disrupted. This increases political instability and the threat to the rule of law. (Imrich Móri, HZDS, government, 18.3.1993, LP X, Session 17)

> There is sometimes a certain tension between politics and the law, that's just how it is, and it even happens in well-established democracies. It is simply a fact that from time to time, one branch of power falters in established democratic countries, but there is always another branch of power that corrects these failures. That's the essence of the rule of law, that there is always another branch of power that corrects mistakes, failures, abuses of power and trampling on rights. (Lucia Žitňanská, SDKÚ-DS, opposition, 18.6.2013, LP 6, Session 21)

System functioning. When actors related reasoning about the purpose of the rule of law to the functioning of the system, they frequently argued that the **rule of law creates conditions that attract foreign investors and foster economic development**. As the quotations below demonstrate, this narrative is often presented with a negative formulation related to the criticism of a specific aspect of the rule of law in Slovakia. Since the beginning of the 2000s representatives from all significant parties across the political spectrum employed it with increased intensity.

> (I)f investors discover that the judiciary is politicised, and there are already initial indications, no foreign capital will invest here. (Ján Sitek, SNS, opposition, 18.12.2000, LP 2, Session 43)

> Investors are not satisfied with cheap labour in Slovakia and the fact that the government was formed by the SDKÚ. This alone would have resulted in an investment surplus between 1998 and 2002, but it didn't happen. Even an invitation to NATO may not be an immediate certificate for a massive influx of investments, although we would all be very pleased. Smer perceives the basis for attracting quality, non-speculative investments to be the trust of business partners in the rule of law and political stability. (Robert Fico, Smer, opposition, 12.11.2002, LP 3, Session 3)

> The current state of justice today is not just a problem for the rule of law, it's a problem for the economy and new investments. Who, when the crisis ends, will come to Slovakia with new investments if they are under the threat of our courts jeopardising their investment? (. . .) Who will provide jobs for the people – the prime minister, us or new investors? (Daniel Lipšic, KDH, opposition, 15.10.2009, LP 4, Session 41)

Politicians frequently referred to issues in the justice system, including weak enforceability of the law and corruption. They argued that these problems made the country unattractive to foreign investors, complicated business operations and impeded economic growth. Both the government and the opposition addressed these issues, as represented by the following selected quotations.

> I'm aware that the ideal notion of an independent judiciary that decides in all cases in a reasonable time and produces quality verdicts is not something we can achieve in a year or two. (. . .) Today, the poor enforcement of the law, the malfunction of judicial institutions, and corruption are hindrances to further economic development. (Lucia Žitňanská, SDKÚ-DS, government, Minister of Justice, 6.8.2010, LP 5, Session 3)

> Entrepreneurs are saying that the business environment is deteriorating under your government. They complain about the enforceability of the law, they can't collect their receivables, and they have no faith in the Slovak judiciary. (. . .) Where have we come to? What should investors think? Will they invest in a country where it's probably very difficult to talk about the rule of law? (Alojz Přidal, KDH, opposition, 16.4.2013, LP 6, Session 17)

Several governments took measures to officially combat the problems. However, the purpose of the rule of law to create attractive conditions for foreign investors and foster economic development was still mentioned as a goal that was not achieved at the end of our period of analysis in 2021.

> In connection with the 'Rule of Law Initiative', the government will continue to diligently implement the action plan to strengthen the Slovak Republic as a rule of law, in all three of its parts: transparency, predictability and participatory legislative processes; corruption as a negative and harmful factor for the 'Slovakia brand'; and transparent and efficient justice as a solid foundation for both domestic and foreign investors. (Peter Pellegrini, Smer, government, Deputy Prime Minister, 18.4.2016, LP 7, Session 2)

> However, the low level of trust in the Slovak judiciary is alarming, and it is dangerous for democracy and also for foreign investment. When there's a high level of corruption and a lack of trust in the judiciary, foreign entrepreneurs will certainly reconsider whether to invest in our country, making it a serious problem. (Miloš Svrček, Sme Rodina, government, 4.12.2020, LP 8, Session 18)

Another narrative regarding the rule of law and the functioning of the system was that **the rule of law is not an abstract concept but a practical tool whose purpose is to enable society to function and ensure the well-being of its members**. This narrative was most often used as a general support for the rule of law, emphasising that it impacts everyday life and the whole of society. In such statements, the rule of law was considered in connection to other fundamental principles rather than being viewed in isolation.

> (. . .) a clear, simple, and understandable legal order is an essential part of the rule of law and democracy in general, as the legal order is the fundamental instrument of the state. (Peter Brňák, HZDS, opposition, 12.9.2001, LP 2, Session 51)

This narrative was used with increasing intensity by representatives of various political parties, both in government and in opposition, from the mid-2000s onwards.

> As a lawyer and someone who has observed the activities of the National Council of the Slovak Republic with interest, albeit from the sidelines, I was quite dismayed when I witnessed the degradation and the misrepresentation of the term 'rule of law'. This is not an empty, profaned concept; it is a fundamental condition for the functioning of any society and state. (Mojmír Mamojka, Smer, government, 3.8.2006, LP 4, Session 2)

> The state can and should intervene and stimulate development by making it achievable through well-defined and predictable rules and laws to address undesirable changes in the global environment. (Mária Ritomská, OĽaNO, opposition. 9.5.2012, LP 6, Session 2)

Notwithstanding the underlying cross-party agreement on the importance of the rule of law for the day-to-day functioning of society, representatives of different political parties, based on their ideological backgrounds, emphasised different approaches to, for example, promoting individual prosperity.

> I would like to conclude, respected colleagues, with a vision that I consider to be current and historical. [A vision of] Slovakia as a free, European, and for the third time, creative and prosperous nation. The aspect of freedom remains a challenge, not only over these 23 years but also in the future because it's about responsibility, democracy, plurality, even in education, for example. It's about the rule of law, which is not just a theory but a practice. It's about the fact that it's not the rich who have the right, but the law enables people to become richer, stronger and more capable when promoting legitimate interests. (Ján Figeľ, KDH, opposition, 16.4.2013, LP 6, Session 17)

> I think it's time to focus on issues and topics in parliament that can have a positive impact on the lives of Slovak citizens, making their lives easier and better. People want to live happier, more joyful lives, they want to feel safe, they want a functioning healthcare system, social security, fast, fair justice, and a fully functioning rule of law. (Karol Farkašovský, SNS, government, 28.3.2017, LP 7, Session 14)

Morality and justice. During the three decades under study, discussions on the purpose of the rule of law in terms of morality and justice were not common in Slovakia. However, we identified a narrative suggesting that **the purpose of the rule of law is to achieve justice and that injustice caused by legal means must be rectified**. This narrative was mainly linked to the issue of the so-called Mečiar amnesties of 1998 and the repeated attempts to revoke them. Advocates of this perspective often rejected a formalistic interpretation of the law. They argued that conflicts between law and justice could arise and that in cases where a law is immoral, subsequent annulments could be justified as moral acts. However, they maintained that amnesties granted for selfish reasons were not justified. Representatives of liberal-conservative parties, such as KDH, Most-Híd and OĽaNO, used this narrative to advocate for the abolition of the 'Mečiar amnesties'.

> Amnesties prevent justice from being served. If, in this country, there has ever been an irreconcilable conflict between the law and justice, it was in this case. Therefore, these immoral amnesties, most likely self-amnesties, must yield to justice. (. . .) An unpunished crime must not be erased from memory. Otherwise, the law can become a means not only to achieve justice but also to achieve injustice. (Pavol Minárik, KDH, opposition, 18.5.2005, LP 3, Session 42)

Although the 'Mečiar amnesties' date back to 1998, the issue was only legally solved in the late 2010s. Therefore, it reappeared in the parliamentary debates over time when MPs emphasised the relevance of the material essence of the rule of law and justice.

> The problem with the mentioned [Mečiar] amnesties is that (. . .) the respective legal act is in line with the law only formally, but it deviates from its material essence. It's a material injustice, an injustice of the Slovak Republic against its own citizens in the interest of certainties, which means criminals or alleged criminals if the matters are not properly investigated. (Ján Figeľ, KDH, opposition, 17.3.2015, LP 6, Session 48)

> (L)aw cannot arise from lawlessness, (. . .) the loud and fundamental essence of law is the achievement of justice and that when the law escapes justice and exceeds the tolerable limits, it is legal and legitimate not to respect such law, and to do something about it. (Peter Kresák, Most-Híd, government, 6.12.2016, LP 7, Session 11)

> It's about gambling with people's trust in the elementary justice that a rule of law should guarantee. (. . .). Because a state governed by the rule of law is one where justice must prevail, and the state must know how to establish a method for applying justice within the state. (Marek Krajčí, OĽaNO, opposition, 30.3.2017, LP 7, Session 14)

5.2 Elements of the Rule of Law

In parliaments, MPs do not usually give theoretical presentations on all the elements they associate with the rule of law. They comment on specific bills or reports and need to focus on specific arguments. Nevertheless, our extensive empirical material has allowed us to identify elements that they most commonly associated with the rule of law. Thus, in this chapter, we do not provide exhaustive lists of the elements of the rule of law discussed in parliamentary debates, but rather key points that were associated with the rule of law. One of the main findings is that while MPs highlighted the limitation of power as a vital purpose of the rule of law (Sect. 5.1), they did not rank the separation of powers first among the elements of the rule of law. Instead, in the sources we analysed, they clearly focused on legality or, more specifically, legal certainty and adherence to the law.

Legality is part of many concepts of the rule of law worldwide, including 'thin concepts'. Thus, its emphasis is consistent with many approaches to defining the rule of law. However, effective rule of law institutions are rarely included in rule of law catalogues and are mostly perceived as means, enabling mechanisms. In our cases, parliamentary debates have highlighted the discrepancies between the written law and its practical implementation, leading actors to demand strong institutions to enforce and safeguard the law.

These and other findings presented below stem from the coding of all statements in our selected sources in which speakers referred to specific subjects as elements, pillars or attributes of the rule of law. We also included speeches where it was clear from the context that politicians discussed the element in question in connection to the rule of law, like, for example, "Without x, the rule of law is an illusion", "It is important to note that the rule of law relies on x" or "In a state under the rule of law, it is essential to guarantee x".

While the rule of law theories and conceptual frameworks contain diverse elements, many of them include three core pillars or (groups of) elements: legality, separation of powers and equal rights. Legality, as a broad concept, means that laws are clear, stable and predictable and that the law is implemented in practice. It also includes the principles that legislation cannot be retroactively amended and that the same laws and rules apply equally to everyone. The separation of powers entails an independent judicial branch. It also implies that judges decide independently of political, religious and economic influences, that they may be dismissed only in exceptional cases and that the arbitrary use of executive powers is prohibited. The notion of (equal) rights encompasses, among other things, respect for fundamental rights and freedoms in general, respect for non-discrimination of any member or part of society, and free access to justice.

Many of the MPs' statements that we coded as references to elements of the rule of law could be assigned to the three themes mentioned above (Table 5.12). In each case, however, the main pillars did not cover a large residual area that was best grouped under the category of 'Effective institutions'. Narratives related to effective institutions were used in all three waves of rule of law legislation in all countries except Romania. This underlines the particular importance of this aspect for parliamentarians. (Equal) rights and the separation of power were also frequently mentioned by MPs throughout the periods of rule of law legislation, but we found fewer narratives relating to them.

As Table 5.13 reveals, MPs in all parliaments except Romania used the narrative that constitutionality/legality/legal certainty is a crucial element of the rule of law, most intensively in the second or third wave of rule of law legislation. Politicians in Hungary and Poland shared the narrative—mainly during the first wave—that legal certainty (including predictable and stable frameworks) is necessary for the new political system. Other narratives were country-specific, including two narratives on legality as an element of the rule of law used only by some parties (one-sided narratives).

Narratives on effective institutions as an element of the rule of law differed more across countries and in one case (Slovakia) also over time. Table 5.14 provides an overview of how MPs referred to this issue in their speeches. The focus was on a judiciary independent from the executive (Czechia) or from political and economic interests in general (Slovakia), on an independent and effective judiciary and prosecution (Poland), on the need to establish diverse independent organs (Hungary), or on respect for the law and its effective enforcement (Slovakia). In general, these narratives were used across party lines. Only in Hungary and Poland did the formerly overlapping narratives become one-sided during the third wave of rule of law legislation.

Narratives addressing (equal) rights as an element of the rule of law were used with greater intensity in Czechia and Slovakia, but we also identified them in Poland and Romania (Table 5.15). In Czechia (in the first and the second wave of rule of law legislation) and Poland, the focus was more on respecting and protecting fundamental rights and freedoms; in Slovakia and Czechia (the third wave), on equality before the law. In Romania, only some MPs employed a narrative on this issue, which focused on the rights of national minorities. This narrative was used by the party that represents the Hungarian minority (see also Sect. 6.1.4).

Narratives on the separation of powers as an element of the rule of law were mainly used in Hungary and Poland (Table 5.16). While MPs in Poland and Slovakia focused on the need to combine the principle of the separation of powers with mutual control (checks and balances), their colleagues in Hungary concentrated more on the separation of powers at different levels of government. Half of the narratives were one-sided narratives.

Although most parties shared narratives on the elements of the rule of law, in all countries except Czechia we identified some narratives that were unique to certain parties. This was most often the case during the third wave of rule of law legislation. References to elements of the rule of law in Hungary and Poland were linked to very

Table 5.12 Narratives on elements of the rule of law, 1990/92–2021

	1st wave					2nd wave					3rd wave				
	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK
Legality	✓	✓	✓	✓		✓		✓		✓	✓	✓			✓
Effective institutions	✓	✓	✓				✓			✓		✓	✓		✓
(Equal) rights	✓		✓	✓		✓				✓	✓			✓	✓
Separation of powers		✓	✓						✓			✓	✓		✓

1st wave: CZ 1992–1998, HU 1990–1998, PL 1990–1997, RO 1990–2004, SK 1992–1998
2nd wave: CZ 1998–2006, HU 1998–2010, PL 1997–2015, RO 2004–2014, SK 1998–2006
3rd wave: CZ 2006–2021, HU 2010–2021, PL 2015–2021, RO 2014–2021, SK 2006–2021

Table 5.13 Narratives on legality as an element of the rule of law

	CZ	HU	PL	RO	SK
Overlapping narratives					
Constitutionality/legality/legal certainty as a crucial element of the RoL.	✓ (2, 3)	✓ (3)	✓ (2)		✓ (3)
Legal certainty (including predictable and stable frameworks) is necessary in the new political system.		✓ (1)		✓ (1)	
Adherence to legal principles and regulations is necessary.	✓ (1)				
Supremacy of the law, law-abiding state institutions and correct implementation of the law as guarantees for RoL.			✓ (1)		✓ (3)
One-sided or diverging narratives					
Unconditional respect for the principle of non-retroactivity is crucial in the rule of law.					✓ (2, 3)
Legal certainty and effective institutions are intrinsically interconnected elements of the RoL.		✓ (3)			

Waves of rule of law legislation where a particular narrative was used most intensively are indicated in brackets

Table 5.14 Narratives on effective institutions as an element of the rule of law

	CZ	HU	PL	RO	SK
Overlapping narratives					
Judiciary that operates independently from influence, especially from the executive, is highly relevant.	✓ (3)				
Establishing diverse independent organs is essential in shaping the RoL.		✓ (1, 2)			
Independent, impartial and well-functioning judiciary and prosecution service are key elements of the RoL.			✓ (1)		
Respect for law and its enforcement are fundaments of the RoL.					✓ (2)
Independent and impartial judiciary is a pillar of the RoL.					✓ (3)
One-sided or diverging narratives					
Independence of diverse organs is essential for restoring the RoL.		✓ (3)			
Independent judiciary and prosecution service are key elements of the RoL.			✓ (3)		

Waves of rule of law legislation where a particular narrative was used most intensively are indicated in brackets

similar criticisms of practical shortcomings. However, in Poland, they were captured by two narratives, while in Hungary they were captured by three elaborated narratives. Again, this is an example of country specificity despite some overarching commonalities (Table 5.17).

Table 5.15 Narratives on (equal) rights as an element of the rule of law

	CZ	HU	PL	RO	SK
Overlapping narratives					
Respecting and protecting fundamental rights and freedoms as an essential pillar of the RoL.	✓ (1–3)		✓ (1)		
Equality before the law is fundamental for the RoL.	✓ (3)				✓ (2, 3)
Safeguarding the constitutional principle of equality of rights is a duty for all political and judicial actors.				✓ (2)	
One-sided or diverging narratives					
The constitutional rights of citizens belonging to national minorities to preserve their language, traditions and cultural identity must be respected.				✓ (1)	

Waves of rule of law legislation where a particular narrative was used most intensively are indicated in brackets

Table 5.16 Narratives on separation of powers as an element of the rule of law

	CZ	HU	PL	RO	SK
Overlapping narratives					
Separation of powers with effective checks and balances as an integral part of the RoL.			✓ (1)		✓ (3)
Separation of powers (including local governments) as a fundamental element of the RoL.		✓ (1)			
One-sided or diverging narratives					
Separation of powers (which is undermined by the government) is fundamental for restoring the RoL.		✓ (3)			
Separation of powers and checks and balances as a guarantee to protect rights under the RoL.			✓ (3)		
Separation of powers is in danger due to the president or government engaging in overreach of their constitutional rights, esp. concerning the judiciary.				✓ (2)	

Waves of rule of law legislation where a particular narrative was used most intensively are indicated in brackets

5.2.1 Czechia: Legal Certainty, (Equal) Rights and Effective Institutions

Issues related to legality (including legal certainty and non-retroactivity) were the most frequently mentioned elements of the rule of law in the analysed Czech parliamentary debates. Statements mentioning effective institutions or (equal) rights followed at a considerable distance. There were only a few statements mentioning

Table 5.17 One-sided or diverging narratives on elements of the rule of law

	1st wave					2nd wave					3rd wave				
	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK
Legality										✓		✓			✓
Separation of powers									✓			✓	✓		
Effective institutions												✓	✓		
(Equal) rights				✓											

See Table 5.12 for the definition of the waves

Table 5.18 Narratives on elements of the rule of law in Czechia

	1992–1998	1998–2006	2006–2021
Legality	Adherence to legal principles and regulations is necessary. (overlapping)	Constitutionality/legality/legal certainty as a crucial element of the RoL. (overlapping)	
(Equal) rights	Respecting and protecting fundamental rights and freedoms as an essential pillar of the RoL. (overlapping)		
			Equality before the law is fundamental to the RoL. (overlapping)
Effective institutions			Adequate legal measures and a judiciary that operates independently from others, especially from the executive, are highly relevant. (overlapping)
Separation of powers	*No established narrative identified in the analysed sources*		

the separation of powers, but these did not form an established narrative.[9] In the selected sources, narratives on legality and (equal) rights as elements of the rule of law were present over time, yet with varying intensity of their use. Statements mentioning effective institutions appeared mainly in the third wave of rule-of-law-related legislation. All narratives were used across party lines (Table 5.18).

Legality. As mentioned, legality issues ranked first when actors in the Czech parliament spoke about the elements of the rule of law, also because MPs often referred to legality when they spoke about the purpose of the rule of law (Sect. 5.1.1). From 1992 to 1998, MPs across parties emphasised the **importance of adhering to legal principles and regulations, and respecting constitutional norms and professional standards**. As the following quotations show, such arguments were made towards the executive and parliamentary majority (Kačenka) and the Prosecutor General (Wagner). In addition, such statements were made as a commitment of the government.[10]

> The validity of the acts of the National Council of the Republic undoubtedly belongs to the general principles of the rule of law. From this principle, it follows that legitimate and legal acts of the National Council of the Republic should be transformed by any legal regulation and remain in force for the entire period established by the relevant law. (. . .) The proposed regulation essentially means bypassing universally applicable legislative principles and the rule of law (. . .). Unjustified adoption of new legislation can be considered an abuse of legislation for political purposes. (František Kačenka, HSD-SMS, opposition, 20.5.1993, LP 1, Session 9)

[9] Note that these findings are based on the analysis of extracts from selected documents that explicitly dealt with elements of the rule of law.

[10] E.g. Václav Klaus (ODS, government, Prime Minister, 7.7.1997, LP 2, Session 12), quoted in Sect. 5.2.1.

> If we claim to be building the rule of law, we are building it first and foremost by our actions, by our insistence that the law be respected. If we leave as the guardian of the rule of law in this country a man who himself breaks the law, then we ourselves do not have a clear conscience and we do not honour the main principle (. . .). (Jozef Wagner, ČSSD, opposition, 17.6.1993, LP 1, Session 10)

During the second wave of rule of law legislation (1998 to 2006), MPs emphasised that **constitutionality and legal certainty are crucial elements of the rule of law**, with a particular relevance of legal clarity, stability and fairness in upholding the rule of law and fostering citizens' trust in the legal system. There was a broad consensus that legal norms, including international treaties, should be applicable universally and non-retroactively, and that they cannot be tailored to specific circumstances.

> In a state governed by the rule of law, legal norms, and therefore international treaties, should not be tailor-made for specific situations. A legal order should be created that applies to everyone, and treaties and laws should not apply retroactively. (Jiří Payne, ODS, opposition, 15.2.2002, LP 3, Session 46)

> In particular, this time too, the economic and legal position of the beneficiaries is worsening, which threatens to violate the constitutional principle of legal certainty and trust in the law, as it is derived from Article 1 of the constitution of the Czech Republic, which speaks of the rule of law. (Vlasta Parkanová, KDU-ČSL, opposition, 31.3.2004, LP 4, Session 30)

Parliamentarians repeatedly mentioned trust in law and the perspective of the norm addressees when highlighting the relevance of legal certainty. It was argued, for example, that legal certainty implies the addressees of law are familiar with it (Votava), and that there is no retroactive lawmaking (Sobotka).

> The rule of law is required to enable those on whom it imposes obligations or confers rights by its legislation to know about them. (Václav Votava, ČSSD, government, 4.11.2004, LP 4, Session 37)

> One of the basic features of the rule of law is the principle of legal certainty and citizens' trust in the law, which includes the prohibition of retroactivity of legal norms. According to the constitutional court's 2001 ruling, true retroactivity has no place in the rule of law. (Bohuslav Sobotka, ČSSD, government, Deputy Prime Minister and Minister of Finance, 25.11.2005, LP 4, Session 51)

This narrative was also used from 2006 to 2021, slightly adapted to the occasions for speaking on the matter, e.g. contracts with churches and religious societies or the parental allowance system. It was widely shared across parties.[11]

[11] In addition, Miroslav Kalousek (TOP09, opposition, 19.1.2016, LP 7, Session 39) argued, for example, that "it is not possible to behave like this in a democratic state governed by the rule of law where the law exists, and we must either adhere to it or, if it doesn't exist, it cannot be that you now decide it will exist, be effective, and at the same time be satisfied with the reassurance of the Minister of Finance: 'When it becomes effective, we won't really act according to it, don't worry, and until then, we will amend it'."

> (W)e will significantly strengthen what we keep talking about here, the principles of the democratic rule of law. It is only on the basis of a good law that a settled and stable jurisprudence of the highest courts can emerge, which will bring a high degree of legal certainty to citizens. The citizen will be able to predict how the courts will rule on his case. (. . .) So first you need a good quality law, and then you can have stable case law. (Jiří Pospíšil, ODS, government, Minister of Justice, 9.11.2011, LP 6, Session 30)

> The principle of legality says that the law must be followed. The principle of legitimacy says that it is not possible for laws to be made in contradiction with the constitution, in contradiction with the expectation that the citizen of the Czech Republic has of the decision of the legislator. (Vojtěch Filip, KSČM, opposition, 13.7.2012, LP 6, Session 41)

> I think that the rule of law always requires a certain stability, certainty and predictability of the law. (Helena Válková, ANO, opposition, 10.11.2021, LP 9, Session 1)

Again, the prohibition of retroactivity was invoked repeatedly as ensuring legal certainty and citizens' trust in the law. Different MPs cited the constitutional court's interpretation of 'true retroactivity', employing a more differentiated reasoning about the matter than before.

> Regarding the ban on retroactivity, the constitutional court stated that it is a fundamental part of the rule of law. In line with previous case law, the constitutional court insists that only true retroactivity is generally prohibited, meaning even unconstitutional retroactivity. (. . .) According to the constitutional court, such a legal norm simultaneously constitutes an interference with the principle of protecting the citizen's confidence in the law and legal certainty, or an interference with acquired rights. (. . .) (Petr Hulinský, ČSSD, opposition, 1.11.2011, LP 6, Session 25)

> The moment you retroactively change contracts that have been made, you are committing a change in what is a legitimate expectation, and you are simply changing something that is supposed to be respected. (. . .) This law has already been examined once by the constitutional court, the law, I mean now, on compensation, on property settlement with churches, and the constitutional court has stated that it is in order, that it is in line with the constitutional order. (Jan Farský, STAN, opposition, 23.4.2019, LP 8, Session 28)

> The rule of law is based on legal certainty. Whoever decides to act or behave in the rule of law must know in advance the legal consequences of that behaviour. Every citizen in a state governed by the rule of law must move on a playing field that has boundaries that are given and known to him or her. And if those boundaries shift or change, it is only in the future, not retrospectively. (Jan Bauer, ODS, opposition, 17.12.2019, LP 8, Session 39)

(Equal) rights. Throughout the whole period of analysis, MPs consistently emphasised that safeguarding and promoting fundamental human rights and freedoms is a crucial aspect of democracy and the rule of law. This narrative was employed by representatives of various political parties, including those in opposition, and it aligns with the emphasis on citizen-centred arguments regarding the purpose of the rule of law (Sect. 5.1.1).

> I believe that here we have approved the government's programme statement, the first point of which was that we want to be a democratic and rule of law state and that we will, therefore, respect the current constitution and all international human rights documents, including the equality of all citizens. (Vladimír Řezáč, LB, opposition, 17.6.1993, LP 1, Session 10)

> (W)e live in a democratic state governed by the rule of law, in which people are not divided according to colour, religion or political affiliation, but according to their compliance or non-compliance with the law (. . .) (Ivan Langer, ODS, opposition, 5.5.2005, LP 4, Session 44)

> The Czech Republic is internationally recognised as a democratic state governed by the rule of law. Under the rule of law, respect for fundamental human rights, including the right to protection of property and the right to a fair trial, should be a matter of course. (Vojtěch Filip, KSČM, opposition, 13.2.2020, LP 8, Session 40)

While the narrative remained unchanged, we found more statements by government representatives since 1998. ČSSD politicians referred to broadly defined rights as a central pillar of the rule of law. ODS MPs highlighted the principle of the right to privacy and the principle of punishing offenders.

> (E)very decent democratic government and every decent rule of law takes care of the human rights of its citizens and citizens of other countries. (Egon Lánský, ČSSD, government, Deputy Prime Minister, 19.8.1998, LP 3, Session 3)

> The government intends to develop a democratic rule of law based on the values of freedom, equality, justice, democracy, tolerance of differences and, above all, solidarity with the weak, vulnerable and defenceless. This is the first priority of the government's efforts. The democratic rule of law is perceived by this government as a state which, through its legal order and its effective applicability, provides all citizens and legal persons with equal access to the rights and freedoms guaranteed by the Charter of Fundamental Rights and Freedoms and the ratified human rights conventions. It sees the way to a truly emancipated society in the concept of a state that is bound by law without exception and serves its citizens, who are guaranteed the freedom to decide their present and future. (Vladimír Špidla, ČSSD, government, Prime Minister, 6.8.2002, LP 4, Session 3)

> (T)he democratic rule of law at the beginning of the twenty-first century is based on different constitutional principles and postulates, and that, among other things, there are two equally important constitutional postulates, namely, firstly, the principle of the right to privacy and, secondly, the principle of punishing offenders. (Jiří Pospíšil, ODS, opposition, 23.6.2005, LP 4, Session 45)

For the period between 2006 and 2021, another narrative centred around the equality of people before the law. This topic was addressed more intensively than before, for example in debates on crime and equal treatment before courts. MPs also discussed the economic crisis and possible solutions, strategies for the fight against corruption, as well as the issue of equal rights in relation to the anti-communist resistance. They argued that **equality before the law is fundamental to the rule of law** and that a state cannot honestly claim to be under the rule of law if it fails to protect the rights of

all its inhabitants. Maintaining equality before the law was considered as essential for upholding the integrity and legitimacy of the rule of law, preventing the legal system from being manipulated for political purposes or leading to injustices.[12]

> (T)o a certain extent, it may break through what European civilisation has achieved in two thousand years under the rule of law. This means the principle of the equality of citizens before the law, the principle of equality of parties within the framework of legal proceedings, but also principles such as the proportionality of punishment, that is to say, everyone should be punished for the crime committed, or the aspiration, even though it will never be fulfilled in its ideal form, of the immediacy of punishment. (Jiří Pospíšil, ODS, supporting caretaker government, 9.2.2010, LP 5, Session 68)

> I would only ask that we stick to the constitution of the Czech Republic and the Charter of Fundamental Rights and Freedoms so that we do not move our democratic society beyond the principles of the rule of law. I hope that no one will be deprived of their judge and that those who will judge certain matters will have the courage and ability not to prevent such a thing. I would like to see that there are no first and second class citizens here and that we remain equal before the law. (Vojtěch Filip, KSČM, opposition, 11.2.2011, LP 6, Session 13)

The narrative was also frequently used by the opposition parties, whose representatives repeatedly linked such statements with demands on or criticism of the government. This was done, for example, in cases of alleged limited independence of the judiciary from politics (Zaorálek), perceived discriminatory treatment in the context of church restitution (Křeček) and regarding President Klaus's amnesties (see Sect. 3.2).

> What we have here is perhaps the most serious case – I repeat – of an organised group that has (. . .) the method and the ability to influence a political cause, and now it is up to us what we do about it. (. . .) You are responsible for moving this country a little bit further towards not having the law apply equally to everybody, because when something like this happens, it is a scandal in the rule of law. (Lubomír Zaorálek, ČSSD, opposition, 13.6.2008, LP 5, Session 33)

> Differential treatment in the same cases is perceived as a fundamental break in the functioning of the pillars of the rule of law. Both all European constitutional courts and the European Court of Human Rights in Strasbourg perceive such treatment very negatively, and thus the state could face significant damage to the restituted property. (Stanislav Křeček, ČSSD, opposition, 13.7.2012, LP 6, Session 41)

> If this form of amnesty, as approved by the president and the government, is in fact a disgrace, if this form of amnesty is something that undermines the confidence of a large part of the public in the rule of law, in the principles of equality before the law, if this form of amnesty raises justified suspicion that it was tailored to a few chosen ones to save them from ongoing criminal proceedings, then I believe that the Chamber of Deputies has no other option but to make this amnesty the subject of a vote of no confidence in the government of Petr Nečas. (Bohuslav Sobotka, ČSSD, opposition, 17.1.2013, LP 6, Session 50)

[12] See also Jiří Bláha (ANO, government, 23.11.2019, LP 8, Session 26), as quoted in Sect. 5.3.1.

Effective institutions. Statements regarding effective institutions as an element of the rule of law mostly referred to the independence of the judiciary and trust in the law, particularly in connection with legal certainty. Other aspects that were addressed, such as the confidentiality of lawyers or the efficiency of judicial and administrative proceedings, did not serve as a basis for the elaboration of a specific narrative.

Most of the statements referring to the independence of the judiciary as a critical element of the rule of law were made from 2006 to 2021, most commonly in connection with the criminal prosecution of several prominent politicians. In connection with a corruption scandal in 2012, police requested a waiver of the parliamentary immunity of the opposition frontbencher David Rath, who was detained in the act of accepting a bribe. Later, the possible influence of politics on the judiciary was raised after ANO joined the government coalition as junior partner in 2013 and took over the Ministry of Justice while its leader, Andrej Babiš, was under investigation for fraud ('Stork's Nest affair'). In 2017, the police asked parliament for consent to the prosecution of Babiš and the parliamentary party group leader Jaroslav Faltýnek. In that period, MPs emphasised the importance of a judiciary, public prosecution and police that operate free from undue influence or manipulation, especially from the executive branch.

> (I)t is a question of whether the Czech Republic is still a democratic state governed by the rule of law, where the police and the courts are truly independent. If it were so, a man accused of accepting a seven-million bribe would hardly be sitting in detention in a situation where all the witnesses in his case have already been questioned; he no longer holds any position that would allow him to continue his criminal activities (. . .). That is also why – I emphasised also – I personally vouched for David Rath when applying for his release from custody. (Jiří Šlégr, non-affiliated, elected for ČSSD, opposition, 7.9.2012, LP 6, Session 45)

> I am an optimist in life and I believe that I live in the rule of law. I believe in the professionalism of prosecutors and the independence of the courts. We have done nothing wrong, let alone illegal. And in the end, I think the truth will prevail, and we will clear our name. In our case, and to the detriment of Czech democracy, unfortunately after the elections, because nothing will happen before the elections. But the purpose of this political plot to damage our movement has been fulfilled, but unfortunately that is our Czech politics so far. (Jaroslav Faltýnek, ANO, government, 6.9.2017, LP 7, Session 60)

Another occasion to address this issue was the allegation that the close collaborators of the president attempted to influence judges' decisions in cases directly related to the office of the president.

> I think that all of us who took the constitutional oath know that the independence of the judiciary is one of the fundamental pillars of the rule of law and that the president of the Republic, who is part of the executive and who seeks to influence that independence in his favour, is doing nothing other than tearing down the very pillars of the rule of law, and that the House, as the supreme representative of the legislature, simply cannot remain silent on this. (Miroslav Kalousek, TOP09, opposition, 22.1.2019, LP 8, Session 26)

Separation of powers. In the parliamentary debates analysed, the separation of powers was mentioned as an element of the rule of law rather sporadically. However, from the context it can be assumed that this is not because MPs did not embrace this concept but that it was generally accepted and not worth discussing. Only in the period from 2006 to 2021 did we identify more statements with reference to it. Politicians argued that **maintaining separate and independent branches of government helps to prevent power from becoming centralised and abused**. Respecting judicial decisions was described as critical for maintaining the legitimacy of government actions and preserving the constitutional order.

> The constitutional system of the rule of law and its separate existence are based on the division of powers among the legislative, executive and judicial branches. This has been reiterated several times, and every elementary school student knows it. The constitution, the primary law of the state, then enshrines the balancing of these powers, mutual control, checks and balances, and thus the tools to maintain that balance. (Alena Gajdůšková, ČSSD, government, 26.9.2019, LP 8, Session 34)

While all parties regarded the separation of powers as an essential element of the rule of law, it was sometimes interpreted in a more nuanced way. For example, as the following quotations show, MPs argued that not "any action on the floor of the Chamber of Deputies would be some kind of improper interference in the exercise of judicial power" (Hašek) and that "the nature of a delict" should not be defined only in judicial decision-making practice (Ožanová). Moreover, the rather general narrative was used by opposition parties to criticise government measures.

> (D)emocracy and the democratic rule of law is based on three pillars – the legislative, executive and judiciary. I want to shatter the myth that any action on the floor of the Chamber of Deputies would be some kind of improper interference in the exercise of judicial power. I will tell you why. The public prosecutor's office – and that is the main point – is subject to the ministry of justice, i.e. the executive. And personnel matters relating to the public prosecution service are also the responsibility of the executive, namely the minister of justice. If the executive does not act, then, in our firm belief, it is the legislative power that comes next, from which the legitimacy of the government derives. (Michal Hašek, ČSSD, opposition, 13.6.2008, LP 5, Session 33)

> In view of the principle of the separation of powers, it is unacceptable that the nature of a delict, that is, the factual basis of such conduct, should be defined only in judicial decision-making practice. (Zuzana Ožanová, ANO, government, 26.9.2019, LP 8, Session 34)

> We will not support any government bill that would restrict the system of checks and balances and the independence of institutions on which the democratic rule of law stands. (. . .) That was part of our common programme, and now, you, the left-wing party, ANO movement, have removed it, but we will abolish the quarantine period. We will advocate for a major legal clean-up in laws. (Zbyněk Stanjura, ODS, opposition, 11.7.2018, LP 8, Session 17)

5.2.2 Hungary: Legal Certainty, Separation of Powers and Effective Institutions

In the parliamentary material analysed, speakers in the Hungarian parliament most often mentioned legality (with a focus on legal certainty as well as predictable and stable frameworks) when referring to elements of the rule of law. This was followed at a considerable distance by the separation of powers and effective rule of law institutions, which were mentioned with similar frequency and generally not very often. Rights, mostly concrete rights, were rarely mentioned as an element of the rule of law, not forming an established narrative. With regard to time, we found more statements on elements of the rule of law from 1990 to 1998 and from 2010 to 2021. In between, speakers did not mention this topic, except regarding the relevance of effective institutions. Most of the narratives have been used across parties (Table 5.19). From 2010, some narratives became one-sided, being used only by opposition parties. However, no narratives with completely new contents emerged in that period.

Legality. In our sources from the Hungarian parliament, issues of legality were referred to throughout the periods as elements of the rule of law and a state governed by the rule of law. More specifically, in the early 1990s, **legal certainty was often cited as necessary in the new political system** and parliamentary actors stressed the need to create it. The constitutional court was mentioned as an important body for clarifying the principles or elements of the rule of law when reviewing legislation, but legal certainty and legality were mentioned as obvious elements and benchmarks also for the court.

Table 5.19 Narratives on elements of the rule of law in Hungary

	1990–1998	1998–2010	2010–2021
Legality	Legal certainty (incl. predictable and stable frameworks) is necessary in the new political system. (overlapping)		Constitutionality/legality/legal certainty as a crucial element of the RoL. (overlapping) Legal certainty and effective institutions are intrinsically interconnected elements of the RoL. (one-sided, opposition)
Separation of powers	Separation of powers (including local governments) as a fundamental element of the RoL. (overlapping)		Separation of powers (which is undermined by the government) is fundamental for restoring the RoL. (one-sided, opposition)
Effective institutions	Establishing diverse independent organs is essential in shaping the RoL. (overlapping)		Independence of diverse organs essential for restoring the RoL. (one-sided, opposition)
(Equal) rights			

> (T)he interpretation of the concept of the rule of law is one of the important tasks of the constitutional court. When reviewing legislation, the constitutional court examines the principles which constitute the fundamental value of the rule of law in accordance with, and on the basis of, a specific provision of the constitution. However, the principle of the rule of law is not a subsidiary, secondary rule to these specific constitutional rules and is not a mere declaration, but a constitutional norm in its own right. (...) In the practice of the constitutional court, legal certainty is closely linked to the constitutional principle of the rule of law. (János Schiffer, MSZP, opposition, 8.2.1993, LP 34, Session 268)

> Legal certainty is a fundamental element of the rule of law, which requires the legislator to ensure that the law as a whole, its individual subdivisions and its individual rules are clear, unambiguous, predictable in their effects and foreseeable for the addressees of the norm in criminal law. A change to the rules of criminal procedure which, unlike in the past, allows for the prosecution and even the imposition of a sentence for an offence committed in the past is a breach of this predictability and foreseeability. (Gábor Fodor, Fidesz, opposition, 8.2.1993, LP 34, Session 268)

Legal certainty and predictability were also mentioned in many debates later on as an indispensable element of the rule of law, for example before Hungary's accession to the European Union. The first Fidesz government was accused by others, e.g. by MSZP, of not following the law, despite their declarations. In this context, parliamentarians also identified several other features that they believed characterised the rule of law.

> Clientelism is rampant (...). Freedom of the media is being infringed, and access to information of public interest is being blocked, racism is on the increase and the rights of minorities are being curtailed. The dysfunctions of the rule of law are striking, the balance of powers has been upset, the National Assembly has been devalued, it has become an episode in political life, there are recurrent serious conflicts between the executive and the judiciary, and there is no meaningful dialogue in society. The civil service has become politicised, and legal certainty is seriously compromised, because it is not the government that follows the law, but the law that follows the government. (Pál Vastagh, MSZP, opposition, 18.10.2001, LP 36, Session 233)

In post-2010 sources, the narrative that **constitutionality or legality is a crucial element of the rule of law** was used with great intensity. MPs from LMP and Jobbik criticised the threat to legal certainty, emphasising its close link to a democratically functioning rule of law. They argued that the courts' case law alone is insufficient to provide legal certainty, and that it must also be ensured by the legislator, for example by enshrining the prohibition of retroactive legislation in the constitution (Schiffer) and ruling out 'government by decree' (Gaudi-Nagy).

> And one more thing: also a constitutional court principle and a principle derived from Article 2, the rule of law, is the prohibition of retroactive legislation. If the constitutional basis for legislation is introduced now, then this is an important principle of legal certainty, where we cannot be satisfied with the interpretation of the law by the judges of fundamental rights from time to time, and the prohibition of retroactive legislation should be included in the text of the constitution, quite simply in the interests of the security of the Hungarian legal order. (András Schiffer, LMP, opposition, 12.10.2010, LP 39, Session 34)

> Linked to this is the unacceptable regulatory concept, (. . .) whereby the government can determine the division of powers and responsibilities in relation to terrorism by decree. I believe that this is also a provision that seriously violates the principles of legal certainty and the rule of law, since, once again, the implementing rules would not provide for parliamentary powers, but would essentially determine by governmental decree who, where, under what conditions and in what way surveillance can be carried out. (Tamás Gaudi-Nagy, Jobbik, opposition, 23.11.2010, LP 39, Session 51)

However, officially Fidesz also emphasised legal certainty as a relevant part of the rule of law, which resulted in MSZP criticising the ruling party again for its hypocrisy, arguing that Fidesz's rhetoric contradicted its own policies.

> Legal certainty is an indispensable element of the rule of law, a concept that has been given substance by the uninterrupted practice of the constitutional court. Legal certainty is the duty of the state, and primarily of the legislator, to ensure that the legal system as a whole, its individual subdivisions and individual pieces of legislation are clear, unambiguous, predictable and foreseeable in their operation for the addressees of the norm. (Pál Völner, Fidesz, government, 7.3.2017, LP 40, Session 204)

> I find it hypocritical that Fidesz wants to celebrate the establishment of democracy and the rule of law at the National Assembly's ceremonial sitting, when the prime minister and 133 brave people have just downgraded the National Assembly, and have just divided the real legislative system in two, citing the epidemic emergency. The government has been given the power to take virtually any measure without any time limit, undermining legal certainty and driving another nail into the coffin of democracy. (Bertalan Tóth, MSZP, opposition, 27.4.2020, LP 41, Session 122)

Like legality in general, legal certainty in particular was frequently mentioned as a crucial element of the rule of law in the debates over the period covered. During the transition period, politicians from both the right and the left also emphasised the importance of predictable and stable law in their speeches, agreeing that the rule of law cannot be achieved without it. Later the statements were related to more diverse aspects. Access to justice for citizens to ensure that the law is correctly implemented and the public's accessibility to the law[13] were, for example, discussed in parliamentary speeches in 2008, particularly by politicians from the then-ruling MSZP-SZDSZ party. After 2010 mainly DK and Jobbik as well as representatives of other opposition parties highlighted the relevance of legal certainty.

> The government has tabled this bill with the intention of ensuring that the fundamental rule of law requirement of access to justice is implemented as fully as possible in line with the requirements of the modern day. (Gábor Csizmár, MSZP, government, 22.4.2008, LP 38, Session 140)

[13] To quote Gábor Velkey (SZDSZ, government, 22.4.2008, LP 38, Session 140): "One of the indispensable prerequisites for the rule of law, access to justice and law-abiding behaviour is that people should be able to familiarise themselves with the law and keep up to date with changes and amendments to the law. This can only become common, everyday practice and expected not only from professional actors but also from citizens if they can access the information they need easily, quickly, inexpensively and without having to search for it."

> (T)he essence of the rule of law is (. . .) [not] that no one checks, not that the government's intentions are not subject to public debate, but the laws that have been debated and adopted in an orderly manner that bind the lawmakers. (Gergely Arató, DK, opposition, 30.10.2018, LP 41, Session 35)

On different occasions, MPs have expanded the list of elements of the rule of law associated with legality. This was the case when, for example, the administrative procedural law was being discussed.

> For this reason, but also in order to protect the values of the democratic rule of law, we believe it is important to have an administrative procedural law that respects and enforces fundamental constitutional rights and the principles of the rule of law. That is to say, the rule of law, impartiality, fairness, a decision within a reasonable time, the right to compensation for damage caused to the client, objectivity, proportionality, protection of acquired rights, openness, fairness and courtesy. Abuse of rights, misuse of powers, unauthorised use of data, breach of confidentiality and so on should be prohibited and sanctioned. (György Gémesi, MDF, opposition, 7.9.2004, LP 37, Session 162)

Separation of powers. The separation of powers was addressed as an important element of the rule of law particularly in the post-transformation period, but also in the 2010s. During the initial wave of political and economic transition and the establishment of the rule of law, all political parties considered it a goal to be achieved, and it was enshrined in the constitution and later in the new Fundamental Law adopted in 2011. When discussing the separation of powers as an element of the rule of law, actors mainly focused on the horizontal separation of powers.[14]

> (T)he question of whether the endeavour to separate the branches of power is alive and whether it is successfully enforced is still one of the criteria of constitutionality and the rule of law. (György Szabad, MDF, opposition, 4.7.1994, LP 35, Session 2)

> Fidesz is for the rule of law. Therefore, it wants a strong state that is controllable by citizens and their communities, limited by laws guaranteeing human and civil rights and the separation of powers. (József Szájer, Fidesz, opposition, 22.5.1996, LP 35, Session 178)

Although the rhetoric remained consistent, opposition voices (primarily MSZP and Párbeszéd-Zöldek politicians in our selected parliamentary debates) accused the Fidesz-KDNP government of dismantling the system of checks and balances in the second half of the 2010s. In such statements, the separation of powers was frequently associated with the rule of law and democracy (see Sect. 6.3.2).

> Between 2010 and 2014, the constitutional barriers to their power were demolished. The system of checks and balances, the most important operating principle of the rule of law, has already been dismantled. (Gergely Bárándy, MSZP, opposition, 19.4.2017, LP 40, Session 214)

[14] See also József Torgyán (FKgP, government, 9.5.1990, LP 34, Session 3), cited in Sect. 5.1.2.

> The separation of powers is an institutionalised barrier to the abuse of power, arguably the basis of the democratic rule of law. These branches must also be separated in terms of institutional and personal powers. The legislature limits the judiciary and the executive by law, the executive limits the legislature, perhaps by dissolving parliament, by the right to call new elections, and the judiciary controls the constitutionality of legislation and, through it, the legislators. This is the foundation of democracy. (Olivio Kocsis-Cake, PM, opposition, 19.11.2019, LP 41, Session 94)

Although the separation of powers was generally discussed in terms of its horizontal dimension, politicians in the early 1990s understood it in a broader, vertical sense, which included the competences of local governments. As the following quotations show, members of all political parties stated that local governments were an integral part of a democratic state under the rule of law due to their ability to counterbalance the dominant central power.

> Local authorities are not external entities, but are integrally integrated into the mechanism of the rule of law, as part of which they are subject to the territorial division of labour. (István Illéssy, MDF, government, 23.7.1990, LP 34, Session 27)

> A real change in the institutions and the way in which power is exercised, in keeping with the nature of the modern European rule of law, will only occur if the familiar threefold division of powers, now institutionalised in the constitution and in laws, is supplemented by the organisational systems of local government or local authority, which embodies the fourth branch of power and is completely independent and autonomous from the central governmental power. (Ferenc Wekler, SZDSZ, opposition, 2.7.1990, LP 34, Session 18)

> Already during the pre-election programme preparation period, the parties agreed that the local government system established in 1990 was a decisive step in the establishment of the rule of law. (Mónika Lamperth, MSZP, opposition, 6.9.1994, LP 35, Session 9)

Effective institutions. When discussing elements of the rule of law, MPs from all political parties also mentioned the relevance of strong institutions, including the ombudsperson, the public prosecutor's office, the constitutional court and ordinary courts. These institutions were primarily discussed in the early 1990s and after Fidesz-KDNP won a two-thirds majority in 2010. During the initial wave of rule of law legislation, the independence of these institutions was not a significant concern. However, after 2010, opposition parties emphasised the importance of their independence from politics as a prerequisite for a functioning rule of law.

All parties have declared the constitutional court as one of the most crucial institutions for upholding the rule of law. Since the 2010s, several opposition parties have raised concerns about the independence of the constitutional court, which poses a threat to the rule of law.[15]

[15] A similar quote by Jobbik: "A very important guarantee of the rule of law is the independence and the inviolability of the constitutional court, so that it has these powers. It is very dangerous when the powers of the constitutional court are curtailed because we have some momentary political interest." (Csaba Gyüre, Jobbik, opposition, 16.11.2010, LP 39, Session 47)

> Hungary fundamentally changed the social structure of the country, and it was a bloodless change, the result of a kind of revolution in the rule of law. In order for this to be stable in Hungarian society, the positive role of the constitutional court was necessary, along with many other things, right at the dawn of the regime change, and the activities of the constitutional court of the time, which described the concept of the invisible constitution, and in the spirit of which it protected freedoms and defended the democratic system, helping to establish its norms. (Gábor Fodor, SZDSZ, government, 29.9.2003, LP 37, Session 89)

> (T)he constitutional court is the cornerstone of our rule of law, the protector of fundamental constitutional rights and the maintainer of the balance between the branches of power. (Márta Mátrai, Fidesz, government, 14.11.2011, LP 39, Session 133)

> The main check on political power is the constitutional court. (. . .) That is why Fidesz is reshaping the constitutional court so that it does not prevent them from exercising power, but if other parties were to come to government – and yes, let us be optimistic about other parties coming to government – it could paralyse the legislature, and if it can, let us be under no illusion, it will want to paralyse it. (Mónika Lamperth, MSZP, opposition, 14.11.2011, LP 39, Session 133)

The same patterns of general rhetoric overlap, but one-sided criticism of limited independence and thus real functionality of the formally established institution applied to ordinary courts.

> Judges may be removed from office only for a reason and in accordance with a procedure laid down by a cardinal law. Judges may not be members of political parties or engage in political activity. The importance of these provisions and their guaranteeing nature cannot be overestimated, since they define the most important elements of the status of judges, which, in addition to the declaration of judicial independence, also provide constitutional guarantees for them. (László Trócsányi, Fidesz, government, 12.12.2018, LP 41, Session 50)

> The independence of the judiciary is a fundamental criterion of the rule of law and democracy, and you are dismantling it. (Bernadett Szél, Independent, 12.12.2018, LP 41, Session 50)

> I think that one of the most fundamental criteria for the rule of law is whether or not judicial independence is established in a given state; whether the government itself, the executive, wants to influence the work and the activities of the courts, whether it wants to influence the outcome of individual judicial decisions, and that is indeed a very, very important problematic (. . .). (Csaba Gyüre, Jobbik, opposition, 16.2.2021, LP 41, Session 180)

Also, an independent prosecution office was cited as an important element of the rule of law.

> By the way, the Public Prosecutor's Office is a similar organisation, obviously it does not have the same function as the court, but it is an independent organisation of the judiciary, and in the Hungarian constitutional system the Public Prosecutor's Office is not an organisation subordinate to the government, but an independent organisation. This has also been confirmed by a decision of the constitutional court. Therefore, the imposition of a legal or constitutional technique on these two organs of the judiciary should not be regarded as an exception, but as the main rule, because this is the only way the rule of law can function, if the actors of the judiciary are independent of the elections, the government majorities and the

> political pressures of the time. (Róbert Répássy, Fidesz, government, 27.10.2010, LP 39, Session 40)

> (O)ne of the main criteria, one might say the cornerstone of the rule of law, is the independent functioning of the prosecution service. The Attorney General also mentioned in his introduction that it is right that the work of the prosecution should be free from party politics. (István Józsa, MSZP, opposition, 10.12.2014, LP 40, Session 39)

All parliamentary parties argued that the ombudsperson was necessary for a democratic state based on the rule of law.

> The constitutional obligation to implement the democratic rule of law is a highly complex and never-ending task, of which the constitutional institution of the Parliamentary Commissioner for Citizens' Rights is a fundamental element. The report notes as a new element that, reflecting the experience of the whole cycle, the anomalies detected are increasingly often not attributable to the classical protection of a fundamental right against state interference, but to the shortcomings in the objective institutional protection of fundamental rights. This should be seen as an important lesson. (Ferenc Kondorosi, MSZP, government, 9.5.2007, LP 38, Session 69)

In the post-2010 wave, the governing parties proposed the re-establishment of administrative courts as a significant institution for upholding the rule of law. While opposition parties raised objections to certain aspects of the re-establishment, they did not oppose the establishment of the courts themselves (for more information, see Sect. 6.3.2).

(Equal) rights. Rights were not explicitly listed as prominent elements of the rule of law. However, some parliamentary debates did mention certain rights as components of the rule of law. For instance, during the first Fidesz government (1998–2002), a representative stated that property rights are essential for the rule of law and legal security. Additionally, minority rights were discussed in the context of the rule of law, particularly in the early 1990s, when the state regulated its approach to minorities and the protection of their rights in the Law on Minority Rights. The selected debates did not express any disagreement on this matter. Since 2010, social rights have been increasingly mentioned in the context of the rule of law. Opposition parties, particularly LMP, accused the government of dismantling social security and what they called the social rule of law (see also Sect. 6.1.2).

5.2.3 Poland: Effective Institutions and Legality

In the Sejm, two themes clearly dominated when it came to the elements of the rule of law: effective institutions and legality. Issues of (equal) rights and the separation of powers as a general principle[16] were discussed to a lesser extent. Although

[16] The particular issue of the independence of the judiciary has been regularly mentioned. Considering the respective context of speaking, we found it more appropriate in most cases to assign such statements the code 'Effective institutions'.

Table 5.20 Narratives on elements of the rule of law in Poland

	1990–1997	1997–2015	2015–2021
Effective institutions	Independent, impartial and well-functioning judiciary and prosecution service are key elements of the RoL. (generally overlapping)		Independent judiciary and prosecution service are key elements of the RoL. (one-sided; opposition)
Legality	Supremacy of the law, law-abiding state institutions and correct implementation of the law as guarantees for RoL. (overlapping)	Constitutionality/ legality/legal certainty as a crucial element of the RoL. (overlapping)	
(Equal) rights	Respecting and protecting fundamental rights and freedoms as an essential pillar of the RoL. (overlapping)		
Separation of powers	Separation of powers and checks and balances as precondition for the RoL, preventing power usurpation. (overlapping)		Separation of powers with effective checks and balances as a guarantee to protect rights under the RoL. (one-sided, opposition)

legality was often mentioned, only half of the statements formed narratives. In the first wave of rule of law legislation, parties used similar narratives while taking different positions on certain issues such as lustration and accountability (Table 5.20). In the second wave, the previously expressed consensus on rights protection collapsed and other narratives were not used as much as before. In the third wave, opposition parties reactivated previously overlapping narratives, but the government parties stopped using them. As a result, there were no established narratives about elements of the rule of law employed across the government–opposition line in that time. In all periods, the constitution or constitutional principles were frequently cited as a point of reference, sometimes instead of or alongside the term (state under the) rule of law.

Effective institutions. The design of rule of law institutions and effective law enforcement were repeatedly mentioned in all considered legislative periods when actors referred to elements of the rule of law. But only in the post-1989 transition phase, when the shape of the new democratic system was generally discussed in parliament, did members of different parties use the same narrative on that topic. They argued for effective institutions against a background of corruption, increasing and changing crime, which was perceived negatively in the population, and other

problems that accompanied the system change.[17] These arguments were accompanied by accusations against political elites.[18]

> The other side, as it were, of the process of fighting corruption is simply the creation of the state under the rule of law, and I would suggest that the High Chamber adopt this point of view. (. . .) There is no state under the rule of law if there is room for organised scandals which then go unpunished. (Józef Orzeł, PC, government, 13.2.1992, LP 1, Session 8)

Politicians argued that an **independent, impartial and well-functioning judiciary and prosecution service are key institutions to effectively implement the rule of law**. Other bodies outside the parliament, including the ombudsperson and the state administration,[19] were also mentioned as relevant.

> It seems that in a democratic state under the rule of law, there must be reference points outside parliament to make the principles of the democratic state under the rule of law relevant and non-illusionary. (Jerzy Jaskiernia, SdRP, government, 22.9.1994, LP 2, National Assembly Session 1)

Most such statements outlined independent and impartial courts as a necessary element of a functioning judiciary in a democratic state under the rule of law. Particularly in the early and mid-1990s, there was a common view among MPs that the authority of the judiciary needed to be strengthened in order to pave the way for a new political order.

> Finally, the restoration of the authority of an independent and impartial judiciary as necessary conditions for the rule of law. This requires a careful consideration of the needs of the courts during the enactment of the state budget. (Michał Chałoński, UD, opposition, 13.2.1992, LP 1, Session 8)

> The foundation of a democratic system and a law-abiding state is, of course, an independent judiciary. The guarantees of judicial independence (. . .) should be strengthened in the new constitution of the Republic. (Longin Pastusiak, SdRP, government, 22.9.1994, LP 2, National Assembly Session 1)

[17] See, for example, Marek Lewandowski (SdRP, government) and Andrzej Grzyb (PSL, government), 1.9.1994, LP 2, Session 28.

[18] As Bogdan Pęk, (PSL, government, 6.3.1997, LP 2, Session 102), put it: "(A)ccusations have been made publicly against the highest representatives of state bodies, various important officials, members of parliament, in a word, people who are in the limelight of politics, and today there is no mechanism that would make it possible either to exonerate those who were potentially unjustly accused, or to prove beyond doubt that the accusations were justified. Such a situation causes a part of Polish society to lose faith in the fundamental principle that should characterise the state under the rule of law – in the effectiveness of the law, as well as in the purity of the political elite".

[19] The institution of an ombudsperson, established already during the PRL period (1987), was predominantly cited by left and liberal MPs as an important institution for a democratic state under the rule of law. See for example Stanisław Rogowski, UP, opposition, 23.9.1994, LP 2, National Assembly Session 1. For the relevance of a 'properly organised' civil service independent from the government see Zbigniew Bujak, UP, opposition, 26.4.1995, LP 2, Session 48.

> The third basic condition for the proper state of the rule of law is the appropriate structure and legal and material conditions for the functioning of the organs of justice and control in the broad sense. (. . .) (T)he most important conditions on the fulfilment of which the effectiveness of the activities of these bodies depends (. . .) are: independence from other state authorities, in particular from the executive; constitutional guarantees of lifetime in office – in the case of judges – or tenure, without the possibility of dismissal (. . .) and, finally, appropriate terms of reference and structure. (. . .) The constitutional court must also have its proper place. (Stanisław Rogowski, UP, opposition, 23.9.1994, LP 2, National Assembly Session 1)[20]

Furthermore, MPs from different factions underlined the need for an independent and well-working prosecution service to build an effective system under the rule of law, prosecuting/fighting crime and corruption and thus ensuring security for citizens.

> The role of the prosecutor's office and its position among other organs of the state cannot be underestimated. This institution in a democratic and thus legal state, as defined by the constitution of the Republic of Poland, should have strong and well-defined grounds for action (. . .). Only such a positioning will effectively realise the principles of impartiality and equal treatment of citizens. It is a correct principle that a prosecutor is prohibited from belonging to a political party or participating in political activities while holding this position. Worse is the implementation of such a provision. (Marek Boral, LD/KP, Contract Sejm, 22.3.1990, LP X, Session 24)

While parliamentarians from different parties argued this way, some aspects were controversial, especially the impartiality of judges. In the context of the vetting/lustration process, conservative/right-wing MPs argued that a "cleansing" of the judiciary was necessary for an effective judicial system and that the governance of the judiciary should not be unrestricted.

> The proposal to introduce the possibility of dismissing judges who breach the principle of independence should be supported. In our view, however, such a very limited means of vetting judges is necessary in the light of the experience of the last two years. Similarly, we believe it is right to allow the dismissal of prosecutors not only on the basis of the results of disciplinary proceedings, as has been the case to date, but on the basis of a negative assessment of their professional preparation. (Piotr Wójcik, PC, government, 6.3.1992, LP 1, Session 10)

Others supported strong judicial self-governance and argued that possible negative effects are a price that has to be paid for the rule of law.[21]

After 1998, various politicians still demanded effective rule of law institutions in light of perceived shortcomings of rule of law standards.[22] However, such

[20] See, for similar arguments, Katarzyna Maria Piekarska (UW, opposition), as quoted in Sect. 5.1.3.

[21] Jacek Kurczewski (KLD, opposition, 6.3.1992, LP 1, Session 10) put it this way: "I think there are a lot of practical considerations that make there inconveniences to the functioning of self-government, as is usually the case, but (. . .) this certain organisational malaise that is being talked about here, is the price that has to be paid for the rule of law to be strengthened in Poland."

[22] See, for example, Józef Oleksy, SLD, opposition, 24.7.2001, LP 3, Session 114.

statements were not made in the form of a concrete and actively used narrative. In that time PiS, in its first term of office, emphasised the key role of the judiciary for guaranteeing the rule of law. In this governmental draft (PiS-led, with LPR and SRP) it was intended to limit the lay judges in civil (family, labour law) and criminal cases in favour of a professional judiciary to make the judicial decision-making more efficient and professional.[23] Opposition MPs accused the PiS-led government of limiting the "social factor" and thereby making courts' decisions more "in line" with the governmental programme while getting rid of lay judges who are not "loyal".[24] Again, the prosecutor's office as part of the rule of law regime was debated.[25] While in their statements the members of the parties agreed upon its relevance, legislative amendments planned by different governments were highly controversial among parties regarding its design and relation to politics.

After PiS returned to power in 2015, then opposition forces reactivated the narrative on the key role of independent courts and prosecution service as elements of the rule of law in their criticism of the government.

> We appeal (. . .) to give the judiciary a chance to be independent of politicians and not to storm, not to interfere with the tripartite division of power that is sacrosanct to the democratic state under the rule of law. (Krzysztof Paszyk, PSL, opposition, 5.4.2017, LP 8, Session 39)

> A little advice at the end: respect the constitution and the standards of the European, democratic state under the rule of law, because in the near future you will care a lot about honest judges, a fair trial and the right to a defence. (Hanna Gill-Piątek, PL2050, opposition, 26.2.2021, LP 9, Session 26)

Rhetorically, PiS and its supporters also declared the judiciary and the constitutional court as important elements of the rule of law. However, they focused on their efficient functioning.

> Without an efficiently and transparently functioning Supreme Court, it will not be possible for that court to properly supervise the rule of law and the justice of decisions made by common courts, as well as to ensure that the line of rulings is based on principles of logical reasoning and life experience. (Ireneusz Zyska, WiS, not in government, but supporting PiS on many issues, 22.11.2017, LP 8, Session 52)

> I was very, very pleased when one of the representatives of the Civic Platform, but also others, because it was repeated in several speeches, quoted the words of a true statesman, Professor Lech Kaczyński, President of the Republic of Poland. (. . .): The Constitutional Tribunal is an integral part of the constitutional system of the state under the rule of law. So it was, is and will remain as long as Poland is. Let us hope forever. (Stanisław Piotrowicz, PiS, government, 17.12.2015, LP 8, Session 5)

[23] Ewa Malik, PiS, government, 13.7.2006, LP 5, Session 21.

[24] Jerzy Kozdroń (PO, opposition) and Mirosław Pawlak (PSL, opposition), 13.7.2006, LP 5, Session 21.

[25] E.g. "It is well known that [the] prosecutor's office is a specific state organ appointed to uphold the rule of law and prosecute crimes." (Jarosław Matwiejuk, elected via Lewica i Demokraci (LiD), parliamentary group Lewica, opposition, 26.6.2008, LP 6, Session 18).

A presidential draft for the reform of the Supreme Court of 2017 aimed at introducing jurors' involvement, which was now criticised by the opposition as a means to subjugate the Supreme Court.[26]

Legality. Similar to effective institutions to ensure the rule of law, legality was present throughout the analysed documents when actors in the Sejm named components of the rule of law. However, a narrative used by many parties in a similar way was mainly present during the first and second waves of rule of law legislation.

From 1990 to 1997, when significant legislation on the judicial system and its axiology was discussed, parties argued that **the supremacy of the law, respect for it, and its correct implementation guarantee that the rule of law is "established in reality"**. MPs emphasised that all institutions must obey the law. These steps were necessary to establish a modern democratic state under the rule of law, often contrasted with the legal arbitrariness of the communist regime. The opposition often criticised the ruling majority for allegedly infringing the rule of law, while government MPs cited legal certainty when justifying new draft laws.

> The implementation of the bills under consideration today should bring us closer to a situation in which state bodies can only do what the law allows them to do, while citizens can do everything that the law does not prohibit them from doing. Thus, thanks to these laws, we are to find ourselves in a situation hitherto completely unknown to Poles born after the Second World War. This is a very beautiful prospect (. . .). (Ryszard Zieliński, UChS, Contract Sejm/government, 6.4.1990, LP X, Session 25)

> There is a lot of evidence that the law in Poland is still treated instrumentally, that the state authorities, including the Sejm, are ready to subordinate the principles of lawmaking and its material principles to ad hoc political needs. Many politicians believe that the proper response to past violations of human and civil rights is to repay the favourable for the favourable. (. . .) This cannot be reconciled with this Convention, cannot be reconciled with the respect for the rule of law expressed in its preamble (. . .). (Włodzimierz Cimoszewicz, SdRP, opposition, 22.5.1992, LP 1, Session 15)

> The Charter captures the relationship between the authority and the citizen in a constructive way (. . .) Article 3(1) states: "Everyone may do that which is not prohibited by law" – which statutes the primacy of the law in the state, known to all lawyers; this refers to the assertion in the preamble that Poland is to be a state under the rule of law. (Marek Markiewicz, S, opposition, 21.1.1993, LP 1, Session 35)

Adherence to the law and thereby guaranteeing legal stability and the defining of legal procedures was also invoked with regard to lustration and restitution. In their statements the MPs from different parties held different positions on these topics, indicating the ambiguities of theoretical principles when it comes to concrete policies.

[26] "The jurors you bring into the Supreme Court will vote out the judges. And who will select the jurors? Your colleagues in the Senate. That is to say, you want to have a majority on the Supreme Court bench thanks to your people." (Robert Kropiwnicki, PO, opposition, 22.11.2017, LP 8, Session 52)

> As for those who have abused their opportunities in the past, they must be held accountable as in any democratic and legal state by eliminating them when applying the requirements of the law, even if the procedure was convoluted and laborious. (Marek Boral, LD/KP, Contract Sejm, 22.3.1990, LP X, Session 24)

> The statute of limitations for disciplinary rulings in such far-flung cases [of judges infringing in the past the oath of political impartiality] has long since passed; on the other hand, it is not since yesterday that we have called our country a state under the rule of law. Breaking the principle that the law is not retroactive would perhaps be a greater evil than leaving a group of unworthy people in the judiciary. But we are also firmly against the use of the universal vetting of judges, because we do not deny the past functioning of an entire segment of the state, which is the judiciary. (Jacek Taylor, UD, opposition, 6.3.1992, LP 1, Session 10)

> Doubts arise as to how to deal with claims made after the sale of property or part of it. The issue of how far to review the settlement of property taken from owners should be resolved in the manner most consistent with the state under the rule of law, i.e. anything taken in breach of the law must be returned (. . .) and, where this is not possible, because the property no longer exists, for example, financial compensation. I hope that the ministries will quickly take the decisions that are within their remit. (Stefan Bieliński, SD, Contract Sejm, 12.7.1990, LP X, Session 35)

From the second half of 1990s, the main narrative regarding legality was slightly different. In that time, in various debates on bills and also on the report of the president of the constitutional court, MPs from different political parties pointed out that **constitutionality/legality/legal certainty is a crucial element of the rule of law**. Since its adoption in 1997 (which had been opposed by conservative and religious groups) the constitution has been referred to several times as the supreme law, whose principles, such as the principle of transparency, must be respected. MPs from most parliamentary parties expressed this view in their public utterances in parliament.

> Despite a brutal and often manifestly untrue political campaign against the constitution (. . .), the people voted in favour of the constitution in a referendum by an overwhelming majority of those who took part in the vote, over 55%. (. . .) A further stage has been initiated in the consolidation of the Polish democratic state under the rule of law through the implementation of the institutions of the constitution, or at any rate such an obligation was imposed on the government by its provisions. (Marek Mazurkiewicz, SdRP, opposition, 8.1.1998, LP 3, Session 8)

> It is the duty of the Chamber in the context of Article 2 of the constitution to bring legislation into conformity with the constitution. (Jerzy Jaskiernia, SLD, opposition, 24.7.2001, LP 3, Session 114)

Especially opposition parties linked their commitment to legality and legal certainty as an important element of the rule of law with criticism of the government's action at that time.

> The provisions of the Fundamental Law[27] are clearly disregarded by the authors of the draft, proposing, for example, to demote all officials appointed so far to the lowest position in the civil service. This would be a blatant violation of the rule of law principle that the law cannot operate retroactively. The formal violation of the constitution by the government's proposed law in failing to provide guidance on the content of the implementing act of the law, as stipulated in Article 92 of the Fundamental Law, pales next to these rights-breaking provisions. (Małgorzata Okońska-Zaremba, SLD, opposition, 17.7.1998, LP 3, Session 24)

> The constitutional principle of the state under the rule of law carries a norm obliging the legislator to observe the principles of good legislation. The very vagueness and imprecision of a provision may already be a reason for its unconstitutionality. (Tadeusz Maćkała, PO, opposition, 27.7.2005, LP 4, Session 108)

(Equal) rights. Throughout the analysed period, the concept of (equal) rights for all citizens before the law was consistently highlighted as a fundamental aspect of the rule of law. This emphasis was particularly strong during the early and mid-1990s, when MPs from all parties stressed that **respecting and protecting fundamental rights and freedoms is an essential pillar of the rule of law**. In general, the parliamentarians argued for the implementation of provisions that protect citizens from the arbitrariness of the ruling elite and ensure their fundamental human rights and freedoms in practice. Left-wing MPs, in particular, emphasised individual rights, including those of prisoners.

> Unfortunately, practice provides sad examples confirming the thesis that, despite all the declarations from all sides about the state under the rule of law and civil society, human rights are still treated in an instrumental way. They continue to be treated as privileges granted by the state and not as rights immanently belonging to man, stemming from the essence of humanity. (Zbigniew Siemiątkowski, SdRP, opposition, 22.5.1992, LP 1, Session 15)

> The proposed law affirms the natural rights to which every human being is entitled. In our understanding, the three main principles of dignity, equality before the law and freedom are principles that are universally recognised and accepted as the basis of the legal order in a democratic state. (. . .) These are precisely the guarantees that a constitutional law must contain: fundamental civil rights and freedoms, political rights and a basic minimum of social rights. (Stefan Szańkowski, PSL-PL, government, 21.1.1993, LP 1, Session 35)

> There is also no dispute that Poland is to be a state under the rule of law, in which legal institutions will protect the rights of citizens, build effective capacity of the executive and control the executive. There is also no dispute that there is a need to enshrine clear civil and social rights, in line with world standards and with accepted civilisational standards. (Aleksander Kwaśniewski, SdRP, government, 23.9.1994, LP 2, National Assembly Session 1)

Access to courts and to the ombudsperson and the constitutional complaint to the constitutional court were depicted, especially by left and liberal MPs, as an important

[27] In Polish, the term 'Fundamental Law' or 'Basic Law' (ustawa zasadnicza) is often used interchangeably with 'constitution' (konstytucja). However, in our sources the latter term was more commonly used.

step to ensure a fair and lawful enforcement of rights.[28] In addition, parliamentarians suggested that lawmaking should be improved for a better implementation of rights. Thus, the arguments for effective institutions to implement the rule of law were also used regarding the individual rights situation.

> The second consequence of the [ECHR] Convention's regulations is precisely the need to improve the quality of the work, the judgments, of our administrative bodies and courts. For, as we know from the Ombudsman's Report for 1991 (pp. 20, 275 and others), they are still, unfortunately, not aware of the existence of European standards for the protection of these rights and freedoms, and that is why they do not apply them, although they should. This does not help Poland to become a democratic state under the rule of law. (Georg Brylka, MN, opposition, 22.5.1992, LP 1, Session 15)

> In the ideological declarations of the parties, in the drafts of their constitutions, great words are spoken, while everyday life and practice are governed either by bad tradition or by ever-growing absurdities. (. . .) For, in my opinion, the unsatisfactory state of observance of the law (. . .) [is due to] the hitherto too vague definition of what is meant by the concept of the state under the rule of law, particularly in the context of citizens' rights, the poor provision of means and forms for citizens to directly shape the law and to protect themselves in the event of its violation, and the inadequate legal and organisational regulation of the judiciary and control bodies. (Stanisław Rogowski, UP, opposition, 23.9.1994, LP 2, National Assembly Session 1)

Throughout the legislative periods, equality before the law was emphasised by MPs from various factions as a key aspect of a democratic state under the rule of law, again with a greater proportion being from liberal factions.

> For me personally, and for the women's parliamentary group that I represent here, it is also important that the criterion of the equal status of men and women features among the elementary principles of the protection of human rights and fundamental freedoms. (Barbara Labuda, UD, opposition, 22.5.1992, LP 1, Session 15)

While in their statements MPs from different parties agreed on this in general, there was no consensus when it came to particular policies. For the SdRP, for example, equality before the law included not prioritising certain religious groups,[29] a position that was not shared by conservatives. Left-wing MPs also argued much more than others for individual rights protection as an element of the rule of law when the practicalities of lustration were debated in parliament.[30]

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[28] See Jacek Kurczewski (KLD, government, 21.1.1993, LP 1, Session 35) or Irena Lipowicz (UD, opposition, 7.4.1994, LP 2, Session 17).

[29] "We say that no church or religious association can be privileged by any law or international agreement. (. . .) Equality, tolerance, freedom to believe and not to believe are important. We believe that this is the standard of a democratic state under the rule of law (. . .)." (Jerzy Jaskiernia, SdRP, government, 23.9.1994, LP 2, National Assembly Session 1)

[30] "We talk a lot about building a state under the rule of law, but in practice we often introduce a climate of constant verification and bringing charges against entire large professional groups." (Wanda Sokołowska, SdRP, Contract Sejm, 6.4.1990, LP X, Session 25)

From 1997 to 2015, statements on rights as an element of the rule of law were made with lower intensity, not reaching the level of actively used narratives. Actors also expressed different positions regarding the relevance of individual or collective rights protection and the right to life/abortion (see Sects. 6.1 and 6.2). Opposition MPs primarily raised concerns about rights and equality in the context of alleged infringements by the PiS government from 2015 onwards, emphasising in this context that both are relevant elements of the rule of law.[31]

Separation of powers. The separation of powers as a general principle was less frequently invoked by Polish MPs as an element of the rule of law. Instead, parliamentarians often emphasised more specific aspects related to it, such as the need for effective functioning of certain institutions, particularly the independence of the judiciary, which was captured by our code 'Effective institutions' (see above). Most statements that focused on the separation of powers as an element of the rule of law date back to the early 1990s, especially to the debate on the new constitution. All MPs argued that the separation of powers is a key principle and an undeniable step towards a modern democratic state under the rule of law, preventing any branch/ruling majority from usurping excessive power. It was also argued that a clear and sustainable system of checks and balances between the different branches would ensure a functioning and efficient state.

> (I)t is necessary to know the goal to which one is aiming, and that is a democratic, social state under the rule of law. There is no single path leading to this goal, and it also takes different forms. The fundamental rules governing such a state are known, with the principle of separation of powers playing a fundamental role (. . .). This means that the individual authorities are separate from each other, counterbalancing and inhibiting each other, but also cooperate with one another. Each authority has constitutionally defined functions to perform. (Erhard Bastek, MN, opposition, 2.4.1992, LP 1, Session 12)

> It is a truism to state that in a democratic state under the rule of law, an efficient system of judicial review of administrative decisions by state or government authorities, as well as of local laws issued by local authorities, is one of the main guarantees of the rule of law and the protection of citizens' rights against infringement as a result of administrative arbitrariness. I am old enough to remember a time when society did without administrative justice. It got by because it had to. (Piotr Chojnacki, PSL, government, 7.4.1994, LP 2, Session 17)

> Another principle, the principle of separation of powers, prevents the concentration of state power in the hands of a single body. The balancing of the three basic branches of power – legislative, executive and judicial – guards against the abuse of public authority, and the demarcation of their competences serves the efficiency of the actions of the various organs of the state. (Tadeusz Jacek Zieliński, UW, opposition, 23.9.1994, LP 2, National Assembly Session 1)

[31] For example, Hanna Gill-Piątek (PL2050, opposition, 26.2.2021, LP 9, Session 26), Kinga Gajewska (PO, opposition, 22.11.2017, LP 8, Session 52) or Barbara Dolniak, N, opposition, 5.4.2017, LP 8, Session 39).

Later, in 1997 and 2006, the role of courts and institutions dealing with lustration was also sensitively debated with regard to the separation of powers and the rule of law,[32] but no established narrative emerged.

After 2015, opposition MPs reactivated the described narrative that the **separation of powers with effective checks and balances is an integral part of a state under the rule of law**. They also argued that the PiS's legislative reforms undermined the separation of powers. In their critique, they emphasised the need to restore the balance of power between the branches of government, particularly to restore the independence of the judiciary from the ruling majority. As mentioned, we classified such statements under the code 'Effective institutions' and describe the arguments used in more detail in Sect. 6.3.

> What you are proposing is a profound interference in Article 10 of the constitution, in the principle of the separation of powers – an old principle, developed as far back as Aristotle, Montesquieu, a principle that is the canon of European civilisation, a principle that is supposed to protect citizens from the power of the authorities. (Krzysztof Brejza, PO, opposition, 19.11.2015, LP 8, Session 1)

In response to this opposition narrative, government MPs emphasised the importance of maintaining the efficiency and accountability of the judiciary, which should not be compromised by an extensive separation of powers, but there was no clear counter-narrative to what the opposition argued.

5.2.4 Romania: Separation of Powers and Legality

In our selected documents, speakers in the Romanian parliament most often referred to the separation of powers when discussing elements of the rule of law. Legality and (equal) rights were mentioned less frequently. MPs' statements covered many aspects related to these issues, but we found established narratives for each of these elements or pillars of the rule of law. Parliamentarians also stressed the need for (more) effective rule of law institutions, but no narrative was found for this perspective. As to the temporal dimension, a key narrative of the transition period referred to legality. While this was an overlapping narrative, a more controversial narrative on the separation of powers emerged in the second wave of rule of law legislation, more precisely under the presidency of Traian Băsescu and even more intensively in periods of cohabitation. During the third wave, (equal) rights were highlighted as elements of the rule of law. In their speech acts the parliamentarians from different parties agreed on this issue (Table 5.21).

[32] Particularly the left emphasised the need to limit the scope of action of the court, for example by arguing that "a situation where a single body, even if it is called the lustration court, investigates, prosecutes and adjudicates at the same time, is unacceptable from the point of view of a democratic state under the rule of law" (Jerzy Jaskiernia, SdRP, government, 6.3.1997, LP 2, Session 102); also Ryszard Kalisz, SLD, opposition, 9.3.2006, LP 5, Session 12.

Table 5.21 Narratives on elements of the rule of law in Romania

	1990–2004	2004–2014	2014–2021
Separation of powers		Separation of powers is in danger due to the president engaging in overreach of his constitutional rights, esp. concerning the judiciary. (one-sided, PSD/ALDE)	
Legality	Legal certainty (including predictable and stable frameworks) is necessary in the new political system. (overlapping)		
(Equal) rights	The constitutional rights of citizens belonging to ethnic minorities to preserve their language, traditions and cultural identity must be respected. (one-sided, UDMR)		Safeguarding the constitutional principle of equality of rights is a duty for all political and judicial actors. (overlapping)
Effective institutions			

Separation of powers. The principle of separation of powers was not prominent in the early 1990s and only rarely explicitly mentioned in the constitutional debates (see Sect. 6.2.4), although the new constitution provided for distinct powers. The president was expected to act as a mediator between them. The importance of the separation of powers was emphasised by members of the opposition when they criticised that politicians, particularly those in government, believed that the results of presidential and parliamentary elections provided them with sufficient political legitimacy to ignore legal provisions. When the constitution was amended in 2003, the principle of separation of powers was introduced explicitly and unanimously.

After the first period of cohabitation under the presidency of Traian Băsescu in 2007, the separation of powers gained much attention as an element of the rule of law or 'the constitutional system'. Especially in that time, but earlier as well, MPs from all parties expressed concerns about his purportedly incorrect understanding of the president's role within a system under the rule of law (see Sects. 5.1.4 and 6.3.4) where the executive cannot bypass the parliament, for example by governing through decrees.

> Stop the permanent attacks on the foundations of the rule of law, return to normality and apply the provisions of Article 114 (4) of the constitution with responsibility and good faith, according to which only in exceptional cases can the government adopt emergency ordinances. (Mihai Ungheanu, PRM, opposition, 9.6.2003, S, LP 4)

> The rule of law exists when the separation of powers exists. Democracy exists when parliament is the supreme lawmaking institution. Indeed, the government has the possibility to table bills, but these bills go through the committee filter and then come to the plenary of the House to be voted on. This is natural for any democracy. That is what happened with this bill. (Máté András-Levente, UDMR, government, 23.10.2006, CD LP 5)

> (I)n a state governed by the rule of law where the separation of powers functions in the state, parliament, the supreme representative body of the people, should have the right to set up committees of inquiry in which everyone is obliged to be present, not façade committees of inquiry in which only MPs and senators, possibly employees or a few people from ministries attend. (Marton Árpad, UDMR, tolerating government, 9.5.2017, CD, LP 8)

Speakers also expressed concern about the potential threat to the independence of the judiciary if the president or government overreach their constitutional rights.

> President Traian Băsescu has repeatedly violated Article 133 para. (1) of the constitution, which enshrines the role of guarantor of the independence of justice for the Superior Council of Magistrates (CSM). Since the beginning of his term of office, Mr Traian Băsescu has tried to intimidate the members of the CSM and discredit this institution, which is fundamental to the constitutional order and to the system of separation and balance of powers in the state. (Titus Corlățean, PDSR/PSD, opposition, 28.2.2007, CD+S, LP 5)

Legality. The principle of legality was cited on many occasions and by MPs from various parties as an element of a state governed by the rule of law. Especially during the transition period, it was invoked with the ideals of the revolutionary departure from communism in 1989 and the constitution of 1991 as legitimating events and sources. MPs used the narrative that **legal certainty (including predictable and stable frameworks) is necessary in the new political system**. The principle of legality was understood as protecting against the arbitrary use of power. Concerns were raised regarding its effective implementation, particularly in relation to the perceived non-application or violation of various rules of the political system, such as electoral regulations, as well as perceived instability due to frequently changing or unclear legal situations.

> We must not forget one essential thing: that the Romanian Revolution of December 1989 not only brought down a regime, but also destroyed a principle applied in all sectors of Romanian society until 1989: the principle of the law of power which led to the exclusion of the principle of equality before the law. After 1989 we tried to establish the rule of law and the principles of government by the power of law. Have we succeeded or are we deluding ourselves? Many citizens of this country say no. The law of power continues to wreak havoc in Romanian society. Until when? (Valeriu Tabără, PUNR, opposition, 20.12.1996, CD+S, LP 3)

Legality was mentioned when discussing the constitutional and legal rules and regulations of the new political system. This includes who is eligible for running in elections and whether it is legal to combine elections for several levels. MPs from all parties demanded legal stability, coherence and adherence to established rules and laws.

> I will not end before reminding the government of an essential principle of legality and the rule of law, as a warning sign: as the bearer of authority, it must itself obey the rules created, because it will then be subject to the sanctions generated by its failure to comply with them. In other words: "Patere laegem quam ipse faecisti", i.e. you will bear the law that you yourself demanded or created. (Cristian Diaconescu, PDSR/PSD, opposition, 22.6.2005, CD, LP 5)

> Although since 1990 there has been a constant concern to remove regulations incompatible with the requirements of the rule of law, the changes made have not been and could not be able to bring about a structural change in Romanian criminal law. There are currently 250 special criminal or extra-criminal laws containing penal provisions. So, I stress, today we have 250 laws, other than the provisions set out in the criminal code, and which complement the current regulations existing in the code. (Emil Boc, PD/PDL, government, Prime Minister, 22.5.2009, CD, LP 6)

> It is important, indeed, for those who listen to us, because so often the phrase 'rule of law' is mentioned, to understand what the rule of law is. The rule of law is based on law. Law written in capital letters. Law that has only one ultimate purpose – to protect the legitimate rights and interests of each and every one of us. Of all citizens. (Ioan Cupşa, PNL, opposition, 24.4.2019, CD, LP 8)

A common rhetorical figure employed by parliamentarians while in opposition was the criticism of "dead letters" of the law that are not respected in practice, implying that the law must be respected in a state under the rule of law.

> The thesis in the constitution that "No one is above the law" is the starting point that underpins the rule of law. (. . .) The political class often deludes itself, offering the people a circus, in the hope that it will succeed in covering up its own shortcomings or, worse still, distracting attention from its own crimes, when (from time to time!) it is caught red-handed! But the most serious attack on the rule of law is the deliberate disregard of the law by people in decision-making positions in power structures. There have been many cases where, in pursuit of illegitimate interests, people in positions of power have lashed out and (. . .) not giving a damn about the law, the rule of law etc., decided to do exactly as they please, not as the law requires. (Mircea V. Puşcaş, PNL, opposition, 28.2.2006, CD, LP 5)

> Of course, it is difficult to talk in Romania about respect for the rule of law criteria when the Ministry of Administration and Interior decides how to change the organic laws in order to make the elections better for its party, or when the Ministry of Foreign Affairs also initiates a project of postal voting, which is managed by the minister appointed by the party in order to collect the votes of the diaspora, or when the presidency communicates what is allowed and what is not allowed in changing the constitution, in administrative reorganisation, as well as in various other areas that are subject to the management of the executive or to the legislation of the parliament. We know, as do most of our fellow citizens, that, if the interests of the government and the PDL so require, black can become white and vice versa (. . .). (Ion Călin, PDSR/PSD, opposition, 22.12.2011, CD, LP 6)

Other statements related to legality referred to ambiguities in the context of the post-1989 legal transformation and changes in government. Although speakers supported legal certainty and stability as elements of the rule of law which are, for example, relevant for the business sector, they argued that upholding poorly made or even

illegal legal provisions might be problematic. In this way, elements of the rule of law were described as less clear than it seems at first glance for the particular context.

> This law achieves continuity in terms of the rule of law because it does not repeal any other law made before 1996, and I am referring in particular to Law No. 112, which, the irony is that it tries and will succeed in saving. The scope of Law No. 112 was limited to residential buildings taken over by the state by title. In reality, however, after the adoption of this law, properties taken over by the state without title were sold without due process. They sold what the state did not own and what Law No. 112 did not deal with. In all fairness, out of respect for the rule of law, out of the certainty that some people coming to power after others should not repeal what their predecessors in government did, we have an article on good faith which states that: properties taken over by the state without title and which have nevertheless been sold remain with the buyers, if they [bought] in good faith. This shows the honesty and fairness with which this bill was made. (Mihai Grigoriu, PNȚCD, government, 23.8.1999, CD, LP 3)

> However, it is important to note that legal instability, a fundamental concern in our monitoring by the European Union, is not solely due to pending court decisions, which are often politically charged. It also stems from the presence of legal uncertainty. And legal uncertainty – and this is what someone who was first vice-chairman of the European Parliament's Committee on Legal Affairs is telling you – is fundamental for business, for investors, for civil society and for the proper development of society. (Cristian Dumitrescu, PDSR/PSD, opposition, 11.10.2011, CD, LP 6)

(Equal) rights. When discussing rights and the principle of equality as part of the concept of the rule of law in the Romanian parliament, politicians often emphasised that these are enshrined in the constitution of 1991. They also mixed references to the rule of law and democracy. In their statements, parliamentarians from all parties agreed that Romanian citizens have equal rights and freedoms. However, speakers often criticised the ineffective legislative foundation of rights and deficiencies in their practical application. They emphasised that the state is constitutionally obliged to protect rights and ensure equality before the law. While speakers generally referred to rights and freedoms in a general sense, they specifically mentioned property rights, freedom of expression and minority rights.

> (T)he law must be respected and applied without privileges and without discrimination, because this is the only way to ensure respect for human rights and human dignity in Romania. As legislators, we have full responsibility to draw up just laws, designed to lead to the real protection of Romanian citizens, but which we respect ad litteram out of respect for the letter and spirit of the law. Also, those elected to enforce the law in Romania, whether they are magistrates, police officers, gendarmes or in structures of the public security and order system, must be aware that there is no alternative in confronting the law but to respect and enforce it. (Marius C. Dugulescu, PD/PDL, government, 28.9.2010, CD, LP 6)

> So, has the Romanian people a democratic society? What about the much-desired rule of law, which generates personal and social security? If I were a naive person, subject to a superficial way of thinking, I might be tempted to give a positive answer to these questions. Since Romania's constitution itself guarantees freedom of speech, freedom of movement and freedom of association, it can be said that we have a profoundly democratic society. It is equally true that, as long as the same fundamental law guarantees the separation of powers in

> the state, we also have, of course, the much-desired rule of law, capable of imposing the force of law over the law of force! (Cristian Dumitrescu, PDSR/PSD, opposition, 25.10.2011, CD, LP 6)

Similar to references to legality, speakers mentioned cases where individual rights and freedoms cannot be applied without ambiguities because different actors' rights and freedoms must be respected. An example was the dismissal of the then Interior Minister Dan Nica in the context of rising crime rates and alleged irregularities in the 2009 presidential elections.

> The rule of law implies harmonising and balancing the relations between the two components, in the sense of the rule of law, i.e. its absolute supremacy in order to preserve individual rights and freedoms. This is a constitutional principle that Prime Minister Emil Boc also respected with regard to the dismissal of Dan Nica. (Ioan Oltean, PD/PDL, government, 6.10.2009, CD, LP 6)

Since the phase before accession to the EU, actors linked rights—particularly liberal rights such as "sacred individual freedom" and property rights—with the EU, the Council of Europe and a "European way of thinking".

> Private property is the guarantee of personal dignity and independence and it is the basis of the democratic rule of law. Private property is specific to European peoples, the tradition of private property in Romanic countries being an argument for our desire to integrate into the European Community, to integrate into the western, civilised world. (Mihai Grigoriu, PNȚCD, government, 23.8.1999, CD, LP 3)

> I believe that parliament's responsibility is precisely to push for a change in our way of thinking, or the formation of a European way of thinking, by drafting and adopting laws that respect fundamental human rights and freedoms. This means the rule of law – when the legal framework allows all individuals equal opportunities to develop their identity for the benefit of all [citizens]. (Iulia Pataki, UDMR, tolerating government, 15.3.2004, CD, LP 4)

> The discourse stubbornly promoted by PSD leaders in public life since the 1990s has nothing to do with the values on which modern Romania is built these days and on the basis of which we can join the European Union, namely individual freedom is sacred and inalienable. The right to property is guaranteed. Justice is independent and strong. These values are complementary values. The draft law for which we have taken responsibility is the key to strengthening the rule of law in Romania. (Călin-Popescu Tăriceanu. PNL, government, Prime Minister, 22.6.2005, CD, LP 5)

Statements emphasised that the rights apply to all citizens, including ethnic minorities (represented by the UDMR) and "those at various stages of criminal proceedings" (Holban).

> In a state under the rule of law, all citizens are equal. In a democracy, citizens have the right to free expression of opinion, free use of community symbols and free use of their mother tongue. The Hungarian community in Romania does not demand more than what is due to all European nations. (Jozsef-György Kulcsar-Terza, UDMR, government, 9.5.2017, CD, LP 8)

> Under the Romanian constitution, the EU Directive on the presumption of innocence and the recommendations of the Venice Commission, any opinion on potential guilt must respect the fundamental principle that 'No one is above the law' and, obviously, the presumption of innocence! This would be conclusive proof that in Romania the rule of law is real and functional, based on respect for the rights and freedoms of citizens, including those at various stages of criminal proceedings. (Georgeta-C. Holban, PDSR/PSD, government, 19.9.2018, CD, LP 8)

Mainly the Hungarian minority party UDMR used the narrative that **the constitutional rights of citizens belonging to ethnic minorities to preserve their language, traditions and cultural identity must be respected**.[33] This was linked with criticism that the minority protection was not put into practice at all times.

> It is not by chance that the protection of national minorities is one of the necessary conditions for integration into these structures, and Romania has already fulfilled a positive role in this respect. This is the clearest proof that the possibilities for the free and full manifestation of all minorities, of respect for human rights, are ensured by the current Romanian constitution. (Negiat Sali, UDMR, opposition, 7.12.2001, CD+S, LP 4)

Effective institutions. As previously stated with regard to the principle of legality and rights, there were occasional statements suggesting that the state must establish robust and effective institutions that work for the benefit of both the state and its citizens, in order to secure and enhance institutional legitimacy and the trust of citizens. During debates on criminal action, such as the plenary discussion on the annual report of the Romanian Security Service (SRI) in 1997, and the 1999 march of miners from the Jiu Valley to Bucharest, parliamentarians argued for a strong state under the rule of law that is capable of defending and facilitating the existence of the state itself, even if the measures are met with resistance by others.

> The S.R.I. is the institution which, together with other national security bodies, belongs to and gives strength to the rule of law and, above all, gives it that element of identity which characterises a democratic, sovereign and independent state. (. . .) The fact that the S.R.I. has settled into its roots, the results obtained and the professionalism of its members create suspicion, envy and adversity towards this institution. (Costică Ciurtin, PUNR, opposition, 30.4.1997, CD+S, LP 3)

> We support the necessary legal measures that are required at this time to stop the escalation of political action against the rule of law, including the declaration of a state of emergency if necessary. Some state institutions and services have shown weakness or incompetence and, of course, we must not tolerate this. (Markó Béla, UDMR, government, 22.1.1999, CD+S, LP 3)

MPs have also pointed out that poorly managed, underfunded and overburdened institutions are unable to serve citizens as they should. This means that citizens'

[33] See, for example, Attila Varga (UDMR, government, 18.11.1997, CD LP 3) in a debate on proposed administrative measures which were expected to change the traditional ethnic composition of two counties.

rights and freedoms may ultimately be illusory.[34] Such statements often referred specifically to the judiciary. They included references to the European Union and a "European state governed by the rule of law" (Potor). However, there was no particular established narrative found on that point in our analysed debates.

> One of the issues that has been constantly on the agenda of public opinion in the country and on the attention of the European Commission, in an unpleasant way and manner, is the situation in the justice system. The institutional conflicts in this area are a demonstration of the superficial nature in which the authorities have managed to reconcile legal practices and institutional relations in this area with the minimum requirements of a European state governed by the rule of law. Unfortunately, it does not take much applied knowledge to see the failure of the authorities in the management of judicial institutions, and this failure calls into question the very manner in which we have managed to implement the practices and norms of the rule of law. (Calin Potor, PNL, opposition, 24.5.2011, CD, LP 6)

> Achieving an independent, impartial, credible and efficient judiciary must be a prerequisite for the supremacy of the law and the principles of the rule of law. (Corneliu-M. Cozmanciuc, PNL, opposition, 12.5.2015, CD, LP 7)

5.2.5 Slovakia: Legal Certainty and Effective Institutions

In our empirical material from the parliament of Slovakia, the most frequently mentioned elements of the rule of law were issues around legality or constitutionality. Effective institutions were mentioned less frequently. Additionally, (equal) rights and the separation of powers were also addressed as elements of the rule of law. Overlapping narratives on elements of the rule of law emerged slowly over time. During the third wave of rule of law legislation, we identified five narratives that were used across party lines. They emphasised, for example, that legal certainty and the binding of state power by the constitution and the law are the cornerstones of the rule of law (Table 5.22). The overlapping narratives were often accompanied by diverging policy positions or criticism of the government by the opposition. The prohibition of retroactivity was a controversial issue among parties, particularly in relation to measures aimed at correcting alleged past injustices. The competing statements revealed ambiguities in theoretical arguments regarding the rule of law in a specific context.

Legality. Legality was mentioned across parties and throughout the legislative periods as an element of the rule of law, often understood as people and authorities "behaving according to the law", as Vladimír Mečiar put it in 1992.[35] In debates on

[34] Vasile Puscas (PDSR/PSD, opposition, 13.12.2005, CD LP 5), argued, for example: "Instead of defying the principles of the rule of law, we should strengthen the authority of state institutions, enable them to function in the spirit of legislation already harmonised with the *acquis communautaire*, the Romanian constitution and European best practice."

[35] "The constitution reflects a deep commitment to democracy, affirming the state's adherence to the rule of law, which means everyone is obligated to behave according to the law, and state authorities are required to abide by the laws of the state." (Vladimír Mečiar, HZDS, government, Prime Minister, 1.9.1995, LP X, Session 5)

Table 5.22 Narratives on elements of the rule of law in Slovakia

	1992–1998	1998–2006	2006–2021
Legality			Legal certainty as a crucial element of the RoL. (overlapping) The binding of state power by the law is a cornerstone of the RoL. (overlapping)
		Unconditional respect for the principle of non-retroactivity is crucial in the RoL. (one-sided, HZDS and Smer)	
Effective institutions		Respect for law and its enforcement are fundaments of the RoL. (overlapping)	Independent and impartial judiciary is a pillar of the RoL. (overlapping)
(Equal) rights		Equality before the law is fundamental for the RoL. (overlapping)	
Separation of powers			Separation of powers with effective checks and balances as an integral part of the RoL. (overlapping)

particular political measures, this general view was complemented by more nuanced and diverse statements. Although legality issues were invoked frequently, they did not form coherent narratives. However, in the third wave of rule of law legislation (2006–2021), a narrative that **legal certainty is a crucial element of the rule of law** was used intensively. MPs also frequently referred to clarity and stability of the law as essential.

> We are saying that Slovakia is a state governed by the rule of law, and the fundamental prerequisite of the rule of law is the stability of the legal order and legal certainty. (Jana Laššáková, Smer, opposition, 11.7.2011, LP 5, Session 20)

Although MPs from all parties employed the narrative, such statements were mainly made by opposition parliamentarians in connection with criticism of the government and lawmaking practice. References to legal certainty as an element of the rule of law also involved demands for proper lawmaking by the parliament, with relatively few legislative changes.

> How can we expect citizens to respect the law, to know their rights and obligations, to be able to defend their rights when, in some cases, not speaking universally, we create laws that are difficult to understand? The law must be readable for everyone, equally accessible to everyone. (. . .) For the functioning of the rule of law, it is necessary for citizens to know, to be able to navigate in the laws. Otherwise, the legal principle that ignorance of the law does not excuse cannot be applied. (Tomáš Galbavý, SDKÚ-DS, opposition, 23.4.2009, LP 4, Session 35)

> (W)e have a significant problem with frequently amending laws that impact the business environment, and this doesn't happen at specific times, like amendments on January 1 and July 1, so that the entrepreneur knows that they need to monitor this. (. . .) So, I see this missing sensitivity (. . .) for the business environment, but also for the rule of law. (Eduard Heger, OĽaNO, opposition, 26.3.2019, LP 7, Session 43)

A second overlapping narrative in that period was that **the binding of state power by the law was a cornerstone of the rule of law,** as established by the constitution. Based on this line of argument, constitutionality and legality were often used as synonyms. Such statements had already been made before, but since 2006, they formed an established narrative.

> Essentially, I stated that in a rule of law, there is no higher principle than respecting the constitution and the law. If society does not agree on this minimum – respecting the law – then we are reverting to a state of chaos and the jungle. (Jozef Moravčík, DÚ, opposition, 5.2.1997, LP 1, Session 24)[36]

MPs attributed the requirement of legality to the action of state authorities (as the following quote by Figeľ shows), of the parliament (Mezenská) or, more precisely, the parliamentary majority (Žitňanská).

> According to Article 1, from which our actions in parliament derive, of the Constitution of the Slovak Republic, Slovakia is a sovereign, democratic and rule of law state. The characteristic of such a state is the unequivocal rule of law that binds the state and all state authorities, ensuring the legality of the exercise of state power. (Ján Figeľ, KDH, opposition, 17.3.2015, LP 6, Session 48)

> (I)f we are committed to the rule of law, we must adhere to the law. And if you want to address an economic or any other problem, you must be able to find a path that is in accordance with the legal order of this state. (Lucia Žitňanská, SDKÚ-DS, opposition, 4.11.2008, LP 4, Session 28)

> The obligation of the legislative body in a state governed by the rule of law is to adopt only those laws that are in accordance with the constitution. If the parliament adopts a law that violates the Constitution of the Slovak Republic, it acts in contradiction to the principle of constitutionality and does not adhere to the rules of lawmaking in the rule of law. (Helena Mezenská, OĽaNO, opposition, 19.3.2014, LP 6, Session 33)

As another characteristic of the parliamentary discourse in Slovakia, we found statements in the second wave of rule of law legislation dealing particularly with the prohibition of retroactivity of legal norms as an element of legality and the rule of law. Unlike the aspects above, this issue remained a matter of dispute between parties due to the political and legal struggles surrounding the amnesties granted by Prime Minister Vladimír Mečiar (see Sect. 5.1.5). Convinced about the illegality of Mečiar's actions, liberal-conservative parties strived to abolish them in order to redress perceived past injustices. In sharp opposition to this, the HZDS pointed out that in a system under the rule of law, it is not possible to restore the extinguished criminality of the act after an amnesty has been granted (see the following quote of Gašparovič) and that retroactivity, in general, contradicts the rule of law (Mečiar). A Smer MP pointed to the judgments of the constitutional court that the prohibition of

[36] Peter Tatár (SDK, government, 13.2.2002, LP 2, Session 54) put it similarly: "However, we are equally convinced that every law that interferes with the exercise of self-government must be in accordance with the content of the constitution. Therefore, it must meet the basic democratic criteria and requirements contained in the principle of the rule of law."

retroactivity is a defining feature of the rule of law (Číž). In sum, the narrative was that **unconditional respect for the principle of non-retroactivity is crucial in the rule of law**.

> In the current legal system of the Slovak Republic, as well as in the legal systems of other democratic states, there is no institution by which, after the granting of amnesty, it would be possible to restore extinguished criminality. Therefore, in the history of Slovak law, as well as in the history of other democratic states governed by the rule of law, there is no case where a granted amnesty has been revoked in response to restored criminality. (Ivan Gašparovič, HZDS, opposition, 18.2.1999, LP 2, Session 10)

> (A)ny attempt at direct or indirect retroactivity destroys the concept of the rule of law. By accepting this retroactivity, we are in contradiction with whether we are still a rule of law. (Vladimír Mečiar, HZDS, government, 4.3.2010, LP 4, Session 49)

> The Constitutional Court of the Slovak Republic has already expressed in several decisions that the principle of lex retro non agit applies in our constitutional order. This means that the law does not have retroactive effect when it stated that a defining feature of the rule of law is also the prohibition of retroactivity of legal norms, which is a significant part of the guarantees for the protection of citizens' rights and equally a guarantee of legal certainty. (Miroslav Číž, Smer, opposition, 7.9.2010, LP 5, Session 5)

Representatives of liberal-conservative parties, in turn, argued that amnesties do not correspond with the principle of legal certainty as an integral part of the rule of law, which makes it reasonable to review them.

> These amnesties, especially those concerning the abduction of Michal Kováč Jr. abroad and the thwarted referendum scheduled for May 23rd and 24th, are confusing and, as such, do not adhere to the principle of legal certainty, which is an integral part of the principles of the rule of law. (Pavol Minárik, KDH, government, 18.5.2005, LP 3, Session 42)[37]

Alternatively, it was stressed that the prohibition of retroactivity is not absolute and should be considered in the context of the overriding demand for justice, the appropriateness of measures taken, and the protection of individual rights.

> One of the principles of a substantive rule of law state is the prohibition of the retroactivity of legal norms, a significant guarantee for protecting citizens' rights and legal certainty. (. . .) According to the Constitutional Court of the Slovak Republic, whether true or false retroactivity of legal norms is constitutionally acceptable depends on the protection of acquired rights, which subsequent legal regulations should not annul or worsen but improve pro futuro. In each case, it is necessary to answer whether the new legal regulation can be considered retroactive, whether it involves true or false retroactivity, and whether such retroactivity is constitutionally acceptable regarding the protection of rights acquired in good faith. (Ján Pataky, SDKÚ-DS, opposition, 12.12.2006, LP 4, Session 6)

[37] Similarly: "Ladies and gentlemen, with this proposal for a constitutional law, we aim to abolish the non-standard, diplomatically put, amnesties granted by the former Prime Minister Vladimír Mečiar, who exercised certain presidential powers for a period. This is because these decisions do not correspond to the principles of legal certainty, which is an integral part of the rule of law." (Ján Figeľ, KDH, opposition, 17.3.2015, LP 6, Session 48)

Effective institutions. Regarding the fundamental institutions of the rule of law and their effectiveness, MPs used a narrative in the second wave of rule of law legislation (since 1998) that **respect for law and its enforcement are fundaments of the rule of law**. Representatives from all relevant parties agreed that the law must be implemented in practice and positioned themselves against the perceived lack of respect for laws and the constitution.

> The legality of the state does not depend on the will of politicians and their proclamations. It is the result of the application of the law by state authorities. After the application of the constitution, a law, or any other generally binding legal regulation, there must be a clear and unequivocal legal effect, which is the correction of the situation or the removal of the violation of the law. (Miklós Fehér, SMK, government, 15.6.2000, LP 2, Session 32)

> I agree very much that the legal system is in place, a rule of law is achieved not when laws are enacted, but when they are applied. (Ivan Mikloš, SDKÚ-DS, government, Deputy Prime Minister and Minister of Finance, 6.12.2005, LP 3, Session 52)

> The rule of law is not just some special authority; the rule of law is not just justice, even though it is a fundamental condition for the functioning of the rule of law. The rule of law is primarily (...) the sovereignty of the law and the enforceability of the law, but there are many other conditions and prerequisites developed over thousands of years. (Mojmír Mamojka, Smer, government, 3.8.2006, LP 4, Session 2)

Speakers suggested that the actual implementation of law, including its interpretation by case law, was not always ensured in Slovakia.

> After all, the decision of the highest instance, against which there is no appeal, must be respected and taken into account by anyone who wants to respect the rule of law. (Katarína Tóthová, HZDS, opposition, 18.2.1999, LP 2, Session 10)

> I believe it is permissible to criticise court decisions, whether general or constitutional, and to criticise them very harshly. I do it myself, and sometimes I use the legal remedies provided to me by law. But always, I have always respected the court's decision. And we should agree that it is necessary to respect the decision of the constitutional court, whether preliminary or substantive. I believe this is crucial for the rule of law. (Daniel Lipšic, KDH, government, Deputy Prime Minister and Minister of Justice, 27.2.2003, LP 3, Session 8)

> If anyone who reaches a position at the district office decides that a judgment is unjust and begins to act according to their own judgment, in that case, there can be no talk of the rule of law or the implementation of law. (Miroslav Číž, Smer, opposition, 18.9.2003, LP 3, Session 17)

In the third wave of rule of law legislation, Slovak parliamentarians most frequently expressed their views on the judiciary and its independence. In the pre-accession phase, the EU requested ensuring its autonomy from politics; consequently, the government pushed through institutional reforms in this direction. Although we identified statements regarding the institutional independence of the judiciary from

the executive and legislative in that period,[38] an established narrative that an **independent and impartial judiciary is a pillar of the rule of law** was most significantly used in the subsequent period. In their speeches, politicians from parties across the political spectrum agreed on that point; however, they differed in positions regarding specific policies. Parties opposing post-accession judicial reforms of the liberal-conservative government (see Sects. 3.2 and 3.3), such as HZDS and Smer, placed strong emphasis on the institutional independence of the judiciary. Representatives of liberal-conservative parties also embraced the principle of judicial independence. However, they highlighted the need for mechanisms to hold judges accountable for their performance.

> The purpose of this draft law is to create legislative conditions for improving the actual institutional functioning of independent judiciary in the Slovak Republic because an independent judiciary is one of the fundamental pillars of the rule of law. (Lucia Žitňanská, SDKÚ-DS, government, Minister of Justice, 8.12.2010, LP 5, Session 9)

> (T)he laws in the field of judiciary and justice from this government coalition strictly and exclusively violate the principles of the rule of law, judicial independence, interfere with the independence of judges, all for the purpose of politicising the judicial system, and all of this with the aim of gaining control of the judiciary by the government coalition. (Róbert Madej, Smer, opposition, 22.3.2011, LP 5, Session 16)

> [The judiciary] is the only area where we have incorporated a strong opponent who doesn't want any change, who wants things to continue as they are today. (. . .) If we're talking about the fact that all public officials should be held accountable for their actions, why shouldn't judges do the same? After all, they identify themselves as a state power. (Alojz Baránik, SaS, government, 29.4.2020, LP 8, Session 6)

In that period, more statements dealt in detail with questions around judicial independence, including recruiting procedures, immunity and the impartiality of judges, as elements of the rule of law and its practical implementation.

> The Constitution of the Slovak Republic in Article 141 clearly states: "In the Slovak Republic, the judiciary is carried out by independent and impartial courts." I repeat the word "impartial". Impartial means unbiased, not taking sides, not only the concept of independence but also respecting both the law and ethical standards and not violating norms that might create an impression of bias or partiality on either side. (Vladimír Mečiar, HZDS, government, 15.10.2009, LP 4, Session 41)

[38] For example: "In a rule of law, independent judiciary has a special and exceptional position, being the highest authority when it comes to deciding on the rights and obligations of citizens." (Tibor Cabaj, HZDS, opposition, 19.1.2000, LP 2, Session 26), or "The significant separation of the judiciary from politics is one of the fundamental priorities, especially concerning the accession process to the European Union. However, I believe that the domestic aspect in this regard is equally important. Simply put, a modern democratic rule of law requires a fundamental separation of the judiciary from politics." (Ivan Šimko, SDK, government, 15.6.2000, LP 2, Session 32)

> (T)he immunity of a judge is a special privilege considered one of the basic guarantees of judicial independence. This, in turn, is related to the separation of powers, where the executive branch should not interfere with the judicial branch. It is fundamentally a violation of the personal guarantees of the judge's independence and the independence of the court as a whole, and ultimately, it impacts the citizen's right to an independent judicial process. We also have the case law of the European Court of Human Rights in this regard. (Boris Susko, Smer, opposition, 21.10.2020, LP 8, Session 16)

(Equal) rights. The principle of equality before the law and the notion that no one is above the law were frequently invoked in Slovak parliamentary debates as critical elements of the rule of law. Representatives from all relevant political parties, often in the opposition role, proclaimed their commitment to these principles when criticising the government's alleged non-compliance with them. In this context, reference was often made to the elementary respect for fundamental rights in general, with particular emphasis on the protection of acquired rights. We observed an overlap of party positions in this regard. During the second wave of rule of law legislation, a narrative was established that **equality before the law is fundamental to the rule of law**.

> We should create a state governed by the rule of law that fully respects the right of all citizens to equality before the law, a state with laws that do not allow the humiliation and persecution of citizens and protect their property, security and lives. (Dagmar Bollová, KSS, opposition, 18.9.2003, LP 3, Session 17)

> (S)ince the time of the Great French Revolution, the principle has been that we should all have the same legal judge. This means the principle of general equality. (. . .) Here, the government is programmatically trying to build structures that simply do not fit into a democratic state governed by the rule of law. (Ján Cuper, HZDS, opposition, 8.12.2004, LP 3, Session 33)

As the following quotations show, MPs also used this narrative in the third wave of rule of law legislation.

> If we were to agree on what is probably the most important principle of the rule of law (. . .), it is the principle of equality before the law. (Daniel Lipšic, KDH, opposition, 3.7.2008, LP 4, Session 24)

> Whether a state is a rule of law state or a dictatorship does not depend on its name, symbols or the text of its legal regulations. It depends solely on how these legal regulations are implemented and how their observance is enforced for everyone without distinction. (Andrej Hrnčiar, Most-Híd, opposition, 26.9.2012, LP 6, Session 7)

> The parties and movements forming the current governing coalition gained trust based on the promise to transform Slovakia into a true rule of law, where we will all be equal before the law and capable of assisting those who need our help, those who will live in Slovakia, where we will be happy to work, do business and live. (Anna Zemanová, SaS, government, 3.2.2021, LP 8, Session 23)

Again, opposition parties linked the narrative with criticism of the government for ignoring the principle of equality before the law.

> I must say that it seems we live in a distorted rule of law, where justice does not apply equally to everyone, where we are not equal before the law, where the chosen (. . .) have more rights and more power than those who work honestly and hard. (Miroslav Kadúc, OĽaNO, opposition, 21.4.2015, LP 6, Session 49)

> (E)ven under better governments, the rule of law wasn't genuinely established in Slovakia, where the principle 'let fall whomsoever' applied. (Miroslav Beblavý, Spolu, opposition, 17.10.2018, LP 7, Session 35)

Concerning equal rights, the 'Mečiar amnesties' were also frequently referred to as contradicting the principle of equality before law.

> The proposers of the approved law probably forgot the fundamentals of the theory of state and law, as well as the basic principles arising from the principles of the rule of law, such as the prohibition of retroactivity and the prohibition of deprivation of legally acquired rights. (Róbert Madej, Smer, opposition, 1.2.2011, LP 5, Session 12)

> I am convinced that even if this legal norm is approved, and we repeal Mečiar's amnesties in parliament, there will be a basis for it before the constitutional court. Because those amnesties undoubtedly, because they violated these individual human rights, (. . .) are inconsistent with the principles of a democratic state governed by the rule of law. (Lucia Žitňanská, Most-Híd, government, Deputy Prime Minister and Minister of Justice, 28.3.2017, LP 7, Session 14)

> At the very least, the fact that Michal Kováč Jr.'s amnesty was revoked, while Marián Kočner's was not, establishes discrimination from a legal perspective. Let's call it in Slovak 'inequality' and it denies the principle of equality as a characteristic of a democratic state governed by the rule of law. (Jozef Rajtár, SaS, opposition, 5.12.2018, LP 7, Session 38)

As a specific case, the presumption of innocence was invoked frequently in the Slovak parliament. Especially representatives of HZDS and Smer declared it to be an elementary (and, at the same time, in practice often violated) feature of the rule of law. This happened mainly when they were in opposition and their prominent members became targets of investigation or prosecution.

> The foundation of every rule of law and every criminal code in democratic countries is the presumption of innocence, and no one, I repeat, no one has the right to label anyone as a person or individual who has violated the law without a valid court judgment. (Ivan Lexa, HZDS, opposition, 11.11.1998, LP 2, Session 3)

> (T)he rule of law must also respect the formal characteristics of the law, formal elements, that we have protection of personality, that we have the principle that unless we prove something against someone, we consider them innocent. (Miroslav Číž, Smer, government, 10.11.2014, LP 6, Session 42)

Separation of powers. The separation of powers has been repeatedly referred to as a vital element of the rule of law in Slovak parliamentary debates from the early 1990s.

Representatives of practically all parties invoked it, mostly while in opposition. In the first half of the 1990s, references to the separation of powers were often unspecific, without deeper explanations and examples, as exemplified by the following quotation.

> In this case, the principles of the rule of law were violated because they do not respect the separation of powers, which is the foundation of our constitution. (Jozef Moravčík, DÚ, opposition, 21.12.1994, LP 1, Session 3)

Later, speakers frequently emphasised the importance of mutual checks and balances of state powers to prevent their abuse and uphold the rule of law.

> I would like to add that in a democratic state governed by the rule of law, the principle of the separation of powers is valid, but this principle is never understood as the isolation of powers. The principle of the separation of powers is always connected with the principle of control, mutual control, mutual checks and balances of individual powers. (Ladislav Orosz, SDĽ, government, 5.10.2000, LP 2, Session 36)[39]

During the third wave of rule of law legislation, an overlapping narrative that a **separation of powers with effective checks and balances is an integral part of the rule of law** was utilised with significant intensity.

> In the Slovak Republic, as in any other democratic state governed by the rule of law, the principle of the separation of powers into legislative, executive and judicial powers applies. These powers are supposed to mutually control, complement each other within the system of checks and balances, but at the same time, they should be independent from each other and have a distinct position. (Róbert Madej, Smer, opposition, 22.3.2011, LP 5, Session 16)

> For the functioning of the rule of law, it is crucial that even the highest authorities of public power in the state act in accordance with the constitution. If this does not happen, there must be an effective legal remedy to rectify this situation. (Andrej Hrnčiar, Most-Híd, opposition, 26.9.2012, LP 6, Session 7)

5.3 Sources of Legitimacy of the Rule of Law

In democratic societies, the people directly or indirectly legitimise the constitution, the legislation, policies and the appointment of various officials. How did parliamentarians speak about the sources of legitimacy of the rule of law? Although in parliamentary practice, politicians do not usually discuss such questions at a purely theoretical level, we extracted the main lines of argument from their contributions to debates on specific bills or policies. Most narratives we found in our empirical material referred to ideas as a source of legitimacy for the rule of law,

[39] Or a similar statement made by Vojtech Tkáč (HZDS, opposition, 20.5.2003, LP 3, Session 12): "The theory of the separation of powers speaks of the division of power and the checks on power. Here, the checks are being removed (. . .) and that is unpleasant and unacceptable in a rule of law."

with a wide range of country-specific narratives. We also identified narratives relating to procedures, which also varied across countries, reflecting different domestic discourses. The temporal pattern of the narratives differed from those on the purpose and elements of the rule of law.

When coding, we assigned the code 'Legitimation' to all statements in our documents that dealt with support, acceptance or trust in the rule of law and its elements (for elements, see Sect. 5.2) and in the (constitutional) state. Support, acceptance and trust could be related to people in the sense of citizens, the demos or the nation, e.g. 'the rule of law must be supported by the citizens' or 'it is good to anchor the rule of law in the minds of the nation'. Speakers did not have to talk explicitly about the 'legitimation' of the rule of law, we also coded more implicit references to it. For a more detailed analysis, we derived three subcodes from theory, each standing for a typical source of legitimacy, namely ideas, procedures and the constitution or legal text.

The subcode 'Ideas' was assigned to references to the idea of human rights, the ideas behind a revolution, the constitutional spirit and basic principles such as legality, or mentions of the rule of law in conjunction with other values (e.g. democracy). The subcode 'Procedures' was used for statements on rule-bound behaviour (regardless of the content of the rule), different types of procedures (e.g. for elections, appointments, legislation, constitution-making, jurisdiction) and characteristics of procedures, including transparency or (non-)compliance with legally prescribed norms. The subcode 'Constitution/legal text' was used for statements that refer to the constitution or other written norms. It was used, for example, when a speaker referred to fundamental rights not as an idea but as enshrined in the constitution or other codified law.

It was often difficult to distinguish between these three categories of the rule of law legitimation in individual speeches. Statements were often enumerative, referring to different sources of legitimacy at the same time. Wherever possible, paragraphs were assigned to subcodes according to their core message. Purely enumerative statements were not coded.

Table 5.23 shows the periods in which MPs used certain narratives on the three different sources of legitimacy of the rule of law with particular intensity. Obviously, MPs paid much attention to questions of the legitimation of the rule of law, with narratives spread throughout the studied three decades. Most of the narratives related to the different ideational underpinnings of the rule of law; however, morality and justice played a minor role compared to the discussions of the purpose of the rule of law (Sect. 5.1). Many narratives also referred to codified laws and procedures. The general ranking has not changed much over time.

When MPs referred to ideas as a source of legitimacy for the rule of law, they did not refer to narrower partisan ideologies but to overarching general ideas such as democracy or freedom or to the ideas underlying a revolution or the constitution. Most of these narratives were used with highest intensity in the first wave of rule of law legislation. While the general themes of the most intensively used narratives overlapped between the five countries, the specific narratives and combinations of the mentioned ideas were country-specific (see Table 5.24). More overlapping

Table 5.23 Narratives on sources of legitimacy of the rule of law, 1990/92–2021

	1st wave					2nd wave					3rd wave				
	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK
Ideas		✓	✓	✓	✓		✓	✓	✓		✓	✓	✓		✓
Codified law		✓		✓	✓				✓	✓	✓	✓	✓		✓
Procedures	✓	✓	✓					✓	✓		✓		✓	✓	✓

1st wave: CZ 1992–1998, HU 1990–1998, PL 1990–1997, RO 1990–2004, SK 1992–1998
2nd wave: CZ 1998–2006, HU 1998–2010, PL 1997–2015, RO 2004–2014, SK 1998–2006
3rd wave: CZ 2006–2021, HU 2010–2021, PL 2015–2021, RO 2014–2021, SK 2006–2021

Table 5.24 Narratives on ideas as a source of legitimacy of the rule of law

	CZ	HU	PL	RO	SK
Overlapping narratives					
RoL is guided by the will to also establish democracy, a free market and to protect rights.		✓ (1)	✓ (1)		
Legal principles (esp. separation of powers, legality, non-retroactivity) as the basis of the new system (under the RoL).			✓ (1)		
The legitimation of the RoL rests on European values (esp. freedom) that were achieved by the Romanian revolution.				✓ (1)	
RoL is guided by the will to also establish democracy, a free market and to protect rights, which is of great importance due to EU accession.		✓ (2)			
Separation of powers through an independent judiciary is an important source of legitimacy.				✓ (2)	
Legitimation of the RoL stems from the idea of fairness and equality.	✓ (3)				
Legal principles (incl. constitutionality, human dignity) are the basis of legitimacy of the RoL and should be protected by the constitution.		✓ (3)			
One-sided or diverging narratives					
A state is perceived and accepted as truly governed by RoL if it guarantees (democratic) rights and freedoms to its citizens.					✓ (1, 3)
Morality, justice and common good as the basis for a functioning and just state (referring to lustration etc.) vs fundamental rights and individual freedoms guarantee a stable state (under the RoL).			✓ (2)		
Legal principles and European standards serve as anchor points for the state and must be respected.			✓ (3)		
A fundamental aspect of the legitimacy of the state under the RoL is its ability to establish and ensure justice.					✓ (3)

Waves of rule of law legislation where a particular narrative was used most intensively are indicated in brackets

narratives were identified in Hungary, Poland and Romania than in Czechia and Slovakia. The parliamentary discourse in Slovakia was characterised by one-sided key narratives on ideas as a source of legitimacy. As in Poland, one-sided or diverging narratives on this issue were a more recent phenomenon. Like the overlapping narratives, the one-sided and diverging narratives were country-specific.

Compared to the references to ideas, the number of narratives invoking codified law as a source of legitimacy for the rule of law was lower (Table 5.25). Most commonly, MPs referred to the national constitution or the Charter of Fundamental Rights, which corresponds with their particular character as legal documents establishing the whole regime and adopted by a qualified parliamentary majority and sometimes by referendum. Again, more of these narratives originate from the first and third waves of rule of law legislation. It is noticeable that in Poland, where narratives were used with great intensity throughout the different waves of rule of

Table 5.25 Narratives on codified law as a source of legitimacy of the rule of law

	CZ	HU	PL	RO	SK
Overlapping narratives					
Constitutionality is an obligation for the state governed by the RoL/legal state.		✓ (1, 3)			
To be legitimate under the RoL, political goals must be transformed into legal documents and measures compatible with the constitution.					✓ (1–3)[a]
The constitution of 1991 as the institutionalised emanation of the Romanian revolution is the most important source of legitimation.				✓ (1)	
RoL derives its legitimacy from codified legal regulations.	✓ (3)				
One-sided or diverging narratives					
Constitutionality is an obligation for the state governed by the RoL.			✓ (3)	✓ (2)	

Waves of rule of law legislation where a particular narrative was used most intensively are indicated in brackets

[a] The narrative was present in all waves, without any difference in intensity

law legislation, codified law was referred to less as a source of legitimacy for the rule of law, which may be related to the late and in some respects controversial adoption of the post-socialist constitution in 1997.

Concerning procedures as a source of legitimacy for the rule of law, one narrative was used by MPs in three parliaments (Table 5.26). It focused on building trust in the state under the rule of law through effective state institutions and was used in Czechia, Poland and Slovakia (in Poland even unchanged over the three decades). In Romania, a narrative referring to the importance of complying with the law for generating support to the rule of law was used in more than one legislative period. Procedural narratives were generally used by representatives across party lines.

In general, most of the narratives on the sources of legitimacy of the rule of law were used across party lines. In contrast to narratives on the purpose or elements of the rule of law, their number was not significantly higher in the third period of rule of law legislation. The relatively few one-sided or divergent narratives related more to ideas and codified law than to procedures (Table 5.27).

5.3.1 Czechia: Codified Law and Procedures

In the Czech parliament, both the letter of the law and its proper application were narrated as principal sources of the legitimacy of the rule of law. MPs mainly referred to the constitution or legal text when speaking about its sources of legitimacy. Procedures were also frequently addressed as a source of legitimacy, and different narratives related to this category. Ideas followed at some distance (Table 5.28). However, in many cases, speakers did not clearly separate their arguments in favour of a certain source of legitimation. Their arguments on their

Table 5.26 Narratives on procedures as a source of legitimacy of the rule of law

	CZ	HU	PL	RO	SK
Overlapping narratives					
Effective state institutions (esp. judiciary and prosecution) are relevant to ensure trust in the state under the RoL.	✓ (3)		✓ (1–3)		✓ (3)
Legal procedures must be respected to avoid them being 'dead letters in the law books', which would mean squandering this important source of legitimacy.				✓ (2, 3)	
The parliament must create via its legislation procedures of the RoL (including at the local level) which guarantee that the citizens' will is respected.		✓ (1)			
Politicisation of the RoL processes undermines its legitimacy.	✓ (3)				
The inadmissibility and potential punishment of arbitrary or unlawful activities of public officials are fundamental elements of the legitimacy of the RoL.					✓ (3)
One-sided or diverging narratives					
Legitimation of the RoL requires a broader social basis.	✓ (1)				

Waves of rule of law legislation where a particular narrative was used most intensively are indicated in brackets

relevance were intertwined—the constitution as a document mirroring the idea of the rule of law, which is to be correctly implemented in practice through the application of the law, in this way achieving the desired legitimacy of the entire rule of law system. Narratives were used by representatives of different parties, with the highest intensity in the third wave of rule of law legislation.

Codified law. When MPs referred to codified norms as the legitimation of the rule of law, this was often done in connection with criticism of their alleged violation. Speakers argued—in our sources with a higher intensity after the beginning of the new millennium—that **the legitimacy of the rule of law derives from codified law, whether in the constitution**, the Charter of Fundamental Rights and Freedoms **or ordinary laws**. This argumentation became an established narrative during the third wave of rule of law legislation. Its users included representatives from all relevant parties, both the opposition and the government. References to the constitution and the Charter of Fundamental Rights and Freedoms[40] held a prominent position when demanding that the law be respected.

> I really have to say that there is (. . .) a much older and unequivocally functional analogy to what is happening here today. It is a basic rule of law established by the ancient Latins in ancient Rome, and it answers the question even for those who oppose the lustration law. And that rule says: 'lex dura, sed lex' – a bad law, but the law. Because the law, whether we think it's okay or you think it's not okay, is the law of this country. (Martin Novotný, ODS, opposition, 22.1.2014, LP 7, Session 5)

[40]Even though the Charter is not directly part of the constitution, it was recognised as a source of constitutional law by the constitutional court.

Table 5.27 One-sided or diverging narratives on sources of legitimacy of the rule of law

	1st wave					2nd wave					3rd wave				
	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK
Ideas					✓			✓					✓		✓
Codified law				✓					✓				✓		
Procedures	✓														

See Table 5.23 for temporal specification of the waves

Table 5.28 Narratives on the sources of legitimacy of the rule of law in Czechia

	1992–1998	1998–2006	2006–2021
Codified law			RoL derives its legitimacy from codified legal regulations. (overlapping)
Procedures	Legitimation of the RoL requires a broader social basis. (one-sided)		Effective state institutions are relevant to ensure trust in the state under the RoL. (overlapping) Politicisation of the RoL processes undermines its legitimacy. (overlapping)
Ideas			Legitimation of the RoL stems from the idea of fairness and equality. (overlapping)

> I am convinced that the whole question should not be political or religious but purely legal. The law should be a kind of sacred system through which a person seeks justice. Instead, we witness constant attacks on legal and, consequently, constitutional principles. If we get used to this elasticity of the legal environment, we will soon find ourselves completely unable to appeal to justice and protect our own dignity, and therefore, the framework of democracy and the rule of law. (Pavel Bělobrádek, KDU-ČSL, opposition, 23.4.2019, LP 8, Session 28)

Some speakers focused on the relationship between legality and legitimacy in a democratic rule of law, addressing potential tension between formal and substantive law or the interpretation of legal texts.

> I believe it is worth having a thorough discussion here in the Chamber of Deputies about the extent to which the government has the right to intervene in hypothetical protection of public interest. I believe that this right of the government is not unlimited, that the government should respect the legitimate expectations of citizens and respect the trust of citizens in the valid laws of our country and in the constitution of our country. (. . .) Among the fundamental principles of the rule of law are also the legitimate expectations of each citizen – if I behave based on valid laws, I will encounter rights and duties guaranteed by these legitimate laws. (Bohuslav Sobotka, ČSSD, opposition, 26.10.2010, LP 6, Session 7)

> While (. . .) a formal rule of law is usually understood as the binding of state power by law, meaning the entire legal system, a substantive rule of law emphasises the values underlying positive law and human rights. And I think that is very important because each norm should undergo not only a test of constitutionality in the broader sense of the word, so that it withstands if we measure its value or quality in terms of observing the basic principles of the formal rule of law, but also in terms of the core of the rule of law, which is made up of values embodied in the constitution, in the Charter of Fundamental Rights and Freedoms, simply in what constitutes the value foundation of a particular legal system. (Helena Válková, ANO, government, 11.1.2017, LP 7, Session 54)

Procedures. In general, narratives about the sources of legitimacy of the rule of law were often expressed indirectly, typically in the context of criticising the erosion of trust in the rule of law and its institutions. This erosion may have been caused by

alleged political interference or other reasons attributed to the actions of certain actors.

In the first wave of rule of law legislation, representatives of left-wing parties (ČSSD and KSČM), then in opposition, emphasised on different occasions (however, not frequently in quantitative terms) that **legitimation of the rule of law requires a broader social basis**. They called for broader societal consent for specific rules for the functioning of the rule of law. Specifically, ČSSD strived for the involvement of parliamentary opposition in the lawmaking, particularly in laws relevant to the functioning of the whole political system. Representatives of the politically ostracised KSČM (from 1992–1996 as part of the so-called Left Bloc) demanded the strengthening of non-parliamentary mechanisms engaging the wider public in the legislative process, either through the office of the ombudsperson or via referenda.[41]

> The building of institutions for a democratic rule of law and their effective functioning is not a matter of political parties, not even of the government coalition. The opposition must also participate in it because these institutions must exist and operate even if the party-political composition of the government changes after elections. (Zdeněk Jičínský, ČSSD, opposition, 24.7.1996, LP 2, Session 3)[42]

> The Public Defender of Rights cannot be replaced by anyone else. (. . .) Therefore, I want to say on behalf of the parliamentary group of the Left Bloc that we (. . .) consider the vote on this bill as a vote on whether civil society should be strengthened, whether legal certainty for citizens should be increased, and whether the rule of law, which our constitution declares the Czech Republic to be, is truly endowed with an institution that will only strengthen this rule of law. (Jaroslav Ortman, LB, opposition, 13.2.1996, LP 1, Session 39)

While this was a one-sided narrative used mainly in the 1990s, representatives of all relevant parties stressed throughout the three decades under review that the credible and effective functioning of the rule of law institutions (without an explicit connection to potential political influences) is relevant for the acceptance of the rule of law. Typically, they made such statements in the context of parliamentary debates on specific issues related to the functioning of the rule of law in the country. In the third wave of rule of law legislation, such statements formed an established narrative that **effective state institutions are relevant to ensure trust in the state under the rule**

[41] Vojtěch Filip (KSČM, opposition, 14.4.1998, LP 2, Session 24) stressed that "(i)f the source of all power is the people, as stated in Article 5 of the Charter of Fundamental Rights and Freedoms, the citizens of the Czech Republic have the right to participate directly in public affairs (. . .) or by the free choice of their representatives. Direct participation of citizens in public affairs is guaranteed both by the constitution and the charter as primary. Therefore, an attribute in a state governed by the rule of law is the constitutional directive that political decisions arise from the will of the majority expressed by free voting."

[42] Earlier, Jozef Wagner (ČSSD, opposition, 16.12.1992, LP 1, Session X) argued that electoral laws are highly relevant to guarantee a fair basis for political competition. Therefore, he found, "we should create such a mechanism on which both the coalition, the government majority and the opposition can agree" and "respect for the law is determined by the extent to which the law respects the will of the citizen, even the one who currently disagrees with the existing government coalition."

of law. Its users included MPs from the opposition (usually when criticising the government) or from the government (usually when supporting measures proposed by the government).

The narrative was employed in debates on various subjects, including the functioning of the courts (speed and quality of judicial proceedings), the public prosecutor's office or the police, as well as, on a more general level, the efficiency of legal regulation (e.g. conflict of interest law and other anti-corruption measures) or, conversely, particular issues such as problems with the seizure of debtors' property. MPs reiterated the need to increase trust in the police and the judiciary, e.g. by streamlining disciplinary proceedings and making them more transparent,[43] or in the economic sector.[44]

> (I)t is necessary to restore confidence in the rule of law and the Police of the Czech Republic. Full confidence of voters and coalition partners in this government can only be restored by the expedited adoption of anti-corruption measures, which the Ministry of the Interior has already prepared and submitted to the government. (Radek John, VV, government, Deputy Prime Minister and Minister of Interior, 21.12.2010, LP 6, Session 12)

> I am very sorry that, as a result of the police's actions, whatever the order was, it led to a breach of trust in the impartiality and good work of the police forces. (. . .) (T)rust in the police is one of the key elements of a democratic rule of law, and all of us across the political spectrum must work to ensure that this trust in the police exists in the public sphere. (Petr Fiala, ODS, opposition, 21.4.2016, LP 7, Session 45)

> Therefore, I would like to ask you to consider, in light of the two hundred thousand cases in the Czech Republic where executions are enforced, debts are collected illegally and unlawfully, to think about the rule of law and the trust in the rule of law, which, from my perspective, is significantly endangered. Because if the state is unable to stop illegal executions, if it is unable to regulate itself, then it is already a collapse of the entire legal system. (Jan Farský, STAN, opposition, 30.6.2020, LP 8, Session 53)

After 2006, a narrative emphasising the harmfulness of attempts to politically influence rule-of-law-related institutions became more prevalent. After the media reported on the government's attempts to influence the public prosecutor's office in order to divert the prosecution of certain members of the government, MPs criticised the interference in the rule of law institutions. The narrative emerged that **politicisation of the rule of law processes undermines its legitimacy**. This narrative was overlapping; however, its usage reflected an intense government–opposition conflict dynamic. It was employed on various occasions in different periods, but not very frequently.

[43] For the judiciary see Marek Benda, ODS, government, 14.8.2008, LP 5, Session 28.

[44] Jan Čižinský (KDU-ČSL, opposition, 22.1.2019, LP 8, Session 26) stressed, for example, "The situation of creditors and debtors in our country is very serious, and the Senate proposal addresses it better. The more successful insolvencies there are, the greater the hope that trust in the rule of law and democracy will be restored in our country, both among creditors and debtors and among people who are now watching these processes."

> (T)he Czech justice system is unable to extricate itself from the swamp it gets into when someone tries to influence it from politics (. . .). (A) large part of the people in this country will not believe that the law truly operates here according to the principles of blind justice. (Lubomír Zaorálek, ČSSD, opposition, 13.6.2008, LP 5, Session 33)

The narrative was reactivated in the eighth legislative period (2017–2021) when Prime Minister Andrej Babiš was criminally prosecuted.

> When the prime minister behaves like this, and when perhaps, in the end, he won't be charged, how many people in our country will believe that his role as prime minister did not contribute to resolving his personal problem? That he didn't influence anyone? How many people will believe that? Colleague MPs, is the erosion of faith in the rule of law worth it to you? Will you be explaining this to hundreds of thousands of people in the streets in a few months? (Petr Fiala, ODS, opposition, 26.6.2019, LP 8, Session 32)

Besides this type of criticism from the opposition, there were also cross-party calls for general political restraint regarding the rule of law institutions. It included refraining from bringing party-political battles into them by rhetorically undermining their impartiality, for example when politicians questioned the merits of a request by law enforcement authorities to waive the immunity of certain MPs, especially shortly before elections (Chovanec), or politically motivated relativisation of fundamental principles of the rule of law, such as legal certainty or predictability of the law (e.g. when Pekarová Adamová was commenting on the government's attempt to tax compensations to churches, which had been contractually fixed as non-taxable by the previous government).

> What greater value in this country, in our constitutionality, is greater than free elections? If someone is obstructing it and you have evidence, which you often mention, present it, or turn to these authorities precisely according to the law within the framework of the rule of law. Coming from the minister of justice, this has a devastating effect on the trust of the Czech public in the state and in the justice that the minister of justice is supposed to defend. (Milan Chovanec, ČSSD, government, Minister of Interior, 6.9.2017, LP 7, Session 60)

> At this moment, it really is not just about whether something is possible from a moral point of view, whether it is right – I do not think it is – but it also concerns respect for legal principles. In this regard, the principle that contracts are valid is violated. Compensation is not paid only according to the law; it is primarily paid according to contracts. And now the state says that contracts are not valid. This significantly undermines citizens' trust in the functioning of the rule of law in our country. (Markéta Pekarová Adamová, TOP09, opposition, 13.12.2018, LP 8, Session 25)

> (T)he Czech Republic is a state governed by the rule of law. If we do not trust the public prosecutor's office, our courts, to assess whether the request [to extradite a Hong Kong citizen to China] is politically motivated, then we are expressing distrust in the institutions of the rule of law of the Czech Republic. (Tomáš Petříček, ČSSD, government, Minister of Foreign Affairs, 1.10.2020, LP 8, Session 58)

Ideas. Deriving the legitimacy of the rule of law from the ideological foundations was relatively rare in the analysed material. Although references to abstract ideas

appeared in the speeches of MPs, as legitimising factors of the rule of law they were mostly invoked through their enshrinement in the codified law (see, for example, the discussion on the idea of legality in the previous section). Nevertheless, one narrative was identified based on a particular idea. It appeared in the third wave of rule of law legislation when MPs of all relevant parties stressed that **the legitimation of the rule of law stems from the idea of fairness and equality before the law which mobilises public trust**. This narrative was used most frequently in the analysed material from 2013 onwards.

Politicians used it on various occasions, from political debates criticising the current government's actions to discussions about proposed legislation. They argued that these ideas as principles of the rule of law create a foundation for its acceptance, as they provide everyone with a sense of trust in the impartiality and unbiased conduct of the relevant institutions. It could be said that it is the inherent value of the rule of law, its very essence, which makes it appealing and therefore legitimised by public support.[45] In this view, norm addressees will accept them when they believe that they are treated fairly and equally.

> (W)e MPs, even though equipped with a certain immunity, are not superhumans who should avoid criminal prosecution. When justice is served, it is, of course, a chance for purification, relevant purification, purification that has a high level of credibility in a rule of law. So, the public should not have the impression that as someone's influence grows, so does his impunity. (Jiří Dolejš, KSČM, opposition, 6.9.2017, LP 7, Session 60)

> I believe that's what this debate is about. That means, was it fair that ordinary people received less than the churches? Was that fair? Was it within the law that we all uphold here? So, if we want to have the rule of law here, let's treat everyone the same, whether it's a dignitary, a church, a business or an ordinary mortal. That's all that matters. (Jiří Bláha, ANO, government, 23.1.2019, LP 8, Session 26)

> (O)ne of the fundamental prerequisites for a functioning rule of law and democracy is trust in justice. Trust that when you, as the weaker party in a conflict, encounter problems, you will receive justice. It may take longer, it may take a shorter time, but you will achieve justice. (Jan Farský, STAN, opposition, 27.9.2019, LP 8, Session 34)

5.3.2 Hungary: Codified Law and (Partly Contested) Ideas

In the debates analysed, members of the Hungarian parliament most often mentioned the constitution as a source of legitimacy for the rule of law. This was followed by procedures and ideas. Although MPs mentioned law and procedures frequently, they did not discuss in detail their relevance for legitimising the rule of law. Therefore, in our selected debates, we identified only one narrative regarding procedures as a source of legitimation of the rule of law, which was used in the first wave of post-1989 legislation. In contrast, statements referring to ideas as a source of legitimation

[45] In addition to the following citations, see also the quote by Bohuslav Sobotka (ČSSD, opposition) in Sect. 5.2.1, paragraphs on (equal) rights.

Table 5.29 Narratives on the sources of legitimacy of the rule of law in Hungary

	1990–1998	1998–2010	2010–2021
Codified law	Constitutionality is an obligation for the state governed by the RoL. (overlapping)		Constitutionality as an obligation for the state governed by the RoL. (overlapping)
Ideas	RoL is guided by the will to also establish democracy, a free market and to protect rights. (overlapping)	RoL is guided by the will to also establish democracy, a free market and to protect rights, which is of great importance due to EU accession. (overlapping)	Legal principles (incl. constitutionality, human dignity) are the basis of legitimacy of the RoL and should be protected by the constitution. (overlapping)
Procedures	The parliament must create via its legislation procedures of the rule of law (including at the local level) which guarantee that the citizens' will is respected. (overlapping)		

were condensed into certain intensively used narratives which changed slightly over the course of the three waves of rule of law legislation (Table 5.29). First, the rule of law was described as being embedded in the broader project of establishing democracy and a free market and protecting rights, then this was increasingly linked to Europe, and later the centrality of certain legal principles was emphasised more. While there was a general overlap of key narratives used by MPs belonging to the government and the opposition, opposition MPs used them after 2010 when they criticised government policy.

Codified law. MPs frequently mentioned the constitution, using terms such as 'constitutional order', 'constitution of a state based on the rule of law' or 'constitutional rule of law'. Implicit in the speeches is the view that **constitutionality is an obligation for a state governed by the rule of law because the constitution is its foundation**. This view was supported by all parties in opposition and in government throughout the periods under study. MPs emphasised that other laws were also part of the constitutional framework, reflecting the legal framework in Hungary. It went without saying that all provisions of the composite constitutional order should also be respected by citizens. This rhetoric was used most frequently during the first and third waves of rule of law legislation.

> In addition to the Fundamental Law, the constitution, there are about a dozen other laws that form the basis of the Hungarian constitutional system. The Constitutional Act and related laws have created the normative foundations and guarantees of the democratic rule of law, parliamentary democracy, a competitive multi-party system and the enforcement of human rights. As a result of the amendment of the constitution and the fundamental laws, Hungary's system and rules of property and ownership, the system and rules of economic management have been completely transformed. (Mihály Bihari, MSZP, opposition, 14.7.1994, LP 35, Session 4)

When arguing in this way, the politicians assumed that the constitution itself is in line with the principles of the rule of law, giving it the power to guide how the rule of law is practised. At the same time, the constitution was perceived as a separate factor because it regulated much more than only issues related directly to the rule of law. This made it an original source of legitimation of many issues related to the system.

> It is now a constitution based on the rule of law, and it is therefore now fit to fulfil its function. It is not suitable to provide a framework for the content of the new laws on legislation, the rules of international treaties and the constitutional court, which will be discussed after the constitutional amendment, and that is why the government is obliged to submit the constitutional amendment. You are well aware that all or almost all of the proposed amendments to the constitution create the constitutional basis for the laws that will be debated afterwards. (Miklós Hankó Faragó, SZDSZ, government, 14.10.2003, LP 37, Session 95)

This is exactly how Fidesz-KDNP argued about the new constitution, the so-called Fundamental Law, which was passed in 2011 with its two-thirds majority in parliament. According to their rhetoric, the constitutional order had to be improved in order to ensure "the functioning of a safe and viable Hungary".[46]

> The Fundamental Law, while seeking to preserve the most important achievements of the constitutional development of the last twenty years since the fall of communism, its well-functioning democratic legal institutions and solutions, has of course also brought significant changes in a number of areas. The reasons for these stem precisely from the experience of the rule of law over the last two decades. Since the rules on the most important legal institutions for the democratic rule of law are contained in the cardinal laws, we, the legislators, have a major task this year to draft all these cardinal laws, which are essential for the functioning of a safe and viable Hungary, with content and provisions that are most in line with the previous, well-established solutions and the necessary changes. (Márta Mátrai, Fidesz, government, 14.11.2011, LP 39, Session 133)

Following the adoption of the new constitution, references to the preservation of certain fundamental rights were a recurring theme articulated by almost all parties. Fidesz-KDNP argued that its legislation was in line with the constitution,[47] even in controversial cases such as the rights of Hungarians living abroad.

[46] Similarly, Péter Kozma (Fidesz, government 14.11.2011, LP 39, Session 133) argued: "I consider the inclusion of Article 38 to be an extremely important rule. (. . .) This is important from the point of view of the lessons learned from the past 20 years, precisely because the constitutional court can interpret the Fundamental Law in response to the requests referred to in paragraph (1) and in other cases where legal certainty is threatened, because the most important aspect of the Hungarian state and the operation of state bodies in accordance with the law, and the observance and enforcement of the principle of constitutionality, is that legal certainty is threatened in certain cases by the non-interpretation or inadequate interpretation of the Fundamental Law."

[47] For a more general view, see the quote by László Trócsányi in Sect. 5.1.2.

> Hungary is an independent and democratic state governed by the rule of law, whose form of government is a republic. The source of power is the people, who exercise it directly through their representatives, exceptionally by referendum. The state operates on the principle of the separation of powers. The proposal lays down the prohibition of the exclusive exercise of power and the state monopoly on the use of force. It enshrines the inalienable responsibility of the governments of Hungary to strengthen and preserve the unity of the nation across its borders. (László Kövér, Fidesz, government, 23.3.2011, LP 39, Session 77)

The opposition also referred to the need for constitutionality, arguing, for example, that the independence of the judiciary, although enshrined in the Fundamental Law, was not effectively implemented (see also Sect. 6.3.3).

> The absurdity that the explanatory memorandum essentially becomes part of the law or other legislation for which the technical basis is now being created is in quite obvious contradiction to the principles of the rule of law. It is also contrary to your own constitution, Article 26 of which states that judges are independent and subject only to the law. Henceforth, judges are not only subject to the law, but are also subject to the justification of proposed laws. In essence, they are not subordinate to the law, but to the legislative will, and that is a very serious difference. (Gergely Arató, DK, opposition, 30.10.2018, LP 41, Session 35)

Ideas. Regarding ideas as a source of legitimacy for the rule of law, we found more nuanced discourses across parties and over time. In the early and mid-1990s, all parties used the narrative that **the rule of law is guided by the will to also establish democracy and a free market and to protect rights**. According to the ruling parties, these overarching goals were enshrined in the constitution through the amendments to the 1949 document adopted in 1989/90. As the following quotations show, the overarching goals were seen as crucial for Hungary's development (Kuncze), as "European norms" (Szabó) and as a prerequisite for "the country's full integration with the West in the broad sense, directly and indirectly supporting its domestic modernisation efforts" (Lezsák).

> In 1989, the country's leading political forces agreed that there was no other way for Hungary to rise, to catch up with developed countries and to join the community of free nations than to build a market economy based on private property, with welfare guarantees; a constitutional state based on the rule of law and power-sharing, and a multi-party democracy strengthened by broad self-government. (Gábor Kuncze, SZDSZ, opposition, 14.7.1994, LP 35, Session 4)

> The enforcement of these European norms is not only manifested in the establishment of pluralist parliamentary democracy and the rule of law – which has already taken place – and not only in the market economy – the institutions of which are in the process of being established – but it must also be enforced in our foreign policy and in our external relations. (Zoltán Szabó, MSZP, government, 22.2.1995, LP 35, Session 58)

> Hungary wants to become a member of NATO because it shares the same values that form the basis of the alliance and that it was created to defend: the rule of law, the market economy, democracy and security. Hungary's membership of NATO provides favourable conditions for the country's full integration with the West in a broad sense, directly and indirectly supporting its domestic modernisation efforts. (Sándor Lezsák, MDF, opposition, 16.9.1997, LP 35, Session 298)

While the ruling MSZP argued that the amendments to the 1949 constitution represented "a transition to public law of truly revolutionary significance" because the revised document enshrined the aforementioned goals and rights, a new comprehensive constitutional revision to "improve" the constitutional order was discussed in 1995/96 in order to increase legitimacy.[48]

During the second wave of legislation, MPs used a slightly adapted narrative that **the rule of law is guided by the will to establish democracy, the rule of law and a free market and to protect rights, which is of great importance due to EU accession**. After the accession to NATO in 1999, the preparations for EU accession received much attention, and the number of MP statements about ideas as a source of legitimation of the rule of law in the context of the EU increased in 2004 (as for NATO in 1999). MSZP in particular adopted a strongly pro-European stance during its government (since 2002), which led to Hungary's accession to the EU. Its representatives advocated the implementation and respect of democratic values, the rule of law, rights, free elections and the free market. Other relevant parties aligned themselves with this pro-European perspective. While a link to the people was established, the following quotations show that the relevance of the EU (Kurucsai) and of the need to protect "the spirit and culture of Western Europe" (Fodor) played a key role.

> The Independent Smallholders' Party welcomes the European Commission's Country Report 2000. We are pleased because it confirms the sacrificial work of the past ten years, the sacrifices of our people, the fulfilment of the principles laid down in the 1993 Copenhagen criteria, and thus the stable democratic institutions guaranteeing the rule of law and the effective exercise of human rights, and which increasingly clearly guarantee the protection of minorities and respect for their rights. Furthermore: we see a functioning market economy, because it is increasingly able to cope with the competition of market forces in the European Union. And finally, citizens see and perceive successful efforts to fulfil the obligations of EU membership, to adopt and apply the acquis communautaire. (Csaba Kurucsai, MDF, government, 30.11.2000, LP 36, Session 177)

> The constitution of this country is fully in line with the rule of law and is in every respect in line with a modern constitution that reflects the spirit and culture of Western Europe and is based on fundamental human rights and freedoms. (. . .) Every time the need to adopt a new constitution arises in general, it results in a strange situation in public opinion, creating the feeling that there is something wrong with the Hungarian constitution. I think we should make it clear to the lay public that there is basically nothing wrong with the Hungarian constitution. I would like to emphasise once again that, of course, it can be amended on a few points, but in terms of its essence and spirit, this constitution is a good constitution, and it is in every respect suitable to serve the Republic of Hungary in the years to come. (Gábor Fodor, SZDSZ, government, 23.9.2003, LP 37, Session 89)

During the third wave of legislation, since Fidesz-KDNP formed the government in 2010, MPs from all parties used with great intensity the narrative that **certain legal principles (including legality/constitutionality and respect for human dignity)**

[48] Mihály Bihari, MSZP, government, 22.5.1996, LP 35, Session 178.

are highly relevant and should be protected by the constitution (Fundamental Law). In doing so, they indirectly acknowledged the relevance of guiding ideas or principles as a source of legitimacy for the rule of law. Fidesz-KDNP, with its two-thirds majority, implemented legal reforms and—as shown by the following quotations—placed itself in a historical line with those who had contributed to the break with the communist regime in 1956 and 1989/90 (Fazekas). They argued that these people had been betrayed by the supporters of the previous regime, who promised to build the rule of law and a fair compromise, but "only spoke the language of power" (Kövér).[49] In general, it was criticised that in the 1990s many people who had been part of the previous regime before 1989/1990 and who did not respect the basic principles of the rule of law and fundamental human rights were appointed to various important positions, and that this had prevented a real change of regime. The new Fundamental Law was declared to "finally clear away the ruins of the communist dictatorship after twenty years, thus bringing to an end the post-communist period of our country", to represent national Christian and traditional European values, and to reaffirm the commitment to the rule of law and democracy (Vejkey).[50]

> The patriotism of our compatriots, who fought against the National Socialist and Communist dictatorship and the foreign occupation, and who were martyred, and the desire for freedom of the heroes of 1956 remind us that only a nation that regards itself as a value and cherishes its traditions can express its free will and preserve its sovereignty. And we must pass on this heritage to future generations. (Sándor Fazekas, Fidesz, government, 17.4.2020, LP 41, Session 122)

> The fundamental underlying lie of the so-called regime change, on which twenty years of our lives and almost all of our relative achievements have been based, for which the country has bitterly fought and suffered during these twenty years, was the fiction that it is possible to build democracy, the rule of law, a homeland, a nation, a future with people who had previously based their entire lives, their careers and their wealth on the maintenance of a totalitarian dictatorship; that they trampled on the human dignity and the most basic human rights of others; that they handed over and sold the country to foreigners; that they denied their own people under the banner of internationalism, and even took up arms against them when it seemed necessary[51] (. . .) The system of so-called regime change was built on the lie

[49] Fidesz and KDNP did not accuse all parties of betrayal. Tibor Navracsics (Fidesz, opposition, 25.1.2010, LP 39, Session 6), for example, mentioned "other democratic parties which seriously thought that the one-party rule of the Hungarian Socialist Workers' Party had to be dismantled, which seriously thought that Hungary had to become a democracy, had to become a state governed by the rule of law, had to become a social market economy." The political debates of the last 20 years, he continued, "have already given a fairly good outline of what the future Hungary should be".

[50] Imre Vejkey, KDNP, government, 27.4.2020, LP 41, Session 122. The constitution should also, as Endre Gyimesi (Fidesz, government, 22.2.2011, LP 39, Session 69) put it, "express the far-reaching values of today's generations, including national unity, the protection of our mother tongue, our health, our families, our community values and our vitality".

[51] Kövér referred to the anti-government protests in the autumn of 2006 and the police violence against demonstrators in several cases.

> that it is possible to make a fair compromise, a compromise that can be considered a real reconciliation, with people who have always spoken to others only in the language of power (. . .) on the lie that a real democracy could be established by tweaking and tinkering with the so-called constitution, which both legally framed and at the same time dismantled the communist reign of terror; that the 1949 constitution of the Communist Party of Hungary was a "constitution". (László Kövér, Fidesz, government, 23.3.2011, LP 39, Session 77)

Fidesz-KDNP representatives stated that since 2010, fundamental values such as the rule of law, democracy and a free market economy had been strengthened.

> The rule of law, Hungary, guarantees its citizens, our compatriots, everyone, order and the promise that there will never again be dictatorship, and that human dignity will be guaranteed. (János Horváth, Fidesz, government, 21.2.2012, LP 39, Session 165)

Reforms were described as serving overarching ideas, e.g. the introduction of the Curia as the highest judicial authority in Hungary was argued to improve the uniform application of the law by the courts and the predictability of jurisprudence, thereby protecting the rule of law, democracy and human rights.[52] When emphasising rights, Fidesz and KDNP focused on securing rights for the many Hungarians living abroad and on "giving minorities more opportunities to survive and prosper".[53]

LMP agreed on the need to "renew Hungarian democracy" and "repair and renew a neglected structure that has been damaged in many ways in recent years", but within the existing constitutional framework.[54] Other parties agreed with the general view that democracy was a guiding principle in the establishment of the post-1989 system. All parties also argued that certain issues should be enshrined in the constitution to protect them.[55]

> At the outset, I would like to make it clear to the Hungarian Socialist Party as the party of regime change: democratic regime change is a value. We are proud that the regime change of 30 years ago enabled Hungary to establish a democratic institutional system, the rule of law, a free republic and a social market economy. We have embarked on the path of catching up and integration with Western Europe, and in time our country became a member of NATO and the European Union. (Bertalan Tóth, MSZP, opposition, 27.4.2020, LP 41, Session 122)

While opposition parties generally supported the relevance of the mentioned principles as guiding norms, they often criticised the government for ignoring the principles of legality/constitutionality, respect for human dignity and other values

[52] Zoltán Kovács, Fidesz, government, 16.2.2021, LP 41, Session 180.

[53] Péter Harrach, KDNP, opposition, 31.3.2004, LP 37, Session 138.

[54] András Schiffer, LMP, opposition, 17.5.2010, LP 39, Session 2.

[55] In our selected material, parties argued for enshrining, for example, Christian values and efficient judiciary (Fidesz, KDNP), the balance of power (Jobbik), the existence of and compliance with procedural rights (MSZP), the individual right to social security and right to housing (LMP), to name but a few.

(see Sect. 6.3.3 for more details).[56] The governing parties, in contrast, argued that they conformed with the EU fundamental values.[57]

Procedures. Across the parties and throughout the periods under study, MPs emphasised the **need for the Hungarian parliament, through its legislation, to create rule of law procedures that ensure that the will of the citizens is respected**.[58] However, this narrative was most intensively used during the first wave of legislation. In this context, legislative procedures, the appointment and election of various political actors at national and local level were discussed, as well as instruments of accountability and legal certainty (see Sect. 5.2.3). Speakers argued that such mechanisms established by parliament help to gain acceptance from citizens, indirectly assuming that this is a way of generating legitimacy for the rule of law. More strongly than in the later periods, MPs stressed that the will of the people was the driving force behind the creation of the rule of law, e.g. the wish to prosecute criminals of the previous regime (Gáspár) and to establish democratic electoral procedures at all levels (Homoki).

> I confess that I am guided by more prosaic principles than the above, such as: the organisation to be created should work, be cheaper than its predecessor, easy to learn and democratic. I also argue that law does not create free citizens, but free citizens create their own rule of law. (István Illésy, MDF, government, 23.7.1990, LP 34, Session 27)

> A young state governed by the rule of law must therefore make use of the legitimate possibility of prosecuting the war criminals of a previous illegitimate regime if it wants its citizens to accept it. (Miklós Gáspár, KDNP, government, 26.1.1993, LP 34, Session 265)

> Please, there must be a clear separation of legislative and executive powers at local level too. In local elections, the electorate chooses the people who, as representatives, are entrusted with the task of making local laws in the municipal council. They will be the local legislators. (János Homoki, FKgP, opposition, 6.9.1994, LP 35, Session 9)

With the 1949 constitution still in force (albeit in a completely revised form, stripped of its socialist elements), MPs also discussed an appropriate process for drafting a new constitution. Parliament was seen as the legitimate place for this task.[59] A very inclusive process of negotiating a new constitution was established.

[56] For example, Bertalan Tóth, MSZP, opposition, 27.4.2020, LP 41, Session 122.

[57] To quote Richárd Hörcsik (Fidesz, government, 19.2.2018, LP 40, Session 269): "It is worth recalling the ominous EU fundamental values, as set out in Article 2 of the EU Treaty: respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights. These fundamental values are also common to the Fundamental Law, and no one in Europe or in Hungary challenges them in their original, undistorted form. I am convinced that the proceedings under Article 7 were conducted for political reasons in the European Union, which is unacceptable to us and to the Poles."

[58] See also the quote by Zoltán Hajdú (SZDSZ, opposition) in Sect. 5.1.3.

[59] Zoltán Gál (MSZP, government, 22.5.1996, LP 35, Session 178), gave the usual view: "It is well known that at the end of the 1980s, work began on codifying a new constitution to create a modern, democratic constitutional state. The laws enabling the political system to be changed were adopted,

> One of the general questions – constantly and repeatedly asked – is who should write the constitution. (. . .) It is extremely rare for the body that adopts the constitution to do so in the form of a separate and uniquely constituted constituent assembly. (. . .) Constitutionalisation is therefore the task of the parliament (. . .). But it is also the task of parliament to create the widest possible range of professional, social and political consensus, which is why it has ensured, in the form of a special House of Commons rule, equal participation – regardless of their parliamentary representation – for all parties and the continued participation of experts. I therefore believe that history has, in fact, judged and answered this question in such a way that there is no need or justification for convening an extraordinary Constituent Assembly or for transforming this National Assembly into a Constituent Assembly. In the normal parliamentary decision-making process, it is the parliament that has to constitutionalise, with certain special rules, such as the broad consensus vote. (Mihály Bihari, MSZP, government, 20.11.1996, LP 35, Session 228)

Ultimately, however, the process failed to achieve its goal of adopting a new constitution.

In the years that followed, these and other issues continued to be discussed and the issue of procedures continued to receive attention. One of the controversial aspects was how to deal with the files of former state security agents. MPs discussed that society's right to be informed about the contents of the files conflicted with the right to data protection. As Mécs (SZDSZ, government) put it, "we are running up against the walls of the rule of law that we ourselves have built by our collective will."[60] This contradiction was to be resolved by amending the constitution.

In the wake of Fidesz-KDNP's election victory in 2010, all parties continued to argue in favour of proper procedures as a source of legitimacy of the rule of law, while the main narratives revolved around other issues mentioned above. Fidesz-KDNP promised to build an effective state, based on the trust of society,[61] and emphasised the importance of elections so that the people can legitimately give a mandate to govern.[62] The opposition parties warned the new parliamentary majority that the norms of the rule of law and procedures must be followed in the public

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many of them with the content that emerged from the national round table negotiations. (. . .) An agreement was reached which, by amending the previous constitution, created the legal conditions for parliamentary democracy, for a peaceful political transition to a state based on the rule of law and a social market economy, and for the new constitution to be drafted by the parliament that would meet after the 1990 elections."

[60] Imre Mécs, SZDSZ, government, 9.5.2005, LP 37, Session 222.

[61] Bence Rétvári (KDNP, government, 25.5.2010, LP 39, Session 6) argued, for example, "We need to rebuild the state, and a key part of this is to assert expertise and vocation, and to restore the stature of public administration. Only in this way can a strong and effective state be created, able to reassert the basic institutions of democracy and the values of the rule of law, based on the trust of society." Róbert Répássy (Fidesz, government, 30.3.2016, LP 40, Session 138) stressed that "(i)n addition to the efficiency of the judiciary, public confidence in the judiciary is the essence of the rule of law, a key issue. If citizens cannot have confidence in the judiciary, their faith in the institutions of the rule of law is shaken." He used this to justify a bill on judicial experts.

[62] See Gergely Gulyás (Fidesz, government, 21.2.2012, LP 39, Session 165), similarly, Péter Harrach (KDNP, government, 27.4.2020, LP 41, Session 122).

interest[63] or proposed establishing a super-majority (four fifths) vote for nominating judges for the constitutional court to give small opposition parties in a state governed by a two-thirds majority a say.[64] Later they criticised the centralisation of power and a lack of respect for constitutional norms[65] (see also Sect. 6.3.2).

5.3.3 Poland: Procedures and (Increasingly Contested) Ideas

In the Polish Sejm, when MPs talked about the legitimacy of the rule of law, they most often referred to procedures as a source of legitimacy or, when referring to different sources, put the emphasis on procedures. Accordingly, the most frequent narrative used regarding legitimation of the rule of law was that about procedures. It dated back to the first and second waves of rule of law legislation. Ideas followed at a considerable distance. (However, in comparison to the other parliaments studied, Polish MPs talked about even the less-addressed issues more than their colleagues.) Narratives regarding ideas were used in each wave of legislation, but mostly in a one-sided way (Table 5.30). The constitution or the law in general was relatively

Table 5.30 Narratives on the sources of legitimacy of the rule of law in Poland

	1990–1997	1997–2015	2015–2021
Procedures	Effective state institutions (esp. judiciary and prosecution) are relevant to ensure trust in the state under the RoL. (overlapping)		
Ideas	Legal principles (esp. separation of powers, legality, non-retroactivity) as the basis of the new system (under the RoL). (overlapping) RoL is guided by the will to also establish democracy, a free market and to protect rights. (overlapping)	Morality, justice and common good as the basis for a functioning and just state (referring to lustration etc.) vs fundamental rights and individual freedoms guarantee a stable state under the RoL. (diverging)	Legal principles and European standards serve as anchor points for the state and must be respected. (one-sided, opposition)
Codified law			Constitutionality is an obligation for the state governed by the RoL. (one-sided, opposition)

[63] "The Hungarian nation, the will of the electorate obliges the new parliament and the new government to lead and organise the work that will help to create a modern, European, developing, just and solidary Hungary of the twenty-first century, without compromise, respecting the norms of the rule of law and in the public interest." (Attila Mesterházy, MSZP, government, 17.5.2010, LP 39, Session 2)

[64] András Schiffer, LMP, opposition, 5.7.2010, LP 39, Session 2.

[65] András Schiffer, independent, opposition, 11.3.2013, LP 39, Session 259.

rarely mentioned as a source of legitimacy for the rule of law, even after the adoption of the new constitution in 1997. Although the intensity of such mentions increased, the respective narratives were one-sided. Overall, the overlap of narratives observed in the early and mid-1990s collapsed after the adoption of the constitution. It had already been fragile, with different associations depending on party affiliation on relevant issues and criticism of alleged infringements of the law, procedures or principles by others.

Procedures. Procedures were frequently mentioned by MPs as a basis of the rule of law throughout the analysed material. From the early 1990s until 2021, the narrative was used across parties that **effective state institutions (especially the judiciary and prosecution) are relevant to ensure trust in the state under the rule of law**. When doing so, MPs pointed to the functioning of different institutions (judiciary, prosecution service, police, legislative institutions, the ombudsperson), but also the behaviour of officials or position holders, to legal procedures to re-establish justice (lustration, restitution), to elections, referenda and constitution-making, or to the practical implementation/realisation of rights.

In the transition period, the discussions revolved around (re)gaining trust of the citizens in the state institutions of the new democratic system. MPs emphasised the need to establish well-working procedures and ensure respect for the laws.

> The intention of the committee, which considered all these voices, somehow taking into account this general fact of social awareness, which is after all a significant political fact, was to create, by means of the proposed laws, a depoliticised police force and to abolish the Security Service. We think that this is (. . .) only a first step towards solving this difficult problem. (. . .) However, (. . .) this public attitude to the police service will continue for a long time yet. Let us have no illusions here in this regard. (. . .) The public will continue to distrust, to suspect the police authorities of trying to conspire against the authorities, of trying to preserve the old order. (Jerzy Zimowski, elected via Komitet Obywatelski 'Solidarność', parliamentary group Unia Demokratyczna, Contract Sejm/government, 6.4.1990, LP X, Session 25)

> To sum up, pathologies in economic and social life should be fought with legal measures such as re-privatisation and privatisation, stable and reasonable laws, decentralisation of power. I believe that people want to live under the law. They remember the time of communism, when you had to cheat and when everyone was treated like a cheat, as a bad dream. They long for morality, the rule of law and honourable behaviour. And that is why opportunities must be created through wise laws. (Władysław Reichelt, KLD, opposition, 13.2.1992, LP 1, Session 8)

> Our society expects not only an efficient, well-organised market economy – it also expects a well-managed state, capable of meeting the most important needs of its citizens. It is well known that the strength and effectiveness of the state is largely determined by an efficient, apolitical, law-abiding administration. (Leszek Zieliński, BBWR, opposition, 26.4.1995, LP 2, Session 48)

In that time MPs also stressed the background of citizens' mistrust in the state and procedures and argued that the citizens' trust in a state under the rule of law depends on good-working and law-abiding state officials.

> The issue of the protection of civil rights, the rule of law and the state in fact concerns the entire socio-political system. (. . .) There was no shortage of emotions and extremes in the discussion about the historical changes taking place in the country. Some saw the very existence of the Ministry of Internal Affairs and the Security Service as the source of all evil, often reducing their functions in the past to mere repressive and distorted practices. Others, driven by their personal unpleasant life experiences, were inclined to make these services a symbol of Stalinism and proof of the domination of the state apparatus over citizens. (. . .) Today, the increased crime, its poor detection rate, the paucity of its preventive functions and the lack of public trust have led to the identification of the militia and the Security Service with evil, associated with the system of so-called real socialism. (Józef Oleksy, SdRP, Contract Sejm, 6.4.1990, LP X, Session 25)

> The ignorance and inertia of the institutions set up to combat economic scandals, financial crime and corruption is astonishing. The lengthy investigation of detected cases, the frequent discontinuation of scandals for lack of evidence or even of the features of a crime, the many criminal fiscal cases dragging on indefinitely rather indicate a sham to appease public opinion and unbelievable formal and legal loopholes scrupulously exploited by people acting to the detriment of the state treasury. (Władysław Staniuk, ChD, government, 13.2.1992, LP 1, Session 8)

> Our members state that too often the state under the rule of law is spoken of without defining its concept, when the consequences of understanding this concept often benefit those who should face the law. People feel that there is ideological confusion and that too often there are experiments, both economic and ideological, which do not have sufficient public support; and this support is not always sought. (Marek Markiewicz, S, opposition, 21.1.1993, LP 1, Session 35)

While the parties rhetorically agreed on the need for functioning state institutions to ensure citizens' trust in the state under the rule of law, their concrete positions on procedural aspects varied. The opposition regularly criticised alleged incorrect legislation by ruling majorities, and governments criticised previous governments in this respect. The left and liberal parties highlighted the independence of the judiciary and the prosecution service, while conservative/right-wing parties focused more on accountability and the functioning of the prosecution regarding crime. Conservative/right-wing MPs also argued for lustration and restitution as a means to rectify the past, while left and liberal MPs emphasised the need to strictly follow the law and defined procedural frameworks, especially in the case of lustration, to uphold a democratic system under the rule of law.[66]

After the mid-2000s, MPs from across the party spectrum—whether in opposition or government—continued to emphasise the relevance of procedures as the source of legitimacy of the rule of law. As the following quotations show, they mentioned the link to citizens' trust in the rule of law when discussing diverse aspects of the practical functioning and effectiveness of the procedures in parliament (Jankiewicz),

[66] See Jan Mizikowski (KPN, opposition, 6.3.1992, LP 1, Session 10), Jerzy Jaskiernia (SdRP, government, 6.3.1997, LP 2, Session 102) or Jan Lityński (UW, opposition, 6.3.1997, LP 2, Session 102), Adam Słomka (KPN-Ojczyzna, opposition, 3.3.2000, LP 3, Session 72) or Marek Suski (PiS, government, 9.3.2006, LP 5, Session 12).

the constitutional court (Łyżwińska), the judiciary (Ślusarczyk) and other institutions (see also Sect. 5.2.3).

> All too often, the laws that are created grant rights to certain benefits, assistance or security, knowing full well that they will not be able to be realised due to a lack of financial resources in the first place. Such rights are nevertheless established. This accusation mainly concerns us, members of parliament and senators (. . .) In so doing, we are destroying confidence in the law and, consequently, in the state. (Paweł Jankiewicz, SLD, opposition, 14.7.2000, LP 3, Session 82)

> In general, the assessment of the constitutional court's activity must be positive. It has a significant impact on the functioning of the law and the building of citizens' trust in the created law. The positive activity of the Tribunal manifests itself particularly in the area of defending the principle of the rule of law contained in Article 2 of the constitution. (Wanda Łyżwińska, SRP, opposition, 5.7.2002, LP 4, Session 25)

> Experts on the subject have long pointed out that the unnecessary increase in the number of lay judges is one factor in the low public confidence experienced by the courts. In times of crisis of authority, the judiciary should and must uphold the rule of law and give citizens a sense of security. Public trust in common courts is the basis for the functioning of Poland as a state under the rule of law and everything should be done to raise the level of the judiciary, which in the opinion of our citizens is not too high. This particularly applies to civil district courts. (Piotr Ślusarczyk, LPR, government, 13.7.2006, LP 5, Session 21)

In that period, MPs also voiced the realisation of rights and freedoms, often linked with "European standards", as a relevant procedural aspect of legitimising the rule of law (see also Sect. 6.1.3). Several MPs, mostly from left and liberal factions, mentioned the constitutional complaint as an important right for citizens, enabling their participation and thereby guaranteeing confidence in the judiciary or state (Chmielewski).[67] Also the ombudsperson was mentioned (Wierchowicz).[68]

> The extent of the ombudsman's activity during the third term of office is impressive. The conviction among citizens that they can count on the ombudsman's competent and decisive assistance in protecting them in the event of violations of their freedoms and rights continues unabated. (. . .) To uphold the freedoms and rights of human beings and citizens means upholding the state under the rule of law, and therefore also European standards, the upholding of which is Poland's ticket to a united Europe. (Jerzy Wierchowicz, UW, opposition, 14.7.2000, LP 3, Session 82)

[67] See, for example, Jerzy Ciemniewski (UW, opposition, 6.6.1997, LP 2, Session 108), cited in Sect. 5.1.3.

[68] "Do not be afraid of PiS, do not be afraid of the president, do not be afraid of the bishops. On this issue, if PiS does not support the Reform Treaty along with the entire Charter of Fundamental Rights, we will do a referendum together. And let the Poles once again vote against PiS. (Applause) Let them vote against PiS once again, and for their own rights. (. . .) You are not going to sign, you are not likely to vote for the Charter of Fundamental Rights in the Sejm – we will appeal to the sovereign, to the people." (Wojciech Olejniczak, LiD, opposition, 23.11.2007, LP 6, Session 2).

> We certainly see an increase in the impact and we see the problem of the constitutional complaint, but in the committee's view – the president and the court also share this – the constitutional complaint is, as I understand it, one of the essential guarantees of a democratic state under the rule of law. (Stanisław Chmielewski, PO, government, 30.5.2008, LP 6, Session 16)

During the third wave of rule of law legislation, from 2015 on, MPs still made regular references to effective procedures as a source of legitimacy. The ruling majority used them to justify their own legislative initiatives while the opposition linked them with criticism of alleged infringements of constitutional rules and principles (again with reference to public opinion or to international and European standards) (see Sect. 6.3.3).

Ideas. Throughout the analysed period, MPs from across the party spectrum also referred to ideas to legitimise their statements with respect to the rule of law or law in general. However, the content of the narratives was somewhat more varied. In the 1990s, when some key legal principles and their roots were discussed, MPs emphasised that **certain legal ideas or principles (such as the separation of powers, legality or non-retroactivity) are the basis of the new system under the rule of law**. Such references overlap with quotes on the purpose and elements of the rule of law in Sects. 5.1.3 and 5.2.3. As the following quotation demonstrates, MPs brought in the need to implement these legal values in the constitution or constitution-making process as "a fundamental guarantee for citizens", often with reference to the opposition movement of the 1980s or in contrast to the communist system. In this view, the parliament elevated these principles to the rank of fundamental principles of the political system, making it possible to establish a democratic system under the rule of law.[69]

> The concept of a 'democratic state under the rule of law' is a construction that found its way into our Fundamental Law in 1989 and is undoubtedly becoming a permanent foundation of constitutional thinking, and it is developed in detail in our draft. It consists in the fact that we point out that the observance of the constitution and the laws of the Republic of Poland is a fundamental duty of every organ of the state and local self-government; we say that all public authorities act on the basis of the law, which is a fundamental guarantee for citizens. We point out that legal acts of public authorities, from which the rights or obligations of citizens arise, have binding force only if they are issued by virtue of a law and with reference to it. (Jerzy Jaskiernia, SdRP, government, 23.9.1994, LP 2, National Assembly Session 1)

Szymański pointed out that the principles could be realised in different ways proposed in draft constitutions.

> Most of the draft constitutions of the High Chamber incorporate the principle of the separation of powers, which is widely believed to be a basic condition for the democratic functioning of state power and a counterpoint to the principle of unity or unity of power on which the constitutional system of the People's Republic of Poland was built. The principle of the separation of powers is expressed in the drafts in various ways; primarily, although not

[69] See, for example, Jerzy Ciemniewski (UD) in Sect. 5.3.3.

> exclusively, by indicating the separate existence of the legislative, executive and judiciary powers (. . .) allowing for the interaction of powers and the mechanisms of balancing and inhibiting each other (as opposed to the strict doctrine of the separation of powers of the US type). (Janusz Szymański, UP, opposition, 23.9.1994, LP 2, National Assembly Session 1)

Another narrative on ideas as a source of legitimacy for the rule of law mainly used in the 1990s was that **the rule of law is guided by the will to also establish democracy, a free market and to protect rights**. Often such statements were underpinned by references to the historical struggle for human and citizens' rights, also with regard to Polish history and opposition movement. As these quotations show, the new liberal approach was described as "personalism, expressed in placing the rights of the individual above those of the group" (Suchocka). The approach was often associated with accession to the Council of Europe and "building civic attitudes" (Stefaniuk).

> Since 1989 there has been a consistent amendment of the legislation in such a way that there are no barriers to our admission to the Council of Europe and also to facilitate the process of ratification of the Convention. It can be said that our legislation in these past three years was based on different values than those recognised in the past 40 years. It was guided primarily by the idea of personalism, expressed in placing the rights of the individual above those of the group, treating the human being first and foremost as a person and only then as a member of a group. This changed the way legal regulations were viewed. (Hanna Suchocka, UD, opposition, 22.5.1992, LP 1, Session 15)

> Nothing builds civic attitudes more than the dissemination of accepted rights and duties of citizens towards each other and the state and the state towards citizens. We should keep this in mind and not devalue accepted values by enacting laws that are contradictory, retroactive, disruptive of a certain consensus on a certain range of mutual constraints between people and their state. (Franciszek Jerzy Stefaniuk, PSL, government, 22.5.1992, LP 1, Session 15)

> Whether we want it or not, delaying the adoption of these principles will not solve anything, distancing us from Europe in this respect as well. Adoption of the Charter in the majesty of a constitutional act will confirm that the Polish parliament has the will to respect the fundamental freedoms of citizens, understood inter alia as the right to work, education, culture and social security. In a state under the rule of law, no one should be in any doubt that it is a state that is guided by the good of the majority of citizens and not by the will of political elites or pressure groups. (Ewa Spychalska, elected via SLD-list, opposition, 21.1.1993, LP 1, Session 35)

Legal values and principles were also mentioned by various MPs in the period after the adoption of the constitution (1997), during the second wave of rule of law legislation, especially when debating judicial laws and reports of the ombudsperson and the president of the constitutional court. However, in that period, two diverging narratives on rights and freedoms emerged. In the context of planned EU accession and their criticism of the (previous) conservative government, representatives of mainly left and liberal parties adapted a previously used narrative and argued that **fundamental rights and individual freedoms guarantee a democratic state under the rule of law within the EU**.

> In my opinion, the fear is correct, and has often been expressed recently, that a model of a totally repressive state is being created before our eyes. Is this justified? You, as ombudsman, in a way monitor the safety of citizens, monitor the functioning of the state, monitor democracy. Does this model of criminal policy fit into the standard, and I use the expression, model of a state under the rule of law, into that which the twenty-first century deserves, and into that which the developed European states offer? (Marek Lewandowski, SLD, opposition, 24.7.2001, LP 3, Session 114)

> The draft Act on the Implementation of Certain Provisions of the European Union on Equal Treatment is intended to supplement existing regulations on the principles of equal treatment, particularly those contained in the Fundamental Law, as well as in a number of other acts in Polish legislation. (. . .) We believe that the provisions contained in this draft are appropriate due to the need to implement European directives into the Polish legal order. This is the fulfilment of our international legal obligation and, at the same time, the strengthening of the principles of equal treatment in particular aspects of social life. (Teresa Piotrowska, PO, government, 28.10.2010, LP 6, Session 77)

Conservative MPs used a competing narrative with a different focus, emphasising that **morality, justice and the common good form the basis for a functioning and just state**. Such statements were identified throughout the selected sources, but they were made with higher intensity during the second wave of rule of law legislation. Speakers used this narrative with regard to abortion/right to life and lustration, highlighting the value of the "common good of the nation". In their view, individual rights must be linked with the common good (Wawak).

> In his briefing, the ombudsman writes that two fundamental values of the constitutional order have guided his work: human dignity and the common good. We accept this with great appreciation. (. . .) However, I think that, reaching back to Article 18 of the constitution, which states that the family, motherhood and parenthood are under the protection of the Republic of Poland, it is worth adding (. . .) the good and rights of the family as an element of this common good, because the common good consists, after all, also of the rights of the family and the good of all families. Such thinking is legitimate. The good of the family is an element of the common good. (Zbigniew Wawak, elected via AWS, government, 24.7.2001, LP 3, Session 114)

> If the content of a state under the rule of law is a set of fundamental directives introduced by the essence of democratically constituted law and guaranteeing a minimum of its justice, then the first such directive must be respect in a state under the rule of law for the value without which all legal subjectivity is excluded, namely human life from its beginnings, from its inception. It is worth recalling this fundamental ruling for the existence of the rule of just law in Poland. (Kazimierz Michał Ujazdowski, PiS, opposition, 5.7.2002, LP 4, Session 25)

Conservative MPs often referred to justice as a value to legitimise their call for vetting/lustration procedures, which would ultimately enable a just state under the rule of law. "Internal guarantees" of the rule of law, including a sense of responsibility of judges, were further voiced by MPs when they talked about legitimatising the work of state institutions.

> We have talked about external guarantees of independence. But internal guarantees are also necessary, which are the integrity of the judge, his righteous character, his civil courage. And also, in my opinion, high professional qualifications. One of the judges said it beautifully in this way, I think: "The independence is in me." The majority of judges are aware of this, but relatively little is said about it by themselves and relatively little is said about it in general. Just as you rarely hear from the judges themselves that independence is not only their right, but above all an elementary duty. Directly related to this obvious statement is the question of responsibility for the breach of the duty to be independent. (Teresa Liszcz, PPChD, elected via AWS, government, 3.3.2000, LP 6, Session 77)

More than the supporters of the above-mentioned narrative on rights, they also linked their statements to the "will of the people".

> (T)his is not the Poland we fought for. This is what people say. Today they have a sense of injustice. They feel that the state is not on their side, that it has turned against them, that the laws created are not perfect and do not safeguard their interests, and that the institutions of the state do not care about citizens' problems and do not take them seriously. I am convinced that the confirmation of this state of affairs – and what I have said certainly comes from our citizens and is often articulated during meetings with voters – and the reflection of this state of affairs is this rate of various speeches that are addressed to the ombudsman. (Krzysztof Lipiec, PiS, opposition, 25.6.2014, LP 7, Session 70)

Since PiS came to power in 2015, opposition parties have argued that **legal principles and European standards serve as anchors for the state and must be respected**. While in the 1990s, MPs had (mainly) referred to the ideas guiding the democratisation process that had started in the 1980s, the left and liberal opposition parties now referred primarily to the European Union. Human and civil rights were mentioned in a more abstract way. This narrative was used when criticising the ruling majority's agenda (see Sect. 6.3.3).

> If serious people who know about the rule of law write in the first paragraph about the decommunisation of the judiciary when the average age of Polish judges is 39, this is an insult to the intelligence of those people who are our partners. (Applause) I expect the Polish government and the Polish parliament to return to the path of the rule of law. As a citizen of Poland, a citizen of the European Union, I expect the European institution to uphold principles consistently. (Adam Szłapka, N, opposition, 21.3.2018, LP 8, Session 60)

> You have rejected any form of constructive cooperation, because in the background, of course, there is the conflict with the European Commission over the rule of law. And yet you yourself spoke of a Europe of values, of 1989, of values, of democracy, of freedom. This is the symbol of Poland that we should be proud of. (. . .) You have ruined this system of values. (Andrzej Halicki, PO, opposition, 14.3.2019, LP 8, Session 78)

Codified law. The constitution, its provisions or legal texts were invoked as legitimation for the rule of law throughout the considered sources, with a higher intensity in the years after the adoption of the constitution, i.e. in the second and third wave of rule of law legislation. However, for a long time, there was no clear pattern of the related statements, which is why we could not identify a narrative. Mainly liberal and left-wing politicians involved in the constitutionalisation process outlined in the

early and mid-1990s the importance of a fundamental law for the stability and functioning of a democratic state under the rule of law.[70] Later they stressed that the constitution is the main legal act and the basis for assessing legislation, behaviour etc., which was also said by national conservative or more right-wing MPs.

The situation changed from 2015 onwards. Now, the opposition frequently mentioned the constitution and its provisions in their criticism of the governmental agenda, particularly in relation to a proposed amendment or debates on fundamental judicial laws. The narrative was used with high intensity that **constitutionality is an obligation for the state governed by the rule of law**. MPs frequently voiced it against the backdrop of supposed violations of the need to protect constitutional norms (Wilk) or of constitutional rights (Grabarczyk) due to a government draft, reform, formerly adopted regulation or action. MPs also demanded that the constitution be respected (Dolniak).

> You want to restrict the citizens' right to a court, and this is something that the citizens will not forgive you for, because citizens, according to Article 45 of the constitution, have the right to have their cases swiftly decided by the judiciary. (Cezary Grabarczyk, PO, opposition, 17.12.2015, LP 8, Session 5)

> Indeed, ladies and gentlemen, the constitution cannot be amended on the spur of the moment. Its amendment cannot be a response to the ruling majority's failure to respect the decisions of the constitutional court. It cannot be amended in an atmosphere of political haggling around one of the most important institutions in our country – the Constitutional Tribunal – because it is the Tribunal that is being amended. (Wojciech Wilk, PO, opposition, 10.2.2016, LP 8, Session 11)

> In a democratic state under the rule of law, the constitutional value defining the identity of the system is the independence of the judiciary and the independence of judges, and thus the independence of the National Council of the Judiciary which is of particular importance in guaranteeing the principle of the division and balance of powers and the right to a court. Article 173 of the constitution unambiguously separates the judiciary from other authorities, assuming that it constitutes an independent whole. Thus, the principle of the division and balance of powers expressed in Article 10 of the constitution should be understood in relation to the judicial power in such a way that its separation and independence is duly respected. (Barbara Dolniak, N, opposition, 5.4.2017, LP 8, Session 39)

5.3.4 Romania: Ideas and Procedures

Romanian parliamentarians, when speaking about the legitimation of the rule of law, most frequently referred to the constitution. Ideas and procedures followed at some distance. However, statements mentioning the constitution covered a wide array of issues. Established narratives referred mainly to ideas, followed by procedures.

[70] See, for example, the quote by Aleksander Łuczak (PSL, Contract Sejm) in Sect. 5.1.3. Or Hanna Suchocka (UD, opposition, 2.4.1992, LP 1, Session 12), argued: "(T)he new, complete constitution should be the crowning achievement of the systemic transformation, and nothing more than its beginning."

Table 5.31 Narratives on the sources of legitimacy of the rule of law in Romania

	1990–2004	2004–2014	2014–2021
Ideas	The legitimation of the RoL rests on European values (esp. freedom) that were won by the Romanian revolution. (overlapping)	Separation of powers through an independent judiciary is an important source of legitimacy. (overlapping)	
Procedures		Legal procedures must be respected to avoid them being "dead letters in the law books", which would mean squandering this important source of legitimacy. (overlapping)	
Codified law	The constitution of 1991 as the institutionalised emanation of the Romanian revolution is the most important source of legitimation. (overlapping)	Constitutionality is an obligation for the state governed by the RoL. (one-sided)	

Especially in the 1990s, speakers across parties constructed an overarching narrative that emphasised ideas. According to this narrative, the Romanians succeeded in overthrowing the communist regime in a revolutionary way, enshrined their liberty in the constitution and in this way realised a return to Romania's pre-communist and profoundly European traditions. After the turn of the millennium, MPs emphasised that problems arise when constitutionally enshrined procedures are not being followed. All narratives found in the analysed documents were overlapping, while MPs often linked them with criticism of other politicians. During the third wave of rule of law legislation, only one narrative was actively used (Table 5.31).

Ideas. With particularly high intensity during the first wave of rule of law legislation, MPs of all relevant parties used the narrative that **the legitimation of the rule of law rests on European values (especially freedom) that were won by the Romanian revolution**. This narrative was enshrined in the very first article of the constitution, cited by MPs.

> Moreover, this is also confirmed by the Romanian constitution, which, in Article 1(3), proclaims Romania as a democratic and social state governed by the rule of law, in which human dignity, citizens' rights and freedoms, justice and pluralism are supreme values in the spirit of the democratic traditions of the Romanian people and the ideals of the December Revolution and are guaranteed. (Verginia Vedinaș, PRM, opposition, 20.12.2006, CD+S, LP 5)

The ideational part of this narrative was shared by MPs across the political spectrum—from the nationalist PRM to the "historic" parties of PNȚCD and PNL and to the post-communist, social-democratic PDSR/PSD.

> In Romania, as a result of the December Revolution, a fundamental transformation of society has taken place, in particular the political objectives of the Revolution: the overthrow of the old totalitarian system and its power structures, the building of democracy, of a pluralist

> system, the freedom of expression, demonstration and organisation of the people, the building of the rule of law through free elections, the adoption of the new democratic constitution have been achieved, including the alternation of government as a specific mechanism of democracy. (Ion Iliescu, PSDR/PSD, opposition, 22.12.1998, CD+S, LP 3)

> The Revolution of December 1989 brought a priceless gift into the lives of all Romanians – freedom – and, with it, the hope that we will build a democratic Romania, a state governed by the rule of law in which the rights and freedoms of citizens, enshrined in the constitution, will be respected with sanctity. (Pavel Cherescu, independent, opposition, 24.2.2004, CD, LP 4)

Such fundamental ideas about the legitimacy of the rule of law were most often expressed by MPs on special occasions, which in the Romanian context were provided by gatherings of both chambers of parliament, including the president and other dignitaries, celebrating the anniversaries of the revolution, the constitution and later the accession to NATO and the EU. This festive character of the speech occasions may have contributed to the fact that in most cases the sources of legitimacy of the rule of law were not discussed in detail, but rather enumerated together with democracy, civil and human rights and other desired goals, as in the case of Sorin Frunzăverde in a debate about NATO accession.

> NATO membership also confirms our belonging to Euro-Atlantic values, based on the principles of democracy, individual freedoms and the rule of law, as expressed in the preamble of the Washington Treaty. (Sorin Frunzăverde PD, opposition, 26.2.2004, CD+S, LP 4)

Some MPs noted the shallowness of evoking the ideas of the revolution at festive occasions.

> In 1989 we believed that our ideals could be realised quickly and that democracy with its attributes – the rule of law, the market economy – would soon take hold. It was not to be. Some of the goals of the Timişoara Revolution and of the whole country have been achieved, but much remains in the stage of intentions. Unfortunately, however, I believe that oblivion is beginning to creep in, quietly, and the commemoration of the Revolution, instead of being a moment of pious remembrance for those who fell, but also of lucid analysis of what was achieved, most often becomes an opportunity for quarrels, mutual disputes, claims of paternity of the various moments, in a show that offends either through a hollow festivism or through hypocrisy. (Viorel-Gheorghe Coifan, PNL, opposition, 19.12.2002, CD+S, LP 4)

On occasions other than festive ones, opposition MPs often referred to the ideals enshrined in the constitution when criticising the government and the president. Such a linkage was typical for a narrative used during the second wave of rule of law legislation. According to this narrative, the **separation of powers through an independent judiciary is an important source of legitimacy**. It evolved when politicians associated with President Traian Băsescu and especially Băsescu himself were criticised for a total disrespect of the judiciary within the system of separation of powers:

> Minister Macovei probably criticised and challenged the way of appointing the judges of the Supreme Court of Justice, either out of a nihilistic spirit or out of a motivation consisting in exercising political control over the future judges of the High Court, her request having no legal basis and no logical reasoning. Minister Macovei's attitude shows total contempt for the principles of the rule of law and the spirit and letter of the law. (Vasile Puşcaş, PSD, opposition, 27.9.2005, CD, LP 5)

> At another meeting of the CSM,[71] the president decrees, in his own style, that "I will not agree to an independence of justice in inefficiency and corruption. We must create the conditions for the body of magistrates to cleanse itself. I would be happy if some would resign, so that we would not be in the situation of issuing a law to administratively cleanse justice." How can such a president who wants to issue laws, who wants to "clean up" the judiciary, in contempt of the laws, of democracy, of the principles of the rule of law, remain in office? (Titus Corlățean, PDSR/PSD, opposition, 28.2.2007, CD+S, LP 5)

Values such as freedom, which "all Romanians" had fought for in 1989 and which were linked to the rule of law, were said to have been corrupted.

> Although the current constitution clearly states in Article 1 that "The state is organised according to the principle of the separation and balance of powers – legislative, executive and judicial – within the framework of constitutional democracy", (f)or five years we have been witnessing a permanent assault by the executive power (government plus president) on the independence and separation of the other two, in fact a fight for more power to be used to defeat the word 'freedom', which was on the lips of the revolutionaries and all Romanians in 1989. (Marian-F. Săniuță, PDSR/PSD, opposition, 6.10.2009, CD, LP 6)

Procedures. The role of legal procedures as generating and stabilising the legitimacy of the rule of law was rarely mentioned by the MPs in an abstract way, like the following.

> It is true that all so-called 'democratic' regimes also use undemocratic methods. Using the argument, famous in politics, 'the end justifies means', decisions are taken by technocrats without consulting the citizens and sometimes even against them. But in no state governed by the rule of law is it acceptable to undermine the principle that the decisions of power have their legitimacy in the will of the people. At least the illusion is maintained that their, the citizens', opinion counts. This includes careful monitoring of speech, of what politicians are allowed or not allowed to speak out aloud. (Gabriela Crețu, PDSR/PSD, opposition, 19.4.2005, CD, LP 5)

> Modern constitutional democracies operate on the basis of both electoral legitimacy and procedural legitimacy, which is rooted in respect for the law. (Vlad Alexandrescu, USR, opposition, 8.3.2017, CD+S, LP 8)

Typically, MPs argued indirectly in the way that they tackled concrete plans or problems and mentioned the rule of law in such a debate. This was the case with a narrative that was actively used since around 2004 that **legal procedures must be respected to avoid them being 'dead letters in the law books', which would**

[71] Superior Council of Magistracy.

mean squandering this important source of legitimacy. Basically, this is an *ex negativo* statement. In that time, MPs often criticised that legal procedures are ignored and rendered into 'dead letters in the law books'. The narrative was constructed around the Romanian trope of '*forme fără fond*', that is, all laws and regulations are in place, but different actors regularly ignore the legal procedures. MPs of all relevant parties used this narrative, like Vasile Puşcaş, one of PSD's most important legal experts, in a political declaration over the need for reforms of the judiciary, and PNL's Norica Nicolai in a debate over stripping parliamentarian immunity from two senators.

> And finally, the procedural aspect of the intensely debated problem of judicial independence is on the MPs' minds as well, when the relation between the judicial bodies and the minister of justice is in question (. . .). (T)he minister of justice has no legal right to intervene in this procedure, all the more so as she was appointed to the executive with the support of a political party, her attitude amounts to a blatant attack on the independence of the judiciary by politicians. (Vasile Puşcaş, PDSR/PSD, opposition, 27.9.2005, CD, LP 5)

> (A)s responsible politicians, at least we should believe in the rule of law, try to give justice a chance. It is also up to us, because these cases, beyond the anecdotal evidence of the telephone conversations which, personally, embarrassed me, many of them give us a lesson in life, in reality. This is Romania, ladies and gentlemen, the land of telephone conversations, the land of backroom deals, the land of the lack of reference points, the land where values are not respected. (Norica Nicolai, PNL, opposition, 26.8.2008, S, LP 5)

From the political actors that most frequently were accused by MPs of transgressing legal procedures, the government and the president ranked first. The governments were often criticised for ignoring judicial decisions and of not applying existing laws, as in the following statement, in which opposition MP George Ionuț Dumitrică (PNL) castigated Prime Minister Emil Boc in the field of education:

> Where is the rule of law now, Prime Minister Boc, when the decisions of the judiciary are totally disregarded by the government you lead or when laws have been frozen for more than two years and legal rights are cancelled, just because you feel like it? (George Ionuț Dumitrică, PNL, opposition, 12.4.2011, CD, LP 6)

Furthermore, governments were criticised for legislative activism, for creating legal instability due to frequent changes in the rules and regulations for the citizens and the markets. Here PD's Marian-Andreea Paul was voicing this criticism, which was shared across parties:

> Because the law brings stability, transparency and good governance. Changing the rules too often kills businesses and jobs. Romania is shaken daily by lies, broken promises, bickering, divisiveness, repeated changes to laws at will. More recently, important laws are changed at night, under the moonlight, as happened with the attempts to amend the criminal code. You cannot speak of stability when you cut off Rompetrol's debts to the Romanian state, uncollected for 10 years, of almost half a billion dollars. Instead, they compensate the public budget with new taxes. (Marian-Andreea Paul, PD/PD-L, opposition, 11.2.2014, CD, LP 7)

The most heavily criticised tool of legal activism was the emergency ordinance, the overuse of which by governments featured frequently in the MPs' criticism across parties. Here, however, the president was accused of wrongly assuming the right to emit ordinances.

> With regard to the declaration, the abuse of rights referred to in this declaration, made by the president of Romania, is real. He has declared that he will do everything possible to prevent a certain legislative act, even though he has done so without having powers in the field of emergency ordinances. His power came into force when there was a law approving or rejecting the ordinance. (Eugen Nicolicea, PDSR/PSD, government, 8.3.2017, CD+S, LP 8)

MPs from the opposition frequently accused the parliament itself of not living up to its role, for not respecting the legal procedures in the legislative process and for disrespecting its mission of representing the 'popular will':

> The USL (Social Liberal Union) has managed to destroy the last shred of credibility of the parliament, by amending the criminal code, which does nothing but protect its corrupt from deserved punishment. The USL has proposed several legislative proposals for adoption without a transparent debate, in violation of procedural rules, in total secrecy. After the overwhelming reactions of foreign chancelleries and institutions called to fight corruption, I had hoped that the USL would drop the Amnesty Law and the sneaky amendments to the criminal code. (Marian Andreea Paul, PD/PD-L, opposition, 17.12.2013, CD, LP 7)

> So once again I say: it is sent immediately to the Permanent Bureau and follows the normal procedure. That is the rule of law. Otherwise, indeed, this parliament is increasingly deserving of its fate of being disrespected. So, if parliament is not being respected either, and neither one side nor the other can see that there is anyone who respects the legal provisions, including our rules of procedure, obviously this opinion of ordinary citizens is justified. (Márton Árpád, UDMR, opposition, 18.4.2012, CD, LP 6)

> And if you were prepared to make this gift to the corrupt, why did you not make this text available to us in parliament, at least a few days before the vote in the special committee, but sent us the text exactly on the morning when the meeting was scheduled for the vote in committee, so that we would receive your proposal after the start of the meeting? (. . .) You have succeeded in demonstrating by this behaviour a lack of respect for justice, for the rule of law, for the citizens we represent, for the institution of parliament, to which you are accountable. (Stelian-Cristian Ion, USR, opposition, 30.10.2018, CD, LP 8)

And finally, MPs from different parties criticised state organisations on different levels—such as the inspectorate for state buildings or the police—for disrespecting laws and legal procedures, thus indicating indirectly that these procedures are a relevant source of legitimacy of the rule of law.

> No local government body has lifted a finger as the law required them to do, even though the State Building Inspectorate, as early as 10 May 2006, in an extensive report, highlighted serious illegalities in the approval and authorisation process for this construction. Those more powerful than the law control individual ministries, as evidenced by (. . .) Minister Iorgulescu of the Ministry of Culture and Religious Affairs (. . .). (Vasile I. G. Dănuț, PDSR/PSD, 19.2.2007, S, LP 5)

Codified law. As mentioned above, MPs across parties frequently evoked the constitution as a major source of the legitimacy of the rule of law. A narrative used with high intensity during the first wave of rule of law legislation was that **the constitution of 1991 as the institutionalised emanation of the Romanian revolution, as the result of the Constituent Assembly, and as the basis for the Romanian post-communist state and society is the most important source of legitimation**. Having been confirmed by a referendum, the constitution enjoyed very high popular legitimation and was therefore referred to as the "civic bible" (Boc).

> In a welcome retrospective, let us recall, distinguished assembly, that ten years ago, on 8 December 1991, the Romanian people were called to the polls and voted by referendum the new fundamental law of the country. For the first time in the last 150 years, on 21 November 1991, the representatives of the Romanian people voted on a constitution which was then submitted to popular suffrage, as a result of which the act drawn up by the Constituent Assembly became a legitimate, democratic constitution, born of the imperative to create a new law establishing and promoting new principles specific to the rule of law. (Valer Dorneanu, PDSR/PSD, government, 7.12.2001, CD+S, LP 4)

> In the democratic rule of law, the constitution is the supreme law. In the rule of law, the constitution helps us to prevent those who temporarily hold power from becoming masters of power. It is the constitution that gives us the means to hold rulers accountable and to prevent them from turning from servants of power into its owners. The constitution is the guarantor of securing the rights and freedoms of citizens. In other words, the constitution is the citizen's 'civic Bible' or, as has been said, it is the technical charter of the social mechanism or the twin sister of freedom. (Emil Boc, PD/PD-L, opposition, 7.12.2001, CD+S, LP 4)

As with the revolution, the constitution was also evoked most often in festive speech acts when its anniversaries were celebrated in parliament. In such moments, their relevance was highlighted by all speakers.

> Of particular importance are: the inclusion in the constitution of the principle of political pluralism as a condition and guarantee of constitutional democracy in Romania; the declaration of Romania as a state governed by the rule of law, in which both the citizen and any public authority are equally obliged to respect the law as an emanation of the sovereign will of the citizens; the introduction of the national referendum as a means of direct participation in the conduct of public affairs; the enshrinement, as in other previous constitutions, of equal rights for citizens, but with the emphasis on the rights of citizens belonging to national minorities to preserve their language, traditions and cultural identity, like the majority population. (Valer Dorneanu, PDSR/PSD, government, 7.12.2001, CD+S, LP 4)

When in the pre-accession period Romania had to incorporate the *acquis communautaire* and to change the constitution, MPs from across the political spectrum agreed on the towering importance of the constitution, including the rule of law.

> The development of constitutional democracy has led to the express proclamation of the principle of the separation of powers in the state and the supremacy of the constitution as a fundamental principle of organisation and functioning of the state, not only in the form of duties of citizens, as in the drafting of the current wording, to the enshrinement of the

> principle of solidarity, which is defining in the evolution of society, especially within the framework of the European model, as well as the rule governing the constitution of representative bodies through free, regular and fair elections. (Valer Dorneanu, PSDR/PSD, government, 25.8.2003, S, LP 4)

> The National Liberal Party believes in and upholds the values of constitutional democracy, the principles that the Romanian state based on the rule of law and the unity of the people, a common asset of all parties that share these values, which must be reflected and enshrined in the provisions of constitution, formulated as precisely and clearly as possible. (Mircea Ionescu-Quintus, PNL, opposition, 25.8.2003, S, LP 4)

The constitution was cited on various occasions for justifying criticism of other actors, e.g. in the debate on the deposition of Traian Băsescu from his office as president, when he was accused of deliberately violating constitutional norms and procedures, and of thereby undermining the constitution's legitimacy-creating function (see Sect. 6.3.4).

The rhetoric of the constitution as an important source of legitimacy was slightly adjusted and mainly used by some of the politicians in the second wave of the rule of law legislation from 2004, when parties such as PSD and ALDE argued frequently that **constitutionality is an obligation of the legal system and the state**. This narrative was mainly used in debates of great political importance, such as the one surrounding the impeachment of Traian Băsescu in 2007. In the debate, the president was accused of deliberately violating constitutional norms and procedures, thereby undermining the legitimacy-creating function of the constitution (see Sect. 6.3.4). Senator Titus Corlățean (PSD) put this in general terms before presenting a long list of Băsescu's allegedly anti-constitutional actions.

> The supremacy of the constitution and the obligation to respect it become empty words if the guardian of the rule is undermined and prevented from fulfilling its mission. (. . .) Chapter I. Violation of the principles of the rule of law, democracy and political pluralism, disregard of the parliament as the supreme representative body of the Romanian people and violation of the provisions of the constitution governing the relations of the president of Romania with the parliament. (. . .) Chapter IV. Violation of Article 1(5), Article 16(2) and other constitutional provisions relating to the general obligation to respect the law and to protect the fundamental rights of citizens. (Titus Corlățean, PDSR/PSD, opposition, 28.2.2007, CD+S, LP 5)

MPs from PSD and ALDE brought the need for constitutionality for all actors as an argument to allay suspicions that they were trying to remove the president from office for narrow political reasons. The narrative was used in connection with regular allegations of governing coalitions, "ably assisted by" the president.

> As for the functioning of the institutions of the rule of law and respect for them, it is enough to recall the repeated violations of the constitution and so many other laws by the main exponents of the current governing coalition, ably assisted by the president of Romania himself. There are so many examples in this area that I feel it is pointless to list them. Therefore, I am content to mention only the recent violation of the legal provisions that stipulate the obligation for the Romanian government to submit to parliament, by 15 October, the draft State Budget Law. (Cristian-S. Dumitrescu, PSD, opposition, 25.10.2011, CD, LP 6)

5.3.5 Slovakia: (Contested) Ideas and Procedures

The discourse on the legitimation of the rule of law in the Slovak parliament presents a mixed pattern for the three decades under study. MPs most frequently referred to ideas and procedures as sources of legitimacy for the rule of law, thus attributing them high relevance. References to the constitution and the codified law followed at some distance. However, statements on ideas went in diverging directions, with MPs of relevant parties holding different positions on it, which is why they did not form overlapping narratives. There was more agreement regarding procedures and the rule of law (Table 5.32); two narratives were used with higher intensity during the third wave of rule of law legislation. MPs from across party lines and throughout legislative periods emphasised that the constitution and codified legal norms are the basis for legitimation under the rule of law.

Ideas. Statements referring to abstract ideas as crucial attributes of the legitimacy of the rule of law were made by representatives from all relevant political parties in all periods, albeit with different positions on the topic. Therefore, all narratives formed by such statements remained one-sided.

For the first wave of rule of law legislation, we identified the narrative that **a state is perceived and accepted as truly governed by the rule of law if it guarantees (democratic) rights and freedoms to its citizens**. It was only used by opposition parties to the HZDS-led governments. We did not find many statements with this particular content, but they were made on various occasions and by different party representatives; thus, they can be considered as established narratives. MPs emphasised the ability of the rule of law to ensure the protection of rights, freedoms

Table 5.32 Narratives on the sources of legitimacy of the rule of law in Slovakia

	1992–1998	1998–2006	2006–2021
Ideas	A state is perceived and accepted as truly governed by RoL if it guarantees (democratic) rights and freedoms to its citizens. (one-sided)		A fundamental aspect of the legitimacy of the state under the RoL is its ability to establish and ensure justice. (one-sided) A state is perceived and accepted as being truly governed by RoL if it guarantees (democratic) rights and freedoms to its citizens. (one-sided)
Procedures			Effective state institutions (esp. judiciary and prosecution) are relevant to ensure trust in the state under the RoL. (overlapping) The inadmissibility and potential punishment of arbitrary or unlawful activities of public officials are fundamental elements of the legitimacy of the RoL. (overlapping)
Codified law	To be legitimate under the RoL, political goals must be transformed into legal documents and measures compatible with the constitution. (overlapping)[a]		

[a] The narrative was present throughout all periods, but without any significant intensity

and democratic participation of citizens as a fundamental condition for its acceptance and public support. In the context of the respective parliamentary debate, this involved criticism of perceived shortcomings or rights violations and a call for the government to remedy them.

> From history, we know, and the older generation has vivid experiences, that every state, even the cruellest dictatorship, tried to declare itself a rule of law; every societal formation invoked the people and, in the name of the people, established laws, enforced them and judged. According to the principles of Roman law, the (. . .) fundamental requirements of the rule of law are to live nobly, not to insult or limit others, to give everyone what belongs to them. These basic requirements should be applied and protected by every right. Amendments and regulations that contradict these principles may be, at first glance, laws adopted democratically, but they are never true laws. (Ernő Rózsa, Spolužitie-Együttélés, opposition, 1.9.1992, LP X, Session 5)

> As the primary assumption for rectifying matters in the field of human rights, law and constitutionality, in the area of public administration and authorities responsible for protecting rights, citizen safety, crime and the fight against organised crime, SDĽ considers the restoration of all functions of a democratic state governed by the rule of law. The aim is for the state and its authorities to serve the citizen in a spirit that all power comes from the citizen and should be accountable to them. (Pavol Kanis, SDĽ, opposition, 14.7.1998, LP 1, Session 49)

This narrative returned in the third wave of rule of law legislation. It was used by KDH and OĽaNO as opposition parties to Smer-led governments—although not very frequently in our analysed material, but on various occasions by different speakers.

> The fundamental purpose of the prohibition of retroactivity is to protect citizens' trust in the law. Retroactivity is in contradiction with the principle of justified trust in the law, according to which someone who acts in accordance with the law in force at a given time can rely on not being retrospectively punished for the unlawfulness of their actions. (Daniel Lipšic, KDH, opposition, 19.10.2006, LP 4, Session 5)

> If we deny the right to a fair trial, we betray the values and principles of our society that we should protect. Democratic societies are more vulnerable to terrorism because they are open societies with freedom of movement and without borders. (. . .) But in a firmly anchored democratic system, there is also immense internal strength. Society, by voluntary agreement, upholds the law and protects democracy from foolish tyrants who seek to replace the rule of law with the rule of the stronger with a weapon in hand. (Erika Jurinová, OĽaNO, opposition, 2.12.2015, LP 6, Session 58)[72]

[72] Another example: "They are not only ethical and moral principles, but their observance and effectiveness are fundamental features of every democratic state governed by the rule of law. This means that in a democratic state under the rule of law, human rights are taken very seriously, just like the office of the public defender of rights." (Viera Dubačová, OĽaNO, opposition, 9.2.2017, LP 7, Session 12)

We observed another narrative for the third wave of rule of law legislation. It was used more frequently but only by a limited number of parties. Speakers argued that a **fundamental aspect of the legitimacy of the state under the rule of law is its ability to establish and ensure justice**. Proponents of this narrative belonged to different parties advocating for the annulment of the so-called Mečiar amnesties, with repeated debates on this issue serving as opportunities for the assertion of this narrative. This narrative emphasised the material component of the rule of law in contrast to the formalistic understanding, designating the achievement of justice as the primary goal and, at the same time, the source of legitimacy for the rule of law. Justice was of high relevance in theorising the legitimacy of the rule of law in Slovakia.

> Although not everyone perceived the same value under the term 'freedom', I am still convinced that the equally strong desire for the fall of totalitarianism was the establishment of justice in everyday life. Experiences from the 1950s and the so-called normalisation period after 1968 could not leave any decent person indifferent. The gradual transition to democratic principles internally connected with the sincerest desire to establish justice based on law, the observance of human rights, the protection of human dignity, and, above all, the freedom of those who decide on law and justice. In human terms, it means that we will no longer allow the third pillar of democracy to be unfree, and we will not allow it to depend on anything other than law and justice. (Milan Hort, SDKÚ-DS, opposition, 15.10.2009, LP 4, Session 41)

As noted, this narrative was often used when speakers discussed the admissibility of the retroactive effect of laws to remedy past wrongdoings. This issue underlines the utmost relevance of the 'Mečiar amnesties' for the parliamentary discourse on the rule of law in Slovakia. As Ján Budaj put it, their shadow loomed over Slovak politics, and over the rule of law in Slovakia.

> The public interest in the rule of law justifies each state organ's ability to reconsider its previous decision, whether its own or those of individuals exercising this power in the previous period, including the potential modification or annulment thereof. The opposite stance can only lead to the abuse of constitutional law, resulting in the weakening of the legality of the state. Therefore, it is in the public interest to have the right to amend or revoke a decision on amnesty if it is intended to establish a truly constitutional state governed by the rule of law. The institution of amnesty, like any other norm in the legal order, cannot be designed to serve injustice. The legal order should serve justice and not the establishment of injustice. Law means seeking justice. The legal order serves justice and not injustice. Justice means measuring everyone by the same yardstick. (Pavol Hrušovský, KDH, government, 3.2.2012, LP 5, Session 28)

> So, in our story, a state crime was committed. (. . .) Vladimir Mečiar's amnesties, and so his shadow still looms over this hall, over Slovak politics, and over the rule of law in Slovakia. It's a long shadow, but no matter how long it is, all of you know (. . .) without the repeal of these amnesties, it is not possible to talk about the rule of law because in a state where the law does not apply equally to everyone, there is no law for anyone. If there is no law for the mother of the murdered Róbert Remiáš, who can be sure if there was no law for the first man of the state, the former president of the Slovak Republic, who can be sure? (Ján Budaj, OĽaNO, opposition, 6.12.2016, LP 7, Session 11)

> I am convinced that it is possible and even necessary to annul these amnesties. (. . .) (T)he loud and fundamental essence of law is the attainment of justice and that when the law exceeds justice and crosses those tolerable limits, it is legal and legitimate not to respect such law, to do something about it. (. . .) (W)e are still struggling with this problem because on the one hand, voices are heard about the immutability of these amnesties, on the other hand, several lawyers are convinced that it can be done, and moreover, that it is the duty of the National Council to act in this way. (Peter Kresák, Most-Híd, government, 6.12.2016, LP 7, Session 11)

Other MPs, in our documents from OĽaNO and SaS, associated the rule of law more directly with the citizens.

> I'm asking, what are Slovak judges paid for? Is it to pursue the poor and damaged citizens with unjust verdicts? Ms Bystrianska is either disoriented or biased in her favour and in favour of the judges, or completely incompetent. Her theories about the independence of judges ignore the fact that the independence of judges is dependent on the satisfaction of citizens. (Mária Ritomská, OĽaNO, opposition, 25.3.2014, LP 6, Session 34)

> Taking the highest competencies, which the constitutional majority in parliament has in a state governed by the rule of law, and giving them to the constitutional court, where, let's say, political nominees are present, is playing with fire. If the constitutional court permanently blocks the decision of the constitutional majority of parliament in this way, people will not forget it. Because the rule of law is a state where justice must prevail, and the state must be able to create a way in which justice can be enforced in the state. If we can't do that, the sense of resistance to our democracy will only grow in people, and extremist forces will strengthen in Slovakia. (Marek Krajčí, OĽaNO, opposition, 30.3.2017, LP 7, Session 14)

> The argumentation during the previous annulment emphasised public interest and the reinforcement of citizens' trust in the justice of the state. I am convinced that such actions indeed strengthen citizens' trust in the justice of the state, which is a sorely missing element in our society and must be built over time and with effort. This is truly one of those steps where we can build it, where we can build a better society, and through which we can, in the future, say that we have, that we will be able to say, yes, we have the rule of law, and people have basic trust in state institutions. (Jozef Rajtár, SaS, opposition, 5.12.2018, LP 7, Session 38)

On different occasions during the third wave of rule of law legislation, politicians stressed that the moral integrity of public office holders, including judges, who are responsible for implementing the rule of law, is a critical element of its legitimacy through public trust. This statement was made when speakers aimed to support removing a specific person from office instead of addressing systematic measures for promoting integrity in the rule of law institutions. Because of the few examples of such an argument[73] and its ad-hoc use, we would not classify it as another narrative.

[73] Vladimír Mečiar (HZDS, government) and Štefan Harabin (HZDS, government, Deputy Prime Minister and Minister of Justice) on 26.3.2008, LP 4, Session 20; Daniel Lipšic (OĽaNO, opposition, 7.9.2016, LP 7, Session 9) or Miroslav Beblavý (Spolu, opposition, 26.3.2018, LP 7, Session 30).

Procedures. Two narratives were identified that emphasise the procedural aspect of the rule of law to ensure its legitimacy. Representatives of all relevant political parties used both. Temporally, such statements appeared across all legislative periods; however, they were used with higher intensity in the third wave of rule of law legislation.

The first narrative stressed that **effective state institutions (especially the judiciary and prosecution) are relevant to ensure trust in the state under the rule of law**. MPs highlighted that impartial court proceedings, for example, are crucial for gaining and maintaining public trust in the entire rule of law system. Judicial independence was presented as a necessary condition for a fair trial, which was essential for maintaining public trust in the rule of law and its effectiveness. Conversely, MPs argued that deficiencies in this area ultimately undermine the legitimacy of the entire rule of law.

> The landfill in Pezinok, or the Pezinok landfill case, is today a synonym for how a state governed by the rule of law should not function. It is one of those cases that evoke distrust in citizens towards the rule of law, distrust in the system of state authorities, justice and the belief that justice can be sought in this state. (. . .) A systematic examination is needed to prevent such cases from multiplying in the future and to restore people's trust in the state apparatus and justice. (Lucia Žitňanská, SDKÚ-DS, opposition, 6.2.2009, LP 4, Session 32)

> (D)o we want to have a credible, efficient judiciary, where a judge who decides, perhaps to my disadvantage because that's just how it goes in legal disputes, is an authority? – everyone will answer yes. Therefore, I did not understand some nonsensical attacks that were directed towards (. . .) a proposal for changes in the judicial system formulated in such a way that the result would be what I mentioned: a satisfied citizen who has confidence in the authority of the judiciary or the authority of a judge. (Pavol Paška, Smer, government, 25.3.2014, Session 33)

> We want judges to be respected in our society, we want to restore their credit, which is important for them to have. When we come to court, we want people to believe that a fair court is deciding in their case, and that it is impartial and independent. (Mária Kolíková, Za ľudí, government, Minister of Justice, 21.10.2020, LP 8, Session 16)[74]

The second narrative underlined that **the inadmissibility and potential punishment of arbitrary or unlawful activities of public officials are fundamental elements of the legitimacy of the rule of law**. MPs referred to the abuse of public power and its potential impunity as a critical factor undermining public trust in the rule of law. Some emphasised the everyday experiences of people, whether direct or mediated through the media. More generally, the narrative relates to the limitation of power by law and considers the respect for this limitation as essential. If rules are violated, effective legal procedures for remedy have to be applied.

[74] Similarly put by Petra Hajšelová (Sme Rodina, government, 28.4.2020, LP 8, Session 6): "I am aware that the ideal country does not exist. But our priority, all of us, should be to strive so that every citizen, regardless of their status, earnings and property, can assert their rights without unnecessary delays, so that the independence and impartiality of the judiciary exist in practice and are guaranteed by law, and so that public trust in the judiciary, where it has been lost, is restored and maintained."

> Justice and the judiciary are the first-line encounter of a citizen with the state and modify the foundations of their trust or distrust in the state and the legal order. But please, the rule of law and the practical side of it are not just about justice. It includes thousands of legal regulations, the entire state administration, trade offices, construction offices, tax offices, professional chambers of lawyers, attorneys, notaries, bailiffs and so on. Let's not cheaply and populistically focus permanently only on justice. (Mojmír Mamojka, Smer, opposition, 6.8.2010, LP 5, Session 3)

> I was very concerned about the behaviour of the Committee for Culture and Media. We cannot decide to use the majority in parliament and forget that in our legal system, such things, such as the dismissal of such an important person, must be properly justified. In a state governed by the rule of law, the resolution of the committee must be properly justified. (Magdalena Vašáryová, SDKÚ-DS, government, 20.6.2012, LP 6, Session 3)

> (P)arliament simply cannot annul everything it considers amoral. Despite how good it sounds, it would be contrary to the principles of the rule of law. (Miroslav Beblavý, non-affiliated, elected for Sieť, opposition, 28.3.2017, LP 7, Session 14)

Codified law. References to codified legal norms (such as the constitution or other legal texts) as a source of legitimacy for the rule of law appeared in parliamentary debates fairly routinely and in a general way. In a more specific way, only one narrative emphasised codified law, when MPs stressed that **to be legitimate under the rule of law, political goals must be transformed into legal documents and measures compatible with the constitution**. It is not possible to unequivocally determine a higher intensity of this narrative's use over time.

This narrative includes both general mentions of the necessity of adhering to the constitution and valid laws, and the opposing argument that justice has to be established even at the cost of, for example, violating the prohibition of retroactivity (see above). Emphasis was placed on valid law and formal legal principles.

> Essentially, I stated that in a rule of law, there is no higher principle than respecting the constitution and the law. If society does not agree on the minimum principle of respecting the law, we are returning to a state of chaos and the jungle. Yes, we must respect the law. (Jozef Moravčík, DÚ, opposition, 5.2.1997, LP 1, Session 24)

> After all, we are and want to be a state governed by laws. And the highest of these laws is the fundamental law – the constitution of the Slovak Republic. It is impossible to change, develop or improve the political system without it being reflected at some decisive moment in this fundamental law of the country. (Mikuláš Dzurinda, SDK, government, Prime Minister, 7.2.2001, LP 2, Session 45)

MPs used this argumentation regardless of their party affiliation, thus forming an overlapping narrative. As with many of the narratives presented in this book, opposition parliamentarians used it more frequently, typically to criticise the supposed incompatibility of a proposed bill with the constitution. What makes this narrative special is that it was also often used by government representatives. They pointed out that their actions had to be in line with the constitution, which they perceived as an uncontroversial basis for the rule of law.

> Even the best project, the best idea, with a high moral solution, can be as good as it gets, if it is not in line with the constitution, it is not a solution that is beneficial for the rule of law. (Katarína Tóthová, HZDS, government, 18.6.2009, LP 4, Session 39)

> We have in our constitution that we are a constitutional state. This has, of course, some consequences, one of which is that society is governed by law. (...) You know, the fundamental fiction in law is that, yes, the legal order should contain a moral system, one that is majority-based in society. It is entirely logical, given that we recognise that there are multiple moral systems in society, there will be collisions with that order, but it is elementary, elementary starting point is that we must respect the law and the constitution in full. (Miroslav Číž, Smer, government, 5.4.2017, LP 7, Session 14)

The Rule of Law in Troubled Waters: Narrating Rights, Democracy and Challenges

6

After 1989, the recourse to the national constitution as the symbol of the (re)birth of democracy was linked for many with self-empowerment, hope, visions and ideals. Many uncontroversial narratives about the foundations of the rule of law reflect this. The term 'rule of law' has since become widely used, especially by (opposition) MPs, who mentioned it when denouncing problems. As we will show in this chapter, the term 'rule of law' became a trigger word, associated with various shortcomings, conflicts and accusations, and with the increasing relevance of the judiciary, perceived as politicised in some parliaments. This was an incremental process, influenced by changes in the composition of parliaments and ruling majorities, their ideological background and the agenda of specific governments in a number of legislative terms. In this chapter, we first analyse narratives on rights (Sect. 6.1), then move on to narratives on democracy in the context of the rule of law (Sect. 6.2) and finally to narratives about the multifaceted challenges to the rule of law (Sect. 6.3).

Summarising the country analyses, members of the Czech parliament when addressing rights in the context of the rule of law mostly referred to transitional justice, European human rights standards and, to a lesser degree, to the legal protection of rights. Only one of the three identified narratives on rights was overlapping. Nevertheless, the conflicts around rights decreased over time. When addressing democracy in the context of the rule of law, Czech MPs frequently used the phrase 'democratic rule of law' in an affirmative way, referring mainly to the national constitutional framework, but there were no more elaborated narratives. As challenges to the rule of law, Czech parliamentarians predominantly cited rule-stretching or violation by the governing majorities. During the third wave of legislation, MPs accused the executive of interfering with the police and the public prosecution to halt criminal proceedings and deplored a lack of trust. All narratives criticising such shortcomings were used across party lines, resulting in a public rhetoric of growing misconduct of those in government.

In Hungary, parliamentarians also frequently mentioned rights, but clear narratives appeared only in the first and third waves of rule of law legislation. The

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first wave was marked by a general pro-rights climate, with all parties declaring support to their protection, including collective rights of ethnic minorities. After 2010, opposition MPs criticised the ruling majority for rights restrictions. Throughout the waves, parliamentarians often used the term 'democratic state under the rule of law' and mostly conceived the rule of law as limiting elected politicians. As challenges to the rule of law, party representatives predominantly criticised the stretching or violation of rules. The politicisation and restriction of the judiciary and of the public administration or independent institutions were also mentioned after 2010, when Fidesz and KDNP started to use their two-thirds parliamentary majority to change the constitutional order. The two narratives on challenges in the first wave of legislation (including a lack of lustration) were voiced across party lines. In contrast, since 2010, the four narratives addressing challenges to the rule of law have been a matter of controversy between government and opposition forces.

In the Polish Sejm, shallow consent on the need to protect rights was soon accompanied by conflicts on specific issues based on ideological differences and regular criticism of shortcomings by the opposition. Politicians generally supported the link between democracy and the rule of law, which was seen as being enshrined in the constitution. However, the liberal rhetoric was less frequently used by conservative and right-wing parties, and after 2015, the opposition parties criticised the ruling PiS for restricting rights and undermining the separation of powers. Ever since 1990, parliamentarians frequently addressed challenges to the rule of law. Most narratives were related to the functioning of the judiciary or public prosecution, followed by the lack of judicial independence and the stretching of rules. They also mentioned post-1989 transformation problems, especially a lack of lustration. While most narratives on challenges were overlapping, the rhetoric became divided after 2015.

Romanian MPs did not pay much attention to discussing rights. While generally declaring them as necessary, they voiced their disagreement on particular issues, such as the question of whether ethnic minorities should receive collective rights (first wave of legislation), alleged rights violations by an anti-corruption public prosecution agency (second wave), and the role of European institutions in rights protection (third wave). In contrast to other countries, some Romanian parliamentarians were more critical on the power-limiting role of the rule of law, even though the rule of law and democracy enjoyed general rhetorical support. Nearly all narratives were used by representatives of various parties. Allegations of a politicisation of the judiciary and public prosecution were most widespread. MPs also mentioned corruption and rule violations, the functioning of the judiciary and a lack of trust. Five narratives were predominantly used during the second wave of legislation (2004–2014).

In Slovakian parliamentary debates related to the rule of law, politicians mentioned rights frequently, but they did not develop many narratives on that topic. The narrative accusing governments of disregarding rights was used most frequently, especially during the first and third periods of rule-of-law-related legislation. MPs from all relevant parties used this rhetoric, while narratives related to ensuring the legal protection of rights were only voiced by some. Parliamentarians agreed that the

rule of law constrains democratically elected majorities; however, since the mid-2000s, representatives primarily from conservative-liberal parties argued that in a democratic system, no authority should stand above the 'constitution maker', which in the Slovak case means a three-fifths parliamentary majority. With growing intensity, MPs developed narratives on challenges to the rule of law, half of them (four) being used by politicians across parties. Most often, they addressed rule-stretching or violations and a politicisation of the judiciary and public prosecutor's office. A lack of trust and malfunctioning of the judiciary and public prosecution were frequently mentioned, as well as corruption.

Comparing the findings by the three main topics addressed in this chapter, references to rights were mostly made in an affirmative way. Particularly in the early 1990s and after the adoption of the Copenhagen criteria, democracy, the rule of law and rights were often mentioned as an intertwined set of overarching principles of a new order to be established. Until the end of the period under study in 2021, all these principles were rhetorically supported by all parties. However, the issues were usually not discussed in detail and when MPs debated rights in connection to particular issues such as the respect of acquired rights or collective rights for minorities, conflicts became apparent (see Table 6.1).

Similarly, the relation between the rule of law and democracy was not the subject of much in-depth discussion. Despite rhetorical agreement on the relevance of both concepts, conflicts arose. While a liberal model of democracy was widely accepted by parliamentarians, it was only in Czechia that there was no dissent. In Hungary and Poland, this dissent became apparent after 2010 and 2015, respectively, when opposition parties targeted the government's illiberal policies. In Romania, the liberal rhetoric was not shared by all parties. In Slovakia, the legitimacy of restricting the democratic sovereign has been discussed since 2005. These examples demonstrate that in most parliaments, the consensus to ensure democracy, internally controlled by mechanisms of the liberal rule of law, was more fragile than it appears at first glance. Moreover, we show that party affiliation cannot consistently explain conflicts among parliamentarians, as it did not structure the rhetoric in all cases and in a uniform pattern across countries.

MPs also mentioned various challenges to the rule of law, as Sect. 6.3 reveals. They continuously criticised ineffective or stretched rules, be it in the form of allegedly unconstitutional legislative proposals, as in Czechia, or of attempts by public authorities to interfere in the work of the independent rule of law institutions, as in Slovakia or Romania, or of more far-reaching attempts to undermine the entire system of checks and balances, as in Hungary and Poland. Speakers in all the parliaments analysed addressed the alleged politicisation or restriction of the public prosecution and other law enforcement bodies. Other challenges that parliamentarians addressed were more country-specific.

Table 6.1 summarises the main patterns of prominent narratives about rights, democracy and challenges in the context of the rule of law and their usage described in this chapter.

When comparing the findings over time, dynamics are evident. During the first wave of rule of law legislation in the 1990s, rights were discussed without an explicit

Table 6.1 Patterns of narratives about rights, democracy and challenges in the context of the rule of law

	CZ	HU	PL	RO	SK
Rights	Minor conflicts, decreasing over time	From pro-rights consensus to dissent over rights restrictions	A shallow consensus that quickly eroded	One-sided and diverging narratives on particular issues	Routine accusations of rights violations and conflicts over the legal protection of rights
RoL and democracy	Liberal rhetoric, widely accepted	Liberal rhetoric, since 2010 neutralised by a qualified majority	Liberal rhetoric, not a guide for all parties	Liberal rhetoric, not shared by all parties	Liberal rhetoric, dissent on the role of the democratic sovereign
(other) Challenges	Unconstitutional legislative proposals, exceeding of powers	Stretching of rules, centralisation of power, lack of lustration	Ineffective institutions, politicisation, centralisation of power	Politicisation, corruption, rule violations	Exceeding of powers, limited trust, politicisation

link to the rule of law or in very general terms, enumerating, for example, democracy, the rule of law and the protection of human and civil rights as goals to be achieved. Rights were mainly associated with the departure from the communist regime and addressed in a very abstract way. At that time, some MPs associated them more with democracy—the key buzzword of that time—than with the rule of law. The latter was associated mainly with the judiciary, the legal system and the state. However, because of the experience with authoritarian state socialism, only a few actors were openly calling for strengthening the state and its institutions; instead, demands for more individual liberties formed the discourses. Later, when experts discussed problems typical of rule of law theory, its dilemmas and value conflicts, e.g. around the prohibition of retroactivity, such problems were often not addressed under the heading of the rule of law, at least not in public debates, but rather in connection to the national constitutional order, which enshrined the rule of law as one of the guiding principles.

During the second wave of rule of law legislation, amid scandals or allegations of the malfunctioning of the rule of law institutions (cases of corruption in Slovakia, presidential overreach in Romania, or the first sporadic accusations of the politicisation of courts in Hungary and Poland), parliamentarians, often from the opposition, used all arguments at their disposal against those they accused of wrongdoing or shortcomings. Some of them also cited international and European institutions or actors, but without establishing a concrete narrative. They mentioned, for example, their country's convictions before the European Court of Human Rights and reports and criticism from the European Commission to substantiate their critique. MPs interested in striking a chord with the public also used the term more frequently. Over time, the rule of law became more prominent as a term and concept in parliamentary debates. In most of the countries (Czechia, Poland, Romania, Slovakia) parties with an 'anti-corruption agenda' as a founding idea or prominent concern have been very successful in elections.

The trend for the rule of law to be increasingly cited in conjunction with problems culminated in the third wave of rule of law legislation. At that time, a vast array of criticism could be observed in all parliaments. Narratives about the rule of law have become more nuanced and complex, at least when experienced MPs and legal experts of the parliamentary party groups spoke. While this was a positive effect of learning from discussions about real-world problems, the background made the matter more ambiguous. The concrete narratives varied from country to country, with the stretching of rules and the politicisation of key rule of law institutions being common criticisms. On the basis of our empirical material alone, it is not possible to decide whether the growing criticism was in each case substantiated by a deterioration in the rule of law or whether MPs across countries have also become accustomed to using the rule of law as a trigger word for presenting themselves to the public as a better alternative to the ruling majorities. While studies leave no doubt that the rule of law indeed deteriorated dramatically in Hungary and Poland, this need not be the only reason for the change in narratives. Having been socialised into the logic and language of the rule of law, along with a greater sensitivity for rule

violations, might have also contributed to the overall pattern of a growing intensity of narratives about political misconduct and deficiencies of the rule of law.

6.1 Rights: General Declarations, Considerable Dissent

Compared to other topics discussed in this book, rights were not the subject of narratives around a (non-)controversial core of the rule of law. In most parliaments, politicians referred to rights (and the constitution) in a general and rather declaratory way, without much specific content. MPs generally supported the protection of fundamental human and civil rights,[1] often naming them in general affirmative statements together with democracy and the rule of law (thus not as an element of the rule of law, but as naturally linked to it). More nuanced discussions and statements about rights were often very specific to the issue under debate. Therefore, the number of elaborated narratives on rights in the context of the rule of law was somewhat limited.

Precisely because of this relatively weak explicit discussion of rights in parliamentary debates around the rule of law, as captured in analysed documents, it is striking that many narratives were used by some parties only (one-sided narratives) or that party positions were diverging. The topics of the one-sided and diverging narratives varied across countries and over time, with no apparent overall pattern. The same applies to the actors who used the narratives. For example, human rights in connection with the rule of law were evoked more often by the liberal-conservative parties in Slovakia, while in Czechia it was mainly communist MPs who mentioned them in connection with the rule of law.

These findings are based on a content analysis of all paragraphs in our selected documents containing references to different types of rights in the context of the rule of law. The expression 'rights' did not have to be explicitly mentioned, as we also coded implicit references to rights. For our study, rights included human rights (e.g. prohibition of discrimination, right to legal protection), civil rights (freedom of expression, freedom of assembly, among others), fundamental rights, individual rights or rights of specific groups (for instance ethnic minorities, LGBTQ+). When analysing the parliamentary debates, we used several more specific analytical categories to capture the nuances of the rights-related narratives, including 'Enforcement/exercise/protection/respect', 'Disregard/restriction', 'Post-1989 transformation' and 'International/European level'. These categories were initially formulated on a theoretical basis and then inductively adjusted and refined in light of the contents of the empirical material (for more details, see Anders et al. 2024).

In all five countries, narratives on rights in connection with the rule of law were used with the highest intensity during the first wave of rule of law legislation, when MPs discussed the constitutions and the framework of the new system. Later, rights

[1] In most cases, parliamentarians did not distinguish between citizen rights, civil rights and rights of citizens. Our wording reflects this practice to adequately mirror the narratives.

played a minor role in the rule of law debates, meaning that they still may have been referred to, but without many substantive narratives around them (Table 6.2). A specific case was the discourse in the Polish Sejm, where rights received more attention throughout the waves of legislation.[2] However, also in this country, the debate was more concentrated on certain issues when compared to the early/mid-1990s.

Most notably, MPs in all countries except Czechia criticised alleged disregard or restriction of rights. In the Slovak parliament, cross-party accusations against ruling parties or their predecessors, depending on the speaker, of disregarding rights were common. This narrative was present throughout the studied waves of rule of law legislation. It was, therefore, classified as an overlapping narrative (Table 6.3). In other parliaments, only some parties used narratives of the disregard or restriction of rights.[3] In Hungary, criticism was also targeted at the ruling parties, which were blamed for violating not only constitutional rights, as in Slovakia, but also EU fundamental rights and values. In Romania, MPs argued that public prosecution, in particular, violated rights when fighting corruption. In Poland, parties criticised deficiencies regarding rights since the transition phase, for various reasons. The strongest criticism was observed for the third wave of legislation, when the opposition targeted rights restrictions by the PiS majority.

General references to fundamental and civil rights were mainly identified in the first wave of rule of law legislation (Table 6.4). As mentioned, the protection of rights was widely supported in all parliaments, including Czech and Slovak legislatures, where we did not find narratives on fundamental and civil rights in our selected material. In both countries, rights did not even play a role in the debates about the new constitutions, although the liberal approach to the rule of law was widely accepted in the Czech parliament (Sect. 6.2.1). This might be due to the fact that the most relevant debates on that issue were held before 1992, during the Czechoslovak transition to democracy, which was not covered in our documents. In Hungary, a narrative explicitly included the rights of national minorities and the right to self-government.

In three parliaments (Czechia, Poland, Slovakia), we found narratives on legal protection (Table 6.5). Parliamentarians across party lines argued that the right to an effective remedy and fair trial is fundamental to the rule of law. While the narrative was similar in all three countries, it was used in different contexts and with slightly different meanings. In Czechia, the narrative was employed in discussions about politicians accused of corruption to emphasise that they have the right to a fair trial. In Poland, it was used across party lines in a general way and when criticising the government. Since 2015, it was only used by anti-PiS opposition forces when denouncing restrictions of rights, e.g. by judicial reforms. In Slovakia, in debates

[2] As mentioned in Sect. 4.3 this may be related to the debates following the annual reports of the Commissioner for Citizens' Rights on the freedoms and rights of persons in Poland, inter alia.

[3] We also found criticism of illegitimately restricting rights for Czechia. It was used primarily with regard to the post-1989 transformation. Therefore, we captured it in that category (see Table 8).

Table 6.2 Narratives on rights

	1st wave					2nd wave					3rd wave				
	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK
Disregard or restriction of rights					✓				✓	✓		✓	✓		✓
Legal protection			✓		✓			✓		✓	✓		✓		
General remarks on fundamental, human or civil rights	[a]	✓	✓	✓	[a]										
Individual and collective rights		✓	✓	✓				✓							
International and European level			✓			✓		✓						✓	
Post-1989 transformation	✓		✓												

1st wave: CZ 1992–1998, HU 1990–1998, PL 1990–1997, RO 1990–2004, SK 1992–1998
2nd wave: CZ 1998–2006, HU 1998–2010, PL 1997–2015, RO 2004–2014, SK 1998–2006
3rd wave: CZ 2006–2021, HU 2010–2021, PL 2015–2021, RO 2014–2021, SK 2006–2021
[a] See Table 6.4

Table 6.3 Narratives of disregard or restriction of rights

	CZ	HU	PL	RO	SK
Overlapping narratives					
The ruling parties restrict(ed) certain rights, and some fundamental rights are at risk.					✓ (1–3)
One-sided or diverging narratives					
The ruling parties restrict(ed) certain rights, and some fundamental rights are at risk vs the rights are fully respected.		✓ (3)			
The ruling parties violated rights and fundamental values as enshrined by the EU and human rights institutions vs these rights are also protected by the Fundamental law.		✓ (3)			
The ruling party's legislation restricts citizens' rights.			✓ (3)		
Public prosecution violated the presumption of innocence and the secrecy of telephone conversations.				✓ (2)	

Periods when a particular narrative was used most intensively are indicated in brackets

Table 6.4 Narratives on human, citizen and fundamental rights in general

	CZ	HU	PL	RO	SK
Overlapping narratives					
The state must guarantee the rights and liberties of the citizens.	[a]		✓ (1)	✓ (1)	[a]
The state must guarantee the rights and liberties of the citizens, including the rights of ethnic minorities and the right to self-government.		✓ (1)			
One-sided or diverging narratives					
–					

Periods when a particular narrative was used most intensively are indicated in brackets
[a]In Czechia and Slovakia, MPs across parties nevertheless shared this view

Table 6.5 Narratives on the right to legal protection

	CZ	HU	PL	RO	SK
Overlapping narratives					
The right to an effective remedy and fair trial is fundamental to the RoL.	✓ (3)		✓ (1, 2)		✓ (2)
One-sided or diverging narratives					
The right to an effective remedy and fair trial is fundamental in the RoL.			✓ (3)		
The ombudsperson is an important and necessary institution for the protection of rights vs it is redundant, the judiciary is more effective.					✓ (2)

Periods when a particular narrative was used most intensively are indicated in brackets

Table 6.6 Narratives on individual and collective rights

	CZ	HU	PL	RO	SK
Overlapping narratives					
Individual and collective rights of minorities must be respected as part of human rights.		✓ (1)			
One-sided or diverging narratives					
The common good, collective security and (Christian) values need to be protected.			✓ (2)		
The rights of citizens belonging to national or ethnic minorities are protected individually vs collective rights are necessary.				✓ (1)	✓ (1–2)

Periods when a particular narrative was used most intensively are indicated in brackets

about ineffective institutions in the country, MPs stressed that the state must ensure that the courts function well to provide legal protection for all citizens. Moreover, there was a diverging narrative on the relevance of an ombudsperson to protect rights in Slovakia.

Narratives on individual and collective rights were identified in Hungary, Poland, Romania and Slovakia (Table 6.6). Except for Hungary, where an overlapping narrative supporting collective rights for ethnic minorities was backed by the existence of large Hungarian communities living abroad, controversies arose over the relation between the two types of rights. In Slovakia, there was such a dispute during the constitutional debate in 1992 and it re-emerged after 1998 when parties representing the Hungarian minority entered the government. In Czechia, granting collective rights to national and ethnic minorities was uncontroversial due to an absence of a minority demanding particular rights in the country. In Romania, controversies were related to the rights of ethnic minorities. In Poland, the conflict between collective and individual rights was not related to ethnic minorities.[4] In this case, conservative and right-wing parties generally emphasised the common good, collective security and Christian values that should not be damaged by individual rights, a view that was contested by others.

For three parliaments (Czechia, Poland and Romania),[5] we identified a narrative about the international and European levels of rights protection (Table 6.7). Parliamentarians emphasised the relevance of international and European institutions in protecting citizens' rights and in some countries, they argued that governments should do more than pay lip service to European values and norms. In Czechia, references to European institutions in the context of rights and the rule of

[4] Minority rights were generally supported by all politicians and seen as part of general protection of human and civil rights, although MPs from minority backgrounds (such as the German minority), liberals and left-wing MPs stressed the need for further legislation to guarantee minority rights more intensively.

[5] As mentioned, one narrative of disregard of rights used in the Hungarian parliament also referred to the EU treaties. However, since the disregard of rights was more emphasised in that narrative, we captured it under that category (Table 7).

Table 6.7 Narratives on rights in terms of international and European level

	CZ	HU	PL	RO	SK
Overlapping narratives					
European institutions are relevant to protect the rights of citizens.			✓ (1, 2)	✓ (3)	
One-sided or diverging narratives					
European institutions are relevant to protect the rights of citizens.	✓ (2)				

Periods when a particular narrative was used most intensively are indicated in brackets

Table 6.8 Narratives on rights in the context of the post-1989 transformation

	CZ	HU	PL	RO	SK
Overlapping narratives					
–					
One-sided or diverging narratives					
Laws that establish special procedures for punishing acts committed under the previous regime are illegitimate restrictions on citizens' rights vs they are legitimate measures.	✓ (1)				
Lustration must fully respect individual rights of those who are lustrated vs collective security and justice must be protected.			✓ (1, 2)		

Periods when a particular narrative was used most intensively are indicated in brackets

law have increased over time. They were primarily related to the Council of Europe and the ECHR, while the EU was mentioned sporadically even in the pre-accession period. In our selected documents for Czechia, we have found such references made only by representatives of the leftist parties. Thus, we consider this narrative as one-sided. In Poland, representatives from all parties stressed the relevance of international and European institutions for protecting rights, but left-wing and liberal parties emphasised it more strongly. In Romania during a harsh dispute between parties especially in the third wave of rule of law legislation, MPs cited both the Council of Europe (and the ECHR) and the EU as organisations that can help to ensure that rights are actually protected. Although all parties used the narrative, they used it to buttress competing positions and policies (see also Sect. 6.3).

Narratives on rights in relation to the post-1989 transformation were identified in Czechia and Poland. They were mostly used in debates on lustration. Especially in Poland, this was a recurring conflict based on an ideological divide. In Romania and Slovakia, lustration was not a relevant issue at all (Table 6.8).

The potential for conflict about rights was mainly, but not exclusively, represented by one-sided and diverging narratives. As Table 6.9 shows, they did not form a coherent picture. Most one-sided or diverging narratives regarding rights were found in Poland. Throughout the waves of legislation, one-sided or diverging narratives on individual vs collective rights, post-1989 transformation (lustration), the alleged disregard of rights and the limited protection of rights were matters of

Table 6.9 One-sided or diverging narratives on rights

	1st wave					2nd wave					3rd wave				
	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK
Post-1989 transformation	✓		✓					✓							
Individual and collective rights				✓	✓			✓							
Disregard or restriction of rights									✓			✓	✓		
Legal protection of rights										✓			✓		
International and European level						✓									

For periods of the waves, see Table 6.2

concern to some parties in the Sejm. In Czechia, disputes related to the post-1989 transformation (transitional justice) and the relevance of European institutions. In Slovakia, two diverging narratives were used during the first and the second waves of rule of law legislation. In Hungary, one-sided narratives about rights violations were used mainly during the third wave of rule of law legislation.

6.1.1 Czechia: Minor Conflicts, Decreasing Over Time

In the Czech parliamentary debates analysed, statements related to rights were quite common. Many of them were fairly general, without any specific message, or they were routine references to the Charter of Fundamental Rights and Freedoms, which, alongside the constitution, is an integral part of the Czech constitutional order. In-depth statements on rights were often interventions by the same MPs, particularly legal experts from the respective parties. As such, they did not qualify as narratives, defined in our analysis as similar arguments made by different speakers.[6] As a result, we identified only a few narratives on rights in the context of the rule of law, especially when compared with narratives related to other topics. These were two diverging ones related to transitional justice (during the first wave of rule of law legislation), a one-sided one on European human rights standards (second wave), followed at some distance by an overlapping one on legal protection of rights (third wave). Overall, this suggests that conflicts over rights and the rule of law have decreased over the course of time (Table 6.10).

Post-1989 transformation. The issue of rights in the context of the transformation and the rule of law appeared primarily in the first and second waves of rule of law legislation, but it was used more intensively during the first wave. Most discussions centred on laws aimed at coming to terms with the undemocratic past, specifically the Act on Illegality of the Communist Regime and on Resistance Against It or the lustration laws, the validity of which was extended several times. While many statements were made by a limited circle of speakers as spokespersons for their parties, in the first wave of rule of law legislation one diverging narrative was used by a significant number of MPs.

On the one hand, representatives of the Communist Party (either as part of the so-called Left Bloc or later independently) used with particular intensity the narrative that **laws that establish special procedures for punishing acts committed under the previous regime are illegitimate restrictions on citizens' rights**. More precisely, they signalled that they perceived the bills aimed at dealing with an undemocratic past as an abuse of the law for political purposes and as unjustified because the constitution granted equal rights to all.

[6] In particular, no narratives were found related to our categories 'Material rights', 'Rights, democracy + courts', 'Individual and collective rights', 'Enforcement/exercise/protection/respect' and 'Disregard/restriction of rights'.

Table 6.10 Narratives on rights in Czechia

	1992–1998	1998–2006	2006–2021
Post-1989 transformation	Laws that establish special procedures for punishing acts committed under the previous regime are illegitimate restrictions on citizens' rights vs they are legitimate measures. (diverging)		
International and European level		European institutions are relevant to the protection of citizens' rights. (one-sided, KSČM, ČSSD)	
Legal protection			The right to an effective remedy and fair trial is fundamental in the RoL. (overlapping)

> Mr Vik proposed a ban on the activities of KSČM, with the stipulation that its members cannot be elected to representative bodies for a certain period of time. (. . .) Mr Vik apparently did not sufficiently take into account not only Article 20 of the Charter of Fundamental Rights and Freedoms, but especially Article 19 of the constitution of the Czech Republic, which clearly speaks about who has passive electoral rights. (Dalibor Matulka, LB, opposition, 9.7.1993, LP 1, Session 11)

On the other hand, representatives of other parties across the political spectrum, including the left-wing ČSSD, denied this view, stating, as the following quotations show, that in 1993 decommunisation had not yet occurred, that the Charter of Fundamental Rights and Freedoms was "too democratic" (Mazalová), or arguing with reference to the precedent of the Nuremberg Trials that the punishment of action under the previous regime was justified (Řezníček).

> In my opinion, the Charter of Fundamental Rights and Freedoms is too democratic. It defends the rights of those who violate it, but unfortunately does not protect the rights of those who abide by it. (Gerta Mazalová, HSD-SMS, opposition, 9.7.1993, LP 1, Session 11)

> (O)pponents of this bill are also operating, among other things, with the legitimacy of the former regime. I want to remind you that the Nuremberg Trials faced a similar dilemma. However, it decided in the interest of basic human rights. As an example, despite the defenders of Nazism arguing that it was a legitimate enforcement of the laws of the Third Reich, such as the enforcement of the Nuremberg anti-Jewish laws, the Nuremberg court did not recognise this in the interest of humanity and could not recognise it either. To the argument that the attack was not directly against the NSDAP, but against the crimes, I remind you that one of the final consequences of Nuremberg was also total denazification.

> Unfortunately, decommunisation has not yet occurred in our country. (Miroslav Řezníček, ČSSD, opposition, 9.7.1993, LP 1, Session 11)

When this debate occurred, the Czechoslovak constitutional court had already ruled upon a petition of left-wing opposition parties that the principal part of the lustration provisions were constitutional.[7] Moreover, supporters of the lustration legislation pointed out that "positively lustrated" persons could prolong proceedings and thus cause "discrimination against the majority".

> Opponents of the lustration law who advocated for a procedure supposedly in line with the principles of the rule of law (. . .) subtly omitted the crucial need for prompt decision-making (. . .). It would have allowed those labelled 'positively lustrated' to prolong proceedings and indefinitely delay the final decision by exploiting appellate mechanisms, which otherwise genuinely ensure the respect of the presumption of innocence. Discrimination against the majority would thus be prolonged until it would reliably be too late for everything. (Jan Klas, ODS, government, 20.5.1997, LP 2, Session 11)

In the second wave of rule of law legislation, the frontiers between the two positions continued to exist. However, as the following quotations show, some MPs already acknowledged the complexity of punishing past actions. The ČSSD even changed its stance, pointing out that extending specific measures for more than ten years after the fall of the non-democratic regime was unjustifiable (Jičínský). It assumed that the other parties also used the extended measures to discredit left-wing ideas in general in order to gain an advantage in political competition.

> I consider the original decision of the legislators to be correct despite all the problematic aspects I mentioned. Positive vetting does not limit anyone's human rights and personal freedoms. Therefore, it remains to reiterate that the right to hold certain positions in state bodies and organisations is not a right of every citizen. It is a privilege that the state can provide to only certain individuals according to its own criteria. Simply put, there is no entitlement to a position. (Vlasta Parkanová, KDU-ČSL, opposition, 26.3.1999, LP 3, Session 10)

> The purpose of extending the lustration law is different. It is a political-ideological intention, serving certain goals, creating a certain atmosphere in society. I want to go back to October 1991 when the original version of the law was being approved. At that time, there was an atmosphere of certain fear in the Federal Assembly. Perhaps that also led to the law being subsequently passed by a narrow majority. Today, we don't have to fear in that regard. Personally, I'm not afraid, even if this law is extended, that anything substantial will change in society. However, it is a bad sign for me because it signals that we want to continue with a

[7] In this ruling, it "emphasised that this case does not constitute an impermissible retroactivity of penalties because the measure under consideration is not punishment but it is a measure defining the conditions for holding certain positions and its purpose is to protect the new democratic regime, national security, and public order" (Šimáčková 2015, p. 4). In favour of legal certainty, the new "law-based state, which has for its starting point a discontinuity with the totalitarian regime as concerns values, may not adopt a criteria of formal-legal and material-legal continuity which is based on a differing value system, not even under the circumstances that the formal normative continuity of the legal order makes it possible" (ibid.: 5).

> certain division of society based on principles that are contrary to the values of the rule of law and the Charter of Fundamental Rights and Freedoms. (Zdeněk Jičínský, ČSSD, government, 24.5.2000, LP 3, Session 25)

Communist MPs also usually invoked constitutional guarantees and Czechia's international commitments regarding citizens' rights protection when there were repeated attempts to prohibit or restrict the use of symbols of the communist movement or its ideology.

> According to the constitution and international conventions, the efforts of those who seek to ban the ideals of socialist thinking and convictions do not hold up. They do not hold up according to the standards of the rule of law, nor do ideologically motivated and politically directed amendments to criminal laws on genocide and violence. (Miroslav Grebeníček, KSČM, opposition, 10.3.2006, LP 4, Session 54)

International and European level. References to the international dimension of rights were present in the analysed parliamentary debates studied throughout the periods of rule of law legislation, but primarily during the second wave, when the European level of rights protection became the most prominent reference. However, the speeches mainly involved asserting the speaker's own position on a topic under discussion vis-à-vis the ruling majorities. This was done by invoking the authority of international and European human rights mechanisms to which the Czech Republic is bound.

In the first wave, MPs—predominantly representatives of left-wing parties such as ČSSD and KSČM, both in opposition then—generally referred to broader international human rights standards or documents[8] to support their position, sometimes with more specific references to UN human rights instruments.

> I believe that we have approved the government's programme statement here, the first point of which was that we want to be a democratic state governed by the rule of law and, therefore, we will adhere to the current constitution and all international human rights documents, including the equality of all citizens. (Vladimír Řezáč, LB, opposition, 17.6.1993, LP 1, Session 10)

In the second wave, the statements were more elaborated and regionally focused, with references to the European framework, particularly to documents of the Council of Europe and to the authority of the European Court of Human Rights. In the debates analysed, mainly left-wing parties explicitly acknowledged the **relevance of European institutions for protecting citizens' rights**. Therefore, we classify these statements as a one-sided narrative. By acceding to the Council of Europe in 1993,

[8] Václav Grulich (ČSSD, opposition, 9.7.1993, LP 1, Session 11), for example, argued: "The proposal undoubtedly does not intend to fundamentally change this correct principle of the rule of law, which, in accordance with international human rights documents, expresses one of the natural rights of man. It only seeks to establish an extraordinary and temporary exception from this principle in the interest of justice, limited solely to the assessment of acts committed at a time when human rights and fundamental freedoms were suppressed in our country."

Czechia also accepted the jurisdiction of the ECtHR. The authority of the Court became accepted as a matter of fact and as an expansion of the ability of citizens to defend their rights. Thus, references to ECtHR judgments became used as equal to constitutional guarantees of rights protection.

> I just want to point out that (. . .) according to the judgment of the European Court of Human Rights, mere compliance with domestic law, meaning the laws of that state, is not sufficient. This law must also meet certain quality standards, as required by the principles of the rule of law stated in the preamble of the European Convention on Human Rights. (Vojtěch Filip, KSČM, opposition, 19.9.2000, LP 3, Session 27)

> Let us realise that this is a fundamental change associated with our position in Europe, where not only are the decisions of non-Czech supra-national European courts binding for our courts, as we already have in the Charter of Rights and Freedoms, but this law creates practical opportunities for those who have become involved in a dispute or whose case has been assessed differently by our constitutional court and the European Court of Human Rights, to assert their rights according to the decisions of European courts. (Stanislav Křeček, ČSSD, government, 16.5.2003, LP 4, Session 16)

Legal protection of rights. During the third wave of rule of law legislation, when referring to rights in the context of the rule of law, Czech parliamentarians increasingly used the narrative that **the right to an effective remedy and fair trial is fundamental to the rule of law**. Those who used this narrative emphasised the crucial role of the right to judicial protection and a fair trial in the legal system. Representatives from multiple parties, in government and in opposition, used it on various occasions, including when debating legislative changes related to the procedural provisions of the justice sector, such as an attempt to restrict the right to judicial review of a decision to reject an asylum application.

> If the Czech Republic is to be called a rule of law state, I understand that it will prioritise the rights of its citizens, but a certain legal framework should be maintained for all citizens. For me, the impossibility of judicial review by administrative courts is a boundary that cannot be crossed. (Zuzka Bebarová Rujbrová, KSČM, opposition, 7.4.2017, LP 7, Session 56)

Most frequently, however, the narrative was used during discussions on judicial proceedings involving politicians or politically sensitive issues in the judiciary (see quotation of Pospíšil below). When Prime Minister Andrej Babiš faced criminal prosecution, opposition MPs argued that he should resign to open the way for his right to a fair trial (see quotation of Výborný). Since the number of this type of debate was significantly higher during the third wave of rule of law legislation, this narrative was predominantly used in that wave.

> Under Czech law, European law and the European legal tradition, every citizen has the right to a remedy in their private law case. Everyone can appeal, and even if we may have the worst opinion of the individual, disagree with them, morally condemn them, or hold them in contempt, we should not deny them this right. (Jiří Pospíšil, ODS, government, Minister of Justice, 13.6.2008, LP 5, Session 33)

> In the end, it is also about your rights and freedoms, Prime Minister, because you also have the right to a fair trial, whether it concerns your criminal prosecution or the legitimacy of subsidy allocations. And you will not have a fair trial as long as you remain in both of those seats – the seat of the prime minister and the seat of the accused, the seat of the prime minister and the seat of the entrepreneur. It will be better for you too when you vacate the first of those seats. (Marek Výborný, KDU-ČSL, opposition, 26.6.2019, LP 8, Session 32)

6.1.2 Hungary: From Pro-Rights Consensus to Dissent Over Rights Restrictions

Hungarian parliamentarians frequently mentioned rights, but since this topic was not always a matter of prominent concern in relation to the rule of law, we did not identify many narratives. Overall, the discourse on rights became increasingly divided. Statements referring to human, citizen and fundamental rights in general received most attention. Narratives falling into this category were most intensively used during the first wave of rule of law legislation. In this period, which was characterised by a widely shared pro-rights climate, parliamentarians also debated the rights of ethnic minorities and there was not much rhetorical disagreement but overlapping narratives. During the third wave of rule of law legislation, MPs continued to underscore the relevance of rights. However, the discourse in parliament was now characterised by two diverging narratives on the respect for/restriction of certain rights at the national level and the violation/protection of rights and values enshrined at the EU and the international level (Table 6.11).

General remarks on fundamental, human or civil rights. While during all three waves of rule of law legislation speakers made various general remarks on human, civil and fundamental rights in the parliamentary speeches examined, we only identified one overlapping narrative, which was primarily used in the early 1990s. In this period, marked by the transformation of the political system, parliamentarians often acknowledged that **the state must guarantee the rights and liberties of the citizens, including the rights of minorities and the right to self-government**. MPs across the party spectrum, regardless of their position in government or opposition, acknowledged the relevance of individual freedoms in a general sense, with no significant differences of opinion. The respect for these freedoms was conceived as a departure from the communist model under the previous regime.[9] Speakers highlighted the importance and the need to define the relationship between state and society, for example when debating the proposal for a parliamentary resolution on the regulatory principles of the constitution of the Republic of Hungary.

> (T)he constitution expresses the relationship between state and society, and the management of this relationship is a fundamental political and philosophical question of every

[9] See, for example, Gábor Fodor (Fidesz, opposition, 8.12.1992, LP 34, Session 254), also quoted in Section 5.1.2.

Table 6.11 Narratives on rights in Hungary

	1990–1998	1998–2010	2010–2021
General remarks on fundamental, human, or civil rights	The state must guarantee the rights and liberties of the citizens, including the rights of minorities and the right to self-government. (overlapping)		
Disregard or restriction of rights			The ruling parties restricted certain rights and some fundamental rights are at risk vs rights are fully respected. (diverging) The ruling parties violated rights and fundamental values as enshrined by the EU and human rights institutions vs these rights are also protected by the Fundamental Law. (diverging)
Individual and collective rights	Individual and collective rights of ethnic minorities must be respected as part of human rights. (overlapping)		

> constitution. According to the regulatory principles put forward, the Republic of Hungary is an independent, democratic state governed by the rule of law. The content of these indicators must be precisely defined in the normative text. The social nature of the state and of the social order must be expressed in the formulation of fundamental constitutional principles and objectives and human rights. (Tamás Isépy, KDNP, opposition, 22.5.1996, LP 35, Session 178)

Statements referred to rights protecting the individual from the state, such as the right to property, the right to freedom of information and the right to self-government.[10] When addressing these issues, MPs often referred en passant and without further clarification to European states or provisions.

> This, then, is the alpha and omega of the idea of self-government as a right to freedom and as an organisational operating principle for the exercise of power. It is the only guarantee of the full application of the idea of self-government, which is in the nature of the rule of law. (Ferenc Wekler, SZDSZ, opposition, 2.7.1990, LP 34, Session 18)

> The concept of the Independent Smallholders' Party stated that, in accordance with the practice of European states, the ownership of land should be returned to our citizens. This means that the state monopoly on agricultural land, which was established during the state party period, will be abolished and a significant part of national property will be transferred to Hungarian citizens. (István Prepeliczay, FKgP, government, 4.3.1991, LP 34, Session 83)

[10] E.g. István Illéssy, MDF, government, 23.7.1990, LP 34, Session 27.

During the second wave of rule of law legislation (1998–2010), when MPs mentioned rights in the context of the rule of law, they focused on rights that protect the individual against the state, such as the right to property, freedom of expression, access to justice, the right to protection of personal data and the right of access to data of public interest. In this period, we did not identify any narratives. The same was true for the third wave of legislation, when mainly the governing Fidesz and the green LMP and MSZP from the opposition generally stressed the relevance of basic human rights, as well as those rights enshrined in the Fundamental Law and rights that protect the individual from the authorities. Their statements showed that they were divided as to whether they are respected in practice.

Individual and collective rights. Minority rights and the right to national and ethnic identity were also discussed, but less often than other issues. In our selected documents, the issue of minority rights was addressed with regard to ethnic minorities.[11] This was done most frequently around 1992, when the Minority Rights Law was debated in parliament. In a pro-rights climate,[12] the parliamentary parties agreed in principle that minorities and nationalities living on the territory of Hungary should be granted certain rights. MPs emphasised that the right to national and ethnic identity is part of universal human rights.

> (T)he bill on nationality and minority rights before us is indeed a generous attempt to settle the issue by declaring that the right to national and ethnic identity is part of universal human rights, that the specific individual and community rights of national and ethnic minorities are fundamental rights of citizenship, and that these rights are not a gift of the majority and not a privilege of the minority, and that their source is not the numerical proportion of national and ethnic minorities, but the right to be different, based on respect for individual freedom and the peace of society. (Sándor Kávássy, FKgP, government, 29.9.1992, LP 34, Session 229)

> The Roma need such a law, or more precisely, a law that legally regulates the situation of nationalities and ethnic groups. After all, the right to national and ethnic identity is a fundamental human right, which applies to individuals and communities alike, and which ensures a harmonious relationship between individual freedom, individual sovereignty and the organisation of the nation as a genuine community. (Tamás Péli, MSZP, opposition, 29.9.1992, LP 34, Session 229)

> The individual rights of minorities are universal human rights, which are created at birth. A minority individual becomes a holder of community rights when he consciously accepts membership of an ethnic group. At the same time, however, a community right is created

[11] In Hungarian, the term 'national minorities' (*nemzeti kisebbség*) is used for large ethic minority groups.

[12] In a statement by István László Mészáros (SZDSZ, opposition, 29.9.1992, LP 34, Session 229) in the debate on the law, this linkage becomes clear: "(I)t is necessary to create an atmosphere in our country that is friendly to individuals, friendly to others and friendly to minorities, because (. . .) the rule of law or democracy is not a set of laws, it is not an order of institutions separated according to their powers, but democracy and the rule of law are more than that, it has a spirit, and this is a spirit to which we can also contribute, so that it can develop in Hungary, if we really approach this issue during the debate on this bill in such a way that we want to do our best and appreciate the speeches of our fellow Members."

> where and when the criteria are present and developed which simultaneously bind a group of people together as a community and separate it from large groups in society on the basis of these criteria which apply only to this group. The emphasis is on the emergence of community rights. (János Varga, MDF, government, 29.9.1992, LP 34, Session 229)

Disregard/restriction of rights. Statements about restrictions and the disregard of certain rights were typically found in a small number of cases debated in the selected documents. In the first and second waves of rule of law legislation, very few cases of no or inadequate guarantees of certain rights were highlighted by MPs.[13] In the third wave, however, two diverging narratives emerged.

The opposition parties (mainly Jobbik, LMP and MSZP) established the narrative that **the ruling parties restricted certain rights and that some fundamental rights were at risk**. In the beginning of that wave, shortly after the change in government, some parties in parliament were still critical of the previous MSZP-SZDSZ government (see Sect. 6.3.2).

> (T)he Hungarian Socialist Party (. . .) has destroyed the country, (. . .) has trampled liberties underfoot, (. . .) has run a system where the rule of law has been abolished, where manually controlled decisions are made in the courts, where dozens of patriots have been and are still being imprisoned, and as a representative of such a party, you talk about how you miss the presence of the word freedom in a political statement, after an election in which your party, my dear Ildikó Lendvai, was destroyed (. . .). (Tamás Gaudi-Nagy, Jobbik, opposition, 17.5.2010, LP 39, Session 2)

However, soon the focus of criticism for rights violations was on the new ruling parties. As the first of the following quotation shows, LMP accused them of having "eliminated social rights", abolishing the "social state of law"[14] and violating the right of defence in criminal prosecution.[15] It warned against the erosion of environmental, property and information rights through retrospective review by the constitutional court, emphasising its impact on the rule of law (Schiffer). Jobbik criticised a tightening and violating of the right of assembly (Gaudi-Nagy),[16] while MSZP stressed a general erosion of individual rights and harmful measures against the rule of law (Lamperth).

[13] For some cases, see Tamás Raj (SZDSZ, opposition, 4.3.1991, LP 34, Session 83), Sándor Puha (SZDSZ, government, 17.11.1997, LP 35, Session 322), Máriusz Révész (Fidesz, government, 24.3.2000, LP 36, Session 130), Péter Hack (SZDSZ, opposition, 14.2.2001, LP 36, Session 187) or József Gyimesi (Fidesz, opposition, 29.3.2005, LP 37, Session 209).

[14] András Schiffer, LMP, opposition, 7.6.2016, LP 40, Session 160.

[15] András Schiffer, LMP, opposition, 4.7.2011, LP 39, Session 107.

[16] For MSZP, also Tamás Harangozó argued that "the police have refused to allow demonstrations to take place on countless occasions, even if only on the grounds of protecting traffic order. In reality, this is one of the most frequently and easily restricted fundamental rights in a democratic constitutional state" and accused the government of wanting to impose even greater restrictions (Tamás Harangozó, MSZP, opposition, 28.6.2018, LP 41, Session 14).

> To sum up: the right to the environment, i.e. the constitutional prohibition to reduce the level of nature protection, the prohibition of discrimination and the principle of equal rights, the right to property and the freedom of information are the pillars of fundamental rights, the removal of which from the ex-post control of the constitutional court is inadmissible even in the case of the Budget Act and tax laws, and leads to a serious breakdown of the rule of law. (András Schiffer, LMP, opposition, 16.11.2010, LP 39, Session 47)

> (T)he rule of law test is being disproportionately and unnecessarily narrowed, and indeed the rules on civic activity have been narrowed and tightened. We believe that it violates the rules of the right of association. (Tamás Gaudi-Nagy, Jobbik, opposition, 14.11.2011, LP 39, Session 133)

> The dismantling of the democratic institutions has not taken place all at once, but in a continuous process, in several stages and from several directions. First, there were significant restrictions on individual fundamental rights. In the area of restrictions on fundamental rights, there have been significant steps backwards, both in terms of civil and political rights, which protect the individual against state power, and in terms of economic, social and cultural rights, which the state protects. In addition to restrictions on fundamental rights, the legal and political system of checks and balances has also been severely hit, with measures that have severely undermined the rule of law. (Mónika Lamperth, MSZP, opposition, 14.11.2011, LP 39, Session 133)

During the Covid-19 pandemic, when the special legal regulation during the pandemic was debated, MSZP pointed out that, as 30 years before, there was a need for a "fight for freedom, the rule of law and democracy".

> (E)veryone, especially Fidesz, should be working to protect people, to protect human lives, to distribute protective equipment, to ensure the livelihoods of the masses who are losing their jobs. It is sad that, 30 years after the change of regime, we must once again fight for freedoms, the rule of law and democracy, because the republic that we have now is only a republic in form, a formal republic, which is in fact an authoritarian system that we must abolish. (Bertalan Tóth, MSZP, opposition, 27.4.2020, LP 41, Session 122)

Speakers from the ruling party rejected such criticism, creating their own, diverging narrative. On many occasions, they stressed that the Fundamental Law guarantees democratic rights and that, despite different political positions, there is no threat to the rule of law and democracy in Hungary, meaning that the **rights are fully respected**.

> Hungary is able to prevent discrimination of gender and race in any situation. It is able to protect state property. It is able to assert freedom in all areas of life. The Hungarian constitution seeks to set in stone the right of citizens to work, to a healthy environment, and is able to formulate a system of public responsibility. (Mónika Rónaszékiné Keresztes, Fidesz, government, 22.2.2011, LP 39, Session 69)

> There is no threat to the rule of law and democracy in Hungary, and everyone is guaranteed freedom of expression and freedom of speech. This fundamental law continues to guarantee all the democratic rights that we have enjoyed over the past two decades, extends fundamental rights and enables everyone to identify with the framework within which the nation operates, based on the Hungarian nation's past, and to exercise democratic freedoms within

> the framework of the rule of law institutions. (Gergely Gulyás, Fidesz, government, 18.4.2011, LP 39, Session 84)

> (A)fter the present establishment of the administrative courts, (. . .) an individual, citizen, civil organisation or other legal entity, who is inevitably in a weaker position vis-à-vis such bodies of power and is in a certain sense vulnerable, will not in future have a remedy against an act of the administration, i.e. of local or central power, within this system of state organisation, not within the administration, but will be able to appeal directly to an independent court. This is a radical change and the best possible thing in terms of the protection of human and civil rights. (Csaba Hende, Fidesz, government, 1.4.2019, LP 41, Session 64)

Also in the third wave, opposition parties referred more frequently than before to the EU to substantiate their criticism of the government for restricting rights. While in the decade before, reference to EU values had mostly been rather general and did not add up to a concrete narrative, MPs now underlined that **the ruling parties also violated rights and fundamental values as enshrined by the EU and human rights institutions**. As the following quotations show, speakers argued that the Hungarian government's measures to "destroy" democracy (including democratic rights) and dismantle the rule of law caused the EU to respond (Szávay), that violating the rights of citizens and the rule of law would "generate further conflicts and further struggles with the organisations and the majority of the European Union" (Arató), and that the restriction of democratic rights by the governing parties have led to calls for human rights organisations and the EU to "defend the Hungarian people" (Tóth).[17]

> It is not Poland that is being attacked, (. . .) but the Polish government's behaviour, which is destroying democracy in the same way as you do, that is being criticised by the European Union, and immigration has nothing to do with it (. . .). (T)he European Union did not attack Hungary then, as you have been so keen to say so often, but it was your measures that were dismantling the rule of law that the European Union attacked. (István Szávay, Jobbik, opposition, 19.2.2018, LP 40, Session 269)

> (D)efending the rights of citizens against the state or even large corporations guarantees the rule of law, which is crucial for the economy. It is also clear, for example, from the most recent example of Poland that the rule of law is one of the most clearly defended common fundamental values of the Union, and it is therefore quite clear that its violation will generate further conflicts and further struggles with the organisations and the majority of the European Union. (Gergely Arató, DK, opposition, 28.6.2018, LP 41, Session 14)

[17] In another statement, Gergely Bárándy (MSZP, opposition, 19.2.2018, LP 40, Session 269) stressed that "the European Union is not only an economic community, but also a community of values. And values include the idea of the rule of law. (. . .) Peace in Europe can only be secured if states, and not the European Union, do not abuse their power, do not put their citizens in a vulnerable position, maintain a system of checks and balances within their own states, and uphold the principles of the rule of law and democratic standards. In Poland today, we are witnessing the opposite, as we are in Hungary (. . .)."

> These signals cannot be taken lightly, as the democratic establishment of the state, or lack thereof, affects all areas of our lives. When a human rights organisation or the European Union speaks out against the violation of the Hungarian rule of law, the curtailment of local government rights or the lack of democratic rights, they are in fact trying to defend the Hungarian people, the rights of the Hungarian people, against the authorities. (Bertalan Tóth, MSZP, opposition, 27.4.2020, LP 41, Session 122)

The governing parties, by contrast, expressed that they did not see a contradiction between the national constitution and EU treaties in terms of respect for human and democratic rights. Speakers argued that these **rights, as also guaranteed by the Fundamental Law**, were not challenged by the ruling majority and that the criticism from the EU for dismantling rights was based on "political reasons".

> It is worth recalling the ominous EU fundamental values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, as set out in Article 2 of the EU Treaty. These fundamental values are also common to the Fundamental Law, and no one in Europe or in Hungary challenges them in their original, undistorted form. I am convinced that the proceedings under Article 7 were conducted for political reasons in the European Union, which is unacceptable to us and to the Poles. (Richárd Hörcsik, Fidesz, government, 19.2.2018, LP 40, Session 269)

6.1.3 Poland: A Shallow Consensus That Quickly Eroded

During the transition phase, the support for individual rights, including the adoption of international and European treaties containing such rights, was particularly high and shared across parties. However, many statements with reference to human and citizens' rights were very general, and the consent was shallow. This became apparent when parliamentarians debated more specific aspects such as transitional justice and the right to abortion—a matter at issue particularly during the second wave. As our sources reveal, the conflicts related to these issues were based on an ideological divide between conservative and right-wing parties and other parties. At the same time, we found that it was particularly the parties in opposition that linked their criticism of the government with references to the need to protect rights. The conflicts culminated after 2015 when in one-sided narratives the opposition parties accused PiS of restricting rights (Table 6.12).

General remarks on fundamental, human or civil rights. MPs mentioned the relevance of basic human and citizens' rights throughout the legislative periods. They did so with particularly high intensity during debates on the constitution, the presidential draft of a charter of rights and freedoms, as well as on the European Convention of Human Rights. Later rights were an issue when parliamentarians were debating the right to court access, a functioning judiciary or reports of the ombudsperson and the president of the constitutional court to the Sejm.

During the first wave, representatives of all factions referred to the need for enshrining, respecting and protecting rights, making them enforceable before courts. This was interpreted as a major achievement in contrast to the former communist

Table 6.12 Narratives on rights in Poland

	1990–1997	1997–2015	2015–2021
General remarks on fundamental, human or civil rights	The state must guarantee the rights and liberties of the citizens. (overlapping)		
Post-1989 transformation	Lustration must fully respect individual rights of those who are lustrated vs collective security and justice must be protected. (diverging)		
Individual and collective rights		The common good, collective security and (Christian) values need to be protected. (one-sided, conservative/ right-wing parties)	
International and European level	International and European institutions are relevant to protect the rights of citizens. (overlapping)		
Legal protection	The right to an effective remedy and fair trial is fundamental in the RoL. (overlapping)		The right to an effective remedy and fair trial is fundamental in the RoL. (one-sided, opposition parties)
Disregard or restriction of rights			The ruling majority's legislation restricts civil rights. (one-sided, opposition parties)

system. In short, and as exemplified by the following statements, parliamentarians used the narrative that **the state must guarantee the rights and liberties of the citizens**.

> The proposed law affirms the natural rights to which every human being is entitled. In our understanding, the three main principles of dignity, equality before the law and freedom are principles that are universally recognised and accepted as the basis of the legal order in a democratic state. We agree with unquestionable, indisputable decisions that regulate the state–citizen relationship, decisions that can be enforced through the courts. These are precisely the guarantees that a constitutional law must contain: fundamental civil rights and freedoms, political rights and a basic minimum of social rights. (Stefan Szańkowski, PL, government, 21.1.1993, LP 1, Session 35)[18]

[18] Or see Jacek Kurczewski (KLD, government, 21.1.1993, LP 1, Session 35): "Why are we in favour of this Charter of Rights and Freedoms, regardless of the fact that one may have reservations about some or other of its spheres? Because this Charter is, despite its moderate language, an essentially revolutionary proposal. It is a proposal that the citizen did not actually have before (there was talk here of Stalinist constitutions or others) (. . .). (T)he essence, I think, of this draft (. . .) is precisely this Article 34. Anyone who finds that protection of their rights and freedoms under other laws is insufficient may invoke the provisions of this charter as the basis for their claim."

> (A) constitution is needed in order to provide boundaries for the activities of the state, so that it does not stand above the citizens, and therefore to give people the certainty of existence as citizens precisely, who have rights and enjoy protected freedoms. (Hanna Suchocka, UW, opposition, 22.9.1994, LP 2, National Assembly Session 1)

> The second matter, which is very close to me personally and on which I also want to comment, concerns civil rights and freedoms, which in any constitution are the most essential, most important and most closely observed element. When we talk about rights and freedoms, we should also remember that before 1989, they were somehow snatched away from the communist, totalitarian authorities. (. . .) The realisation of civil rights and freedoms must be ensured in the constitution. (Wojciech Borowik, UP, opposition, 23.9.1994, LP 2, National Assembly Session 1)

Often MPs expressed the general need to implement and realise certain rights in practice, referring to preconditions in the judiciary or to the behaviour of state institutions.

> (I)t is not enough for civil liberties to be proclaimed and decreed, they must be organised by a balance of powers and the organisation of the market economy, which simply detracts from the field of activity of the state and gives credibility to such provisions. The ratification of this convention becomes credible only where it is accompanied by the construction of certain architectural foundations of a free society in the form of parliamentary democracy and a market economy. (Janusz Lewandowski, KLD, opposition, 22.5,1992, LP 1, Session 15)

While MPs from various political groups generally raised the need to establish a legal, political and judicial system, aligned with international and European standards, that would enable citizens to assert their acquired rights in a timely and effective manner, most statements in our sources stemmed from left and liberal factions. They also emphasised more than other parties the need to protect sexual, religious, national and other minorities. During the first wave of rule of law legislation, for example, they argued for the protection of individual rights, including those of perpetrators (Lewandowski), demanded anti-discrimination measures (Borowik) and declined privileges for certain religious associations (Jaskierna).

> When creating legislation, we must adopt a new axiology, corresponding to a democratic state under the rule of law, one in which the law serves to protect a system of such fundamental values as the protection of human dignity and rights (of both the victim and the perpetrator), the protection of goods serving the human being and his or her development. (Marek Lewandowski, SdRP, government, 1.9.1994, LP 2, Session 28)

> The guiding principle constituting the system of civil rights and freedoms is equality before the law. There can be no exceptions to this principle. The constitution of the Republic of Poland should be so unequivocal that there cannot even be the suspicion that any discrimination is possible in Poland. We share the concern of citizens with disabilities, supporters of different religions or minorities, including sexual minorities, for their equal place in society. Difference cannot be a reason for discrimination or unequal treatment. Rights and freedoms established by the will of the majority must not undermine the rights of minorities. We also extend this principle to the protection of vulnerable groups for economic or social reasons. (Wojciech Borowik, UP, opposition, 23.9.1994, LP 2, National Assembly Session 1)

> We say that no church or religious association can be privileged by any law or international agreement. (. . .) Equality, tolerance, freedom to believe and not to believe are important. We believe that this is the standard of a democratic state under the rule of law (. . .). (Jerzy Jaskiernia, SdRP, government, 23.9.1994, LP 2, National Assembly Session 1)

Also when discussing the state of ethnic and religious minorities, left and liberal parties argued that the majority does not have complete freedom but must respect the rights of minorities. Other parties generally agreed to establish minority rights; however, there were certain concerns about the implementation (and the scope) of rights.[19]

> The formation of majorities and minorities is (. . .) inevitable, not least as a result of democratic election procedures. These procedures give the majority the right to decide. However, it does not follow that complete freedom can reign here. It must be clearly stated and enshrined in the constitution that the will of the majority must not undermine the rights of the minority. This applies, in particular, to the rights of national and ethnic minorities. (Stanisław Rogowski, UP, opposition, 23.9.1994, LP 2, National Assembly Session 1)

This pattern did not change during the second wave of rule of law legislation when, for example, during the debate on a law on minorities mainly the SLD advocated positive discrimination of minority groups in terms of language, culture and religion.

> The work on the draft law on national and ethnic minorities has been going on for 12 years. It has to be said honestly that this does not speak well of the Polish state, of our Chamber, which, although it is not grappling with the ethnic conflicts that so bloodily marked the decline of the twentieth century, is not able to fully guarantee its citizens the fundamental rights enshrined in the constitution. (. . .) I have heard from, as they described themselves, Polish patriots, that a special law for minorities is an unnecessary privilege that harms the Polish nation. (. . .) Minorities, by their very nature, are vulnerable to discrimination in their daily lives. Therefore, a democratic state under the rule of law must provide them with certain facilities. This so-called positive discrimination in no way harms other citizens. On the contrary, it testifies to the strength of spirit and tolerance of the national majority, the strength of democracy and the high level of the state under the rule of law. (Jerzy Szteliga, SLD, government, 15.2.2002, LP 4, Session 13)

Despite general rhetorical agreement, the debates about rights became more contentious during the second wave of legislation. Government MPs justified their bills by underlining that the respect of human and civil rights would be guaranteed while the opposition raised doubts. For example, the first PiS government declared its bill on the Central Anti-Corruption Bureau as a measure to establish equal rights for all citizens (Gosiewski), while the opposition argued that the bill would in contrast restrict constitutional rights and civil liberties (Kalisz).

[19] For such remarks see Mirosław Czech, UW, opposition, 23.9.1994, LP 2, National Assembly Session 1. Also representatives of the German minority demanded broader rights. However, there was no major disagreement on this point. Only LPR MPs stated that no further group rights were needed, as these would single out minorities and favour them more than the Polish majority.

> As Law and Justice parliamentarians, we are aware that this is a special moment in the history of the High Chamber, as we are beginning work on a bill that will lead to a breakthrough in the fight against corruption crime. Corruption is a phenomenon that poses one of the greatest threats to the functioning of state institutions and is a denial of the constitutional principle of equality of all citizens before the law, as well as free and fair competition in economic activity. (Przemysław Edgar Gosiewski, PiS, government, 16.2.2006, LP 5, Session 10)

> The draft of this law violates the constitution of the Republic in many places. First of all, attention should be drawn to the limitations of constitutional rights and civil liberties, such as personal inviolability – Article 41 of the constitution, such as the freedom and protection of the secrecy of communication – Article 49 of the constitution, such as the inviolability of the dwelling – Article 50 of the constitution. (. . .) This is a violation of basic constitutional benchmarks. (Ryszard Kalisz, SLD, opposition, 16.2.2006, LP 5, Session 10)

A similar pattern of general rhetorical agreement on the relevance of rights but criticism from the opposition of the real status of rights remained after a change of government, when the ruling parties pointed, for example, to the particular importance of protecting property rights (Tusk, PO) and re-establishing civil rights (Kalinowski, PSL), while the PiS, now in opposition, supported Ombudswoman Irena Lipowicz for criticising shortcomings of the protection of rights in Poland (Lipiec).

> Along with the right to life and liberty, the right to property is one of the fundamental human rights and underpins the legal, economic and social order. Property is a condition for civil liberty and sustainability. We shall therefore endeavour to ensure that ownership at the individual level becomes widespread among our citizens, and the state will act in such a way – and I dedicate this to my government with particular determination – that it guarantees the effective and best possible protection of the private property of our citizens. (Donald Tusk, PO, government, Prime Minister, 23.11.2007, LP 6, Session 2)

> Poland is a state under the rule of law, strong in the activity of its citizens. We are glad, Mr Prime Minister, that the period of undermining the independence of the judiciary and violating civil rights, especially the principle of the presumption of innocence, has come to an end (. . .) and we are also glad that those actions will be stopped which, while retaining a semblance of legality, lead to the appropriation of the state. (Jarosław Kalinowski, PSL, government, 23.11.2007, LP 6, Session 2)

> I would like to say a lot more about matters of protecting human and civil rights in our difficult Polish reality. (. . .) I would like, from this place, to thank you, Professor, for your determination when it comes to acting on behalf of human rights, and also for the comments you have made today to all institutions responsible for human rights, including the legislature and the executive, which is not surprising. I make no secret of the fact that I am appalled that the Presidium of the Sejm is denying her the right to a meeting. She is in fact our envoy in the important mission of fighting for human rights. (Krzysztof Lipiec, PiS, opposition, 25.6.2014, LP 7, Session 70)

Post-1989 transformation. Although all parties agreed on the need to protect the individual under the rule of law, opinions diverged in discussions about concrete

issues, particularly transitional justice. MPs in the Sejm repeatedly discussed whether and how people who had held positions of responsibility in the communist system should be held accountable for this action under the new regime, for example by restricting certain rights after 1989. This conflict was mirrored in diverging narratives used, especially during the first and second waves of rule of law legislation. Foremost left-wing, but also liberal parties argued that **lustration must fully respect the individual rights of those subject to lustration** and condemned a collective-guilt approach. Conservative and right-wing parties pointed out that **collective security and justice must be protected** and emphasised the collective right 'to know'.

> In participating in the work of the committee and the subcommittee, I have had the opportunity to become acquainted with a variety of points of view and the motivation behind the assessments. (. . .) I was only concerned about those cases in which, through the prism of individual events, there was a tendency towards an extreme, degenerate collective evaluation and collective punishment. (. . .) (W)hat I would like to emphasise most is the need for the new legislation to be framed and drafted in such a way that the protection of the citizen, his rights and freedoms comes first, followed by the protection of the interests of the state as a whole. After all, these relations were too clearly reversed in the past. (Józef Oleksy, SdRP, Contract Sejm, 6.4.1990, LP X, Session 25)

> I also get the impression that the minister of justice does not have sufficient arguments to a certain group of prosecutors whom he does not want to re-employ in these positions. Collective responsibility must not be used, otherwise it will be the first step to rename the ministry the ministry of injustice. (Marek Boral, elected via PZPR,[20] party group LD/KP, Contract Sejm, 22.3.1990, LP X, Session 24)

> We fully support the vetting project that has emerged from the vetting committee. And I have these thoughts: today, when we talk about lustration, it is impossible not to mention the events that took place almost five years ago in the same chamber, that is, the lustration resolution of the first-term Sejm and its implementation. For it is difficult to find in a democratic state under the rule of law a more flagrant example of disregard for the law. The very fact that a decision of this magnitude, concerning the uncovering of secret material of special importance as well as elementary human rights, did not have the status of a law and was introduced into the agenda on the fly, as it were, and adopted by surprise, was evidence of irresponsibility. The manner in which this resolution was implemented confirmed to excess all the fears of its opponents. (Jan Lityński, UW, opposition, 6.3.1997, LP 2, Session 102)

A relevant issue was whether lustration laws violate the rule of law principle of non-retroactivity. Conservative representatives argued that this is not an absolute principle.

> It is alleged that it violates the principle of non-retroactivity. This principle, although not explicitly enshrined, is derived from the essence of the state under the rule of law. But exceptions to this principle are known and these exceptions are particularly justified in situations of political breakthroughs. This is precisely the situation we are facing. I would

[20] PZPR did not form part of the government but received some posts of ministers until July 1990.

> like to draw attention to the fact that this peculiar "verification" is to take place with the appropriate application of the regulations of disciplinary proceedings, regulations which provide far-reaching guarantees for the protection of judges' rights, and which are further strengthened by the fact that the composition of the disciplinary court is to be increased to five members. (Teresa Liszcz, PC, government, 6.3.1992, LP 1, Session 10)

During the second wave of legislation (when the post-Solidarność AWS governed), mostly the opposition left and liberal MPs, such as Kurczuk, criticised the lustration law with regards to violation of rights, while MPs from the conservative and right-wing government, such as Ujazdowski, referred to the protection of rights during lustration and to the ultimate goal of bringing justice and security to the state. They demanded open access to files of the former Security Service (SB).

> Unacceptable is the situation resulting from the wording of the provision of Article 27(2)(2)(b) of the Act, which introduces the possibility of resuming proceedings concluded by a final ruling to the detriment of a person vetted, which grossly deviates from the standards of a state under the rule of law (. . .). The final, substantive determination of the case and the termination of proceedings against a particular person must create guarantees for that person that he cannot be held responsible in the future for an act for which he has already been tried once. Thus, I emphasise these words: there must not be a state of permanent uncertainty for the person being vetted as to the consequences under Article 30 of the Act, and thus his freedom must not be unconstitutionally restricted. (Grzegorz Kurczuk, SdRP, opposition. 3.3.1999, LP 3, Session 45)

> It is appropriate to reiterate once again the position of AWS. Lustration is a condition for the security of the state, a condition for the openness of public life and respect for the citizen's right to information on the biographies of persons performing public functions. (Kazimierz Michał Ujazdowski, elected via AWS, government, 3.3.1999, LP 3, Session 45)

The conflict continued when a new lustration law was debated in parliament in 2006 under a PiS majority. The positions were only slightly adapted. PiS emphasised that the lustration served the public's right to transparency with regard to persons in public functions (Mularczyk) while the left parties warned of an inquisition (Kalisz).

> The proposed law implements the principles enshrined in Article 2 of the constitution of the Republic of Poland, which states that the Republic of Poland is a democratic state under the rule of law, realising the principles of social justice by ensuring transparency in public life, and in particular by providing information on persons who perform public functions, in accordance with the principle set out in Article 61(1) of the constitution of the Republic of Poland. (Arkadiusz Mularczyk, PiS, government, 9.3.2006, LP 5, Session 12)[21]

[21] He also argued "that privacy is of course a right, but it is not an unlimited right. Privacy can be limited by other rights, including non-constitutional rights, and one such right that can limit the right to privacy is the right to openness of public life, which also derives from Article 2 of the constitution. Of course, there may be disputes and different opinions of lawyers about this fact here, but we are of the opinion that the realisation of the right to openness and transparency of political life cannot be limited in this case by these provisions." (Arkadiusz Mularczyk, PiS, government, 9.3.2006, LP 5, Session 12).

> So the Democratic Left Alliance is in favour of continuing lustration, but let it be judicial lustration. And we agree with the postulate that if there is such a great need to extend the scope of vetting to other groups of people, let vetting courts be established in each voivodship, because the one in Warsaw would not be able to handle it. Only any determination of guilt – the determination of guilt in vetting proceedings – must be on an adversarial basis and on the basis of a court verdict. We cannot leave that out, otherwise we are dealing with an inquisition. Perhaps an inquisition is dear to some people here, but an inquisition must not be allowed here in a democratic state under the rule of law. (Ryszard Kalisz, SLD, opposition, 9.3.2006, LP 5, Session 12)

Individual and collective rights. While conservative parties generally supported the broad need to establish and protect rights, they occasionally put more rhetorical emphasis on the common good, arguing that "there are no individual rights without the rights of the family and without the rights of the nation".[22] This tendency strengthened during the second wave of legislation, after the adoption of the constitution in 1997. In that time, conservative and rightist forces made intensive use of the narrative that **the common good, collective security and (Christian) values need to be protected**. This became apparent, for example, when debating the right to abortion, which the left and liberal parties demanded as an absolute constitutional right (Banach), while conservative parties emphasised the right to life of the unborn child, citing a constitutional court ruling (Liszcz).

> The right to life is not an absolute right and therefore an overriding right, not coming into conflict with other rights, including another right to life. If this were the case, it would be impossible to kill in war, which is allowed under both the old and the new constitution, not only in defence of life, but of another constitutional value such as individual and collective freedom. In the light of this conflict of goods, the Polish constitutional court has not at all invoked and analysed a woman's constitutional right to human dignity, understood as the impossibility of demanding from a woman such sacrifices and offerings that would clearly exceed the ordinary measure of the duties of motherhood. (Jolanta Banach, SdRP, opposition, 17.12.1997, LP 3, Session 6)

> The ruling in question on this issue brings pride of place to the Polish court and emphatically demonstrates the importance of this institution in a democratic state under the rule of law. (. . .) The provisions abolishing the prohibition of any action against the conceived child, except for those aimed at protecting its or its mother's life, and legitimate prenatal examinations, and abolishing the punishability of acts involving bodily harm to the conceived child or causing a disorder of its health threatening its life, were also deemed unconstitutional. (. . .) In addition to this – or perhaps it should be said: before the provisions containing specific legal solutions detrimental to the protection of life and other goods of the unborn human being – the court declared unconstitutional the amended Article 1 of the Anti-abortion Act, reducing the protection of the conceived child, i.e. according to its wording: the protection of life in the prenatal stage, to the limits set by the ordinary legislator. (Teresa Liszcz, PC, government, 17.12.1997, LP 3, Session 6)

[22] Marek Jurek, ZChN, government, 21.1.1993, LP 1, Session 35.

In this conflict, conservative parties argued that human life was directly protected by the rule of law.

> I am thinking here of a very important principle – the protection of human life precisely on the basis of the rule of law and the dignity of respect for the human person. (Tadeusz Cymański, elected via AWS, joined PiS parliamentary group, opposition, 24.7.2001, LP 3, Session 114)

> If the content of a state under the rule of law is a set of fundamental directives introduced by the essence of democratically constituted law and guaranteeing a minimum of its justice, then the first such directive must be respect in a state under the rule of law for the value without which all legal subjectivity is excluded, namely human life from its beginnings, from its inception. It is worth recalling this fundamental ruling for the existence of the rule of just law in Poland. (Kazimierz Michał Ujazdowski, PiS, opposition, 5.7.2002, LP 4, Session 25)

Also in a debate about a law on national and ethnic minorities, the League of Polish Families questioned if "the fact that the electoral committees of national minorities do not have to exceed the 5 per cent support threshold in elections to the Sejm" would not be enough privileging of minorities and that further measures might be incompatible with the constitutional principle of equality.[23]

International and European level. International and European treaties were mostly invoked in the 1990s, especially when discussing the ratification of rights charters. Generally, the parties expressed their agreement that **international and European institutions are relevant to protecting the rights of citizens**. There was a common perception, however, stressed most frequently by left and liberal MPs as well as by parliamentarians of the German minority, that the adoption of international standards into national law would complete the Polish legal system. They highlighted the importance of ratifying the European Convention on Human Rights,[24] which was interpreted as "supplementing our internal, imperfect system of protecting the rights of human beings living in Poland, becoming its next, extremely important link, greatly strengthening the legal positions of citizens in various legal relations, including with the state".[25]

During the second wave of rule of law legislation, MPs across party lines cited along with the constitution the Declaration on Human Rights, the International

[23] Jerzy Czerwiński, elected via LPR, opposition, 15.2.2002, LP 4, Session 13. However, also individual voices among the supporting parties warned not to single out minorities too much because this could lead to "negative phenomena such as undermining the general rules of democracy and weakening the application of democratic procedures in the practice of political life, arousing entitlement attitudes that are excessive in relation to the state's capabilities or at the expense of other groups, as well as causing or stimulating local conflicts at the interface of minority–majority, minority–other minority, for example, over the extent of support for so-called equalisation of opportunities (. . .)." (Tadeusz Samborski, PSL, government, 15.2.2002, LP 4, Session 13).

[24] 22.5.1992, LP 1, Session 15.

[25] Georg Brylka, MN, opposition, 22.5.1992, LP 1, Session 15.

Covenant on Civil Rights,[26] other international treaties and later the EU framework to support their own arguments concerning specific issues debated in parliaments. On such occasions, they declared compliance with these norms as obligatory to guarantee the protection of rights.

> The obligation of legal protection of life is also statuated by international legal acts binding on Poland, in particular: the 1966 International Covenant on Civil and Political Rights (primarily in Article 6) and the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (primarily in Article 2), as well as the 1991 International Convention on the Rights of the Child. (Teresa Liszcz, PC, government, 17.12.1997, LP 3, Session 6)

> In this context, I would like to ask you [the ombudsperson] whether you see the fact that Poland is bound by the European Convention on Human Rights, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment and other conventions ratified by Poland? Because from some of the speeches, including in this discussion, it could appear that Poland had no international obligations here. So it was only a matter of our whim, what kind of conditions of serving a sentence in Poland we create. (Jerzy Jaskiernia, SLD, opposition, 24.7.2001, LP 3, Session 114)

Left-wing parties, especially when in opposition, hinted at the citizens' right to turn to the ECtHR and the relevance of the ECJ in the event that Poland fails to fulfil its international obligations (Rydzoń) and emphasised the need to reach "European standards" in the country (Pawłowski).

> In the opinions of the representatives of the Bureau of Studies and Experts, concerning the drafts of Self-Defence and League of Polish Families, under the heading: conclusions, we read: "However, if the adoption of the project in the implementation of the new provisions were to result in a serious and persistent violation of the principles of liberty, democracy and respect for human rights and fundamental freedoms and the state under the rule of law in the future, including in particular such rights as the right to privacy, the right to an effective remedy and the right of access to an impartial court, this could lead to political action by the European Union institutions in the nature of political sanctions." (Stanisław Rydzoń, SLD, opposition, 9.3.2006, LP 5, Session 12)

> Equal treatment of citizens irrespective of gender, race, ethnic origin, nationality, religion, belief, worldview, disability, age or sexual orientation still falls short of European standards in our country. The adoption of the bill on the implementation of certain provisions of the European Union in the field of equal treatment will bring us closer to these standards, at least from the legal side. In the mental and cultural sphere, it will be a process that will be prolonged in time, spread over years and perhaps even generations. (Sylwester Pawłowski, SLD, opposition, 28.10.2010, LP 6, Session 77)

Early on, but only occasionally in our sources, conservative and right-wing parties criticised other parties for "going to Strasbourg and Brussels" to circumvent parliamentary majorities in Poland, for example in a debate on the adoption of the European Convention on Human Rights in 1992 (Jurek). At times, they were also

[26] E.g. Irena Lipowicz, UD, opposition, 7.4.1994, LP 2, Session 17.

critical of the Western antidiscrimination approach (Paluch) and accused the European Parliament of "interfering in the rights of sovereign states".[27]

> I will say frankly that I am not surprised by anything in this speech, not even by the fact that, when there has been a lack of other fraternal help, threats are already being made to Poland and the Poles, that some people, perhaps including those sitting in this Chamber, are going to turn to Strasbourg and Brussels for fraternal help (applause) against Poland and the Poles, against laws and legislation sovereignly made by the Polish parliament, in accordance with the law, in accordance with our sense of justice, against the Poles quite simply. This does not surprise us. (Marek Jurek, ZChN, government, 22.5.1992, LP 1, Session 15)

> I do, however, have some concerns relating to my conviction that the legal system of some EU member states contains provisions that are regarded there as a tool for combating discrimination against minorities, the operation of which in our system, in our reality, should not necessarily be considered desirable. In relation to this, I would like to ask the following question: will it be possible, on the basis of the institution of the European arrest warrant, to surrender to the courts of other EU countries people who in Poland speak out against the legalisation of same-sex marriages or in defence of the family, which, in the light of the legal provisions of other EU countries, may be considered a manifestation of homophobia, discrimination against minorities etc.? (Anna Paluch, PiS, government, 21.6.2006, LP 5, Session 20)

During the third wave, the international and European level was also mentioned, but the focus was on national (rights) violations in general due to the judicial reforms under the PiS government.

Legal protection. When MPs discussed rights in the context of the rule of law, legal protection was actively mentioned throughout the whole period of analysis, with no period of particularly intense debate. The most evident dynamic was that the narrative shared during the first and second waves of legislation became one-sided during the third wave.

During the first two waves, representatives across parties agreed that **the right to an effective remedy and fair trial is fundamental in the rule of law**. In the early and mid-1990s, MPs voiced this narrative in various debates on the judiciary, constitutional laws and other issues in a declaratory way. The necessity of (establishing) functioning and just courts was highlighted by MPs from both government and opposition.

> We believe that the above-discussed proposals for changes in the government's submission should be supported, sharing the view that they serve the legitimate aim of strengthening the efficiency of the judiciary, preventing the recently visible organisational inertia and improvement of the implementation of the fundamental tasks of the justice system and the judiciary – ensuring real, equal right to court for all citizens. (Piotr Wójcik, PC, government, 6.3.1992, LP 1, Session 10)

> The need for universal access to an administrative court is of course an institutional guarantor of a democratic state under the rule of law, but on the other hand it should be

[27] E.g. Kazimierz Michał Ujazdowski, PiS, opposition, 5.7.2002, LP 4, Session 25.

> borne in mind that complaints to an administrative court are not infrequently an expression of mere petulance. One has to use the proverbial 'golden mean' to reconcile beautiful ideas with the mundane reality of life. (Aleksander Bentkowski, PSL, government, 7.4.1994, LP 2, Session 17)

> This law we are talking about today is the first law that is supposed to implement the assumptions on which the new constitution was based. It is supposed to implement those constitutional institutions that the constitution creates or introduces into the political system of our state. I think it is very good that we begin the process of implementing the constitution in the life of our state with a law that essentially constitutes the basic guarantee of creating a state under the rule of law or strengthening a state under the rule of law, and not in some abstract way, but from the point of view of changing the status of the citizen in the state. (Jerzy Ciemniewski, UW, opposition, 6.6.1997, LP 2, Session 108)

During the second wave of legislation, mainly opposition MPs referred to legal protection, mostly when criticising the perceived non-functioning of courts, or during the PiS-led government from 2005 until 2007 with regards to the lustration process and anti-corruption measures. However, politicians from all parties appreciated the work of the constitutional court in protecting citizens' rights when discussing the court president's reports to the Sejm and when the court's decisions supported their own position.[28]

> Thank you very much on behalf of the Law and Justice Parliamentary Club for the information presented on the work of the constitutional court in 2014. It is a detailed, comprehensive document that tells how important matters were dealt with by the constitutional court. It is a document that confirms that the role of the Constitutional Tribunal in the Polish legal system, in maintaining civil liberties and rights, is truly difficult to overestimate. In its rulings, in its judgments, the Constitutional Tribunal has often indicated to the Sejm, the Senate and the president of the Republic of Poland the courses of action that should be taken to ensure that the system of civil rights and freedoms is not only maintained, but expanded. At the same time, it has often indicated to citizens and institutions that are entitled to raise questions, to submit applications to the Constitutional Tribunal, that there are no absolute freedoms, that these freedoms must sometimes be restricted in the name of the common good, in the name of preserving other freedoms. (Wojciech Szarama, PiS, opposition, 10.7.2015, LP 7, Session 96)

> I would like to thank you for this further year of work for the protection of our citizens, the protection of their rights and freedoms, as well as the protection of the democratic system in the state, in the Republic of Poland (...). (Stanisław Chmielewski, PO, government, 10.7.2015, LP 7, Session 96)

The rhetoric changed after the 2015 elections. From then on, mostly opposition MPs referred to legal protection in their general criticism of the ruling majority's reforms, stating that the amendments and laws affecting the judiciary, especially to the constitutional court, would undermine its independence and would ultimately result in a system that fails to protect citizens' and fundamental rights.

[28] See, for example, 5.7.2002, LP 4, Session 25.

> One of the greatest values is democracy, i.e. the rule of the majority, but with respect for the rights of the minority. The guarantor of this is the constitution, and the guarantor of the observance of the constitution in lawmaking is the constitutional court – the construction of the constitutional court is designed in such a way that none of the political options has a guaranteed majority in it and can legislate against its principles. Poles are to have the right to feel secure that their democratic rights and freedoms are not threatened. (Katarzyna Lubnauer, N, opposition, 19.11.2015, LP 8, Session 1)

> The introduction of the above changes will mean that Poland will definitely cease to be a democratic state under the rule of law. If there is a lack of independent courts, nothing will stand in the way of future restrictions on the rights and freedoms of citizens as enshrined in the constitution without having a sufficient majority. (Kinga Gajewska, PO, opposition, 22.11.2017, LP 8, Session 52)[29]

Disregard of rights. The disregard or restriction of (all kinds of) rights was mentioned in all three waves of rule of law legislation. In the 1990s, MPs frequently deplored a lack of rights protection as inherited from the previous communist regime. Following the adoption of the constitution in 1997, MPs criticised non-compliance with existing legislation, constitutional principles and international or European standards, especially in debates on the reports of the ombudspersons and president of the constitutional court. Furthermore, during the first PiS-led government in 2005–2007, bills were criticised by the opposition as violating human and civil rights. After 2015, when PiS re-entered government, opposition parties frequently argued that the **ruling majority's legislation restricts civil rights**. This narrative was particularly prominent in debates on the reforms of the constitutional court (Rosa), public prosecution (Budka), the judiciary, and other legislation such as the criminal code (Ueberhan).

> (Y)ou are not hitting the judges, you are not hitting the opposition, you are hitting ordinary citizens with this amendment. And this situation is unfortunately a bit like Orwell's Animal Farm. At the beginning everyone was equal, later everyone was equal, but some were more equal. We all know how this book ends. (Monika Rosa, N, opposition, 17.12.2015, LP 8, Session 5)

> You are squandering constitutional values. It is the sickness of history that not so long ago you were able to insult the constitution, and now suddenly you are talking about Article 2, about the principle of a democratic state under the rule of law, while at the same time you are preparing the tools of a total state, a state in which politicians will implement criminal policy with practically no accountability. We want to discuss improving the security of citizens, we want to discuss improving the functioning of the judiciary in the broadest sense, but there will be no consent to violating basic human rights under the guise of such laws, to politicise the prosecutor's office from the bottom up, to dissolve appeal prosecutors' offices in the name of political revenge and to carry out such a purge in the prosecutor's office, as

[29] Similarly, Cezary Grabarczyk (PO, opposition, 17.12.2015, LP 8, Session 5) criticised the government in a debate on the Amendments to the Law on the Constitutional Court: "You want to restrict the citizens' right to a court, and this is something that the citizens will not forgive you for, because citizens, according to Article 45 of the constitution, have the right to have their cases swiftly decided by the judiciary."

> prosecutors are clearly saying, just because there could be prosecutors there who do not want to act politically. (Borys Budka, PO, opposition, 13.1.2016, LP 8, Session 8)

> The amendments to the criminal code, which are ostensibly intended to comply with an EU directive, are formulated in such a way that they have nothing to do with the directive, and may restrict human rights, even freedom of expression, freedom of assembly, the right to family life, the dissemination of information for scientific, academic or reporting purposes. The draft violates the rights of detainees, restricts the right to court of the less well-off, disregards the existing fundamental rules of procedure. These changes have nothing to do with the fight against terrorism and the implementation of the Directive. (Katarzyna Ueberhan, Wiosna, opposition, 26.2.2021, LP 9, Session 26)

PiS occasionally referred to legal protection to justify certain reforms, arguing that the bills or amendments would not infringe any legal right protection system.[30]

6.1.4 Romania: One-Sided and Diverging Narratives on Particular Issues

In the parliamentary debates analysed, Romanian MPs did not engage in deeper discussions about rights. They in general expressed their agreement on the relevance of guaranteeing rights, a narrative which was mainly used during the first wave of rule of law legislation. However, for some specific issues, parties presented competing stances and we identified diverging and one-sided narratives. During the first wave of rule of law legislation, parties used diverging narratives concerning the individual and collective rights for ethnic minorities. During the second and third waves, two one-sided narratives were employed with particular intensity, one concerning rights violations by an anti-corruption public prosecution agency, the other regarding the role of European institutions for protecting rights (Table 6.13).

General remarks on fundamental, human or civil rights. Romanian MPs from all parties frequently stressed the importance of human, basic and citizens' rights (whether framed as human rights according to international declarations or fundamental rights enshrined in the constitution) as major achievements in post-communist times. On such occasions, these rights were routinely enumerated together with democracy and the rule of law. Such statements were made, for example by UDMR's Geza Domokos (see quotation below), above all in the first wave of rule of law legislation, when the constitution of 1991 and its amendment in 2003 as well as major legislation on the judiciary were adopted. On an abstract and declarative level, MPs used the narrative that **the state must guarantee the rights and liberties of the citizens**. The rapporteur of the draft constitution, FSN-affiliated Ioan Muraru, for example, framed the Romanian constitution as indebted to several national and international declarations that shared common values. Protecting them was declared an important duty of all branches of government.

[30] E.g. Stanisław Piotrowicz (PiS, government, 17.12.2015, LP 8, Session 5) or Zbigniew Ziobro (SP, government, Minister of Justice, 13.1.2016, LP 8, Session 8).

Table 6.13 Narratives on rights in Romania

	1990–2004	2004–2014	2014–2021
General remarks on fundamental, human or civil rights	The state must guarantee the rights and liberties of citizens. (overlapping)		
Individual and collective rights	The rights of ethnically non-Romanian citizens are protected individually vs collective rights are necessary. (diverging)		
Disregard or restriction of rights		Public prosecution violated the presumption of innocence and the secrecy of telephone conversations. (one-sided, PSD/ALDE)	
International and European level			European institutions are relevant to protect the rights of citizens. (one-sided, PNL/USR)

> The ideals of the December 1989 Revolution must find expression in the fundamental law. Hopes for freedom and for the assurance and respect of fundamental human rights and freedoms must be unequivocally enshrined in the new constitution (. . .). (Geza Domokos, UDMR, opposition, 13.2.1991, AC, LP 1)

> All these declarations, covenants and charters affirm the undeniable truth that all human beings are born free, equal in dignity and rights, and that among these rights are life, liberty and the pursuit of happiness. (. . .) (B)y these regulations it is solemnly declared to be the highest aspiration of the people and the aim of every society organised as a state to proclaim, preserve and protect the natural liberties and rights of man. (Ioan Muraru, FSN, government, 12.3.1991, AC, LP 1)

When the Law for the Organisation of the Judiciary was debated in 1991, the MP Ioan Ban (PNL) pointed to the possibility that public prosecution could infringe citizens' rights but, in the end, he was content with the legislative regulations:

> These are very serious measures which touch upon human rights and that is why someone must watch over the work of this category of magistrates. (. . .) But, due to the fact that citizens can be exposed to certain abuses, to the violation of human rights, it is absolutely necessary and, we consider, very advanced and progressive this form of legislation that the government has presented. (Ioan Ban, PNL, opposition, 28.5.1991, CD, LP 1)

In the debate on the constitutional amendments in 2003, the rapporteur enumerated the fundamental rights of the citizens, and MP Mircea Ionescu-Quintus (PD) stressed the newly constitutionalised ones:

> On the positive side, new fundamental rights and freedoms, such as equal opportunities for women and men, the guarantee of economic freedom and free initiative, access to culture, the right to a fair trial and the right to a healthy environment, are included in the constitutional provisions. (Mircea Ionescu-Quintus, PNL, opposition, 25.8.2003, S, LP 4)

Individual and collective rights. During the first wave of legislation, the relation and the tensions between individual and collective rights were also discussed—in both houses of the Romanian parliament exclusively in the context of the nation. Against the historical background that multiethnic Transylvania with the Romanians in the majority, but also with around 1.7 million Magyars and many smaller ethnic groups, had become part of Romania only after World War I, the relation between minorities and the titular nation was hotly debated. Conflicts were visible during constitution-making and its amendment in 2003. All debates circled around the question of whether the rights of ethnically non-Romanian citizens should be protected as individual rights or as collective rights as an ethno-cultural group. This question marked a significant divide between all 'Romanian' parties on the one hand and UDMR (representing the Hungarian minority) with occasional help from the Minority Group, such as the Germans in parliament, on the other.

The 'Romanian' parties stressed that **the rights of ethnically non-Romanian citizens are protected individually**, just as those of ethnic Romanians. This was cited by Ion Rațiu (PNȚ) and Valeriu Stoica (PNL) as being in line with the original idea of the rule of law as a liberal concept. Stoica interpreted the protection of the individual as resulting in the protection of entire minority groups. Collective rights were therefore not necessary. Furthermore, the mainstream parties argued that collective rights for ethnic minorities were inadmissible, since they would constitute a discrimination of ethnically Romanian citizens, as Deleanu put it.

> (I)n drafting the constitution we must never forget that the purpose of a constitution is the rule of law, the idea for which the state was created is the defence of the individual, not of the collectivity, and the very defence of the collectivity that results from it is nothing other than the defence of each individual. (Ion Rațiu, PNȚ, opposition, 13.2.1991, AC, LP 1)

> Proclaiming that the state is based on the unity of the Romanian people, the common and indivisible homeland of its citizens, without any discrimination, it also recognises and guarantees the expression of the identity of ethnic minorities in all areas of economic, political, cultural, religious, legal and social life. The right to identity goes far beyond the simple principle of equality. Naturally, such a right, with its broad significance and profound implications, must not be turned into a privilege. Anachronistic by definition with the very democratic substance of society. (Ioan Deleanu, FSN, government, 13.2.1991, AC)

> (F)or us the defence of minority rights is a principle from which we never deviate. I have justified why: in the long-standing liberal tradition, the defence of minority rights means, first and foremost, the defence of individual rights and, by that, the defence of group identities. (Valeriu Stoica, PNL, opposition, 26.6.2003, CD, LP 4)

The more nationalist parties like PUNR or PRM also supported this view; their main priority was the integrity of Romania as a nation state, as Ioan Gavra (PUNR) made clear. Therefore, on later occasions, Damian Brudaşca (PRM) pointed to the fact that the Romanian constitution spoke of "citizens of ethnic minorities" and not of "communities of ethnic minorities".

> I believe that those who raise the issue of respect for human rights in Romania are living or reliving a certain pre-war political romanticism. (. . .) (W)hen we are drafting a new constitution for Romania that we want to be democratic, we are guided by the indestructible nature of the Romanian unitary national state. This word 'national' probably bothers some people. But we need it because, over the years, we have experienced many moments of hardship because others have attacked our national identity; secondly, it is a question of respecting and affirming a certain national consciousness. (. . .) (T)he other populations and ethnic groups living in Romania represent only 8% (. . .). (Ioan Gavra, PUNR, supporting government, 13.02.1991, AC, LP 1)

> (B)y adopting this ordinance we may be setting an extremely dangerous precedent. In the text of this law, we are talking about property that belonged to the "community of national minorities in Romania". It should be pointed out that the Romanian Constitution speaks of "citizens belonging to national minorities", not "communities of national minorities". So we are preparing to return things to entities that are not recognised by the Romanian Constitution. (Damian Brudaşca, PRM, opposition, 11.5.2001, CD, LP 3)

In contrast, MPs from UDMR and other minority representatives argued—particularly during the first wave of legislation—that **individual rights were simply not enough for practically implementing the constitutional right of minority groups to preserve their cultural cohesion and identity**. As they stressed, language and culture are inherently collective systems, and institutions such as schools that teach in minority languages could not be organised on the basis of individual rights. On a broader scale, minority MPs demanded the allegedly outdated denomination of Romania as a nation state be exchanged for some other solution that would reflect the county's multi-ethnic composition and would be more in line with "European values", as Andrei Echim from the Minority Group suggested, or with "the new realities of today's Europe", as Geza Domokos (UDMR) proposed.

> Our conviction is that, in relation to the imperative of Romania's integration into European values, the residues of the totalitarian-Ceauşescu mentality in national matters are incompatible with the rules of law already established and with the legal conscience of the democratic world in the field of human rights and the rights of national minorities. (Andrei Echim, National Minority Group, opposition, 13.2.1991, AC, LP 1)

> (I)s it not a contradiction to state on the one hand that the Romanian state is national and on the other hand that the state recognises and guarantees the right to preserve, develop and express the identity of all ethnic minorities? (. . .) (W)e are not calling for the establishment of a multinational state with all that would follow from this. We believe that the essential elements of our state are sovereignty, unity and indivisibility. They fully cover the notion of the modern Romanian state with openness to the new realities of today's Europe, of the contemporary world. (Geza Domokos, UDMR, opposition, 13.2.1991, AC, LP 1)

They also called for more specific minority rights, e.g. the right to have a translator provided in court for being able to use the right to court as provided in the constitution.

> Romanian citizens belonging to ethnic minorities (. . .) know the Romanian language, perhaps not to the same degree of perfection that Romanian citizens of Romanian nationality know, but they know the Romanian language, but they have difficulty expressing themselves in court, given the fact that it is a very specific language, even for a Romanian (. . .). They know Romanian, but they want to exercise a fundamental right provided for in the constitution. (Attila Varga, UDMR, opposition, 26.6.2003, CD, LP 4)

Disregard/restriction of rights. In the second wave of rule of law legislation from 2004, a one-sided narrative emerged and was frequently used, suggesting that under the guise of President Traian Băsescu and Minister of Justice Monica Macovei **the public prosecution violated citizens' rights, like the presumption of innocence and the secrecy of telephone conversations**. Băsescu and Macovei engaged actively in fighting corruption and had established the National Anti-Corruption Directorate (DNA) as a specialised anti-corruption body (Sects. 3.2 and 3.3). Representatives from the social-democratic PSD and the liberal ALDE were most often accused of and prosecuted for acts of corruption and abuse of public office. It was mainly MPs from these parties who voiced the narrative, for example when they started their first attempt to oust Băsescu from office in 2007.

> The President of Romania was at least complicit in the violation of Article 28 of the constitution, regarding the secrecy of correspondence, according to which "The secrecy of letters, telegrams, other postal items, telephone conversations and other legal means of communication is inviolable". (. . .) This is a violation of the fundamental rights of citizens, enshrined in the constitution, of the provisions of Article 28 of the constitution on the secrecy of telephone conversations, by reference also to the laws on the organisation of intelligence services. (Titus Corlățean, PSD, opposition, 28.2.2007, CD+S, LP 5)

On the occasion of the debate on the Law on the Code of Criminal Procedure in 2010, the MP András-Levente Máté (UDMR) raised the spectre of a surveillance state.

> If the prosecutor already wants to pursue certain data transfers, human rights may already be automatically violated. When he wants to find out whom I have spoken to, not what I have spoken about, just whom I have spoken to, or even when he wants to check my email address, whom I have communicated with, that already violates human rights. All the prosecutor has to do is go and ask for a court order. Because otherwise, we get to the point where everyone can be prosecuted, whether they are suspected of something or not. (András-Levente Máté, UDMR, government, 22.6.2010, CD, LP 6)

Although the narrative was most frequently used during the second wave of legislation, MPs continued to voice it later. Even much later, when the PSD-led government tried to roll back some of the anti-corruption measures, MPs like Steluța-Gustica Cătăniciu (PSD), ALDE's Călin Popescu-Tăriceanu or Márton Árpád—whose UDMR was in different constellations, sometimes supporting PSD- and

sometimes PNL-led governments—recalled the alleged violations of fundamental rights by the DNA.

> At the time to which you refer, a judge, and not any kind of judge, but the President of the High Court of Cassation and Justice, declared himself to be DNA's trusted partner, and Romania was condemned by the ECtHR. The rule of law was seized by the structures of force, and the idea of fundamental rights was perverted into that of the fight against corruption. (Steluța-Gustica Cătăniciu, PSD, government, 12.9.2017, CD, LP 8)

> Well, I call upon the old PNL MPs, if they are still sensitive and concerned about defending the rights and freedoms of the individual. I remind you that the rule of law is not based on repressive institutions and their unlimited reinforcement, it is the rule of law that is capable of defending first and foremost the rights and freedoms of citizens and the democratic order. Perhaps this appeal of mine has the gift of waking you up, even if belatedly. (Călin Popescu-Tăriceanu, ALDE, government, 29.9.2015, CD+S, LP 7)

> A country where the goodwill of prosecutors reigns, who, hand in hand with certain segments of the secret services, destroy human lives, who terrorise the entire state administration, even the parliament or judge members of the CSM, without answering for their actions. A country in which human rights being only a luxury are not respected at all. A country where anyone can be listened to and recorded almost permanently, without any hindrance, with the invocation of national security. Thus, people who are inconvenient to these structures are prosecuted on other grounds, using parts of the truncated recordings, without being allowed to hear the whole recording, on the grounds of protecting national security. A country in which the presumption of innocence and the presumption of the illicit nature of the acquisition of wealth remain dead letters of the Constitution. (Márton Árpád, UDMR, opposition, 12.9.2017, CD, LP 8)

International and European level. The overarching narrative on the meaning of the Romanian Revolution was that it aimed at returning to European and to historical Romanian values at the same time. MPs of all parties and across time interpreted the membership in European organisations as a 'natural step' that corresponded to their own values, enumerating also human rights and freedom.

> This is because the values of the Union are respect for human dignity, freedom, democracy and the rule of law, values shared by the member states in a society characterised by pluralism, non-discrimination, tolerance, justice and solidarity, the Union offering its citizens an area of freedom, security and justice. (Ştefan Glăvan, PC, opposition, 17.5.2005, CD+S, LP 5)

However, MPs, mainly from opposition parties, often used European bodies' criticism of certain problems in Romania as an argument to support their own positions in parliament. On such occasions, they often accused the ruling parties or the president of paying only lip service to European norms and treaties. They invoked the Copenhagen criteria, the Council of Europe, the European Court of Human Rights, opinions or reports of the EU Commission, the European Parliament and Council, as well as GRECO, the Venice Commission or the Cooperation and Verification Mechanism. Parliamentarians also indirectly threatened sanctions from these institutions, e.g. defeats at the ECtHR.

> I hope we will not face a new safeguard clause, although this could always be considered by those monitoring Romania. However, the state is involved in cases before the European Court of Human Rights, where Romania is in the unfortunate lead in losing cases. (Vasile Puşcaş, PSD, opposition, 9.10.2007, CD, LP 5)

The narrative that **European institutions are relevant to protect the rights of citizens** was mainly used during the third wave of rule of law legislation. Especially from 2017 to 2019, when the two chambers of the Romanian parliament debated the criminal code and the fight against corruption, parliamentarians like the very active Ioan Cupşa (PNL) often lumped the European bodies and recommendations together. Together with other opposition MPs like Ion Stelian (USR) he presented positions of European institutions regarding rights as guidelines for Romanian policy and violations of them as harming Romania's interests. The parliamentary discourse reflected that different groups of actors (including judges' organisations) engaged intensively in the third wave of rule of law legislation to mobilise statements by various European actors (Sect. 3.4).

> How do you protect Romania's interests, considering that the European Commission, the European Parliament, the Council and the Venice Commission, all together, as Romania's legitimate international partners, advise us – and I will read it to you. I will read to you what these international partners advise Romania on the criminal code and the code of criminal procedure: Freezing the entry into force of the amendments to the criminal code and the code of criminal procedure; Reopening the process of revising the criminal code and the criminal procedure code, taking full account of the need to ensure compatibility with EU law and international anti-corruption instruments, as well as the recommendations made in the CVM and the opinion of the Venice Commission. (Ioan Cupşa, PNL, opposition, 24.4.2019, CD, LP 8)[31]

> We remind you of the public positions adopted by GRECO, the Venice Commission, the European Parliament and the European Commission – through the CVM Report and the Resolution adopted on 13 November 2018 – public positions that show the conclusions of these international bodies of which Romania is a member, conclusions that are generally valid, that it is not appropriate to set up the Criminal Investigation Section and we are recommended not to set it up. (Ioan Cupşa, PNL, opposition, 5.3.2019, CD, LP 8)

> It is important to say that at no point is it asking for the limitation periods for criminal liability to be reduced. It is important to say that neither the Court nor the European Union is calling for the decriminalisation of offences such as negligence in the performance of duties, such as aggravated abuse in the performance of duties, with gain for oneself or for another, or with the causing of damage and particularly serious consequences. (Ion Stelian, USR, opposition, 24.4.2019, CD, LP 8)

[31] Or, shortly thereafter, the same MP argued: "You have not respected any of the obligations incumbent on us, following the recommendations addressed to us, which had to be respected, in view of the conclusion of the international treaties we signed as a party, in compliance with the constitutional provisions. The GRECO recommendations, the recommendations of the Venice Commission or the European Parliament resolution were not respected. This attitude will harm Romania's interests in the short and long term." (Ioan Cupşa, PNL, opposition, 5.3.2019, CD, LP 8).

6.1.5 Slovakia: Routine Accusations of Rights Violations and Conflicts Over the Legal Protection of Rights

In Slovakia, as in the other parliaments, rights were rarely invoked as a stand-alone topic in the rule of law debates. Instead, they were usually related to various other issues, and statements about rights often did not constitute narratives in the way we defined them. This was also because the statements related to rights were often made by the same individuals, which—while reinforcing the impression that the topic was an issue of particular interest—made it challenging to identify narratives. Most often, MPs referred to rights to justify their own position when speaking about problems and challenges to the rule of law. Irrespective of their party affiliation, they routinely accused those in the government of restricting rights, thus cementing a public discourse of misconduct. Consequently, the narrative claiming that governments disregard rights was the most frequently used narrative on rights. It was employed over time, with particular intensity during the first and third waves of rule of law legislation. Other narratives were related to the judicial and extrajudicial protection of rights. They were used either by individual parties (one-sided) or by opposing camps (diverging narrative) (Table 6.14).

Disregard/restriction of rights. The thematic emphasis on fundamental human and civil rights in the parliamentary debates analysed mostly revolved around calls for their respect and protection or allegations of their restriction. References to the disregard or restriction of rights appeared across legislative periods in connection with various other issues. Typically, and particularly during the first and third waves of rule of law legislation, opposition parties criticised the governing majorities, using the narrative that **the ruling parties restrict(ed) certain rights and that some fundamental rights are at risk**. Rhetorically, this criticism was often harsh, with accusations of authoritarian or totalitarian tendencies.

Table 6.14 Narratives on rights in Slovakia

	1992–1998	1998–2006	2006–2021
Disregard or restriction of rights	The ruling parties restrict(ed) certain rights, and some fundamental rights are at risk. (overlapping)		
Legal protection		The right to an effective remedy and fair trial is fundamental to the RoL. (one-sided, HZDS) The ombudsperson is a relevant institution for the protection of rights vs it is unnecessary, existing institutions are more effective. (diverging)	
Individual and collective rights	[a]		

[a]There was a conflict around collective rights for national minorities in these two periods; however, due to insufficient numbers of statements in the analysed debates, it could not be interpreted as an established narrative

In the mid-1990s, such statements targeted HZDS, whose legislation, e.g. amendments of the criminal code, was presented as a violation of human rights (see the quote by Rózsa) or constitutional citizens' rights (Benčík).

> My constituents are outraged by the adoption of the amendment to the criminal code, because they see it as part of a set of laws aimed at concentrating power, strengthening the position of the executive, restricting fundamental human rights, and instead of democratic changes, creating an authoritarian style of governance. (Ernő Rózsa, Spolužitie-Együttélés, opposition, 29.3.1996, LP 1, Session 14)

> (B)oth texts of both amendments are (. . .) also a threat that jeopardises constitutionally guaranteed political rights, such as freedom of speech, freedom of association, assembly and others. (Michal Benčík, SDĽ, opposition, 11.2.1997, LP 1, Session 24)

Later, after a change in government, HZDS complained about violations of the individual rights of its leader and former prime minister Vladimír Mečiar, after police forced him to testify, which he had refused to do and locked himself in his villa in Trenčianske Teplice.

> (I)f we are to evaluate the police intervention at the family home of Vladimír Mečiar in Trenčianske Teplice, we must unequivocally state a gross and unjustifiable violation of fundamental human rights and freedoms of the individuals residing there. (Jozef Kalman, HZDS, opposition, 27.4.2000, LP 2, Session 30)

During the third wave of rule of law legislation, several protest parties that entered parliament pointed to an alleged general threat to individual rights by increasing the powers of the state (Hraško) or curtailing fundamental human rights and freedoms during the Covid pandemic, for instance (Kotleba).

> This amendment to the constitution, as I mentioned, is a return to totalitarianism. And I'll share one thought here, which isn't my own: the more rights for the state, meaning the police, the intelligence service, judges, the fewer rights and freedoms for citizens. (Igor Hraško, OĽaNO, opposition, 2.12.2015, LP 6, Session 58)

> You are taking steps that, when we put them together into a coherent mosaic, cannot be called anything other than steps that clearly (. . .) lead to the curtailment of basic fundamental human rights and freedoms in Slovakia, which introduce almost totalitarian practices in some areas, and which with such elements and choices which we face today also question the remnants of citizens' trust in the rule of law that they still have. (Marian Kotleba, ĽsNS, opposition, 5.2.2021, LP 8, Session 23)

Occasionally, representatives of the governing majority also used the narrative when criticising previous governments. For example, HZDS accused a predecessor cabinet of secretly violating property rights (Hofbauer) and an MP from Most-Híd invoked the perceived disregard for the fundamental rights and freedoms in the 1990s (Kresák). The usage pattern of this narrative indicates that it was an overlapping narrative.

> Respect for the rule of law has been violated elsewhere – by cabinet decisions regarding national assets under such circumstances that neither the founding ministries nor even the ministries that should have known about it, nor even the Ministry of Administration and Privatisation itself, were aware of it. That there has been an encroachment on property rights in this way and that it is an unprecedented act. Ladies and gentlemen, it is unprecedented when a government which did not obtain a mandate through elections and even lost it in elections decides to continue to dispose of the national wealth of the state, essentially in a conspiratorial and cabinet-like manner. (Roman Hofbauer, HZDS, government, 22.12.1994, LP 1, Session 14)

> We are facing a truly significant decision today, a decision that can allow us, after 19 years since the issuance of the aforementioned decisions contradicting democratic and legal principles, to finally deal not only with the decisions themselves but also with the period of exercising state power marked by not only gross abuse but, most importantly, the disregard for the fundamental rights and freedoms of the citizens of the Slovak Republic. (Peter Kresák, Most-Híd, government, 5.4.2017, LP 7, Session 14)

Legal protection. In the parliamentary debates analysed the topic of rights protection appeared quite frequently but without significant depth. Most often, there were general and unspecified mentions of rights protection in the rule of law. However, since the second wave of rule of law legislation, a one-sided narrative emerged that **the right to an effective remedy and fair trial is fundamental to the rule of law**. As the following quotations demonstrate, representatives of the opposition party HZDS, in government in the previous period, frequently used it in the context of investigation or prosecution of its prominent figures, such as the former minister of interior or the director of intelligence services, for alleged abuse of power while in public office (Kalman). The right to an effective remedy was also invoked during parliamentary debates on the increase in court fees, which the opposition rejected as an illegitimate obstacle to accessible justice (Cuper). When pointing to the relevance of the mentioned rights, HZDS speakers often referred to the national constitution.

> In accordance with the documents mentioned, human beings have become the highest social value, which is why there is a special system of legal protection of fundamental rights and freedoms in the constitution, in the form of judicial and other legal protection. It is based on the principle that the right to judicial protection is the foundation of the rule of law. The constitution of the Slovak Republic also, in the second section titled 'Basic Human Rights and Freedoms', in Article 21, enshrines the inviolability of the home. It unequivocally states that the home is inviolable and cannot be entered without the consent of the person residing therein. (Jozef Kalman, HZDS, opposition, 27.4.2000, LP 2, Session 30)

> Yes, it can be agreed with those who argue that the right to a fair trial is one of the fundamental and elementary rights that apply in a rule of law. Therefore, if we are to be a democratic state governed by the rule of law, as Article 1 of this constitution states, this state has an obligation to facilitate, not hinder, citizens' access to justice. (Ján Cuper, HZDS, opposition, 6.12.2005, LP 3, Session 52)

Connected with the emphasis on individual rights, HZDS also stressed the relevance of an independent judiciary for protecting citizens' rights in a system governed by the rule of law.

> In a rule of law state, the independent judiciary holds a special and extraordinary position, serving as the highest authority in deciding on the rights and obligations of citizens. (Tibor Cabaj, HZDS, opposition, 19.1.2000, LP 2, Session 26)[32]

In the third wave of rule of law legislation from 2006 onwards, members of the Smer party (when in opposition) also highlighted the right to judicial protection as a fundamental right related to the rule of law, although the intensity of use was lower. Since HZDS (which lost parliamentary representation in 2010) and Smer belonged to the same political camp, the narrative can be understood as one-sided. Similarly to HZDS, Smer was accused of ignoring or even profiting from the existing state of the judiciary, while allegations of nepotism, misconduct and corruption in law enforcement institutions became a critical issue of the rule of law in the country. Smer representatives, in turn, considered repeated attempts by liberal-conservative governments to reform the judiciary to be an attempt to interfere in judicial independence. Their argumentation emphasised citizens' right to a fair judicial process, which cannot be guaranteed if judges were not protected from external influences, especially the political ones.[33]

> It is important to realise (. . .) that judicial immunity is not a privilege of judges; it is the right of citizens to a fair judicial process, to a lawful judge, and to ensure that the judge is not intimidated by political or other state power. (Martin Glváč, Smer, opposition, 9.9.2010, LP 5, Session 5)

> (J)udicial immunity is a special privilege considered one of the fundamental safeguards of judicial independence. This, again, relates to the separation of powers, where the executive branch should not interfere with the judicial branch. It fundamentally violates the personal guarantees of a judge's independence and the independence of the judiciary as a whole, ultimately impacting a citizen's right to an independent judicial process. (Boris Susko, Smer, opposition, 21.10.2020, LP 8, Session 16)

Along with courts, extrajudicial ways of protecting individual rights were mentioned. During the second wave of rule of law legislation, in 2001, the institution of

[32] Also Gustáv Krajči (HZDS, opposition, 14.2.2001, LP 2, Session 45) argued in 2001 that the "position and activities of the Supreme Court, as well as regional and district courts, including military courts, are characterised by specific constitutional principles, particularly judicial independence with impartiality, as well as judicial accountability. Independence is not a privilege, but a principle meant to guarantee citizens impartial, objective and fair protection of their rights. An independent judiciary is therefore an inalienable right of the citizens of this country."

[33] Likewise, Róbert Madej (Smer, opposition, 1.2.2011, LP 5, Session 12) reminded his fellow MPs in 2011 "that among the fundamental human rights guaranteed by a whole range of international agreements and treaties, including the constitution of the Slovak Republic as well as the most basic law of our state, is the right to judicial protection, guaranteed by Articles 46 to 50 of the constitution."

the ombudsperson was introduced as part of a constitutional amendment. A diverging narrative emerged on this issue. The parties of the then-governing broad coalition of pro-European parties, including conservatives, liberals and socialists, argued that **the ombudsperson is a relevant institution for the protection of rights**. They considered it to be an essential and indispensable element of rights protection. This position was underlined by the official title of the institution, the 'Public Defender of Fundamental Rights and Freedoms'.

> The basic rights and freedoms of a modern society are institutionally secured through a system of judicial and extrajudicial protection. Judicial protection has two components: protection through general courts and through the constitutional court. (. . .) Extrajudicial protection of fundamental rights and freedoms is provided by state administrative bodies and, alongside them, by other state authorities. The institution of the ombudsman holds an important place among them, which the current constitution did not establish. Compliance with basic rights and freedoms in the Slovak Republic is not flawless enough to justify the absence of an ombudsman's office. (Miklós Fehér, SMK, government, 6.2.2001, LP 2, Session 45)

> Another highly debated part of the proposed constitutional amendment is the establishment of the Public Defender of Fundamental Rights and Freedoms (. . .). During the discussion, opinions were voiced suggesting that it is the creation of an office as a quiet, peaceful place for deserving retirees. However, experiences in developed European countries suggest otherwise, indicating that it is a proven institution for the protection of the rights and freedoms of individuals and legal entities in cases where public authorities are inactive or fail to act. I am familiar with the situation in public administration, and I do not believe that after the election of the chief ombudsman, it will be a quiet place. (Viliam Sopko, SDĽ, government, 14.2.2001, LP 2, Session 45)

Opposition parties at that time (particularly HZDS) found that **the ombudsperson was unnecessary, since existing institutions are more effective at protecting individual rights**. They regarded the general prosecutor's office as the principal institution for rights protection, which would act with a higher degree of professionalism and liability than the ombudsperson.[34]

> The prosecutor's office is a body responsible for safeguarding legality. It protects the rights and legally protected interests of individuals, legal entities as well as the state. The attorney general and other prosecutors must be individuals with legal education and legal practice. Therefore, it cannot happen, as rumoured, that some sidelined politicians or representatives of a particular ethnicity would be appointed to the ombudsman's office. The ombudsman bears no liability for the performance of his function, neither disciplinary nor criminal, of course, unless he commits an offence under the criminal code. The attorney general is responsible for everything within the scope of his function until he can be dismissed from office. (Ivan Gašparovič, HZDS, opposition, 7.2.2001, LP 2, Session 45)

[34] Also Gustáv Krajči (HZDS, opposition, 14.2.2001, LP 2, Session 45) argued that in the Slovak order, "the oversight of the exercise of human and civil rights and freedoms was entrusted to the prosecution".

These differing views persisted, with liberal-conservative parties continuing to support the ombudsperson's office and appreciating its work, for example during the presentation of annual reports in parliament,[35] while other parties largely ignored it.

Individual and collective rights. As mentioned previously, another conflict in Slovakia was related to rights of ethnic and national minorities. Disputes over the scope and form of guaranteeing their rights were strongly present during the discussion of the draft constitution in 1992 (the first wave of rule of law legislation) and subsequently in 1999 (the second wave) after the party representing the Hungarian minority, the SMK, became part of the government. Although we did not find a sufficient number of statements in debates related to the rule of law to qualify it as a narrative, given the importance of minority issues in Slovak politics and their potential for conflict, reflected in clearly diverging positions between partisan blocs, we report some observations below. In both periods, the nationalist-populist parties HZDS and SNS argued that the rights of members of national minorities are protected as individual rights of all citizens. In their view, it was neither necessary nor desirable to create a higher standard for a selected group of citizens since, in a state governed by the rule of law, the principle of equality was of utmost importance. As the following quotations illustrate, these parties expressed this position during the constitution-making process while in government (Mečiar, Hrnko), and later while in opposition (Malíková).

> The constitution has a tremendous significance internally as well. (. . .) When we talk about this right of national self-determination, we simultaneously say that it primarily has validity externally, but internally, in building society and the state, we want to consistently pursue the path of applying the civic principle. Ethnic nationalism is not characteristic of us, but neither is nor will be minority and ethnic group nationalism. Equality of citizens, equality of rights, equality of duties. (Vladimír Mečiar, HZDS, government, Prime Minister, 1.9.1992, LP X, Session 5)

> We welcome the fact that in the second chapter, basic rights and freedoms of citizens are formulated based on constitutional equality and equal rights of all citizens (. . .). (W)e cannot accept the term 'majority nation' because in this Slovak Republic, there is only one nation; other citizens of the Slovak Republic belong to various nationalities. (Anton Hrnko, SNS, government, 1.9.1992, LP X, Session 5)

> (T)he Slovak National Party cannot agree to have the rights of national minorities, i.e. collective rights, supersede individual rights, which are guaranteed by every legal and democratic state, and which you, the governing coalition, also sanctified in the government's programme declaration. (Anna Malíková, SNS, opposition, 2.7.1999, LP 2, Session 17)

Representatives of the Hungarian minority countered by arguing that a dominant position of the majority does not result in equality but supremacy. Collective rights for ethnic minorities, by contrast, would ensure them broad freedom. In their view,

[35] See, for example, Peter Osuský (SaS, opposition, 9.2.2017, LP 7, Session 12) or Viera Dubačová (OĽaNO, opposition, 9.2.2017, LP 7, Session 12).

protecting the collective rights of national minorities was a European standard entirely in line with the principles of the rule of law.[36]

> A nation fighting for its sovereignty is simultaneously unable to take into account that on the territory where it constitutes the majority, it does not fully respect the rights of minorities. This path leads to supremacy rather than equality. As long as the majority decides what minorities need, members of the minority will remain second-class citizens. (. . .) In a democratic rule of law, an integration policy is applied parallel to pluralistic policy, aiming to create unity among different groups in society by ensuring them broad freedom in addressing their own affairs, while also providing specific regulations to preserve their own identity. (Árpád Duka-Zólyomi, Spolužitie-Együttélés, opposition, 1.9.1992, LP X, Session 5)

6.2 The Rule of Law and Democracy: A Shallow Liberal Consensus

The relationship between the concepts of the rule of law and democracy is of vital interest to anyone studying contemporary societies. However, in the five parliaments studied, politicians did not speak much about the relation between these two concepts. In our selected documents we found many general references, but relatively few statements that went into the details. Conflicts surrounding the relation between the rule of law and democracy were therefore not immediately apparent.

In general, the relevant parties in all parliaments agreed on the importance of the democratic rule of law, and their representatives used a liberal rhetoric that considered the rule of law as a legitimate limitation to democratically elected majorities. In Hungary, however, the ruling parties de facto neutralised their rhetoric by exploiting their large parliamentary majority for illiberal actions. In Poland, PiS, which did not actively use the term 'democratic (state under the) rule of law', ignored the logic of checks and balances in practice. In Romania, some MPs questioned the liberal concept of the rule of law as a constraint to elected majorities. Something similar could be observed in Slovakia, where parties also disagreed on the role of the democratic sovereign vis-à-vis the constitutional court in conflict cases. In all parliaments, opposition parties frequently argued that the ruling majority would undermine the democratic rule of law in practice. Party lines did not structure the rhetoric and conflicts uniformly across the countries studied.

To analyse the narratives on the rule of law and democracy, we coded all explicit and implicit statements on the relation between the two concepts. For a more fine-grained analysis, we used subcodes to capture if statements propelled the liberal

[36] As Árpád Duka-Zólyomi (SMK, government, 13.2.2001, LP 2, Session 45) argued: "(Y)ou contradict yourself because you acknowledge, that is, collective rights of the nation, but do not recognise collective rights for other national minorities, etc. (. . .) Once again, you have proven that with your nonsense, you generate hatred among ordinary citizens of this republic, against citizens of Hungarian nationality. This path certainly does not lead to Europe and democratic values and the rule of law."

understanding of the relationship, placing the protection of rights and freedoms even against the majority's will in the centre, or whether they followed the majoritarian understanding, favouring the will of the sovereign, the democratically elected majority. The subcode 'Rule of law constrains majorities' (liberal understanding) was assigned to statements referring to constitutionally guaranteed rights and freedoms, the separation of powers, the hierarchy of norms, i.e. the hierarchy between the constitution and ordinary legal provisions, the inviolability of certain norms, the constitutional court's power and authority to interpret the constitution in a binding manner, to references that the law controls political action, that political majorities must respect the (values of the) constitution, and the description of the constitution as the supreme law. We assigned the subcode 'Rule of law serves majorities' (majoritarian understanding) to statements that democratically legitimated political majorities should be able to pursue their interests, that constitutional goals must be repeatedly renegotiated by democratic majorities, that the rule of law should not constrain the room for manoeuvre of democratically elected majorities, references to the people as sovereign and the task of elected political actors to fulfil the will of the sovereign, or statements that courts should interpret the law in the spirit of the legislator. The paragraphs were scanned for their core statement and checked to see whether there was a recognisable tendency in favour of one of the subcodes. After coding, all statements were interpreted, considering the context of speech.

As mentioned, the members of parliament rarely debated the relation between the rule of law and democracy in detail. They made such statements mostly when debating specific problems, such as the 'television crisis' in Czechia in 2000/2001, various aspects of the constitutional overhaul by the Fidesz-KDNP majority after 2010, judicial and other reforms by PiS in Poland or the cohabitation in Romania (2007–2008, 2012–2015, 2017–2019). MPs tailored their speeches to the specific topic, and we had to interpret them to uncover their views on the relationship between democracy and the rule of law.

In all parliaments, liberal rhetoric has been predominant since the 1990s. Politicians expressed their support for the idea that elected majorities must be bound by law and controlled by other actors or institutions in a system of checks and balances. Due to this general support, they enshrined in all constitutions that the country is a democratic state under the rule of law (Sect. 3.2). Over time, this term was used with increasing intensity in all parliaments, often by citing the national constitution. Particularly in the early years of the transition, when the new regime was established, the perspective that democracy and the rule of law (and individual rights) benefit each other prevailed among MPs.

Nevertheless, this perspective remained unchallenged only in the Czech parliament. In all other parliaments, some MPs highlighted the superior legitimacy of elected representatives of the people, which implied that they were the final arbiter of decision-making. In the first wave of rule of law legislation, some parties put this argument forward in a general way (Poland, Romania, Slovakia). Later, when MPs used the argument in discussions on certain bills or problems, it was more specific. In Slovakia, some parliamentarians underlined that the democratically elected majority

Table 6.15 Narratives on the relation between the rule of law and democracy

	CZ	HU	PL	RO	SK
Overlapping narratives					
Independent authorities are vital for protecting democratic principles and safeguarding civil rights.	✓[a]	✓ (1)	✓ (1)	✓[a]	✓
One-sided or diverging narratives					
Undermining the separation of powers and filling positions in formally independent institutions with one's own people undermines the democratic rule of law.		✓ (3)	✓ (3)		
The sovereign can define the constitutional setting even against the will of other branches of government.					✓

Periods when a particular narrative was used most intensively are indicated in brackets
1st wave: CZ 1992–1998, HU 1990–1998, PL 1990–1997, RO 1990–2004, SK 1992–1998
2nd wave: CZ 1998–2006, HU 1998–2010, PL 1997–2015, RO 2004–2014, SK 1998–2006
3rd wave: CZ 2006–2021, HU 2010–2021, PL 2015–2021, RO 2014–2021, SK 2006–2021
[a] The low number of statements did not allow for qualifying this as a narrative

has to have the last word or emphasised the need for accountable or morally just decisions in the context of particular conflicts between legality and legitimacy. In Hungary and Poland, where parties with large, even constitutional majorities undermined the system of checks and balances from 2010 and 2015 onwards, this development was not accompanied by an explicit denial of the democratic rule of law. Yet, in the parliamentary debates analysed, especially PiS in Poland has never actively used the idea of liberal democracy.

For Hungary and Poland, we were able to identify more specific narratives on the rule of law and democracy based on a number of statements by various actors communicating the same message (Table 6.15). In both parliaments, MPs from different parties emphasised the importance of independent authorities in protecting democratic principles and safeguarding civil rights during the first wave of rule of law legislation. There was a common assumption, based on criticism of the government majority's actions, that undermining the separation of powers and appointing partisan individuals to formally independent institutions would undermine the democratic rule of law in the third wave of legislation. In the selected sources from the parliaments of Czechia, Romania and to some extent also Slovakia, we could not assess with certainty if rather specific statements regarding the rule of law and democracy (which were not used with high frequency) constituted a narrative used primarily in a certain period or by particular actors.

As mentioned, MPs' party affiliation did not structure the rhetoric in all cases and in a similar pattern across countries. For most of the time, there were no clear party profiles of addressing the relationship between democracy and the rule of law. Fidesz since 2010 and PiS since 2015 were prominent exceptions, but their rhetoric (and policies) differed across time and did not correspond with other conservative parties in the region.

In sum, parliamentarians did not frequently and deeply discuss the rule of law and democracy and the relationship between the two ideas. The rhetoric used in the parliaments was supportive of liberal narratives, but it was not always put into

practice (see also Sect. 6.3). The causes of such problems cannot be detected by an analysis of narratives and party ideology alone. However, the absence of an overarching parliamentary discourse on this important issue beyond debates on particular aspects may have provided the breeding ground for the rule of law deficiencies.

6.2.1 Czechia: Liberal Rhetoric, Widely Accepted

In the analysed debates in the Czech parliament, the relationship between the rule of law and democracy was rarely discussed explicitly. MPs expressed their respective point of view mostly implicitly. For example, throughout the periods studied they frequently used the phrase 'democratic rule of law' or 'democratic state governed by the rule of law', the term corresponding to Article 1 (1) of the Czech constitution (see Sect. 5.1.1), which was often referred to in debates surrounding rule of law issues. The Czech MPs' particular emphasis on the protection of the individual and citizen vis-à-vis the state when speaking about the purpose of the rule of law was also in line with the liberal version of a democratic rule of law. However, they rarely made substantive reference to the precise sense of the words.

In general, MPs acknowledged that the rule of law constrains democratic majorities. Parliamentarians, predominantly from the opposition, often cited this assumption when criticising the actions of the current ruling majorities, accusing them of ignoring the rules of the game and misusing their majority. Over time, all relevant parties expressed the same view, but we found most statements with this content during the third wave of rule of law legislation.

> There is a steamrolling taking place in this chamber even in cases where it is not necessary, and if there is no consensus, it is not even sought. (. . .) It is unacceptable for any law (. . .) to be voted on during a break in the session of the parliamentary party group. In a rule of law and a stable parliamentary democracy, it simply must not happen that elected representatives are denied their legal rights and parliamentary customs, clearly defined by rules. (Miroslav Petráň, VV, opposition, 17.1.2013, LP 6, Session 50)

> Are we under the rule of law, and do we want to respect the agreements that were made? Or are we not under the rule of law, and like Bolsheviks, we bend these agreements? (. . .) It seems that the majority in this chamber does not want to respect the rule of law, even considers declaratory judgments to be a crime, does not respect agreements, and wants to bend them in a Bolshevik way. Of course, you have the right to do so if you have the majority. But that does not mean that we will live in a better country. (Miroslav Kalousek, TOP09, opposition, 23.12019, LP 8, Session 26)

> (W)e are here today to defend the rule of law. To defend the equality of citizens before the law. To defend the principles of the rule of law against conflicts of interest with the prime minister. We often hear words that when someone wins the elections, they have the right to govern. Yes, they have the right to govern, but not to govern the law. (. . .) Simply put, the law is not subject to a vote. The law either applies or it does not. (Marek Výborný, KDU-ČSL, opposition, 26.6.2019, LP 8, Session 32)

Given the low number of explicit statements about the relationship between the rule of law and democracy, it is challenging to identify temporal trends or more precise narratives. Nevertheless, it is possible to identify some broad lines of argumentation. One argument asserted that while democracy is based on the rule of the majority, in a state governed by the rule of law, this majority must respect the rights of minorities, whether they be ethnic, social or political minorities (including the parliamentary opposition).

> The foundations of an independent Czech state are being laid, with a complete disregard for the rights of the lands of Moravia and Silesia. A state that aims to be called rule of law cannot trample on the rights of a portion of its inhabitants. (Gerta Mazalová, HSD-SMS, opposition, 16.12.1992, LP 1, Session X)

> An attribute of a constitutional state is the constitutional directive, according to which political decisions stem from the will of the majority expressed through free voting. However, the decision-making of the majority must respect the protection of minorities. (Vojtěch Filip, KSČM, opposition, 11.2.1998, LP 2, Session 20)

Another argument pointed to the limits set by the rule of law institutions (the constitution or decisions of the constitutional court) to powers of the government branches and policy-making. The legislative power, the president and others would need to respect these limits that are laid down in the national constitution or the Charter of Fundamental Rights.

> (A)ccording to the constitution and the Charter of Fundamental Rights and Freedoms, we are a parliamentary republic, a democratic state governed by the rule of law with a social dimension. The Charter of Fundamental Rights and Freedoms gives our democratic state a social character. In this regard, these fundamental constitutional categories are superior to the programmatic demands of political parties and stand above them. The political demands of parliamentary parties must be applied within the framework of a democratic state under the rule of law, as formulated not only by the constitution but also by the Charter of Fundamental Rights and Freedoms. (Zdeněk Jičínský, ČSSD, opposition, 19.1.2007, LP 5, Session 9)

> (T)he democratic rule of law, which is based on the separation of powers, is based on the fact that we have individual constitutional and statutory bodies that have divided powers, there is a system of checks and balances and these bodies and their powers and control are balanced against each other. It is not possible for anybody, any one of them, it does not have to be the president of the Republic, to arbitrarily say that he rejects his position in the constitutional and legal system and wants to have other powers. (Jiří Pospíšil, non-affiliated, elected for ODS, opposition, 13.2.2014, LP 7, Session 6)

A third argument underscored the inviolability of basic rule of law principles as enshrined in the constitution or the Charter of Fundamental Rights, such as the independence of the judiciary or legality (the competence to decide based on legal empowerment), even against the will of a legitimate democratic majority in parliament, the government, or decisions taken by a referendum.

> This legislative proposal is based on a simple premise that through a referendum, the people directly exercise state power, according to Article 2, Paragraph 2 of the constitution and Article 21, Paragraph 1 of the Charter of Fundamental Rights and Freedoms. We understand that referendums can decide on fundamental matters of domestic or foreign state policy, as well as other important issues of public interest. We also comprehend that referendums cannot concern constitutionally guaranteed fundamental rights and freedoms, taxes, levies or other financial obligations to public budgets and the state budget, the exercise of judicial power, the appointment of individuals to functions, and their removal from functions, except for the president of the Republic, and changes to the essential elements of the democratic state governed by the rule of law. (Stanislav Grospič, KSČM, opposition, 26.6.2018, LP 8, Session 16)

> (I)t doesn't work in a rule of law and a democratic system that whoever is in power can decide on everything, including justice. It simply doesn't work that way. And if you have that feeling, please, for the sake of our future, get rid of it as soon as possible because it is truly dangerous for the development of this country. You have the power for it, but you won't gain law and justice on your side with that. (Jan Farský, STAN, opposition, 23.1.2019, LP 8, Session 26)

Another argument emphasised the necessity of applying the principle of accountability at the individual level, stating that even executive politicians relying on an electoral majority are accountable for their actions in terms of responsibility to the public and to the oversight mechanisms of other branches of power.

> Parliament has a supervisory role; MPs are supposed to scrutinise the government, and ministers must endure criticism. It means that part of the job of a minister, a government member, a prime minister or a finance minister is to endure criticism from MPs, senators and all other citizens, and to be able to handle that criticism in a manner befitting a democratic state governed by the rule of law. (Bohuslav Sobotka, ČSSD, government, Prime Minister, 18.6.2015, LP 7, Session 29)

> (S)ince in a democratic republic, in a rule of law, the dictatorship of the majority does not decide, but it is the rule of law according to the laws, and that's what we're talking about here today – that there are laws and rights that apply to everyone, and even the president, whose office grants significant powers and full responsibility for the performance of the office, should not be completely exempt from all actions but should be responsible to the constitution and the laws, just as he is accountable to his voters, as it has been said here. (Vojtěch Pikal, Pirates, opposition, 26.9.2019, LP 8, Session 34)

Not in every case did MPs automatically agree that the rule of law should restrict the majority, for example in a parliamentary debate related to the so-called television crisis at the turn of 2000 and 2001. During this period, employees rebelled against the duly appointed director of public television, arguing that his appointment by the council, whose members were elected by the parliamentary majority, aimed to subject the public broadcaster to the political parties. The rebels were supported by President Václav Havel and part of the parliamentary opposition, claiming a distinction between legality and legitimacy, between the letter and the spirit of the law.

Representatives of the parties in the 'opposition agreement',[37] ČSSD and ODS, argued that in a democracy, there can never be a disconnection between legality and legitimacy, as legality is based on legitimately elected power. They considered protesting against decisions through illegal means, such as the disobedience of public television employees towards its management (occupation of buildings and broadcasting facilities, leading to dual broadcasting of the official editorial office and the rebellious one), to be illegitimate.

> The dispute surrounding Czech television is not a fight for freedom of speech or the independence of this public institution. It is a dispute about the extent to which the principles of parliamentary democracy and the rule of law are truly ingrained in our society. It is a dispute about how capable and willing we are to respect democratic choice and the representative mandate that arises from such a choice. It is a dispute about how capable and willing we are to respect laws, even if we may not be entirely convinced of their perfection. It is a dispute about whether these fundamental values can be questioned at any time, whenever it suits someone's agenda. (Ivan Langer, ODS, opposition tolerating minority government, 5.1.2001, LP 3, Session 30)

> We have a provision in the constitution stating that the Czech Republic is a democratic state governed by the rule of law. In this sense, all authorities of this country, with constitutional status, are elected and formed in accordance with constitutional rules. From this perspective, in my opinion, it is not possible nor right to juxtapose legality and legitimacy and proclaim that, for example, the dismissals of television members [sic] were legal or the uprising of television members was legitimate, but not legal. I believe that such a dichotomy cannot be conducted in a democratic state under the rule of law (...). The highest criterion of democracy in this country is the election, and the bodies arising from elections are bearers of democratic legitimacy. (Zdeněk Jičínský, ČSSD, government, 5.1.2001, LP 3, Session 30)

Also during the Covid-19 pandemic, a latent conflict between the principle of majority voting and the rule of law with its emphasis on legality and other elements was mentioned. In this case, representatives from the opposition warned against the exploitation of emergency rules by the political majority at the expense of the rule of law.

> (E)ven though there's a state of emergency and the threat to lives and health persists, some rule of law should still apply. I assume that the rule of law should be understandable,

[37] After unsuccessful negotiations to form a majority coalition government following the 1998 elections, the main rivals in the elections, the Czech Social Democratic Party (ČSSD) and the Civic Democratic Party (ODS), agreed to the so-called opposition agreement. According to this agreement, ODS committed to allowing the formation of a minority single-party government by ČSSD. Throughout the entire electoral term, ODS positioned itself in opposition to the ČSSD government but pledged not to initiate or participate in a vote of no confidence against the government. Regarding the lawmaking, ČSSD sought ad hoc cross-party support. One criticism of the opposition agreement points out that both parties covertly agreed to divide spheres of influence, jointly occupy posts in the public administration, and attempt to get public media under their influence. The above-mentioned 'television crisis' was one of the main events that led to public mobilisation and the discrediting of the opposition agreement.

> predictable and subject to review. The same must apply to government regulations (. . .). Unfortunately, it doesn't seem this way. It looks like all these regulations are issued based on some random decisions, some whims, some polls, or some letters and wishes. Maybe this is the pinnacle of democracy – governing based on polls and letters, but the rule of law suffers as a result. People's trust in the state, trust that things happen according to some presumed plan, is eroded. (Vojtěch Pikal, Pirates, opposition, 18.4.2020, LP 8, Session 47)

6.2.2 Hungary: Liberal Rhetoric, Neutralised by a Qualified Majority

As in Czechia, MPs in Hungary often named the country a 'democratic state under the rule of law' or argued that it should stay a democratic state under the rule of law, implying that democracy and the rule of law are linked and have to be respected. The rhetoric mirrored the formulation used in the constitution. In Article 2 of the old 1949 Hungarian Constitution, which was revised in 1989/90, the parliament declared Hungary to be an independent, democratic state governed by the rule of law, with supreme power vested in the people. These provisions were also present in the 2011 Fundamental Law (Article B).

In general, the analysis of our selected documents suggests that Hungarian MPs only occasionally discussed the relationship between the rule of law and democracy in detail. When such discussions did occur, politicians generally argued that the rule of law constrains democratic majorities.[38] Such a view was most frequently expressed during the first and third waves of rule of law legislation. When arguing in this way, MPs most often emphasised the separation of powers. This corresponded with the narrative that a main purpose of the rule of law is to limit power (Sect. 5.1.2) and that the separation of powers is a key element of the rule of law (Sect. 5.2.2). While in the early 1990s MPs also highlighted local democratic government and thus the vertical separation of powers as relevant for constraining power, the horizontal separation of power, particularly the role of an independent judiciary, was emphasised more during the third wave of legislation. After 2010, various parliamentary debates referred to rights entrenched in the constitution or fundamental law, the inviolability of certain norms and the role of judicial oversight (Table 6.16).

In the early and mid-1990s, representatives of all parties argued that the separation of powers is relevant. MPs perceived the separation of powers as a logic inherent in both democracy and the rule of law. The narrative was used that **independent authorities are vital for protecting democratic principles and safeguarding civil rights**. The statements were informed by the lessons learned from the pre-1990 political system. Politicians praised institutions that all work independently of each other, with a focus on institutions legitimised by elections, including parliament, the

[38] Only a few statements argued that the primary responsibility of the legislature was to implement the political will of the majority via (unrestricted) legislation. They were made by SZDSZ MPs in the transition period and LMP members later functioning as independents in the sixth legislative term (2010–2014) and did not form a coherent narrative.

Table 6.16 Narratives on the relation between the rule of law and democracy in Hungary

1990–1997	1997–2010	2010–2021
Independent authorities are vital for protecting democratic principles and safeguarding civil rights. (overlapping)		Undermining the separation of powers and filling positions in formally independent institutions with one's own people means undermining the democratic RoL. (one-sided, opposition)

ombudsperson, local authorities and an independent judiciary. The respective discourse was described in Sects. 5.1.2 and 5.2.2.

> The other is the ideal of the rule of law, of a liberal, democratic state, where the separation of powers means that the state also operates and performs its function within a framework: the law. (Géza Laborczi, SZDSZ, opposition, 16.11.1993, LP 34, Session 343)

During the second wave of rule of law legislation, there was no major debate around the relationship between the rule of law and democracy while parties generally continued to support the constitutional principles.

In 2010, when Fidesz-KDNP won a two-thirds parliamentary majority, other parties still believed in the power-restraining effect of institutions.

> I believe that what distinguishes a totalitarian system, a party-state system, from a democratic constitutional state is that in a democratic constitutional state, you cannot only have a two-thirds majority, but also a one hundred per cent majority, but the difference between the two is that in a democratic constitutional state, even if a party alliance wins 90 or 100 per cent, it does not have unlimited power. Its power is still limited by different legal principles, different independent institutions, different procedural guarantees. (András Schiffer, LMP, opposition, 5.7.2010, LP 39, Session 21)

Shortly after, when it became visible that the governing parties used their qualified majority to change the constitutional framework to reshape the political and judicial institutions (Sects. 3.2 and 3.3), the discourse changed. The narrative was established and used with high intensity that **undermining the separation of powers and filling positions in formally independent institutions with one's own people means undermining the democratic rule of law**.

> The big question in Hungary, and in all parliamentary democracies, is what protects us from the arbitrary power of the legislature, and what protects us in Hungary today from the arbitrary power of the two-thirds [majority]. (András Schiffer, LMP, opposition, 14.11.2011, LP 39, Session 133)

The opposition forces paid growing attention to counter-majoritarian institutions, e.g. an independent judiciary, an independent constitutional court or the European Commission to protect the rights of those not represented by Fidesz-KDNP. Rhetorically, however, the governing parties agreed that the independence of the judiciary was inherently constitutional and inviolable.

> Any kind of openness in terms of norm control, based on professional grounds, is important and necessary. Another important rule under the bill is the requirement to be bound by a motion. This means that the regulation raises to the level of Fundamental Law that the constitutional court may only examine a provision of the law that is not the subject of a motion if it is closely connected in content to the rule under review. The constitutional rule of law is based on respect for individual freedom and dignity and the protection of the fundamental values of democracy. The administration of justice is a guarantee of fundamental freedoms and other rights. (Márta Mátrai, Fidesz, government, 11.3.2013, LP 39, Session 259)

As the following quotes show, Fidesz and KDNP asserted that the separation of powers, which must be respected, was in place, that democratic freedoms were accessible to all citizens and, furthermore, that they were being expanded (Gulyás, Kozma).[39] They also argued that the fact that there was parliamentary deliberation on contested legislation contradicted the opposition's criticism, which suggested that democracy and the rule of law were abolished in Hungary (Szakács).

> This constitution also contains a choice between rule of law institutions and rule of law solutions. My only request is that the choice between the rule of law issues should not be turned into a democracy-avoidance choice. There is no threat to the rule of law and democracy in Hungary, and everyone is guaranteed freedom of expression and freedom of speech. This fundamental law continues to guarantee all the democratic rights that we have enjoyed over the past two decades, extends fundamental rights and enables everyone to identify with the framework within which the nation operates, based on the Hungarian nation's past, and to exercise democratic freedoms within the framework of the rule of law institutions. (Gergely Gulyás, Fidesz, government, 18.4.2011, LP 39, Session 84)

> This is important from the point of view of the lessons learned from the past 20 years, precisely because the constitutional court can interpret the Fundamental Law in response to the requests referred to in Paragraph 1 and in other cases where legal certainty is threatened, because the most important aspect of the Hungarian state and the operation of state bodies in accordance with the law, and the observance and enforcement of the principle of constitutionality, is that legal certainty is threatened in certain cases by the non-interpretation or inadequate interpretation of the Fundamental Law. (Péter Kozma, Fidesz, government, 14.11.2011, LP 39, Session 133)

> It has also been said in recent years that democracy has disappeared in Hungary, and that there are no institutions and institutional systems based on the rule of law which, as it were, reflect the various legal and other interests, ethical and moral interests arising from the principle of the separation of powers. I also think that the fact that the fourth amendment to the Fundamental Law is now before parliament proves that this argument does not stand

[39] "(M)y only request is that the choice between the rule of law issues should not be turned into a democracy-avoidance choice. There is no threat to the rule of law and democracy in Hungary, and everyone is guaranteed freedom of expression and freedom of speech. This fundamental law continues to guarantee all the democratic rights that we have enjoyed over the past two decades, extends fundamental rights and enables everyone to identify with the framework within which the nation operates, based on the Hungarian nation's past, and to exercise democratic freedoms within the framework of the rule of law institutions." (Gergely Gulyás, Fidesz, government, 18.4.2011, LP 39, Session 84).

> either. After all, the constitutional court has issued a ruling within the framework of the legislation and the constitution. Parliament has accepted this as binding on itself, and the government and the organisations whose job it was to do so have tabled the amendment before us, which we hope will be adopted in a way that addresses the concerns of the constitutional court. (Imre Szakács, Fidesz, government, 11.3.2013, LP 39, Session 259)

In contrast, opposition MPs (mainly from MSZP, Jobbik, LMP and DK) criticised that the separation of powers, as a fundamental element of a democratic state, was being violated by the government, e.g. by curtailing the constitutional court. They contended that the Fidesz-KDNP reforms, including new provisions related to the administrative courts, did not align with the principles of the rule of law and the democratic legal evolution initiated in the 1990s, and that the freedoms outlined in the Fundamental Law were subject to restrictions.

MSZP criticised that the new Fundamental Law drafted by Fidesz-KDNP in 2011 severely restricted the principle of the separation of powers (Bárándy). Jobbik stressed that extensive interference in the judiciary, especially in the appointment of judges, would be a violation of the principles of classical democracy, the separation of powers and the independence of the judiciary, and therefore could not be justified or accepted (Gyüre). LMP argued that the constitutional court is an important institution in a democratic state governed by the rule of law because it protects citizens from the arbitrariness of the elected majority, a function that it could not fulfil in Hungary (Schiffer).

> The constitutional court has to take its decisions on the basis of a Fundamental Law that severely restricts people's social rights, the principle of the separation of powers, human rights, the right to property, and that overturns and abolishes guarantee rights that have existed for decades, but otherwise, I believe that this list could go on. (Gergely Bárándy, MSZP, opposition, 14.11.2011, LP 39, Session 133)

> In many cases it can be respected that a two-thirds majority or a parliamentary majority should have the right to determine who, in the executive or here and there, in the exercise of the power of appointment, should appoint the people they want to work with. But when you look at the principles of classical democracy and the separation of powers and the independence of judges, I would say that to interfere to this extent in the judiciary, well, what can I say, it already justifies, it could justify, that it is already an interference in the independence of judges. So there is no way of agreeing with this either. (Csaba Gyüre, Jobbik, opposition, 12.2.2013, LP 39, Session 252)

> Even after the amendment of the Fundamental Law and last year's Constitutional Court Act, there was still a possibility that the constitutional court would not be completely deprived of its rights, or more precisely, that the constitutional court as an institution of the rule of law would be emptied of its functions. The bill before us completely airbrushes out the constitutional court, making it almost superfluous. It is precisely the function of a brake and counterweight that the constitutional court has lost, for which it has played an indispensable role over the last twenty years. (András Schiffer, LMP, opposition, 13.11.2011, LP 39, Session 133)

These statements were not developed on a purely theoretical basis but were always expressed in relation to concrete measures planned and realised by the ruling

majority. At times, they were more nuanced, and the parliamentarians did not always argue that the rule of law should restrict elected majorities. For example, as early as 1996 FKgP proposed to strengthen the parliament's position vis-à-vis the court by suggesting that the president of the constitutional court, just like constitutional judges, should be elected by the national parliament and not by other (constitutional) judges (Torgyán). DK argued in 2018 that rule of law violations would also be a source of conflict between the parliamentary majority in Hungary and an EU majority (Arató).

> In our view, in a constitutional state, there should be no question of parliament not having this right in the future. The constitutional court would become independent of all institutions of public power and the balance of power would be upset if we were to decide definitively on this issue by having the president of the constitutional court elected by a body of constitutional judges. (. . .) (T)his power of the National Assembly cannot be taken away, and this power of the National Assembly cannot be called into question, just as it cannot be called into question in a constitutional state that this requires a two-thirds majority in the parliament. (József Torgyán, FKgP, opposition, 2.4.1996, LP 35, Session 163)

> The Democratic Coalition believes that democracy is based on the rule of law and independent judiciary. In comparison, defending the rights of citizens against the state or even large corporations guarantees the rule of law, which is crucial for the economy. It is also clear (. . .) that the rule of law is one of the most clearly defended common fundamental values of the Union, and it is therefore quite clear that its violation will generate further conflicts and further struggles with the organisations and the majority of the European Union. (Gergely Arató, DK, opposition, 28.6.2018, LP 41, Session 14)

Several MPs emphasised that the separation of powers should also contain provisions for a balance of power (Nyikos). In this view, while the limitation of power as the logic of the rule of law can be organised in different ways, the democratic type of the rule of law is a system of separation of powers plus checks and balances (Kocsis-Cake).

> I quote the sentence in Paragraph 2 of the basic provisions, because I think it is very important: "Hungary is an independent democratic constitutional state based on the principle of the separation of powers." I think that, at first reading, there is nothing wrong with this sentence; everyone can take it on board. However, it did leave me with a certain sense of inadequacy, because, after all, in every state, in every form of government, there is a division of power of some kind; there is a division of power in dictatorships too, and so I think that this sentence would be more complete, clearer and more forward-looking if it were to be supplemented by a sentence whose essence is that it is also based on the principle of the balance of powers, alongside the division of power. (László Nyikos, Jobbik, opposition, 22.2.2011, LP 39, Session 69)

> But they are all former Fidesz founders who went to the Bibó College as law students. I am sure that is not what they learned at Bibó College. They probably started their studies by immersing themselves in constitutional law, immersing themselves in Montesquieu and learning about the separation of powers. Separation of powers is an institutionalised barrier to the abuse of power, arguably the basis of the democratic rule of law. These branches must also be separated in terms of institutional and personal powers. The legislature limits the judiciary and the executive by law, the executive limits the legislature, perhaps by dissolving

> parliament, by the right to call new elections, and the judiciary controls the constitutionality of legislation and, through it, the legislators. This is the foundation of democracy. You have often referred in recent days to the fact that the municipal elections prove that democracy exists here, because the opposition parties have won some large cities. (Olivio Kocsis-Cake, PM, opposition, 19.11.2019, LP 41, Session 94)

In sum, despite a general rhetorical overlap that the rule of law potentially restricts governing majorities through certain guiding principles, government and opposition forces argued differently on the state of affairs in Hungary during the third wave of legislation, when Fidesz-KDNP's large majority allowed them to de facto neutralise the system of checks and balances.

6.2.3 Poland: Liberal Rhetoric, Not a Guide for All Parties

Members of the Sejm generally supported the position that democracy and the rule of law must be respected. Throughout the periods studied, we found no explicit opposition to establishing the democratic rule of law, even from those who were accused of undermining these principles. When citing the term 'democratic state under the rule of law', many representatives referred to the constitution, which enshrined both concepts.

> (W)e see the need to supplement the existing "small constitution" with a law today that sets "limits on the will of the majority exercised by public authorities". The Republic of Poland must be a democratic rule of law state, as we have advocated and continue to advocate for. (Stefan Szańkowski, PSL-PL, government, 21.1.1993, LP 1, Session 35)

> Another stage of strengthening the Polish democratic state under the rule of law has been initiated through the implementation of constitutional institutions, or at least such obligation has been imposed on the government by its provisions. (Marek Mazurkiewicz, SdRP, opposition, 8.1.1998, LP 3, Session 8)

> The constitution of the Republic of Poland, the common good, and the principles of a democratic state under rule of law should decisively prevail over party interests in this case. (Wojciech Szarama, PiS, opposition, 10.7.2015, LP 7, Session 96)

Although all parties supported the democratic rule of law in general, they did not express this in form of an explicit narrative in our selected documents. Most statements dealt with specific aspects of realising the democratic rule of law (assuming that this project was supported) or started from the fact that the democratic rule of law was established by the constitution and focused on commenting on particular problems. In such debates, a liberal rhetoric was visible for most parties when they emphasised the need to constrain elected majorities by binding them to the constitution, establishing a system of checks and balances etc. However, conservative and right-wing parties used the liberal rhetoric less frequently, and after 2015 the PiS government disregarded liberal principles like the separation of powers.

Statements addressing the relationship between the rule of law and democracy were found mainly for the first and third waves of rule of law legislation. Although

Table 6.17 Narratives on the relation between the rule of law and democracy in Poland

1990–1997	1997–2015	2015–2021
Independent authorities are vital for protecting democratic principles and safeguarding civil rights. (overlapping)		Undermining the separation of powers and filling positions in formally independent institutions with one's own people means undermining the democratic rule of law. (one-sided, opposition)

the discourse changed over time, the general pattern was that members of governing parties emphasised the importance of balancing democratic legitimacy with the rule of law. They regarded the rule of law as a key framework for democratic decision-making processes that should not compromise democratic principles. In contrast, opposition parties tended to emphasise the need to constrain elected majorities, e.g. by adherence to legal principles, judicial review and generally the separation of powers. However, the emphasis of constraints did not imply respect for electoral choices. Also, the statements covered various subjects, forming only a few narratives (Table 6.17).

During the first wave of legislation, especially in the early years of transition, MPs used the narratives that **independent authorities, mainly the judiciary and Constitutional Tribunal, are vital for protecting democratic principles and safeguarding civil rights**. During the general debates on the constitution and the future political system of Poland, politicians underlined the relevance of a democratic state with elected bodies and at the same time considered checks and balances as a necessity in the post-1989 state system. Despite rhetorical agreement, the concrete opinions on the shape of the new regime and the relationship between the concepts of the rule of law and democracy differed, with no discernible relevance of party affiliation and affiliation to government or opposition.

> I believe that three general principles should be adopted when drafting the constitution: the system of government of the Republic of Poland is republican; the Republic of Poland is a democratic state under the rule of law; and the sovereign in the Polish state is the nation. The nation, as sovereign, exercises power through its representatives, elected to the Sejm in democratic elections based on strict principles. There is a tripartite division of power: legislative power, which belongs to the parliament, executive power, which belongs to the government, and judicial power. In local matters, public authority is exercised by the local government, which has a separate legal personality, and the treasury is not liable for the liabilities of the local government, and vice versa. (Marian Michalski, PSL, government, 23.9.1994, LP 2, National Assembly Session 1)

> As the first principle of a state under the rule of law, sovereignty must be mentioned, meaning the supremacy of the nation. From this principle, it follows that the subject of power is the entirety of citizens, while the representatives elected by them are merely holders of offices constituting the organs of power. The sovereign possesses the right to create authorities within the framework of the state, which is achieved by a democratic and freedom-based electoral system. It also has the competence to control the organs of power through electoral acts and, among other things, through holding them accountable through parliamentary and constitutional means. The principle of separation of powers plays an

> important role in realising the principle of sovereignty. The principle of constitutionalism recognises that all key organs of the state are defined in the fundamental law of the state, in the constitution that regulates their powers, structures and rules of operation. (. . .) (T)he constitution occupies the supreme place in the system of law (. . .) (Tadeusz Jacek Zieliński, UW, opposition, 23.9.1994, LP 2, National Assembly Session 1)

During the transitional debates, MPs emphasised the importance of the rule of law as a check on the power of the majority, which can be interpreted as a response to the legal arbitrariness and subjugation of the law to politics during the communist era. They emphasised that adherence to legal principles and the protection of individual rights and freedoms were of paramount importance and take precedence over mere majority decisions. Jerzy Pietkiewicz, a member of the Solidarność activists faction OKP, argued for a strong review of government action (in the cited debate on domestic security forces). Janusz Korwin-Mikke, a liberal-conservative politician from the small UPR, even advocated for a "nomocracy" to protect individual rights against the tyranny of the majority.

> If we want to call ourselves a state under the rule of law, we must accept this. It cannot be that the special services conduct their activities according to their own discretion, so to speak. Someone from the government must take responsibility for this political decision on wiretapping and the use of special measures. I think the attorney general is the right person here. (Jerzy Pietkiewicz, elected via Komitet Obywatelski 'Solidarność', parliamentary group OKP, government, 6.4.1990, LP X, Session 25)

> Although the constitution indeed states that the Sejm is the supreme authority, it does not change the fact that for us, the judiciary is the most important authority. The character of society, the sense of law, and thus the norms of all our behaviours depend on the quality of the judiciary. That is why we strongly advocate for nomocracy, or the rule of law, rather than democracy. (. . .) The people want to have laws that would guarantee and protect them also against the tyranny of the majority, against sudden changes in the majority. The rule of law, not the rule of people, is needed in Poland. (Janusz Korwin-Mikke, UPR, opposition, 6.3.1992, LP 1, Session 10)

Many representatives of opposition parties emphasised the judiciary's autonomy and its role in limiting the powers of the executive and legislative branches. In cases where its autonomy was linked with problems in the functioning of the system, at least from the perspective of ruling parties, this was "the price that has to be paid for the rule of law to be strengthened in Poland", as Jacek Kurczewski, a representative from the liberal KLD, argued. Stanław Rogowski from the left-wing UP demanded strong judicial control as a check to the state and its administration.

> I must recall the idea of a Supreme Judicial Council, which I myself eventually co-founded from the national judicial council. We adopted this idea, in a sense we recycled it from Italy (. . .) and it is indeed dangerous to have solutions that would limit it. I think there are a lot of practical considerations that make there inconveniences to the functioning of self-government, as is usually the case, but it is in this area, I think, that we cannot afford to adapt to these very practical needs. This insufficient influence of the minister of justice on the selection of the judiciary, this certain organisational malaise that is being talked about here,

> is the price that has to be paid for the rule of law to be strengthened in Poland. (Jacek Kurczewski, KLD, opposition, 6.3.1992, LP 1, Session 10)

> In a democratic state under the rule of law, judicial control of the effects of the functioning of bodies exercising administrative functions is a logical fulfilment, both precisely as regards administration and the actions of other judicial bodies. (Stanisław Rogowski, UP, opposition, 7.4.1994, LP 2, Session 17)

Members of governing parties[40] tended to emphasise the need to strike a balance between democratic legitimacy and the rule of law by providing the executive with the competence to exercise power while remaining subject to judicial review (Lipowicz), by binding all authorities' action to the constitution and laws made by the elected parliament (Iwiński) or by defending the principle of the state under the rule of law while implementing the electoral commitments accepted by society (Kwaśniewski). Also, as a result of rulings by the constitutional court, which referred to specific rights and norms derived from this principle, they highlighted the significance of all state institutions in maintaining the new system. Especially during the constitutional debates, the notion of a 'democratic state under the rule of law' began to find its place in parliamentary debates as a concept that was also gradually given more legally defined content.

> An extremely important element in the contemporary understanding of the separation of powers is the appropriate position of the executive branch in relation to the legislative and judicial branches. It should provide the executive branch with sufficient powers to efficiently and flexibly administer and determine administrative policy. The president, government and prime minister should have real opportunities to implement their policies while remaining under parliamentary control, and the regulations issued by them should remain subject to judicial review. (Irena Lipowicz, UD, government, 2.4.1992, LP 1, Session 12)

> The democratic state under the rule of law is the principle of principles that underpins the entire constitutional construction and determines a number of specific solutions. A state under the rule of law is a state governed by law, which stands above the state; and the rule of law means that the system of state organs operates in a strictly legal manner. This must result not from a specific statement, but from the entirety of the provisions of the Fundamental Law. (Tadeusz Iwiński, SdRP, government, 23.9.1994, LP 2, National Assembly Session 1)

> We do not want anyone to understand that the only sense of democracy, the only sense of politics, is legal procedures. In our view, the sense of democracy is to defend the principle of the state under the rule of law, and the sense of politics is to implement the electoral commitments accepted by society and to convince society of the necessary actions that are taken on its behalf, on behalf of society. (Aleksander Kwaśniewski, SdRP, government, 4.2.1995, LP 2, Session 42)

[40] Occasionally, opposition MPs also took such a view of a balance, for example when demanding the competence of the parliament to choose constitutional judges to be combined with an obligation of them to be reviewed by the National Council of the Judiciary, e.g. Andrzej Wielowieyski (UW, opposition, 23.9.1994, LP 2, National Assembly Session 1).

In the second wave of rule of law legislation between 1997 and 2015, different majorities were in government. While we found no narrative used in this wave, opposition members touched on issues of the rule of law and democracy when criticising the government for misbehaviour. For instance, Ratajczak from LPR stressed the obligation of the parliamentary majority (at that time the left-wing SLD was the strongest party) to adhere to constitutional principles, reflecting broader opposition narratives centred on accountability and transparency in government. Gronkiewicz-Waltz from the liberal PO, for example, emphasised the need for checks and balances within the democratic framework, particularly to be protected against perceived biases within judicial proceedings under the new PiS-led government. When PO was the strongest party in parliament, forming the government, Szarama from the conservative PiS underlined the need to prevent political attempts to influence the composition of the constitutional court.

> From the constitutional principle of the state under the rule of law arises the obligation for the legislature to adhere to the principles of correctness in legislation, which is linked to the principles of legal certainty and security, as well as the protection of trust in the state and the law. (Elżbieta Ratajczak, LPR, opposition, 27.7.2005, LP 4, Session 108)

> In a free economy and democracy, the government cannot do everything because the government and parliament are also limited by the constitution. There is a separation of powers. There is still the judiciary. And there is an unwritten rule that if there is any appearance of bias, such a person must be excluded from any panel that adjudicates. (Hanna Gronkiewicz-Waltz, PO, opposition, 10.3.2006, LP 5, Session 12)

> I hope that these high standards regarding the selection of judges of the Constitutional Tribunal will be upheld in this term, and that proposals put forward by some, aimed at ensuring that the composition of the Constitutional Tribunal is determined in such a way that certain views have a majority, will be rejected. (Wojciech Szarama, PiS, opposition, 10.7.2015, LP 7, Session 96)

When in government, UW politicians cited judicial independence as a relevant democratic principle (Suchocka) and the separation of powers as vital for the rule of law (Ostrowski). In our material we did not find any statements about the need for institutional checks of the legislative by PiS politicians while in government. PO presented reforms aimed at the depoliticisation of the prosecutor's office after the end of the PiS-led government as essential for strengthening the rule of law and the restoration of societal trust in democratic governance (Pahl).

> (O)ne of the fundamental criteria for recognising a state system as democratic is the existence of an independent and impartial judiciary in its structure and practice, whose jurisdiction covers all cases requiring judicial resolution according to the criteria most fully expressed by the European Community in the European Convention on Human Rights. (Hanna Suchocka, UW, government, Minister of Justice, 3.3.2000, LP 3, Session 72)

> The principle of the separation of powers should therefore be seen as a component of the concept of the state under the rule of law, a criterion and guarantee of the democratic nature of the state system, through which the provisions of the constitution can be interpreted, especially regarding disputes over competence. (Ryszard Ostrowski, UW, government, 3.3.2000, LP 3, Session 72)

> The main intention behind the changes to the prosecutor's office law was primarily the depoliticisation of the prosecutor's office. The situations we witnessed, namely the instrumental treatment of the prosecutor's office (. . .) led to the sense of the rule of law in society requiring the creation of mechanisms of control, functioning or operation of the judiciary that would guarantee certainty, provide guarantees of strong foundations of the state under the rule of law, a lawful state, which would ensure a societal sense of justice. (Witold Pahl, PO, government, 14.4.2011, LP 6, Session 90)

From 2015 to 2021 almost exclusively opposition MPs referred to the rule of law and democracy in our selected sources. After the 2015 elections, when PiS formed the first one-party cabinet since 1989, the opposition accused it of abusing its power, arguing that the rule of law is about constraining the power of elected majorities. Various MPs from the liberal parties, most prominently PO and Nowoczesna,[41] invoked the term 'democratic state under the rule of law' when voicing concerns about PiS's policies to undermine the separation of powers and manipulate key institutions, such as the Constitutional Tribunal, the prosecution service, the National Council of the Judiciary (NCJ) and the judiciary in general. These measures resulted, in their view, in insufficient protection against the dominance of the majority (Budka). Opposition parliamentarians referred in particular to the principle of a democratic state under the rule of law when expressing concerns about perceived threats to judicial independence, arguing that the role of the judiciary is particularly crucial in a situation when one party has an absolute majority,[42] or when criticising the politicisation of key institutions and attempts to undermine constitutional safeguards. The prevailing narrative during this period was that **undermining the separation of powers and filling positions in formally independent institutions with one's own people means undermining the democratic rule of law**.

> The greatest harm (. . .) you have done is how you treated the pillar of a democratic state under the rule of law (applause), the foundation – the principle of separation of powers. (. . .) You're pouring gasoline onto something that is already the last safeguard, protecting citizens from the unchecked appetite of the majority for basic rights and freedoms (applause). (. . .) Night-time voting in the Sejm will not overshadow what you are doing with the Constitutional Tribunal. You insult the president sitting here, you insult everyone who dares to have a different opinion than Law and Justice. (. . .) There will never be consent in this chamber for personal antipathy, for disrespect for the constitution by your leader to be the basis for demolishing the democratic state under the rule of law. (Borys Budka, PO, opposition, 17.12.2015, LP 8, Session 5)[43]

[41] Also the opposition party PSL voiced criticism referring to the concept of a democratic state under the rule of law; see Krzysztof Paszyk, PSL, opposition, 5.4.2017, LP 8, Session 39.

[42] Kamila Gasiuk-Pihowicz, N, opposition, 19.11.2015, LP 8, Session 1. Similar statements were made by Katarzyna Lubnauer and Mirosław Suchoń in that debate about changes to the Law on the Constitutional Court.

[43] Similarly, Krzysztof Brejza (PO, opposition, 19.11.2015, LP 8, Session 1) argued: "(W)hy is this principle of separation of powers necessary? (. . .) It's to protect the freedoms of citizens because the freedoms of citizens emerge from the dialogue of powers, and what you are proposing is a

> From the principle of a democratic state under the rule of law stems the impartiality of public officials, yet you have appropriated the Constitutional Tribunal, you have appropriated the civil service, today you are appropriating the prosecutor's office, and to avoid talking about it, you have appropriated the media and, moreover, you claim that you are doing all of this for the good and safety of citizens. (Izabela Leszczyna, PO, opposition, 13.1.2016, LP 8, Session 8)

> (I)n every normal democratic country, it's the courts that control parties and politicians. In the PiS-led state, it's the parties and politicians who want to get their hands on the courts. But we will do everything within the law to make it difficult, and in the future, we will do everything to rebuild the independence of the judiciary and punish those responsible for the attack on the courts. (Kamila Gasiuk-Pihowicz, N, opposition, 5.4.2017, LP 8, Session 39)[44]

As mentioned, PiS did not actively use its own narrative on the rule of law and democracy, and the relationship between the two concepts. Regarding the prosecution service, however, Piotrowicz (who became a constitutional judge in 2019) outlined the need for executive control in order to guarantee the sense of security and social justice of judicial decisions, and Wójcik accused the opposition of "hysteria" regarding its criticism.

> Of course, there is one exception: the courts are to be independent, the judges are to be independent, but not the prosecutors, not the prosecutors. It is the state under the constitution, the Council of Ministers that is responsible for security. The public prosecutor's office is the only instrument in the hands of the executive through which it is possible to influence the shape of judicial decisions, the shape of jurisprudence that fosters a sense of social justice. After all, Article 2 of the constitution states: Poland is a democratic state under the rule of law which implements the principles of social justice. (Stanisław Piotrowicz, PiS, government, 13.1.2016, LP 8, Session 8)

> In 1989 there were discussions on the occasion of the round table about how the prosecutor's office should be shaped, what the political model should be. And it was then that the democratic opposition said that the prosecutor's office should be linked to the executive. That is why in 1990 completely new regulations were introduced, which lasted for 20 years, until you changed them. Unfortunately, you changed them under the influence of a kind of hysteria, breaking certain principles, because Poland has excellent traditions from the inter-war period. (. . .) In the inter-war period there were no problems with this, after 1990 – there were none, but in 2009 for the state suddenly there was a problem and suddenly it was necessary to separate these functions that led to pathologies. (Michał Wójcik, PiS, government, 13.1.2016, LP 8, Session 8)

monologue of one political group. The principle is meant to protect citizens from the mistakes of the rulers." Or Monika Wielichowska (PO, opposition, 17.12.2015, LP 8, Session 5): "(S)top trampling on the constitution, stop destroying the Constitutional Tribunal, because only it can protect us, Poles, protect fundamental values, freedoms, rights and democracy."

[44] For a more detailed legal explanation of the constitutional provisions regarding the independence of the judiciary, the impartiality of judges, and thus the independence of the National Council of the Judiciary, see Barbara Dolniak, N, opposition, 5.4.2017, LP 8, Session 39.

6.2.4 Romania: Liberal Rhetoric, Not Shared by All Parties

The discourse in the Romanian parliament differed from the other countries in that restrictions to elected majorities were at times evaluated somewhat more critically, even though all parties generally expressed their support for the idea of the rule of law. All parties generally underlined the relevance of the rule of law, often to confirm the constitutionality of their own policies and to accuse political opponents of violating the constitution.

As in the other parliaments, speakers expressed that **democracy and the rule of law are formally established, linked and have to be respected**. This mirrors the Romanian constitution, where the rule of law is explicitly embedded in an overall framework of different principles that must be considered.[45] Similarly, as in the other parliaments, MPs in Romania, when speaking about the relation between democracy and the rule of law, most often did so in a superficial way. They simply enumerated them as two achievements of the Revolution of 1989, of Romania's return to European standards and to the EU. Only very rarely did MPs engage in a discussion of the actual relation between the majority principle of democracy and the rule of law. If they addressed this issue at all, then they sometimes did so by evoking key elements of the rule of law like separation of powers, but much more often by evoking institutions like the parliament or the presidency. Therefore, there is but little indication of more pronounced narratives being shared by all MPs across parties and periods. However, after 2014 and especially in times of cohabitation, representatives from opposition parties were critical of the government's majoritarian understanding of democracy.

We found more statements than in other parliaments arguing that the rule of law serves elected majorities, although a clear majority stressed that the rule of law constrains elected majorities. The perspective that the rule of law serves the elected majority emphasised the relevance of elections in democracy. It was, for example, voiced in the early 1990s during the discussions of the constituent assembly for the constitution of 1991 by Ioan Deleanu, a law professor representing the FSN (later PDSR, and ultimately PSD).

> Under the condition of a comfortable majority of a party in parliament, that party designates – by means of the vocation of parliament – the executive branch, and when the head of the executive branch, the head of state, belongs to the same party – at least up to the moment of appointment – you must be convinced that it is not safe to speak of a separation of powers, because the political legitimacy of these branches of state activity is one and only one: the party that has acquired victory in the elections. (Ioan Deleanu, FSN, government, 27.3.1991, AC, LP 1)

[45] According to Article 1 (3), "Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizens' rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and shall be guaranteed."

The separation of powers was not explicitly mentioned as a principle in the 1991 constitution until an amendment in 2003, and in the 1990s, the legitimacy produced by democratic elections was particularly valued. However, different branches of government were established, including the president as a mediator.

Different from the moment of constitution-making, the parliamentary majorities as well as the power relations between the president and the governments reflecting those majorities became fragile and dynamic (Sect. 3.1). Government formation as well as governmental work were characterised by a multitude of configurations of shared exercise of power—including the toleration of a minority cabinet, formal coalitions between two or more parties, and ultimately cohabitation with a president and a government with differing political affiliations. The importance of the separation of powers as an instrument to constrain the elected majority was emphasised by members of the opposition.[46]

The idea that elected majorities are placed at the centre of a democratic system under the rule of law was also present in statements during the presidency of Traian Băsescu (2004–2014), criticising him for ignoring the competences of the elected parliament (see Sects. 5.1.4, 5.2.4 and 6.3.4). Ion Stat (PSD) used particularly strong language, calling Băsescu a "president-dictator":

> The president-dictator attacked the Romanian justice system only because the magistrates judge according to the laws of this country. By setting himself up as a supreme judge above the constitution, Traian Băsescu is simply asking the magistrates to stop judging according to the spirit of the law. In so doing, he has once again trampled underfoot the fundamental institution of the state called upon to establish the truth and to dispense justice only in the name of the law. (Ion Stan, PSD, opposition, 15.11.2011, CD, LP 6)

The argument was also used during the presidency of Klaus Iohannis (2014–). MPs like Călin Popescu-Tăriceanu (ALDE) affirmed "the political supremacy of parliament over the other public institutions, as the supreme forum of democracy" and qualified "as unconstitutional and unacceptable" certain judgments by the president, the Superior Council of Magistracy or public prosecution agencies against activities of the government.

> Therefore, the Romanian parliament qualifies as unconstitutional and unacceptable the judgments that either the President of Romania, the Superior Council of Magistracy or representatives of the public prosecution make against some decisions and activities of the government. Such actions illegally and abusively usurp the exclusive right of parliament to hold the government accountable for its activities in the various forms provided for by law and by the regulations of the chambers. (...) We reaffirm the political supremacy of parliament over the other public institutions, as the supreme forum of democracy, the only forum representing the views of all citizens, because here we also have the parties forming

[46] E.g. Dan Lăzărescu (PNL, opposition, 23.3.1992, CD, LP 1) or Ioan Onisei (PD, opposition, 19.3.2002, CD, LP 4).

> the governing arch and the opposition. So all the citizens of Romania are represented. (Călin Popescu-Tăriceanu, ALDE, government, 8.3.2017, CD+S, LP 8)

Overall, however, the narrative prevailed that the rule of law constrains bodies that enjoy legitimation through democratic elections, such as the chambers of parliament. As mentioned, this relation was not exclusively seen in a positive light. This became visible, for example, when in the early 1990s the law on the constitutional court was intensively debated. Dan Lăzărescu (PNL) problematised the superiority of the constitutional court over all other institutions.

> But it's above parliament too, that's the big problem. It is the only institution, even the president of the Republic is not above the control of parliament, but this court, as it has been conceived, is above parliament and escapes the control of parliament, that is to say it escapes the control of the elected representatives of the nation. (Dan Lăzărescu, PNL, opposition, 23.3.1992, CD, LP 1)

In contrast, Marian Enache (FSN) highlighted "the real democratic character" of the constitutional court.[47] Vasile Gionea (PNȚCD) emphasised that the elected parliament established the rules which the court could only interpret, and that parliament could overrule certain decisions by the constitutional court by a two-thirds majority in both chambers.

> The constitutional text, as well as the provision in our law, namely that when the constitutional court declares before it that a law or certain texts in a law are unconstitutional, of course the court's reasoned decision goes back to parliament, which will examine and decide: either it is constitutional, or it is unconstitutional, and parliament has the possibility, with two thirds of the votes, to decide that a law is still constitutional. And then the decision of the constitutional court is null and void. So, the supreme power of lawmaking in the country is vested in parliament, and the constitutional court not only cannot decide against parliament, but more than that, it cannot pronounce laws null and void. (Vasile Gionea, PNȚCD, opposition, 23.3.1992, CD, LP 1)

The provision in Article 145/1 of the Romanian constitution of 1991 which permitted the parliament to overrule certain decisions of the constitutional court was abolished by the constitutional amendment of 2003 (Enache 2012, p. 169 ff.). This strengthened the role of the court vis-à-vis ruling majorities. Since around 2010, MPs from PD insisted on the constitutional restraints of the majority principle. At that point in time, the coalition that had earned President Băsescu his presidency in 2004 had long fallen apart, and he faced an assertive government coalition between PSD and PNL (taken together as USL). Dan-Cristian Popescu (PD/PD-L) accused this coalition of a "dictatorship of the majority", and Marian Andreea Paul (PD/PD-L) compared the state created by the USL coalition to a predator.

> We cannot, by invoking the representative mandate, granted to us by the trust of the electorate with the right to vote, defy the fundamental principles of the rule of law, the

[47] Marian Enache, FSN, government, 23.3.1992, CD, LP 1.

> first of which is that no one is above the law. (. . .) A week has passed since a majority of Romania's MPs irresponsibly defied the rule of law in this parliament. The rule of law is the guarantee of the primacy of laws and citizens' rights in the face of any abuse of power against the citizen, but also of the dictatorship of the majority. (Dan-Cristian Popescu, PD/PD-L, opposition, 17.12.2013. CD, LP 7).

> USL creates the predatory state. Since coming to power, USL has been trying to protect its parliamentarians from justice. I remind you that this year USL has tried twice to build a super-immunity for parliamentarians, by amending the statute of parliamentarians. But each time, PD-L challenged the changes at the constitutional court. (. . .) What USL is doing is a disgrace that risks to take us off the map of democratic states in Europe. (Marian Andreea Paul, PD/PD-L, opposition, 17.12.2013, CD, LP 7).

The narrative that a PSD-led government would display a majoritarian understanding of democracy and ignore the constitutional constraints resurfaced again in 2016, when President Klaus Iohannis was forced into a cohabitation with a victorious PSD. Now, MPs from PNL (again in opposition) were accusing PSD of abusing parliamentary majorities for shielding their corrupt colleagues from prosecution.

> But today's kleptocrats have forgotten to take into account the fact that Romanians have had enough time in 27 years to experience the taste of freedom and living in a state governed by the rule of law. Because the parallel state, which the Dragnea–Tăriceanu gang preaches, is everything but the rule of law. The generations born after 1989 are coming of age today. They are people who have learned freedom and lived in accordance with Western values, and they can no longer be manipulated or led by propaganda. These are the Romanians we see protesting in the public squares of our cities or in the diaspora, who have taken up civic resistance against today's rulers. (Dumitru Oprea, PNL, opposition, 6.12.2017, CD, LP 8)

The most principled reasoning about constitutional restraints of parliamentary majorities, however, was voiced by the new USR, as Vlad Alexandrescu elaborated:

> To speak of political supremacy, of any institution, authority or organisation, is not only constitutionally inaccurate but democratically dangerous. (. . .) In a constitutional democracy, there is no quest for supremacy, but governing with respect for pluralism. Romania is a constitutional democracy based on the rule of law, where government action is and must be limited and controlled, in accordance with the principle of the separation and balance of powers. (. . .) The USR Parliamentary Group firmly rejects the attempt to use this draft declaration to rank the legitimacy of state institutions or authorities. Such formulations betray a rudimentary understanding of the idea of legitimacy in a state governed by the rule of law, implying that legitimacy is enjoyed only or primarily by those elected by vote. (Vlad Alexandrescu, USR, opposition, 8.3.2017, CD+S, LP 8)

6.2.5 Slovakia: Liberal Rhetoric, Dissent on the Role of the Democratic Sovereign

As in the other parliaments, MPs in Slovakia generally agreed on the relevance of both the rule of law and democracy but did not often explicitly discuss the relationship between the two concepts. They frequently employed the phrase 'democratic

state under the rule of law' also enshrined in Article 1 of the Slovak constitution, which states: "The Slovak Republic is a sovereign, democratic state governed by the rule of law." The phrase was used affirmatively, while criticism was related mainly to deficiencies in practice.

MPs did not always differentiate strictly between the rule of law and democracy, making it challenging to distillate concrete lines of argument concerning their relationship. The separation of powers was, for example, sometimes treated as a characteristic of the rule of law (Duka-Zólyomi), sometimes also of democracy or the rule of law (Kaník). Moreover, speakers raised doubts about the functioning of the distinct pillars of state power, including the independence of the judiciary (Kaník).

> The basic premise of the existence of the rule of law is the balance of the separation of state power between the executive, legislative and judicial branches. The constitution must strictly ensure this division of power to prevent a certain centralisation of power (. . .). (Árpád Duka-Zólyomi, Spolužitie-Együttélés, opposition, 1.9.1992, LP X, Session 5)

> Democracy is when there is a system with several institutions that mutually control each other, preventing any injustice from occurring through the domination of the majority. Because the majority can always have a tendency towards injustice when succumbing to the seduction of its power. (. . .) (T)his is precisely why there are institutions of democracy, liberal democracy, with multiple pillars of power. The president should stand above them, should be independent. But we also need a prosecution that is independent of political party games and struggles; we need a judiciary that makes decisions and does not postpone them, a judiciary that is independent and respects the law, and is not above the law. We lack all of this today. Therefore, Slovakia is not governed by the rule of law today. It has enormous defects in terms of what we could consider a rule of law. (Ľudovít Kaník, SDKÚ-DS, opposition, 12.3.2013, LP 6, Session 15)

Others treated the rule of law as an attribute of democracy.

> We all, at least in our declarations, have the ambition to build a democratic society, whose fundamental attribute is the rule of law. The rule of law means respect for the constitution, respect for the law. (Ján Danko, HZDS, opposition, 18.1.2000, LP 2, Session 26)

> A rule of law without a democratic state cannot exist, and vice versa as well. They are two sides of the same coin that are inseparable. Underneath this, however, is one pillar, legality. (Mojmír Mamojka, Smer, opposition, 6.8.2010, LP 5, Session 3)

More detailed and event- or problem-driven statements were made occasionally, meaning that actors reacted in their speeches to specific events or problems. Over time, we found statements referring to the idea that the rule of law and the constitution constrain elected majorities. Since around 2005, however, this position became controversial to some extent, with some MPs arguing that **the sovereign**, i.e. the people represented by the qualified parliamentary majority, **can define the constitutional setting even against the will of other branches of government**, which implies the de facto ability to overrule certain decisions by the constitutional court.

In the overwhelming majority of cases, statements that the rule of law constrains elected majorities were made by parliamentarians while in opposition, regardless of their party affiliation, often when criticising the government majority's alleged overstepping of boundaries of the rule of law. The core of the argument can be traced to general references to the separation of powers or constitutionality as elements of the rule of law, and to the emphasis on the necessity of protecting rights, which makes the relationship between state power and society special in the rule of law. MPs mentioned the relevance of the constitutional court in controlling the government, for example (Hrnko). Alternatively, they argued that the ruling majority's proposals must be in line with the constitution (Jurinová).

> I am also pleased that the government considers a democratic rule of law as its permanent and fundamental goal. Despite various statements from leading figures, especially HZDS, the government will support a parliamentary democracy system where the executive power stems from the parliament. However, from this perspective, I am less understanding of the government's resistance to acknowledging, for example, the binding nature and unquestionability of decisions of the constitutional court. (Anton Hrnko, DÚ, opposition, 19.1.1995, LP 1, Session 4)

> (E)ven the National Council of the Slovak Republic is bound by this law in its activities and must respect the conditions stipulated therein. Conduct contrary to the law in such cases is not only a violation of the principle of legality but, in the case of a legislative body, also contrary to the principle of constitutionality. In such a case, it can be assumed that some of the fundamental principles on which the rule of law is built may be violated. (Erika Jurinová, OĽaNO, opposition, 6.8.2012, LP 6, Session 6)

As already mentioned, since the mid-2000s, a dispute has emerged over the parliament's ability to override constitutional court decisions by a constitutional amendment or a specific constitutional law adopted by a qualified majority. The initial impetus for these debates was the decision of the constitutional court in 1999, which annulled Prime Minister Dzurinda's decision to revoke amnesties granted by his predecessor Mečiar. Although subsequent debates did not specifically address the power of the constitutional majority to override the constitutional court's decisions, this argument occasionally surfaced during repeated attempts to repeal the amnesties through special constitutional laws. After the constitutional court, citing the principle of judicial independence, had annulled the constitutional amendment from 2014, which, among other things, had introduced property and security checks for judges, the rhetoric became more nuanced and diverging. In this dispute, representatives primarily from the parties of the conservative-liberal bloc (KDH, SaS, OĽaNO) argued that in a democratic system, no authority should stand above the democratically elected parliamentary three-fifth majority, which, in the Slovak context, is authorised to adopt and potentially change the constitution and define the arrangements of the rule of law.

> In a state governed by the rule of law, it is possible to revoke a decision of the constitutional court only through a constitutional amendment or the approval of a constitutional law. In this case, it certainly does not involve an interference of the legislative power into the judicial

> power because, in the mentioned case, the revocation of the court's decision does not come from the legislature but from the constitutional legislator. (Pavol Minárik, KDH, government, 18.5.2005, LP 3, Session 42)[48]

> (U)nlike the constitutional court, the National Council can write the constitution, can approve constitutional laws. I don't understand why the constitutional court should decide on the constitutionality of the constitution. Can you explain that to me? And your argument is because the National Council cannot do everything. Are you telling me that the constitutional court can decide that a constitutionally approved law by the National Council is unconstitutional? (Jana Cigániková, SaS, opposition, 28.3.2017, LP 7, Session 14)[49]

> Taking the highest competences that the constitutional majority in parliament has in a state governed by the rule of law and handing them over to the constitutional court, where, let's say, political nominees sit, is playing with fire. If the constitutional court permanently blocks the decision of the constitutional majority in parliament in this way, people will not forget it. Because a state governed by the rule of law is a state where justice must prevail, and the state must be able to create a way in which justice can be applied in the country. If we cannot do that, a sense of resistance to our democracy will only grow in people, and extremist forces will strengthen in Slovakia. (Marek Krajčí, OĽaNO, opposition, 30.3.2017, LP 7, Session 14)

In response to the situation where the constitutional court declared a specific constitutional law incompatible with the constitution of the Slovak Republic, an amendment to the constitution was eventually adopted in 2020 (Law 422/2020 Coll.), explicitly prohibiting the constitutional court from testing the constitutionality of constitutional laws.

The opponents in this conflict were MPs from several parties, most vocally HZDS and Smer, who claimed that the so-called material core of the constitution requires special protection, even against the will of the constitution-maker. Thus, they argued that not even the qualified constitutional majority was authorised to deal with fundamental aspects of the rule of law according to its own will.

> Breaking the constitution is unacceptable under the rule of law. There is no breaking of the decision of the constitutional court; the decision simply states that something is inconsistent with the constitution. In a rule of law state, it is inappropriate to include in a constitutional law something that is inconsistent with the constitution. (Katarína Tóthová, HZDS, government, 18.6.2009, LP 4, Session 39)

[48] Daniel Lipšic (KDH, opposition, 19.10.2006, LP 4, Session 5) argued similarly: "The constituent power stands above all three powers, and it establishes and defines the principle of the separation of powers. A constitutional law is an act of the constituent power, not the legislative power, so the argument that the adoption of a constitutional law would constitute an interference of the legislative power in the judicial power is clearly mistaken."

[49] Or, as Alojz Baránik (SaS, government, 21.10.2020, LP 8, Session 16) put it: "There has been much discussion here about not depriving the constitutional court of the authority to decide on the compliance between a constitutional law and the constitution (. . .) It simply needs to be understood that the constitutional court is a product of the constitution-maker, and if the constitution-maker decides so, it can, among other things, abolish the constitutional court. Therefore, it would be absolutely illogical for an unelected body to decide on something that the essentially sovereign constitution-maker, directly elected by the people, has chosen to decide."

> Anyone in this chamber suggesting that anything can be done with 90 votes or implying it by some subtext, in my opinion, is not acting wisely if they are advocates of liberal democracy. The idea that there are things that cannot be decided by a [simple] parliamentary majority is one of the fundamental achievements of modernity, the concept of the rule of law, and liberal democracy. We should not question it, not even in the name of abolishing brutalities such as Mečiar's amnesties. (Miroslav Beblavý, independent, elected for Sieť, opposition, 28.3.2017, LP 7, Session 14)

> I am aware that members of the National Council are elected in direct general elections and are representatives of citizens, and therefore, ultimately, they could even abolish the constitutional court. However, in a democratic society in the European Union, this is probably inconceivable, and even the constitution-maker within certain international rules, our commitments, our membership in the European Union, cannot decide completely arbitrarily as they wish. Therefore, as the last border safeguard against arbitrary decisions of the legislative and constitutional assembly, there is the constitutional court (. . .). (Boris Susko, Smer, opposition, 4.12.2020, LP 8, Session 18)

In the late 2010s, in a conflictive political context, parliamentarians, mostly from opposition parties, referred more directly to the rule of law and democracy, warning that democracy can be risky without the rule of law (Baránik)[50] and that MPs of the governing parties have to oversee the executive (Pellegrini).

> We have a prosecution that is just the legal protection of this mafia-led state, and the police, of course, we all know what kind we have (. . .). So, we don't have any rule of law. We have democracy. We can choose someone who, through all sorts of populist moves and speeches, gets into power, or perhaps through lies (. . .). That's the kind of democracy we have, but we don't have a rule of law. Our courts don't provide real judicial protection, our prosecution acts only in the interest of the government clique, and our police is simply the physical protection of this mafia state. (Alojz Baránik, SaS, opposition, 9.2.2017, LP 7, Session 12)

> Is this democracy? Is this really a rule of law? It is entirely clear that despite a strong and dangerous constitutional majority, the members of the governing coalition are in the service of the government of the Slovak Republic and are unable to fulfil their constitutional duties towards it. (Peter Pellegrini, Hlas, opposition, 3.2.2021, LP 8, Session 23)

6.3 Challenges to the Rule of Law: Permanent and Growing Matters of Concern

The preceding sections of this book have revealed that when speaking about the rule of law, MPs in Czechia, Hungary, Poland, Romania and Slovakia often addressed perceived problems related to the rule of law. In this chapter, we demonstrate that in all five countries, many relevant parties criticised the respective government for

[50] In a similar vein, Richard Sulík (SaS, opposition, 18.6.2013, LP 6, Session 21) argued: "These are failures of the rule of law! All the more reason to be careful to say that democracy or the democratic principle is above all. I would like to remind you that even Adolf Hitler was elected purely democratically. The majority of his actions were democratic, and we know how it ended."

undermining the rule of law. The most significant narratives on challenges to the rule of law circulating in the parliaments referred to ineffective or stretched rules, which have been a permanent matter of concern. MPs also frequently and increasingly expressed concerns about the alleged politicisation or restriction of the public prosecution and other law enforcement bodies. Other challenges, such as deficiencies in the overall functioning of the judiciary and prosecution, problems connected with the post-1989 transformation, were more country-specific.

As statements about challenges to the rule of law, we coded all speech acts that mentioned threats, problems and risks for the rule of law or its elements. We also coded implicit references when the context or speech act clearly indicated that a phenomenon was discussed as a challenge to the rule of law or its elements, i.e. speakers did not have to explicitly address issues as challenges to the rule of law (e.g. "xy threatens the rule of law"). Subsequently, we categorised the statements based on the type of alleged challenge. These categories were developed deductively and refined and expanded during our pretest analysis of the empirical material.

Table 6.18 provides an overview of the main thematic areas to which the identified key narratives on the challenges to the rule of law in each of the five countries referred in the three waves of rule of law legislation. The selection is based on the significance (in qualitative terms) of a particular theme for the parliamentary discourse in a country.[51] Narratives falling under a particular category were well-established and used with high intensity in the respective period, although they might have been used over a longer time (for details, see the individual country sections). As in the other analyses, if a narrative was related to different categories, we chose the one which was more common. For example, in Hungary and Poland, problems regarding the constitutional court were mainly covered by a narrative of the court's politicisation which was emphasised more strongly. Therefore, the table—intending to highlight the main narrative themes – indicates no separate narrative on the constitutional court for these countries.

In all five countries we identified narratives about ineffective rules, i.e. rules being stretched, violated or not complied with, as a permanent challenge to the rule of law. In all parliaments, narratives addressing this topic were used with the highest intensity during the second (the 'EU accession') wave of rule of law legislation, but for some specific narratives under this category, other periods were more significant (except Romania). In Czechia, Poland and Slovakia the topic was a matter of concern for parliamentarians throughout the whole period analysed.

The politicisation or restriction of the public prosecution and other law enforcement bodies was addressed in every parliament, mostly with the highest intensity during the second or third period, suggesting a growing relevance of such narratives. In Poland, MPs mentioned the politicisation as a challenge to the rule of law throughout the periods analysed, i.e. such narratives emerged long before the

[51] In Anders et al. (2024), we provide a more comprehensive list. Because of limited space, our detailed description in this book focuses on the most relevant topics.

Table 6.18 Thematic areas of main narratives on challenges to the rule of law per country

	1st wave					2nd wave					3rd wave				
	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK
Rule-stretching or violation/non-compliance	✓	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
Politicisation/restriction of the judiciary[a] and public prosecution			✓					✓	✓		✓	✓	✓	✓	✓
Functioning of the judiciary, public prosecution and law enforcement			✓	✓					✓				✓		✓
Post-1989 transformation[b]			✓					✓				✓			
Lack of trust									✓		✓				✓
Corruption/clientelism									✓					✓	✓
Constitutional court						✓					✓				
Politicisation/restriction of the administration or independent institutions												✓			

1st wave: CZ 1992–1998, HU 1990–1998, PL 1990–1997, RO 1990–2004, SK 1992–1998
2nd wave: CZ 1998–2006, HU 1998–2010, PL 1997–2015, RO 2004–2014, SK 1998–2006
3rd wave: CZ 2006–2021, HU 2010–2021, PL 2015–2021, RO 2014–2021, SK 2006–2021

[a]Depending on the national context, this category includes interventions in constitutional, administrative and ordinary courts or in institutions in charge of judicial self-administration (judicial councils)

[b]We consider a narrative relevant to the post-1989 transformation if it addresses issues typically associated with democratisation and economic liberalisation, like lustrations, restitutions and privatisation. The narratives do not have to relate solely to the transition period in the early 1990s

politicisation and restriction of the judiciary received attention from the EU and scholars.

In three countries, the main narratives on challenges to the rule of law fell into the category 'Functioning of the judiciary, public prosecution and law enforcement'. Corresponding narratives were typically linked to criticism of these institutions' low levels of performance, often due to their underfunding and understaffing. Other prominent complaints refer to a supposed lack of trust in the rule of law and its institutions and problems related to the post-1989 system change and problems with corruption and clientelism.[52]

There was no significant parliamentary discussion of pre-1989 challenges to the rule of law, which does not necessarily mean that there were more problems with the rule of law after 1989 than before. Obviously, MPs paid more attention to current problems than to past ones, and the prevailing assessment was that there was no rule of law during communist times, as some quotes in this book indicate. This is another reminder that narratives cannot provide an all-encompassing picture of reality.

The following sections provide an analysis of the narratives most frequently used in the five countries. Concerns were expressed about the dominance of the executive, particularly in Hungary and Poland, its attempts to interfere in investigations (in Czechia, Romania and Slovakia), the introduction of unconstitutional legislative proposals (in Czechia and Slovakia), and the undermining of the separation of powers (in Hungary, Romania and Slovakia). In Poland and Romania, various political parties portrayed limited judicial independence from politics. Slow court proceedings were a major issue in all countries except Czechia, where it was an occasional topic of parliamentary debates until around 2010. Complaints about understaffing in Hungary and Poland, the recurring criticism by MPs from different parties in Poland that the ruling majorities frequently tried to fill positions in the public administration with 'their people', and complaints about poor law enforcement in Slovakia were also associated with this issue.

For the purpose of an accessible comparative overview, the wording of narratives slightly differs from the original wording, summarising various statements by their main idea or argument. The number of main narratives was relatively even across the countries (seven in Hungary, eight in Romania and Slovakia, nine in Czechia), except for Poland, where the core of main narratives used in the three decades studied amounted to 13. The pattern was different regarding the number of one-sided and diverging narratives. Poland again ranks first with seven, followed by Hungary (five), Slovakia (four), Czechia (three) and Romania (one). The number of controversial narratives was highest in Hungary, followed by Poland and Slovakia (hence the longer sections for these countries). In contrast, it was lowest in Romania, where even harsh criticism of governments for violating the rule of law was rhetorically

[52] No significant narratives in the countries' parliaments fell into our subcodes 'Economic and other interest groups', 'Juridification' and 'Sovereignty', even though parliamentarians occasionally touched on these issues in debates.

Table 6.19 Narratives on rule-stretching or violation/non-compliance

	CZ	HU	PL	RO	SK
Overlapping narratives					
Public authorities exceed their powers through their actions and deliberate inaction, disrupting the system of checks and balances.	✓ (1, 3)			✓ (2)	✓ (1–3)
Proposed laws violate the constitution or fundamental principles of the RoL.	✓ (1–3)				✓ (3)
Frequent legal amendments undermine the principle of legal certainty as a key element of the RoL.		✓ (1)			
Lack of stable, transparent and constitutional law (making) undermines the RoL.			✓ (2)		
One-sided or diverging narratives					
Ruling majority (Fidesz, PiS) violates RoL principles (constitutionality, separation of powers etc.).		✓ (2, 3)	✓ (3)		

shared by parliamentarians across parties, even if they only voiced them while in opposition.

Table 6.19 reveals that parliamentarians in Czechia, Romania and Slovakia were particularly concerned about public authorities exceeding powers through their actions and deliberate inaction. Especially in Czechia and Slovakia, this narrative was used throughout the period studied. Other narratives were more country- or time-specific. MPs criticised the parliamentary majority for frequent legal amendments (Hungary), for abusing and misusing extraordinary legislative procedures (Slovakia), for general deficiencies of law and lawmaking (Poland) or for violating various rule of law principles (Hungary, Poland).

As Table 6.20 demonstrates, narratives on the politicisation/restriction of the judiciary and public prosecution, frequent in the second and third waves of rule of law legislation, were more controversial than those related to rule-stretching by the political majority, and were often used by only some of the parties.[53] The narratives were used in different waves of rule of law legislation and they varied across countries in terms of the assumptions about causes and blame and the ideological profile of those using them.

The statements on the functioning of the judiciary and public prosecution employed in the parliaments of Poland and Romania can be condensed into two overlapping narratives on the functioning of the judiciary and prosecution, one overlapping narrative in Slovakia and one diverging in Poland (Table 6.21). In Poland and Romania, parliamentarians criticised a lack of resources of the judiciary and prosecution and the general structure of these bodies, while in Slovakia, the

[53] We should remember that according to our definition, overlapping narratives include those that are used across the ideological party spectrum, even when only while in opposition. This definition implies that one-sided narratives used during the third wave of rule of law legislation can become overlapping if, after a change in government, the new opposition forces use the same narrative for criticising the new governing parties.

Table 6.20 Narratives on the politicisation/restriction of judiciary and public prosecution

	CZ	HU	PL	RO	SK
Overlapping narratives					
The executive is interfering with the police and the public prosecution to halt criminal proceedings.	✓ (3)				
The lack of judicial independence inherited from the old regime needs to be addressed.			✓ (1)		
The lack of institutional independence of the judiciary/ public prosecution is exploited by the executive/president to fight political opponents.				✓ (2, 3)	
One-sided or diverging narratives					
There is a lack of impartiality in the judiciary ('corrupt judges').[a]			✓ (2, 3)		
Ruling majority (Fidesz, PiS) seeks to politicise the judiciary, constitutional court and prosecution service.		✓ (3)	✓ (3)		
Those in power misuse public prosecution and other law enforcement authorities to criminalise political opponents.				✓ (2)	✓ (2)
Significant parts of the judiciary and prosecution serve particular interests, including political ones vs under the guise of modernising reforms, the government attempts to gain control over the judiciary and prosecution.					✓ (3)

[a]In Poland, this was a diverging narrative, with the competing narrative used by the opposition that PiS employs this argument as a pretext to politicise the judiciary, constitutional court and prosecution service.

Table 6.21 Narratives on the functioning of the judiciary and public prosecution

	CZ	HU	PL	RO	SK
Overlapping narratives					
The judiciary lacks the resources and competences to act effectively.			✓ (1, 2)	✓ (1, 2)	
Court proceedings are excessively long, which harms the rights of citizens.					✓ (3)
One-sided or diverging narratives					
Dependence of public prosecution on the executive is harmful to their functioning vs lack of accountability in the judiciary and public prosecution is harmful to their functioning. (diverging)			✓ (2, 3)		

focus was on the excessive length of court proceedings without agreeing on the specific reasons for this challenge to the rule of law.

Narratives on the post-1989 transformation were more country-specific, although all countries under study shared similar legacies from the previous regime and transition experience (Sects. 2.3 and 2.4). Only in Hungary and Poland did we identify narratives used with high intensity related to the transformation (Table 6.22). While in the first wave of rule of law legislation they were overlapping, they later became one-sided. Differences between the cases were also observed regarding the issue of the lustration of public officials. Lustration laws differed by

Table 6.22 Narratives on the post-1989 transformation

	CZ	HU	PL	RO	SK
Overlapping narratives					
Crimes committed under the previous regime must be investigated, victims compensated and lustration established.		✓ (1)			
Lack of law-abiding, trustworthy state institutions and a pending stable legal system hinders the prompt establishment of a state under the RoL.			✓ (1)		
One-sided or diverging narratives					
Crimes committed under the previous regime must be investigated and lustration be strengthened.		✓ (3)			
Lack of decommunisation, especially in the judiciary, hinders the establishment of a just state.			✓ (2, 3)		

Table 6.23 Narratives on lack of trust

	CZ	HU	PL	RO	SK
Overlapping narratives					
Due to the failure of the political class to build and stabilise a functioning and independent judiciary, citizens have lost considerable confidence in the RoL.				✓ (2)	
Due to public officials' arbitrary behaviour and omissions, citizens have lost confidence in the RoL.					✓ (3)
One-sided or diverging narratives					
Due to the executive action and rhetoric towards the judiciary and law enforcement authorities, citizens have lost trust in the RoL.	✓ (3)				
Due to low effectiveness and cases of corruption in the judiciary, trust in the RoL is undermined.					✓ (3)

country (Sect. 3.2). While mild lustration was argued to be a challenge to the rule of law by all parties in Hungary and some parties in Poland, the supposedly insufficient lustration policy in Romania did not constitute a significant narrative regarding challenges to the rule of law in the parliament. In Czechia and Slovakia, some political parties denounced the established practice of lustration as contradicting the principles of the rule of law. However, the issue was not narrated as a prominent challenge to the rule of law in any of these countries.

In Romania and Slovakia, but also in Czechia, there were narratives of low trust in the state as a problem for the rule of law. The arguments about the cause of decreasing confidence varied – with the failure of the political class (Romania), public officials in general (Slovakia), the executive (Czechia) or cases of corruption in the judiciary (Slovakia) being particularly common (Table 6.23).

Only in two parliaments, in Romania and in Slovakia, were there significant narratives focused on corruption (Table 6.24).

Table 6.24 Narratives on corruption/clientelism

	CZ	HU	PL	RO	SK
Overlapping narratives					
Corruption and patronage are commonplace in politics, which undermines the principle of equality before the law.				✓ (3)	
One-sided or diverging narratives					
The prosecution and judiciary are part of a system of corruption that reaches into the highest echelons of politics.					✓ (3)

The topics of other prominent narratives were even more particular to the countries. The constitutional court was addressed in specific narratives only in Czechia, where, since the second wave of rule of law legislation, some parties have argued that it is too activist, thus undermining the system of separation of powers. In other countries, parliamentarians also referred to the constitutional court, but primarily in connection with (and therefore already captured under) the more specific categories discussed above. For example, in Hungary and Poland, MPs criticised alleged attempts to politicise the constitutional court.

Only in Hungary did the politicisation or restriction of the public administration or other independent institutions different from those already mentioned rank among the significant themes of narratives on challenges to the rule of law. Since the third wave of rule of law legislation, opposition parties have criticised that the Fidesz government curtails the independence of formally independent institutions by placing loyalists in top positions, restricting media freedom and interfering in public administration in a legal but illegitimate way.

The issues addressed in many one-sided or diverging narratives for which we found statements only by representatives of certain parties differed temporally and by country. As Table 6.25 reveals, the number of such narratives was significantly higher in the second and third waves of rule of law legislation.

In terms of countries, in Czechia, one-sided narratives included alleged excessive activism of the constitutional court, observed in speeches of leftist MPs. In Hungary and Poland, new narratives on challenges to the rule of law emerged after Fidesz returned to power in 2010 and PiS entered government for the second time in 2015. They included the governments' curtailing of various counter-majoritarian institutions and built on a long-standing tradition of criticism across party lines about entrenched structural problems that have been difficult to overcome. Also in these two counties, the post-1989 transformation was covered by one-sided narratives. In Romania, one narrative concerned the alleged instrumentalisation of the fight against corruption at the hands of special public prosecution agencies was founded or strengthened under the presidency of Traian Băsescu. However, in general, the parties agreed rhetorically on the relevant challenges to the rule of law, even if there were domestic conflicts about how to address these challenges. In Slovakia, the diverging narratives argued that certain governments instrumentalised reforms of the judiciary and the prosecution to subordinate these institutions and use them for their own political goals. Some parties in this country also voiced their concern in one-sided narratives about the lack of trust and corruption.

Table 6.25 One-sided or diverging main narratives on challenges to the rule of law

	1st wave					2nd wave					3rd wave				
	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK
Politicisation/restriction of the judiciary and public prosecution								✓	✓	✓		✓	✓		✓
Rule-stretching or violation/non-compliance							✓					✓	✓		
Post-1989 transformation								✓				✓	✓		
Functioning of the judiciary, public prosecution and law enforcement								✓					✓		
Lack of trust															✓
Corruption/clientelism															✓
Constitutional court						✓					✓				
Politicisation/restriction of administration or independent institutions												✓			

For periods of the waves, see Table 6.18

Table 6.26 Narratives on challenges to the rule of law and democracy in Czechia

	1992–1998	1998–2006	2006–2021
Rule-stretching or violation/non-compliance	Proposed laws violate the constitution or fundamental principles of the RoL. (overlapping)		
	The executive exceeds its powers, acts arbitrarily, undemocratically and against the principles of the RoL. (overlapping)		The executive exceeds its powers, acts arbitrarily, undemocratically and against the principles of the RoL. (overlapping)
Politicisation/ restriction of judiciary or public prosecution/law enforcement			The executive is interfering with the police and the public prosecution to halt criminal proceedings. (overlapping)
Lack of trust			Due to the executive's action and rhetoric towards the judiciary and law enforcement authorities, citizens have lost trust in the RoL. (overlapping)
Constitutional court		The constitutional court is too activist, thus undermining the separation of powers that must be protected. (one-sided, ČSSD/KSČM)	

As already mentioned, some narratives were used only during a specific period (for instance the criticism of excessive length of judicial proceedings in Czechia) and, for various reasons, they eventually became irrelevant to the parliamentary debate. Nevertheless, such narratives may still be deemed relevant as there is potential for their revival.

6.3.1 Czechia: Unconstitutional Legislative Proposals and the Exceeding of Powers

By far the most widespread references to challenges to the rule of law throughout the periods studied fall into the category of 'Rule-stretching or violation/non-compliance', forming two overlapping, but distinct, narratives. References to challenges related to the politicisation and restriction of the public prosecution and law enforcement and to the lack of trust were also frequent, with narratives mainly used during the third wave of rule of law legislation. Criticism of the role of the constitutional court followed at a distance (Table 6.26).[54]

[54] We also found many statements referring to transformation issues, and two one-sided narratives were identified for this area. However, they were strongly related with a very limited number of

Rule stretching and violation or non-compliance. When elaborating on challenges to the rule of law in the examined parliamentary debates, members of the Czech parliament most frequently mentioned problems of **rule-stretching and violation or non-compliance**. Such statements appeared throughout the entire analysis period, and speakers addressed various specific issues. Nevertheless, we identified two narratives.

The first was used by representatives of all parties regardless of their status (in government or in opposition). Parliamentarians regularly stated (with no period of particularly high intensity) that **proposed laws would violate the constitution** or the Charter of Fundamental Rights and Freedoms. The rule of law as a concept was usually not explicitly mentioned in these statements.

> The entire first half of the bill is not a proposal for a legal norm but a means of political and ideological struggle, a means that does not respect the constitutional order of the Czech Republic and is in gross contradiction with numerous provisions of the new constitution of the Czech Republic and the Charter of Fundamental Rights and Freedoms, which is part of the constitutional order according to Article 3 and Article 112, Paragraph 1, of the constitution of the Czech Republic. (Vladimír Řezáč, LB, opposition, 9.7.1993, LP 1, Session 11)[55]

> And as I've already mentioned, such regulation is indeed in conflict with the principles of the rule of law, where criminal responsibility is an individual matter, and the state must prove to the citizen that they have committed an offence. (. . .) I would like to point out that even the general principle of the presumption of innocence, in my opinion, would be violated by such regulation. (Jiří Pospíšil, ODS, opposition, 25.3.2004, LP 4, Session 30)

> (F)rom the perspective of the basic legal principles of the rule of law, this law is unacceptable. It creates inequality among the recipients of the legal norm, distinguishing between ordinary citizens, small business owners and large business owners. That is simply unacceptable. (Jan Chvojka, ČSSD, government, Minister for Human Rights, Equal Opportunities and Legislation, 8.9.2017, LP 7, Session 60)

In later periods, MPs also increasingly highlighted inconsistencies of legislative proposals with existing case law of the constitutional court.[56] Some speakers stated

speakers who repeatedly spoke in parliamentary debates on behalf of their political parties. For this reason, they are not included in the table. Other topics that MPs referred to in one-sided or diverging narratives were alleged interference in national sovereignty by international bodies, like the ECtHR or the EU, and that the lustration practice is in contradiction with the rule of law principles.

[55] In addition, Antonín Seďa (ČSSD, opposition, 11.02.2011, LP 6, Session 13) argued, for example: "I fear that the presented draft of the law contradicts the principles of the rule of law, especially the constitutional order of the Czech Republic."

[56] To quote also Miroslav Grebeníček (KSČM, opposition, 10.3.2006, LP4, Session 54), for example: "According to the constitution and international conventions, the efforts of those who want to ban the ideals of socialist thinking and convictions will not stand. In the eyes of the rule of law and based on ideologically motivated and politically directed amendments to criminal law norms regarding genocide and violence, they do not hold up either. The constitutional court has already expressed its opinion on a similar matter, as is widely known."

that if the legislative proposal got adopted, they would appeal to the constitutional court to review the constitutionality of the contested law.[57]

The second narrative related to rule-stretching, violation or non-compliance was employed by representatives from all parties when in opposition. They criticised that **the executive exceeds its powers, acting arbitrarily, undemocratically and against the principles of the rule of law**. Politicians used this narrative to criticise the actions of the government or the president of the Republic. As visible in the wording of the quotations below, such statements were more abstract and general than the first mentioned narrative, and they often referred directly to the concept of the rule of law. MPs emphasised that the rule of law is undermined by arbitrary conduct even when it was not against any particular law. This narrative was most prominently used during the first and third waves of rule of law legislation.

> If we claim that we are building a rule of law, then primarily, through our actions, we are building it, by insisting that the law is respected. If we allow as guardians of legality in this country a man who himself violates the law, then we do not have a clear conscience ourselves and do not respect the main principle for which we are here, we do not respect the principles that the population of this country embraced after November, that we will finally live in a rule of law. (Jozef Wagner, ČSSD, opposition, 17.6.1993, LP 1, Session 10)

> The government of Václav Klaus, using its party majority in parliament, refused parliamentary oversight and, even at the end of its term, did not dare to appear before the representatives with its final account. Such behaviour is incompatible with a democratic rule of law. (Miroslav Grebeníček, KSČM, opposition, 24.7.1996, LP 2, Session 3)

During the third wave of rule of law legislation, the narrative was still used intensively when MPs (almost exclusively representatives from opposition parties) wanted to point to the general conduct of top-level decision makers. In such cases, they referred to abstract principles that go beyond everyday politics, especially the equality before the law. The opposition, for instance, criticised the large-scale amnesty granted by President Václav Klaus in 2013 and endorsed by the government (Sobotka) or the fact that Andrej Babiš, one of the wealthiest businessmen in the country benefiting from state subsidies, who also faced criminal charges, was appointed minister of finance and later prime minister (Výborný).

> The prime minister countersigned the amnesty, and therefore the entire government of the Czech Republic bears responsibility for the form of this shameful act. I believe it is not possible to label this responsibility of the government as purely formal. (. . .) If this form of amnesty, as approved by the president and the government, is indeed a disgrace, if this form of amnesty is something that undermines the trust of a large part of the public in the rule of law, in the principles of equality before the law, if this form of amnesty raises justified suspicions that it was tailored to a few chosen individuals to save them from ongoing criminal proceedings, then I believe that the Chamber of Deputies has no choice but to make this amnesty a subject of a vote of no confidence in the government of Petr Nečas. (Bohuslav Sobotka, ČSSD, opposition, 17.1.2013, LP 6, Session 50)

[57] E.g. Jan Farský (STAN, opposition, 23.4.2019, LP 8, Session 28) or Jan Bauer (ODS, opposition, 17.12.2019, LP 8, Session 39).

> In a functioning rule of law, it's not possible for a person facing criminal charges to become the prime minister. This happened in our country. In any case, we could have spared ourselves the questions and suspicions that equality before the law does not apply here if someone else from ANO were the prime minister. (. . .) In a functioning rule of law, it's also not possible for someone who, as the prime minister, has a significant influence on the allocation of public funds, to have a financial interest in these subsidies. (. . .) It's sad that the government couldn't address this clear conflict of interest involving its leader, and it took a preliminary audit by the European Commission to say that it's not acceptable and that the rules must apply, even if it involves the prime minister. (Marek Výborný, KDU-ČSL, opposition, 26.6.2019, LP 8, Session 32)[58]

Politicisation. MPs were also critical of the alleged **politicisation/restriction of the judiciary or public prosecution and law enforcement**. Statements that fell under this category touched on diverse topics, but most often, politicians argued that **the executive is interfering with the police and public prosecution to halt criminal proceedings**. This narrative was mainly used during the third wave of rule of law legislation in connection with specific cases involving government members. Politicians across party lines raised this criticism, but only when in opposition. Speakers drew attention to the fact that the police and public prosecution are subordinate to the executive (the Ministry of Justice or the Ministry of the Interior). They accused the government of actively trying to stop or discourage the investigation or prosecution of its members in specific cases. Such cases involved, for instance, the investigation of Deputy Prime Minister Jiří Čunek for alleged bribery (Rath), of the former minister of defence for violation of public procurement rules when purchasing fighter aircraft (Sobotka), or the prosecution of Prime Minister Andrej Babiš for alleged fraud during his previous business activities (Farský).

> If you were in my position, and our government did what you did with the public prosecutor's office and the specific cases, you might thunder even louder than I am here, because you would say it's a violation of the rule of law, that it's an unacceptable intrusion of politics into the public prosecutor's office, that it's an abuse of political power to sweep cases under the rug. It's just like that! We both know it's like that. And we both know that it wasn't right and that it didn't benefit the supreme public prosecutor's office. (David Rath, ČSSD, opposition, 13.3.2008, LP 5, Session 28)

> (I)n the midst of an ongoing criminal investigation, a government minister, who is incidentally in a conflict of interest because he was a member of the government that approved the purchase of CASA aircraft, recommended the resignation of the police authority conducting the investigation and even the supervisory prosecutor, all in a live broadcast! I ask: what else

[58] On the same issue, Markéta Pekarová Adamová (TOP09, opposition, 10.1.2018, LP 8, Session 5), argued: "If media manipulation is something entirely unacceptable in Western democracies, then abusing political power to weaken, paralyse or even completely destroy the competition is something that is unacceptable in any rule of law. (. . .) The case has already gathered dust, but I believe it is necessary to mention it as a reminder of what the prime minister is capable of. It is a documented and proven case, but even if there were only one, it would not inspire much confidence."

> could be qualified as influencing criminal proceedings than statements of this kind? (Bohuslav Sobotka, ČSSD, opposition, 18.7.2012, LP 6, Session 45)[59]

> And I hope that such a situation will not be repeated too often here in the chamber. Situations where for 59 days, the chamber is blocked by manoeuvring to avoid justice, hiding behind various cases, attacking prosecutors, attacking the police, attacking the courts, undermining their credibility, and even discrediting OLAF when its report arrives. The damage done by attacking democratic institutions and the foundations of the rule of law is much greater than the 50 million related to Čapí hnízdo. (Jan Farský, STAN, opposition, 19.1.2018, LP 8, Session 6)

MPs who criticised the politicisation of the judiciary and the prosecution often pointed out that the mere possibility of a conflict of interest undermined the rule of law.

> We may have encountered here possibly the most serious case – I repeat – of an organised group that has the ability, method and capability to influence a political case, and now it depends on what we do about it. I appeal to you: if the government is to have a function and authority, it cannot turn a blind eye to this. If you do, I'm not saying this out of animosity, but you bear responsibility for what you did not do in front of the public. For pushing this country a bit further towards a situation where the law does not apply equally to everyone because if something like this is happening, it is a scandal in a state governed by the rule of law. (Lubomír Zaorálek, ČSSD, opposition, 13.6.2008, LP 5, Session 33)

> By the fact that the person under criminal prosecution is the prime minister, the entire government is embroiled in this monstrous conflict of interest. And if there are reasonable suspicions that they are also obstructing the investigation, undermining justice, then the fundamental principles of the rule of law and the public's trust in justice are indeed at risk. (Miroslav Kalousek, TOP09, opposition, 23.11.2018, LP 8, Session 23)

> And these (. . .) are significant reasons why Andrej Babiš cannot be the prime minister. Not only because he has personal problems and a conflict of interest, but also because he doesn't even pretend to remain neutral when dealing with these matters as the prime minister. He's leaving his defence to lawyers and will defend himself before the relevant authorities, refraining from commenting to avoid raising suspicions that he's abusing his highly influential position at the top of the executive branch. No, he's doing the exact opposite. From the position of the prime minister, he's waging an open campaign against Czech law enforcement agencies. (Petr Fiala, ODS, opposition, 26.6.2019, LP 8, Session 32)

Lack of trust. In the parliamentary debates analysed, public trust in the functioning of the rule of law was usually mentioned in connection with criticism of the

[59] In the same debate, Radek John (VV, opposition, 18.7.2012, LP 6, Session 44), argued: "The attacks by the minister of finance are no longer directed solely at investigators, but they also question the independent functioning of the police as a whole, as well as the principle of the separation of powers. In my opinion, this intentionally destabilises the security forces, disregards professional and political neutrality, and questions fundamental principles of the rule of law. Instead of recognising the logic of the separation of powers and the independence of investigative bodies, senior politician Kalousek attacks everything that opposes him, everything that is independent of him."

government's actions. It was generally part of the lines of argument used to accuse representatives of the executive of attempting to influence the administration of justice. Especially during the third wave of rule of law legislation, MPs used the narrative that **due to the executive's action and rhetoric towards the judiciary and law enforcement authorities, citizens had lost trust in the rule of law**. Again, this criticism was raised by representatives of various parties, especially ČSSD and ODS, mainly when in opposition. From their perspective, the scandalous misuse of power by top-level politicians, such as President Klaus with his above-mentioned amnesty (Hašek) or Prime Minister Babiš (Vrecionová), significantly contributed to undermining public trust in the rule of law.[60]

> The amnesty made it clear to the public: those at the top can do whatever they want. What does that mean? Is it only okay to steal when you steal on a large scale? You have denied equality of people before the law. Your action brought privileges to the rich who, thanks to their lawyers, dragged out their trials for over eight years. You have denied one of the main reasons for the existence of the state. You have become allies of one group of citizens against the majority. You are not just undermining trust in the state; you are undermining people's trust in democracy. With your actions, you have become the most important supporters of extremists of all kinds. With your actions, you have launched an attack on the rule of law. (Michal Hašek, ČSSD, opposition, 17.1.2013, LP 6, Session 50)

> When it comes to the criminal investigation for subsidy fraud and even this delaying tactic alone should be a reason for the prime minister to resign. How can citizens trust the police and the courts when there are doubts surrounding the prime minister himself? How can the prime minister be a role model for the citizens of the country when he is suspected of subsidy fraud and obstructing an investigation? How can we expect citizens to respect the rule of law when the prime minister himself is not setting an example? (Veronika Vrecionová, ODS, opposition, 23.11.2018, LP 8, Session 23)[61]

[60] Jiří Paroubek (ČSSD, 24.3.2009, LP 5, Session.2013, LP 6, Session 53), stressed in connection to the alleged manipulation of the public prosecution and the judiciary in the case of Deputy Prime Minister Čunek: "(I)t is necessary to openly point out that this government, especially in recent times, has been significantly undermining the level of justice, particularly the authority of the judiciary and the prosecution. Citizens' trust in a state where they seek justice through paid officials who base their activities on strict principles of independence and impartiality has dropped to its lowest point." His party fellow Lubomír Zaorálek (ČSSD, opposition, 17.7.2013, LP 6, Session 55) argued in 2013, after police raided the government office and detained several people, including the chief of cabinet and the prime minister's mistress, on suspicion of corruption and abuse of intelligence services: "(D)o you think that will restore public trust? Do you think that when you started attacking the police and prosecutors yesterday, shouting 'disciplinary proceedings against them!' and so on, you, who are in a conflict of interest (. . .). How can Petr Nečas, as a constitutional figure, attack the police and prosecutors in cases that directly concern him? Do you understand how the public perceives this?! As a denial of the principle of the rule of law."

[61] Or Petr Fiala (ODS, opposition, 21.4.2016, LP 7, Session 45) criticised police action against protesters on the occasion of the Chinese president's official visit to Prague in 2016: "(Y)ou yourself admitted that at least one mistake was made, so this casts a bad light on the police, it undermines trust in the police. And we cannot allow in a rule of law, in a democratic country, for there to be doubts about the police's work, that the police may be working on some political order (. . .)."

Especially the investigation and subsequent criminal prosecution of Prime Minister Andrej Babiš was depicted as having "a devastating impact on the atmosphere in society and trust in law and justice".[62] Even if he was eventually acquitted, people would not believe "that his performance as prime minister did not contribute to resolving his personal issue".[63] Another opposition MP argued that since a criminally prosecuted person became prime minister, "a person who, through the ministry of the interior, indirectly controls the police, and through the ministry of justice, controls the prosecutors, trust in justice has been endangered and weakened".[64]

Constitutional court. Since the second wave of rule of law legislation, the constitutional court was repeatedly criticised, mainly by the representatives of leftist parties (KSČM and ČSSD), both while in government and while in opposition. They used the narrative that **the constitutional court is too activist, thus undermining the separation of powers that must be protected**. In the parliamentary debates analysed they argued that the constitutional court had harmfully exceeded its limits within the system of the separation of powers. Some speakers called for a reform of the powers of the constitutional court.

> The constitutional court's authority to exercise 'negative lawmaking power' is rightly criticised. However, the constitutional court effectively engages in 'positive lawmaking' as well, through arbitrary interpretations of legal norms in the form of 'constitutionally correct interpretation'. (Marie Rusová, KSČM, opposition, 16.5.2003, LP 4, Session 16)

> At this moment, with its decision, the constitutional court has placed the Czech Republic outside the constitution. It has entered the political scene as a player and wishes to fulfil the role of a legislator. Such a position in a democratic state governed by the rule of law also requires bearing the corresponding responsibility. At the same time, it is appropriate to consider the mutual relationships of all constitutional bodies of the state and their organisation. First and foremost, it is time to open a professional and political discussion about the future constitutional status of the constitutional court itself and the role it is supposed to play. (Jiří Paroubek, ČSSD, opposition, 8.9.2009, LP 5, Session 60)

MPs criticised certain rulings of the constitutional court and warned against a "tendency we are experiencing, where judges are becoming some sort of special class in this country, separated from what is part of the entire state system", which was allegedly reinforced by some decisions of the constitutional court.[65] Another social democratic MP deplored the "very unfortunate stance of the constitutional court", which "declared that when parliament refuses to act, the courts must act".[66] In 2019, an ANO representative also expressed her reluctance to activate the constitutional court to impeach President Miloš Zeman.

[62] Marek Výborný, KDU-ČSL, opposition, 23.11.2018, LP 8, Session 23.

[63] Petr Fiala, ODS, opposition, 26.6.2019, LP 8, Session 32.

[64] Jan Farský, STAN, opposition, 27.9.2019, LP 8, Session 34.

[65] Zdeněk Jičínský, ČSSD, government, 17.8.2005, LP 4, Session 46.

[66] Stanislav Křeček, ČSSD, opposition, 13.7.2012, LP 6, Session 41.

> I am against filing a constitutional complaint, and the main reason is that we would be entrusting the constitutional court with a competence that belongs solely to us as sovereigns, the legislative body, and we would violate the principle of the separation of powers. (Helena Válková, ANO, government, 26.9.2019, LP 8, Session 34)

6.3.2 Hungary: Stretching of Rules, Centralisation of Power and a Lack of Lustration

In our selected documents, when members of the Hungarian parliament mentioned challenges to the rule of law, they mostly addressed problems that fell into the category 'Rule-stretching or violation/non-compliance'. At a far distance followed the three categories 'Politicisation/restriction of the judiciary and public prosecution' and 'Politicisation/restriction of the administration or independent institutions'—their main argument can be summarised as the centralising of power—as well as 'Post-1989 transformation' (the latter mainly constituted by statements concerning a lack of lustration), with narratives falling into these categories being used equally frequently. By far the most statements about challenges to the rule of law were made during the third wave of rule of law legislation, i.e. the period when Fidesz-KDNP governed with a two-thirds majority in parliament, except for 2015–2018 (Table 6.27).[67]

Rule-stretching or violation/non-compliance. Narratives related to this category of challenges to the rule of law have appeared in many areas of the parliamentary debate over the past 30 years. In the first wave of rule of law legislation, Hungarian parliamentarians, when in opposition, criticised alleged deficiencies regarding the principle of legal certainty, which was interpreted as a relevant purpose and key element of the rule of law (see Sects. 5.1.2 and 5.2.2). Across party lines, MPs drew attention to the many amendments to the law, even key legislation, adopted by acting government majorities. In their eyes, **frequent legal amendments undermined the principle of legal certainty as a key element of the rule of law**.

> We cannot support a campaign-style constitutional amendment that goes beyond the legitimate grounds of governability and is tabled as a matter of urgency. We are of the opinion that amending the constitution for the umpteenth time in such a short space of time to such an extent, and back and forth, is unnecessary and even harmful, because it weakens hopes in the functioning of the rule of law. And without stable basic constitutional provisions, the rule of law and legal certainty are an illusion. (Csaba Hámor, MSZP, opposition, 9.5.1990, LP 34, Session 3)

[67] Other aspects covered by statements included police violence in 2006, slow court proceedings and excessive workload, a distorted relationship between politics and business (influence of politics on the economy), little or no debate with civil society or professional/specialised organisations in the legislative process.

Table 6.27 Narratives on challenges to the rule of law and democracy in Hungary

	1990–1998	1998–2010	2010–2021
Rule-stretching or violation/non-compliance	Frequent legal amendments undermine the principle of legal certainty as a key element of the RoL. (overlapping)	Fidesz violates RoL principles (constitutionality, separation of powers etc.). (one-sided, opposition)	
Politicisation/ restriction of the judiciary and public prosecution			Fidesz seeks to politicise judiciary, constitutional court and prosecution service. (one-sided, opposition)
Politicisation/ restriction of the administration or independent institutions			Fidesz government uses legal measures to curtail the independence of officially independent institutions by placing loyalists in top positions, restricting media freedom and interfering in public administration. (one-sided, opposition)
Post-1989 transformation	Crimes committed under the previous regime must be investigated, victims compensated and lustration established. (overlapping)		Crimes committed under the previous regime must be investigated and lustration be strengthened. (one-sided, opposition)

> (I)f this practice continues to prevail in this House, that any bill can be touched at any time under the heading of incoherence, it will mean the death of the constitutional rule of law. (Tamás Sepsey, MDF, opposition, 14.10.1997, LP 35, Session 309)[68]

Under the first Orbán government (1998–2002), opposition parties, mainly left-wing MPs who had been voted out of office, established the narrative that **the ruling majority violates rule of law principles (constitutionality, separation of powers etc.)**. MPs accused Fidesz, FKgP and MDF of stretching and exploiting rules to their own advantage. In our selected documents, the parliamentary majority was criticised for prematurely shortening the terms of office of incumbent mayors and local representatives, which was interpreted as undermining legal certainty. They also argued that the Fidesz government had created a patronage system that benefited people close to power (mainly family and friends (Kovács)), abolished the system of reconciliation of interests, the party neutrality of public media, the supervisory role of parliament and ignored the law (Avarkeszi), prevented the establishment of committees of inquiry and curtailed opposition rights, inter alia (Fodor).

[68] See also Miklós Gáspár, KDNP, opposition, 12.5.1997, LP 35, Session 268, cited in Sect. 5.1.2.

> The leadership of Fidesz sees governance not as a service but as an opportunity to impose its will on society, to build a clientele and to put them in an advantageous position. This effort necessarily entails questioning certain constitutional principles, ignoring or arbitrarily interpreting laws, democratic institutions and the rule of law, and breaking the conventions of the first two parliamentary terms of government after the change of regime. (László Kovács, MSZP, opposition, 18.10.2001, LP 36, Session 233)

> So far, not a single word has been uttered from the governing party about the rule of law and the state of democracy. This is probably no coincidence, since this government has abolished the system of reconciliation of interests, social supervision of social security, the party neutrality of public media and the supervisory role of parliament, and it is ignoring the constitution, the laws and the rules of procedure. (Dezső Avarkeszi, MSZP, opposition, 18.10.2001, LP 36, Session 233)

> We remember that one of the first stages in the process of attacking the rule of law was the restriction of the functioning of parliament, the introduction of the three-week parliamentary session; we remember how the establishment of committees of inquiry was prevented; we remember how opposition rights were curtailed. We also remember how the independence of the judiciary was attacked and how it was tried to influence the judiciary through methods of budget and financial support, withholding, not giving; on the other hand, we also remember how the prosecution service has been put in such a position in this country that it is now seen by many citizens as an instrument of political influence. (Gábor Fodor, SZDSZ, opposition, 25.5.2002, LP 37, Session 4)

For the period after the first Fidesz government, we found fewer statements in parliament referring to issues of rule-stretching. The Fidesz-KDNP landslide victory in the 2010 parliamentary elections was mainly based on their public call for credibility and accountability of politics (Sects. 3.1 and 3.2). This criticism was directed against the previous government led by MSZP. LMP, a party newly elected to parliament, stated in 2010 that the public had lost confidence in the parliamentary system because of police violence (in 2006)[69] and alleged corruption and clientelist networks under the former ruling parties; it also criticised oligarchic tendencies and expected a new kind of politics.

> (W)e are aware that the new government that is now taking office (. . .) and your constitutional majority, not only have the task of carrying out the maintenance work that the parliamentary elite of the past twenty years has failed to do, but also cannot conceal the fact that a moral crisis has developed in Hungary in recent years that will certainly give the new parliament a lesson in how to regain the credibility of politics, and restore the credibility of Hungarian parliamentarianism. We also agree that the Hungarian rule of law has been seriously challenged in recent years, and I am thinking here of the violations committed by the police in recent years, and I am thinking of how corruption has become rampant in Hungary. But when I refer to this, it is not enough to demand accountability and to promise accountability, we need to work together and put proposals on the table of the House, and we did this today when we tabled our campaign finance bill, on how to institutionally curb the

[69] In autumn 2006, anti-government demonstrations broke out in Budapest and other major cities following the leaking of a speech by then Prime Minister Ferenc Gyurcsány (the 'Öszödi speech'). Several people were injured during the protests as the police, on orders from higher up, used heavy-handed methods against the demonstrating crowds.

> rule of oligarchs of all colours, whether at national or local level. (András Schiffer, LMP, opposition, 17.5.2010, LP 39, Session 2)

When the new Fidesz-KDNP government quickly passed a new Fundamental Law in 2011, amended it several times and adopted other reforms in the following years, narratives on rule-breaking and non-compliance rapidly re-emerged and expanded. Opposition MPs argued that Fidesz, through various amendments to the law, established a new system for centralising and retaining political power, e.g. by violating media freedom, strengthening the executive at the expense of the legislature, limiting opposition rights, infringing on the independence of the judiciary, adopting personalised and retroactive laws and establishing a patronage system.

The issue was raised by the opposition for example during the debate on the new Fundamental Law in 2011 and in debates on 'cardinal laws', i.e. key legislation which is passed and can only be amended by a two-thirds majority. MPs criticised frequent amendments of the law (Lamperth, Fodor)—an already established narrative—but also various other alleged deficiencies with high intensity. The statements often combined criticism of rule violations with other aspects, so that we cannot clearly separate distinct narratives on the violation of diverse rules, as the quotes below demonstrate. The statements included criticism of unconstitutional, retroactive and biased legislation in favour of the personal interests of Fidesz-KDNP (Lamperth), excluding the opposition from debating legislation and depriving it of other rights (Lamperth, Novák). Opposition MPs also accused the government more generally of dismantling the system of checks and balances to concentrate power in the executive.

> I am thinking of the frequent and undebated amendments to the constitution and laws, unconstitutional legislation such as retroactive legislation or regulation in the field of civil service, and then the dismantling of the institutions that protect the rule of law, including the constitutional court (. . .) or legislation influenced by individual interests, where a two-thirds majority has made a law because of someone's personal interest or concern: lex Borkai, lex Szapáry, lex Szász Károly, lex Koltay, and the list goes on. All these have caused serious damage to the legal system as a whole, which is difficult to repair. In order to achieve total concentration of power, the State Audit Office, the public prosecutor's office, the public media have already been seized, and a person has been elected president of the Republic who, by virtue of his personality and background, cannot be expected to oppose the prime minister, even if the interests of the country dictate it. (Mónika Lamperth, MSZP, opposition, 14.11.2011, LP 39, Session 133)

> Just as they have abolished the four-fifths passage,[70] they have now abolished the remaining opposition right in the rules of procedure, and we do not even have the opportunity to speak. So, while my fellow Members were arguing for the quality of legislation, I was trying to argue for the basic freedom of expression, how equal opportunities were curtailed by shortening the election campaign period, how opposition parties were curtailed in the media, and finally how our opportunities to speak are now being curtailed in parliament,

[70] Under the Horn government, a four-fifths majority was required to pass the constitution, meaning that not only the ruling parties but also the opposition had to agree.

> too, obviously on the most sensitive issues. (Előd Novák, Jobbik, opposition, 20.12.2011, LP 39, Session 157)

> Well, this political fear is not, in my opinion, a sufficient reason for a bill to be presented to us in violation of the rule of law, first of all, because there is not enough time for the political parties to consult and discuss with the necessary civil society organisations and others what their views are on this, there is no time for that. On the other hand, it is also contrary to the rule of law that they want to force through a bill against the objections of the opposition, against the essentially unanimous "no" of the opposition parties. (Gábor Fodor, independent, opposition, 2.6.2014, LP 40, Session 6)

Three times during the period of investigation, Fidesz-KDNP won a qualified majority in parliamentary elections. Because of the various far-reaching reforms adopted by this majority, the opposition parties no longer saw a level playing field. The electoral success of the governing parties was in their view largely due to the governing parties' restructuring of the whole system, including their influence on media coverage to the detriment of the opposition and the limitation of opportunities to scrutinise government actions in an independent court. The narrative was that Viktor Orbán "has subjected everything to a single objective, namely the retention of political power", and has "built his own system" (Balczó). It was employed across opposition parties, including those that had also been critical of the previous governments, such as Jobbik. The opposition parties have consistently pointed to personalised legislation and the dismantling of the separation of powers by law (including an independent judiciary and opposition rights in parliament), limited media freedom and the building of a patronage system that benefits people close to the prime minister.

> You have made the institution of the referendum partly impossible and partly empty. This has eroded the rule of law in the same way as the dismantling of genuine checks and balances. This is no wonder, of course, since even your minister of justice is baffled by the concept of the rule of law. (Tímea Szabó, PM, opposition, 19.10.2021, LP 41, Session 217)

> In 2010, another opportunity to turn things around came along: with a two-thirds majority in parliament, Viktor Orbán had the chance to set the country on a new upward trajectory, and to consistently lead it as a statesman. That is not the path Viktor Orbán has chosen. He has subjected everything to a single objective, namely the retention of political power, and he has so far succeeded in achieving this as an outstanding political juggler, building his own system, only it is Hungarian society that has to pay a high price for this. In order to retain power, Viktor Orbán has gradually suppressed the rule of law and built up his own chain of vassals, which he maintains by luring away EU funds with impunity on the one hand, and by keeping him under existential threat on the other. (Zoltán Balczó, Jobbik, opposition, 27.4.2020, LP 41, Session 122)

Politicisation/restriction of the judiciary and public prosecution. For the post-1989 transformation period, when the legal order was being established, we did not find any statements in the parliamentary debates analysed about a politicisation or restriction of the judiciary. This finding is highly relevant because the constitutional court under its first president László Sólyom—often described as an activist

constitutional judge—played an important role in this process. It was not until after the parliamentary elections in 2010 that concerns about such tendencies were raised time and again. From then on, also another narrative emerged that **Fidesz seeks to politicise the judiciary, the constitutional court and the prosecution service**. It was linked to the criticism of a general stretching of rules described above. Opposition MPs from DK, Jobbik, LMP, MSZP and PM expressed their concern about the independence of the judiciary and the erosion of the rule of law. The debates focused on several issues, including the strengthening of the public prosecutor's office at the expense of the courts (Dorosz) as well as legal changes to the powers and composition of the constitutional court, which would have implications for future governments—even in the event of a change of government (Lamperth).

> (T)he government has continuously strengthened the prosecution service at the expense of the courts, the defence and the rest of the judiciary. At the end of this process, as this proposal also shows, the country will end up with a muscularised super-prosecution service that will not correct the defects that already exist in the prosecution service, but will only exacerbate them. The prosecution service is the least transparent and therefore the least controllable of all public actors and institutions (. . .). (Dávid Dorosz, LMP, opposition, 14.11.2011, LP 39, Session 133)

> In a modern democracy, the second most important principle after the principle of the separation of powers is that there should be an authoritative, independent body which ensures that the spirit of the constitution is upheld. The main check on political power is the constitutional court. No wonder, then, that Viktor Orbán has made the abolition of the separation of powers and the constitutional court his top priorities. That is why Fidesz is reshaping the constitutional court so that it does not prevent them from exercising power, but if other parties were to come to government – and yes, let us be optimistic about other parties coming to government – it could paralyse the legislature, and if it can, let us be under no illusion, it will want to paralyse it. (Mónika Lamperth, MSZP, opposition, 14.11.2011, LP 39, Session 133)

Opposition parties also criticised restrictions on the autonomy of judges and constitutional judges, on the independence of courts and on the functioning of the National Council of the Judiciary. Legal reforms tailor-made to the interests of the governing majority included the lowering of the retirement age of judges (originally planned also for constitutional judges), which drove many senior judges out of their posts. The problem was that a two-thirds majority was sufficient for the appointment of judges and constitutional judges, so that Fidesz-KDNP did not have to compromise with the opposition on appointments, as was previously the case. As the opposition pointed out, this meant that people loyal to the government or the party were appointed (Sect. 3.2).

In the second half of the 2010s, when administrative courts were established, opposition parties objected to the concentration of power in the Ministry of Justice and the procedure for appointing judges at these courts, which they saw as a means to further politicise and restrict the judiciary. In addition, critics argued that the appointment to various key positions of individuals whose independence from party

politics was questionable could jeopardise the independence of the judiciary and thus the rule of law itself.

> (Y)ou wanted to create autonomous administrative courts in a way, within a regulatory framework, that would have made it possible, in practice, to put your party soldiers in these courts. A maximum of half of the people who would have been judges in these new courts, a maximum of half, so maybe only 20% or 10%, would have been judges (. . .). In other words, your tried and tested people from the administration would have been shunted into these courts. (Gergely Bárándy, MSZP, opposition, 21.2.2017, LP 40, Session 200)

> Contrary to the title of the law, we are not amending the law on administrative courts, but the law on Fidesz courts. (. . .). (I)f there has been a legal dispute between citizens and the state in Hungary up to now, it has been settled by independent courts, including judges specialising in public administration, who have decided on these cases. From now on, if a citizen has a problem with the police, the tax authorities, the electoral authorities or any other state body, he will no longer have to deal with the independent courts, but with the Fidesz party state. (Bence Tordai, PM, opposition, 20.3.2019, LP 41, Session 62)

> (T)he separation of powers, an ancient democratic principle, has been seriously violated in this law. It is when the executive acquires influence, and decisive influence, over the judiciary, and can practically control it. What you have shown over the past nine years is that the policy of the Fidesz-KDNP governments has been nothing other than to ensure that everything in Hungary where there is power is controlled and that the government's position clearly prevails. What Viktor Orbán determines must happen at all levels. (Csaba Gyüre, Jobbik, opposition, 19.11.2019, LP 41, Session 94)

The governing parties Fidesz and KDNP saw no restrictions or politicisation of the judiciary[71] and rejected all criticism as unfair and politically motivated. It was, in their view, unjustified to say, for example, "that the minister's administrative function with regard to the administrative courts is, so to speak, of the devil's own making, when at the time of the 1990 regime change and for the eight years that followed, the entire judicial organisation, i.e. the entire civil and the entire criminal courts, were all operating as a ministerial administrative model".[72]

Politicisation/restriction of the administration or independent institutions. Opposition parties in the Hungarian parliament, including Fidesz, were sensitive to possible political influence on the public administration in the first wave of rule of law legislation.[73] When Fidesz, FKgP and MDF formed a government (1998–2002),

[71] István Varga (Fidesz, government, 14.11.2011, LP 39, Session 133) argued that "there is no question today of judicial independence being threatened in any way, whichever solution we have chosen, because there is no sane person in Hungary, and there is no political force in Hungary, that would threaten judicial independence or try to influence in any way the judges at the top of the judiciary in what decision they take."

[72] Imre Vejkey, KDNP, government, 12.12.2018, LP 41, Session 50.

[73] As László Salamon (Fidesz, opposition, 16.6.1997, LP 35, Session 284) argued in 1997: "(I)n some cases (. . .) politics can have an influence on civil service activity, even if the civil servant adheres to the constitutional principle that in a state governed by the rule of law."

opposition MPs criticised alleged restrictions of the public television and radio. Members of the former governing parties, now in opposition, described them as an instrument of government propaganda and attacks on opposition parties (Kovács, Fodor). They also criticised the unequal treatment of the local administration depending on party affiliation (Fodor).

> The first two terms of government saw the separation of politics and administration, in line with the rule of law, and the emergence of a neutral civil service. Over the past three and a half years, this process has been reversed, with the government increasingly subordinating civil servants and making them subservient to party political interests. Political loyalty has become more important than professionalism in the succession process. The way in which the government has brought public service television and radio under its control is contrary to democracy and the rule of law. These stations, run with taxpayers' money, have become a mouthpiece for government propaganda for success, rather than a source of impartial information for the electorate. Opposition opinions are rarely voiced, and opposition parties that are genuinely opposed to government policy are also subjected to undignified attacks by some public service media presenters. (László Kovács, MSZP, opposition, 18.10.2001, LP 36, Session 233)

> We also remember what happened in the field of the media, ladies and gentlemen: an open attack on media freedom, which we had to restore just a few days ago, and for which Europe also issued a warning to Hungary. And we also remember how local governments were attacked, how the independence of local governments was attacked, how they tried to keep local governments on a leash, and how they created a model where there were good local governments and there were bad local governments. The good municipalities were, of course, those run by politicians in the outgoing government. (Gábor Fodor, SZDSZ, opposition, 25.5.2002, LP 37, Session 4)

After 2010, when Fidesz governed again, such narratives on political interference and constraints on the administration and other independent institutions as a challenge to the rule of law re-strengthened. In short, opposition parliamentarians criticised that the **government used legal measures to curtail the independence of officially independent institutions by placing loyalists in top positions, restricting media freedom and interfering in public administration**. In contrast to the typical patterns of criticism of the governments reported in this book, the criticism of government action was often not directed at individual bills or measures alone, but at different aspects of challenges in combination, thus painting a picture of a more general systemic attack by the government on the rule of law, which was in line with the criticism described above.

Already in 2010, opposition parties frequently mentioned restrictions on independent media and the reshaping of media relations, organised through legal changes.[74] Fidesz-KDNP legalised, in their view, a non-objective operation of public media, restrictions on media freedom and the reorganisation of media relations, for example through the creation of the National Media and

[74] See, for example, the statement by Tamás Gaudi-Nagy (Jobbik, opposition, 13.12.2010, LP 39, Session 59) on the proposed reform of the National Media and Infocommunications Authority in 2010.

Infocommunications Authority. The opposition parties also questioned the political independence of persons appointed to key positions in various sectors; their entrenchment with long terms of office was seen as contrary to the rule of law. This was the case with the National Media and Communications Authority, the president of the Republic, the president of the State Audit Office, the president of the National Authority for Data Protection and Freedom of Information, various professional chambers and the Commissioner for Fundamental Rights, among others.[75]

> We have seen the decisions that have been taken in public about who will be appointed to head independent state institutions. We have seen that when the President of the Republic, János Áder, who is the former leader of Fidesz, was elected, he was supposed to embody the unity of the nation. And then we saw when the head of the State Audit Office was elected, former Fidesz MP László Domokos, who was here yesterday, almost embracing the entire Fidesz parliamentary group. It seems that they are not even giving in to appearances any more. Then we can see the constitutional court, with former Fidesz MPs and former Fidesz ministers sitting on it, and we can also see the decisions pointing in the same direction. And we can also see the attorney general, who is a former Fidesz candidate, and we can see his decisions. (Olivio Kocsis-Cake, PM, opposition, 19.11.2019, LP 41, Session 94)

Post-1989 transformation. In addition to the transformation of the political and economic system, one of the dominant themes of the parliamentary discourse in the post-transition period has been the need to address the wrongs committed under the previous regime and to bring accountability and (economic) compensation to the victims, and the governing parties introduced respective bills. Such measures, which were sometimes explicitly linked to the principle of the rule of law, included the renewal of personnel in certain sectors[76] and the restitution of illegally deprived property to the former owners.[77] While members of the first freely elected parliament agreed at the rhetorical level that it was necessary to investigate former crimes and to establish the rule of law in Hungary, the opposition, for various reasons, was not satisfied with the contents of lustration measures. Some parties found that they were not far-reaching enough.

> I am convinced that the new Hungarian parliament has a paramount duty to compensate those who have suffered oppression, who have suffered damage to their physical existence or who have suffered damage to their freedom. I am convinced that a state governed by the rule of law, which is what we believe and want to believe Hungary is, must do everything in

[75] See also the quote by Mónika Lamperth (MSZP, opposition, 14.11.2011, LP 39, Session 133) cited above.

[76] For example, Csaba Ilkei (MDF, government, 26.6.1990, LP 34, Session 17): "The requirement of these personal requirements is indeed – and I personally have said the same – essential before appointment. No new kind of state security work is possible without a renewal of personnel if the state claims to be a state governed by the rule of law."

[77] To quote Miklós Borz (FKgP, government, 8.12.1992, LP 343, Session 254): "I would like to announce that I fully agree with the resolution of the Economic Committee. I would like to support this by saying that we are a state governed by the rule of law. And in a state governed by the rule of law, the owner who has been deprived of his property illegally and unlawfully has the right to reclaim it and to get it back when the opportunities arise."

> its power to ensure that, within this framework of the rule of law, it takes responsibility and names the guilty parties. (Péter Hack, SZDSZ, opposition, 8.12.1992, LP 34, Session 254)

> Fidesz is also guided by the rule of law in this area. We firmly believe that everyone has the right to know the sins of the past, and that the state has a duty to do everything in its power to ensure that citizens can exercise this right. Revealing the past also means discovering the identity of the perpetrators of those crimes and making this public in an appropriate manner. (Gábor Fodor, Fidesz, opposition, 8.12.1992, LP 34, Session 254)

MSZP argued that historical justice cannot be achieved by (criminal) law, referencing in this point to a constitutional court judgement.

> I must add, however, that anyone who in 1992 sees criminal law as the appropriate and adequate instrument of historical justice is not on the right track, and I must emphasise and warn against this because it should be borne in mind that the decision of the constitutional court of 3 March 1992 made it very clear to everyone that this is a very difficult path: to find historical justice through the instrument of criminal law and to remain within the requirements of the rule of law, on the ground of the rule of law. (Pál Vastagh, MSZP, opposition, 8.12.1992, LP 34, Session 254)

After the constitutional court had struck down a broader definition of target groups for lustration measures in 1993 (see Sect. 3.3), the parliament passed a law at the end of its term in 1994 that only affected a certain group without strict sanctions. In 2000, László Csúcs (FKgP, opposition) deplored "a lack of public self-cleaning" with a "half-hearted" law that he did not see fully enforced. He criticised that "perpetrators of crimes against the nation" did not have to "apologise to the victims, ultimately to the Hungarian people, for the fact that their actions have destroyed hundreds of thousands of human lives and have continually trampled the elementary norms of the rule of law underfoot". He furthermore argued that "without purity in public life, without moral renewal in our society, we are jeopardising the meaning of the change of system, without a more humane life".[78] In 2002, Péter Bárándy, a member of the then ruling MSZP, argued that the screening method had not lived up to expectations because the public was still "haunted by the secrets of the former state security services". However, the process of coming to terms with the past should not, in his words, "turn into a witch-hunt", since there was "a huge difference between an agent and an agent". A government bill replaced the screening process with a "fact-finding process, which only establishes whether or not the public figure in question can be linked to the state security files that are handled in a uniform manner" and made the files themselves accessible to the public in an archive.[79]

After the 2010 parliamentary elections, the narrative re-emerged in parliamentary debates, with MPs arguing that **crimes committed under the previous regime must be investigated and lustration be strengthened**. Jobbik and LMP, which had since entered parliament, criticised shortcomings of the lustration policy since 1989

[78] László Csúcs, FKgP, opposition, 3.5.2000, LP 36, Session 138.

[79] Péter Bárándy, MSZP, government, 11.9.2002, LP 37, Session 18.

and stated that the lustration had been too weak, and the target group defined too narrowly. They introduced several bills, including a bill on agents and collaborators of the state socialist security services. However, the governing parties Fidesz-KDNP did not vote for it, and some opposition parties interpreted it as a block to regime change and the rule of law. In 2011, on the initiative of Fidesz, a law on the criminalisation and exclusion of the statute of limitations for crimes against humanity and the prosecution of certain crimes committed under the communist dictatorship was adopted. The bill was criticised by some, but also supported by other opposition MPs, although they argued that its adoption was not a complete solution to the lack of lustration.

> We also have disagreements on the sub-targets. Accountability is right when we think of corruption, when we think of police misconduct, when we think of abuses of the secret services. But in a state governed by the rule of law, accountability is not promised in return for social, economic and societal collapse, and this has political consequences. And if accountability is promised, it would perhaps be a good idea in this context to remember the twenty-year debt to the political elite, the public disclosure of files, and the disclosure of the secrets of the dictatorship before the regime change. (András Schiffer, LMP, opposition, 25.5.2010, LP 39, Session 6)

> At the time, the Antall government fulfilled its historic mission of laying the formal foundations of democracy and the rule of law. However, for the citizens of Hungary, the last thirty years have not brought the prosperity and security that we all longed for. There has been a failure, to this day, to hold to account those who ran the one-party communist system, including full public disclosure of the files of the agents. There has been a failure to compensate those who have been deprived of their wealth and freedom, even though Hungarian citizens – and we from Jobbik know this on a Christian social basis – believed then and still believe in a social market economy and in European values such as the rule of law and solidarity with the fallen based on Christian values. (Koloman Brenner, Jobbik, opposition, 27.4.2020, LP 41, Session 122)

6.3.3 Poland: Ineffective Institutions, Politicisation and the Centralisation of Power

In all three waves of rule of law legislation studied, members of the Polish Sejm voiced challenges to the rule of law. Compared to the other countries, the number of such statements was much higher and we identified several narratives used with high intensity. Most of them referred to the functioning of the judiciary or prosecution in the sense of ineffective institutions (Table 6.28). At a distance followed statements related to our categories ‘Politicisation/restriction of the judiciary and public prosecution’ and ‘Rule-stretching and violation/non-compliance’. Allegations of rule violation and non-compliance were primarily made during the second and third waves of rule of law legislation. Post-1989 transformation issues were also frequently cited as challenges to the rule of law, but mainly during the first and second

Table 6.28 Narratives on challenges to the rule of law and democracy in Poland

	1990–1997	1997–2015	2015–2021
Functioning of the judiciary, public prosecution and law enforcement	The judiciary lacks the resources and competences to act effectively. (overlapping)		
		Dependence of public prosecution on the executive is harmful for their functioning vs the lack of accountability in the judiciary and public prosecution is harmful for their functioning. (diverging)	
Politicisation/ restriction of the judiciary and public prosecution	The lack of judicial independence inherited from the old regime needs to be addressed. (overlapping)	There is a lack of impartiality in the judiciary ('corrupt judges'). (one-sided, conservatives)	There is a lack of impartiality in the judiciary ('corrupt judges') vs PiS majority interferes in the judiciary and prosecution service. (diverging)
Rule-stretching or violation/ non-compliance		Lack of stable, transparent and constitutional law (making) undermines the RoL. (overlapping)	PiS majority violates RoL principles (constitutionality, separation of powers etc.). (one-sided, opposition)
Post-1989 transformation	Lack of law-abiding, trustworthy state institutions, and of a stable legal system hindering the prompt establishment of a state under the RoL. (overlapping)		
	Lack of decommunisation, especially in the judiciary, hindering the establishment of a just state. (one-sided, conservatives)		

waves. As in other countries, statements often referred to several topics and categories at the same time.[80]

Functioning of the judiciary, public prosecution and law enforcement. In the early and mid-1990s, MPs often described a well-functioning judiciary and prosecution service as well as a trustworthy police force as prerequisites for the

[80] Many of the statements captured by the mentioned categories also cited problems captured by the categories 'Corruption/clientelism', 'Lack of trust' and 'Constitutional court'. Statements on issues around corruption and clientelism were mainly related to the post-1989 transformation period and often linked to an alleged lack of lustration/decommunisation and independence/impartiality of the judiciary. Other criticisms referred to an alleged political instrumentalisation of the fight against corruption by the PiS-led government (in 2006) and claimed interference of foreign institutions, mostly the EU, in national sovereignty/national legislation/fundamental law based on Polish traditions/values.

establishment of a democratic state under the rule of law. Particularly against the background of widespread corruption and illegal economic behaviour during the uncertain transition period, the need for more effective prosecution of crimes became apparent. The narrative was established and used across parties that **the judiciary lacks resources and competences to act effectively**. This was interpreted as hindering the establishment or consolidation of a state under the rule of law. Parliamentarians criticised slow court proceedings and ineffective crime prosecution, citing as reasons understaffing, underfunding, poor equipment and a lack of professionalism, but also bad legislation. They highlighted that in a democratic state under the rule of law, legislation serves to protect human dignity and rights of all people, including perpetrators.[81] In discussions on how to adequately define practical conditions for an effective judiciary and prosecution service, MPs developed their views on the necessary elements of the rule of law (Sect. 5.2.3).

> In addition to the judges who have proved to be dishonest, we have a certain group of judges who are simply incompetent. I know these cases from my personal experience as a lay judge in court. The court records show examples of gross incompetence, violations of the law when judges rule. And this should also be grounds for dismissal of a judge. (Teresa Liszcz, PC, government, 6.3.1992, LP 1, Session 10)

> I think that if you often have to wait for months for a court date, there are unfilled judges' posts in many courts, constant shortages, and on top of that there are more and more new cases coming (to the courts), the collapse of the whole structure is already easy to predict. In this situation, I think it is urgent to reform the entire justice system. Work on it must start today, I want to say, from the foundations to the roof. Otherwise, we will not have a good justice system, which is something quite fundamental to the functioning of the state under the rule of law. (Andrzej Gaberle, UD, opposition, 7.4.1994, LP 2, Session 17)

The problems around ineffective institutions were also still frequently raised during the second wave of rule of law legislation. MPs mentioned a "crisis of the application of law" with a "non-functionality of Polish courts", as in the quotation below. The practical difficulties of lengthy court proceedings which limit access to the courts as a fundamental principle of a democratic state under the rule of law were often discussed in the context of constitutional principles and adapting to international and European standards and conventions.

> Firstly, there is a crisis of law in Poland, and certainly a crisis of the application of law. (. . .) It concerns above all the right to a court. This right to a court is declared in the constitution, it is also the subject of the Constitutional Tribunal's jurisprudence. However, in practice, the non-functionality of the Polish judiciary puts a big question mark over the realisation of the right to court. (. . .) (O)ne of the sources of the crisis in the Polish judiciary is the excessive corporate privileges of judges, confirmed by the constitution. This is the identification on the part of the European Union of one of the main causes of the crisis in the application of law in Poland. (Kazimierz Michał Ujazdowski, PiS, opposition, 5.7.2002, LP 4, Session 25)

[81] See Marek Lewandowski (SdRP, government, 1.9.1994, LP 2, Session 28), quoted in Sect. 6.1.3.

Representatives of all parties agreed on the need for a well-functioning administration in the judiciary. However, positions on how to achieve this differed. MPs mostly from the right-wing post-Solidarity spectrum which governed in this period argued that this requires a stronger administrative structure and executive involvement for higher accountability. A reform of the judiciary should "create a balance between the competences of the executive and the self-government of judges", with "a minister of justice who is accountable to parliament for the efficiency of the courts (. . .) and to the citizens for the enforcement of the law".[82] Centre and left-wing parliamentarians and opposition parties, by contrast, often expressed concerns about a possible political influence of the executive. This would violate the constitution, which emphasises the principle of separation of powers.[83]

The inefficiency of the prosecution office was also criticised since the early 1990s across parties. In 2010, when a PO-PSL coalition separated the positions of the minister of justice and the prosecutor general with the aim of enhancing the autonomy of the prosecution office from the executive and political parties, PiS and other opponents argued for the incorporation of the prosecutor's office into executive structures for greater efficiency and accountability, as practised in other European states. Their narrative was that **a lack of accountability in the judiciary and public prosecution is harmful for their functioning**. Using a competing narrative, PO argued that **the dependence of the public prosecution on the executive is harmful for their functioning**.

> The combining of the functions of minister of justice and prosecutor general by politicians has proven that the prosecutor's office can become a place for party politics rather than fighting crime. (Applause) The rash of pathologies involved violated fundamental civil rights and freedoms. (. . .) We want the public prosecutor's office to fulfil its role as a politically neutral public prosecutor. (. . .) The separation of the functions of the minister of justice from that of the prosecutor general will be the culmination of the process of repairing the justice system, not the beginning. (Donald Tusk, PO, government, Prime Minister, 23.11.2007, LP 6, Session 2)

The diverging narratives were still used during the third wave of rule of law legislation, when the 2015 election winner PiS initiated the reintegration of the offices of the public prosecutor general and the minister of justice. PiS promised to take responsibility vis-à-vis the people for crime prosecution and "to put an end to this fiction that no one is responsible for state security".[84] Critics argued that this would "undermine the democratic state under the rule of law" and "not ensure the effectiveness of the prosecution work of this body, but only a mass replacement of personnel with those politically loyal to Law and Justice".[85] While the first position

[82] Kazimierz Michał Ujazdowski, elected via AWS, government, 3.3.2000, LP 3, Session 72.

[83] Bogdan Lewandowski, SLD, opposition, 3.3.2000, LP 3, Session 72.

[84] Stanisław Piotrowicz, PiS, government, 13.1.2016, LP 8, Session 8.

[85] Witold Zembaczyński, N, opposition, 13.1.2016, LP 8, Session 8.

resulted in policy measures, the second was more frequently voiced in parliamentary debates.

> (W)e are ending an experiment on the Polish prosecutor's office, an unsuccessful experiment, an experiment which was initiated by the 2009 amendment. (. . .) (T)he proposal to separate the office of the prosecutor general from that of the minister of justice was a huge, fundamental, one might say, mistake. (. . .) It was President Lech Kaczyński who said that there would be pathologies in which politicians would refer any scandal or affair to an independent prosecutor's office, saying: it's not us, it's them, they are independent. And now I recall the words of Prime Minister Ewa Kopacz, who on the occasion of successive scandals said: it's not us, go to the prosecutors, they are independent. (Michał Wójcik, PiS, government, 13.1.2016, LP 8, Session 8)

Politicisation. Many statements of Sejm members since the early 1990s fell into our category '**Politicisation/restriction of the judiciary and public prosecution'**. In the transition phase, restoring and strengthening the independence and authority of the judiciary was commonly regarded as a prerequisite for building a state under the rule of law. Politicians across the party spectrum used the narrative that there was a **lack of judicial independence inherited from the old regime that needed to be addressed**. This lack was considered to result from both material (salary, equipment of courts) and legal conditions (non-removability, tenure). To establish judicial independence, MPs supported the principle of non-removability—as agreed in 1989 by the Round Table—and independent administrative structures as well as sufficient material conditions.[86] Similar arguments were made for an independent prosecuting body, which was regarded as an integral aspect of a democratic state under the rule of law.[87] Conservative parties emphasised also the lack of internal independence of parts of the judiciary. They argued that "a large group of judges who have betrayed the principle of independence", either in the previous regime or through their involvement in post-1989 economic scandals, should not be protected by non-removability.[88]

Particularly representatives from the centre-right (post-Solidarity) and later the conservative-right (PiS) camp were dissatisfied with the lustration procedures in the judicial sector during the transition period. They believed that unqualified and corrupt judges could maintain their positions. During the second and third waves of rule of law legislation, they often employed the narrative that there was **a lack of impartiality in the judiciary ('corrupt judges')**. According to their rhetoric, some judges used their status and judicial language to be immune and even to "manipulate

[86] "Without adequate material guarantees, we will never achieve the desired level of independence of judges, independence of prosecutors", claimed Zbigniew Bujak (PC, opposition, 23.9.1994, LP 2, National Assembly Session 1). Similarly argued Michał Chałoński (UD, opposition, 13.2.1992, LP 1, Session 8). Aleksander Bentkowski (PSL, tolerating government, 6.3.1992, LP 1, Session 10) stressed that irremovability makes judges "independent, autonomous and 'truly fair'".

[87] See the statement by Marek Boral (LD/KP, Contract Sejm, 22.3.1990, LP X, Session 24), quoted in Sect. 5.2.3.

[88] Teresa Liszcz, PC, government, 6.3.1992, LP 1, Session 10.

a legal norm" (Łyżwińska). The constitutional court was criticised for making political decisions (Mularczyk). MPs used the argument of internal judicial independence to justify certain interventions in the self-governing structure of the judiciary or other interferences, e.g. during a debate in 2000 on the organisation of the common court system,[89] when lowering the retirement age of judges in the common courts by a new law in 2017 or when reforming the composition of the National Council of Judiciary, which selects judges, in 2018.

> Cases of peculiar manipulation of a legal norm under the guise of one interpretation and then another are encountered in practice very often. (. . .) Of course we still have appellate review, it's just that there are dozens of ways the system doesn't work for that too. (. . .) Today, in such civil cases, hardly any ordinary citizen understands what is going on during the trial and what the court is talking about, and how they are supposed to argue their case is completely unknown. (Wanda Łyżwińska, SRP, opposition, 27.7.2005, LP 4, Session 108)

> The role of the Constitutional Tribunal is to rule on the constitutionality of laws. Practice in recent years, both under President Rzepliński and previous presidents, has shown that the Constitutional Tribunal has often become embroiled in political disputes. This often had to do with the scheduling of hearings prior to the entry into force of the law, for example, or often, in my opinion and in the opinion of experts, with the manipulation or juggling of the composition of Constitutional Tribunal judges so that the verdict is as it should be. Very often it was known in advance what the verdict would be. There were many such cases. Let me remind you of the issue of vetting or the law on open pension funds, and many, many other cases. In cases where the Constitutional Tribunal was supposed to uphold the constitution, it often turned out that it upheld the party interests of the majority that had been in power for eight years. (Arkadiusz Mularczyk, PiS, government, 17.12.2015, LP 8, Session 5)

> Today, after 27 years, we are working on a project which, in line with the demands of the Law and Justice programme, provides for an extraordinary complaint. Today, ladies and gentlemen, we can say: at last we will be able to look at this independence, impartiality and infallibility of judges, and at last there will be an opportunity to look at the injustice in judgments, in decisions, which we have to deal with in the Members' offices. Finally, it will be possible to help all these people. (Waldemar Buda, PiS, government, 22.11.2017, LP 8, Session 52)

During the third wave of rule of law legislation, in which the PiS majority in parliament adopted far-reaching reforms of the judiciary and the prosecution service, opposition parties frequently used the narrative that **the ruling majority seeks to politicise the judiciary and constitutional court.** More specifically, they raised strong concerns about interference in judicial administration, the selection of judges and court presidents, the composition of the constitutional court, issues related to judges' self-government, tenure and retirement age and the alleged politicisation of the public prosecution service (especially the involvement of the minister of justice). They framed these actions as undermining the separation of powers and checks and balances, ultimately threatening the rule of law. Constitutional provisions were often

[89] See the quote of Teresa Liszcz in Sect. 5.3.3.

cited to support their arguments. Although the previous government (PO-PSL) had also been criticised by several MPs for having interfered in the formation of the constitutional court, the criticism was not as intense as that directed against the PiS reforms.[90]

> It is also a solution that contradicts Article 180 of the constitution, which explicitly states that judges are not removable from their positions. This is precisely the guarantee of their independence and you are striking at this guarantee. Extinguishing the terms of office of judges also violates the principle of the tripartite division of power, because at this point the legislature will be able to interfere so strongly with the judiciary that it will remove the judges currently in office. Furthermore, the expiration of the term of office of all current tribunal judges will also violate the principle of lex retro non agit. According to this principle, a law should have no legal effect on facts that arose before the date of its entry into force. (Kamila Gasiuk-Pihowicz, Nowoczesna, opposition, 10.2.2016, LP 8, Session 11)

> This project was prepared by the Iustitia Polish Judges Association and is proof that the thesis promoted very often recently by representatives of the government, by representatives of the parliamentary majority, that the judiciary does not want changes, that it is some kind of caste that defends itself against changes, that defends its status quo, is wrong. The minister even used the phrase 'judicialocracy'. I think, Mr Minister, that even if one assumes that we are dealing with what you called a 'judicialocracy', you want to replace this judicialocracy with a 'pisocracy', and this should absolutely not be allowed in this House either. (Krzysztof Paszyk, PSL, opposition, 5.4.2017, LP 8, Session 39)

> My question to the minister: why do you want to carry out another attack on democracy in Poland, after the attack on the Constitutional Tribunal and the prosecutor's office, by interfering in the principles of the tripartite division of power and the independence of the judiciary, in spite of these negative opinions, including those of international organisations? (Paweł Bańkowski, PO, opposition, 5.4.2017, LP 8, Session 39)

Similar to the debates on a possible politicisation of the judiciary, the **politicisation of the prosecution service** has been a matter of growing concern. During the early 1990s, when the office of the prosecutor general was linked with the position of minister of justice, not many MPs raised doubts in the chosen model.[91] The issue received more attention from 2007 on, when the PO-PSL government planned to separate the prosecutor's office from the executive (the law realising this came into

[90] According to Stanisław Tyszka (Kukiz'15, opposition, 19.11.2015, LP 8, Session 1), the Civic Platform had attacked the Constitutional Tribunal by using a transitional provision in a law on the constitutional court adopted in May with its own votes. "The intention of those changes was obvious: it was an attempt to ensure the availability of the Constitutional Tribunal and to block the constitutional changes that I hope the current government will introduce." Kamila Gasiuk-Pihowicz (Nowoczesna, opposition, 19.11.2015, LP 8, Session 1) stated that "in the matter of the Constitutional Tribunal, it was Civic Platform which was the first to act with the conviction that the political majority in parliament is allowed to do everything."

[91] E.g. Zbigniew Siemiątkowski (SdRP, opposition, 6.3.1992, LP 1, Session 10), Marian Michalski (PSL, government, 23.9.1994, LP 2, National Assembly Session 1) or Stanisław Rogowski (UP, opposition, 23.9.1994, LP 2, National Assembly Session 1).

force in 2010). Especially MPs of PO (and to a lesser degree left parties) justified this with the need to depoliticise the prosecutor's office. They argued that combining the two functions has served its political aims.[92] It would be "detrimental to the democratic state under the rule of law" since the prosecutor's office "has been used to achieve exclusively partisan goals" in recent years (i.e. under the PiS government), with "an everyday occurrence" that promotions have been given to prosecutors who have pursued cases along party lines, "while prosecutors who have acted in accordance with the prosecutor's ethos have often been subject to disciplinary action or transferred to smaller units".[93]

PiS MPs, in contrast, spread a completely different interpretation of the developments, arguing that the 'depoliticisation' was in fact a measure used by PO and PSL to control the prosecution service.[94]

> The government coalition, under the slogan of depoliticising the prosecutor's office, amended the law on the prosecutor's office more than a year ago, subjecting it to unilateral political influence from those currently governing the state. The rank of the prosecutor's office was downgraded, and it ceased to be the supreme authority and became one of many central public authorities. The president of the Council of Ministers, to whom the prosecutor general is obliged to submit an annual report on its activities, has become the sole body to control the work of the prosecution service. There is no such obligation in relation to the Sejm and the Senate. The drafters of the law on the NCP have exploited this loophole in the system of control over the prosecutor's office to politicise it even further and actually subordinate its operation to the will of politicians from the Platform and the PSL. (Marzena Dorota Wróbel, PiS, opposition, 14.4.2011, LP 6, Session 90)

When PiS adopted a counter-reform in 2016, justified with the aim of achieving more efficiency and accountability, two camps with diverging narratives competed, with the narrative of a **lack of impartiality in the judiciary** on the one side, and the narrative that the **PiS majority interferes in the prosecution service** on the other. The latter was used by the opposition—mainly PO, Nowoczesna and PSL—arguing that PiS politicises the prosecution service. Their rhetoric was in a dramatic tone, with many references to European standards, to other European countries and to the impact on the protection of citizens' rights and to the imbalance of powers and infringement of the separation of powers.

[92] See the statement of Donald Tusk (PO, government, Prime Minister, 23.11.2007, LP 6, Session 2) quoted above in this section.

[93] Bożena Szydłowska, PO, government, 26.6.2008, LP 6, Session 18. Witold Pahl (PO, government, 14.4.2011, LP 6, Session 90) criticised "the instrumental treatment of the prosecutor's office, its use for ad hoc political purposes in every sphere of life, including the economic sphere, to influence certain social, political processes, i.e. concerning what was often the subject of public debate, what was discussed in the public media."

[94] This interpretation was repeated in 2011 when PiS MP Stanisław Piotrowicz (PiS, opposition, 13.1.2016, LP 8, Session 8) argued that the prosecutors feel that they had been "cheated". While formally being independent, "de facto informal instruments were used to subjugate the prosecution service completely."

> (W)hat you want to do is, first of all, to politicise the prosecution service, which is against the Bordeaux Declaration, which is against the Rome Charter, that is, the whole acquis of the European prosecution service, which says that the prosecution service should be independent, first and foremost, from the executive, because a member of the government cannot give instructions to prosecutors, and that is what the current instrument you want to introduce amounts to. There are 6,000 independent prosecutors and one politician who will have full hold over them, full power over all 6,000 prosecutors regardless of their position and responsibilities. This is the worst of it all. (Robert Kropiwnicki, PO, opposition, 13.1.2016, LP 8, Session 8)

> Firstly, the law introduces a solution that is unknown at the moment anywhere in Europe (. . .). Indeed, in the countries you mentioned, there is a subordination of the attorney general to the minister of justice, but there is no combination of these functions. However, the minister of justice is an active politician, and combining these functions means that the prosecutor's office is politicised and closely dependent on the government – today's Law and Justice government, but also every subsequent one. Attention is drawn in this context to the provisions of Article 50 of the Act Introducing the Law on the Public Prosecutor's Office, under which the terms of office of district and regional prosecutors expire. This will result in the possibility of personnel changes in all relevant positions in the prosecution service. (Mirosław Pampuch, Nowoczesna, opposition, 13.1.2016, LP 8, Session 8)

Rule-stretching or violation/non-compliance. Complaints about rule violation or non-compliance have been widespread in the Polish Sejm throughout the time since 1990. Statements covered a wide range of events, aspects and developments. Opposition MPs often accused parliamentary majorities, governments and state officials affiliated with the ruling party of exploiting the law for power consolidation and political purposes. Violations of the rule of law, including checks and balances and the separation of powers, were frequently cited as leading to infringements of constitutionally guaranteed civil and human rights. Ruling party members mentioned such concerns but used them as a partial justification for the political and judicial reforms addressing problems inherited from previous administrations and governments. This pattern of rhetoric was already established in the 1990s.[95] Compared to the high frequency of statements criticising rule violation/non-compliance or intentions to make them possible, there were relatively few narratives used across situations and MPs. Mainly during the second wave of rule of law legislation, when a post-Solidarność coalition governed, MPs argued with high intensity that a **lack of stable, transparent and constitutional law(making) undermines the rule of law**.

> These systemic changes also mean rebuilding, after the cataclysm of communism, the authority of all democratic institutions which perform public service from public funds. It is about rebuilding the authority of government. I am saying – and the words of previous speakers have also made it very clear – that today this authority is shaken. It is also undermined as a result of the abuse of power and the exploitation of privileges derived from power. (Jacek Rybicki, elected via AWS, government, 8.1.1998, LP 3, Session 8)

[95] E.g. Andrzej Gaberle (UW, opposition, 1.9.1994, LP 2, Session 28) or Aleksander Kwaśniewski (SdRP, government, 4.2.1995, LP 2, Session 42).

> Article 17(3) allows the CBA[96] to initiate operational control without the court's consent. Here it is not even necessary to ask the question, but does this not create a ground for obvious abuse and violation of the fundamentals and principles of the constitution? Article 19 in para. 1 and 3 gives CBA officers the right to commit crimes. Is the state under the rule of law supposed to be about stimulating crime? (Applause) It is possible that some forms of provocation may be used, but the opacity of Article 21 opens a window into the sources of corruption within the CBA itself. (Jarosław Wałęsa, PO, opposition, 16.2.2006, LP 5, Session 10)

MPs across party lines also complained about deficiencies in Polish law and the legislative process, particularly in the early 2000s. Such criticisms included poor legislation, frequent amendments to the same law, a lack of transparency of the law for the public and shortcomings in the lawmaking procedures.

> I would like to emphasise that the weaknesses of our law, the inadequacies in the functioning of the legislative bodies, are a burden that affects all the terms of our parliament and other bodies adopting and propagating the law. (. . .) It is already possible to speak of a peculiar disease of legislation in our country and all the information of the ombudsman repeat the charges against the legislators which are identical in their nature. (Tadeusz Jacek Zieliński, UW, opposition, 14.7.2000, LP 3, Session 82)

> (W)e agree with the conclusions that the ombudsman draws at the end of his 17 points, with his criticism of the reality of the state of the rule of law, lawmaking and law enforcement, criticism formulated out of concern for the state of the law. We also share his doubts and concern about how far Poland still falls short of the standards of a stable state under the rule of law, where the law is transparent, understandable to every citizen, and respected by everyone, from the criminal to the minister, and everyone wants the law to be a true instrument of social stability, the common good and good mutual coexistence. (Józef Oleksy, SLD, opposition, 24.7.2001, LP 3, Session 114)

> (W)e unfortunately have a practice in this parliament of destroying constitutional principles of lawmaking. These constitutional principles of lawmaking have been violated in at least two cases: in the case of the vetting law, or rather the anti-vetting law (. . .) – fortunately, the constitutional court pointed out the unconstitutional manner in which this law was passed – and in the case of the manner in which the electoral model was changed (. . .), in this case the Constitutional Tribunal (. . .) defends the high rank of the Upper House, which cannot be a chamber commissioned by the ruling party, cannot be a chamber whose activity is evidenced by the fact that it bails out the Democratic Left Alliance when it loses in the Sejm. (Kazimierz Michał Ujazdowski, PiS, opposition, 5.7.2002, LP 4, Session 25)

A recurring concern, mainly voiced by MPs when sitting on the opposition benches, was the failure of the legislature to implement the judgments of the constitutional court in time or at all (Kłopotek). This was partly described as a problem caused by the government (Widacki).

> How can we expect a citizen to respect the law if we, the legislators, we, the government – I am thinking of the Sejm, the government – do not respect the judgments of the Constitutional Tribunal? We say all the time, we emphasise – although I don't think we quite believe that

[96] Central Anti-Corruption Bureau.

> this is the case – that we are a state under the rule of law. Far from it, if we ourselves do not respect this law. (Eugeniusz Kłopotek, PSL, opposition, 27.7.2005, LP 4, Session 108)

> However, we are concerned that many judgments of the Constitutional Tribunal have not been implemented, as the necessary legislative changes resulting from these judgments have not been made. These delays are primarily the responsibility of the government and specific ministries. (Jan Widacki, (elected via Partia Demokratyczna, parliamentary group Lewica i Demokraci, opposition, 30.5.2008, LP 6, Session 16)

Already during the first PiS-led government in 2005–2007, and even more so from autumn 2015 onwards, the opposition parties strongly attacked the PiS government for its judicial reforms and other legislation, using the narrative that the **PiS majority violates rule of law principles**. Such criticism explicitly referred to rule violations, including the undermining of the separation of powers, retroactive laws, abuse of power, the instrumental use of constitutional amendments to settle certain political disputes, attempts to change the constitution through an inadequate procedure, by reinterpreting some laws and trying to interpret laws[97] and violations of civil rights and freedoms.[98]

> In a state under the rule of law, it is not permissible to amend the constitution for the sole purpose of settling a current political dispute, as this would amount to treating the Fundamental Law instrumentally. (Krzysztof Paszyk, PSL, opposition, 10.2.2016, LP 8, Session 11)

> Your hastily written laws are as great a threat to civil liberties and the rule of law in Poland as the actions of al-Qaeda are to peace in the Middle East. In terms of standards of legal protection, you are pushing our state under the rule of law out of the heart of democratic Europe into the jaws of the eastern leviathan. (Hanna Gill-Piątek, PL2050, opposition, 26.2.2021, LP 9, Session 26)

The opposition parties also strongly criticised rushed and inadequate legislative procedures for significant legal drafts, the absence of critical legal opinions and the perceived politicisation of the legislative process, which they saw as compromising its integrity for the benefit of specific political parties.

> Once again, we are being offered fast-track procedures. Once again, we could not wait for the opinion of the National Judicial Council, which has a provision in the Act on the national judicial council for the possibility of giving an opinion on such laws. We received the opinion of the Supreme Court today, already during the session of the Sejm. The lack of opinions from such important bodies means that you do not really take into account anyone's legal opinions. (. . .) Everything will soon be tailored to the needs of the parliamentary majority. (Katarzyna Lubnauer, Nowoczesna, opposition, 17.12.2015, LP 8, Session 5)

[97] Robert Kropiwnicki, PO, opposition, 5.4.2017, LP 8, Session 39. See also the statement of Kinga Gajewska (PO, opposition, 22.11.2017, LP 8, Session 52) quoted in Sect. 6.1.3.

[98] Katarzyna Ueberhan (Wiosna, opposition, 27.10.2020, LP 9, Session 20) pointed out for an amendment of the law on the National School of Judiciary and Public Prosecution that even seemingly purely technical legislative changes can lead to a restriction of minority rights, in this case people with dual citizenship.

MPs from the government side accused PO of previous breaches of rules when in government[99] and used this to justify reforms to rectify "predecessors' mistakes", albeit to a lesser extent compared to the opposition's statements.

Post-1989 transformation. Most discussions on the transformation and its impact on the rule of law date back to 1990–1997, covering the establishment of key institutions under a new democratic system. This includes debates on the vetting of state authorities, the judiciary (especially judges who began their careers in the Polish People's Republic) and the prosecution service, and the lustration law adopted in 1997. In that period, a narrative was frequently used across parties that there would be **a lack of law-abiding, trustworthy state institutions and of a stable legal system hindering the prompt establishment of a state under the rule of law**. Against the backdrop of the post-1989 insecurities in the state apparatus, frequent political struggles within the parliament and with the president, short-lived coalitions as well as economic scandals and problems arising from the transition to a free market, there was a widespread conviction that these "pathologies" arose also because of a systemic lack of morality within society as a whole and that new institutions were urgently needed.

> I wanted to talk about the causes of this wave of corruption and scandals that we have, which did not begin now or two years ago, but at the end of the 1980s. The causes persist all the time and have not changed. The first is an unstable law that is inconsistent, that comes from different eras, not to say different regimes, a law that is not equal for all entities, including all economic entities. (Józef Orzeł, PC, government, 13.2.1992, LP 1, Session 8)

> (T)he left-wing parties of the current and previous parliamentary term had already pointed out the harmful phenomena emerging during and alongside the processes of political transformation; today, other political groups also see the threat of these phenomena, and on this point we are in agreement. In such situations, however, we must always answer the question: where do mismanagement, scandals and corruption come from? Is it just loopholes in the law? We must also remember that they are born out of the poor state of general morale, and in business and the economy in particular. (Józef Oleksy, SdRP, opposition, 13.2.1992, LP 1, Session 8)

> (N)o one doubts the need for a state civil service as soon as possible. [It] (. . .) is an indispensable element of a democratic state, ensuring stability in the work of the state administration under conditions of changing governments and balance of power in parliament. It is supposed to ensure the isolation of the mechanisms of the state's functioning from political pressures, and in our Polish conditions this is to become a guarantee of an irreversible break with the model of the so-called crony republic so well-known from the past and, unfortunately, also from the present. (Piotr Czarnecki, UP, opposition, 26.4.1995, LP 2, Session 48)

[99] Stanisław Piotrowicz (PiS, government, 17.12.2015, LP 8, Session 5) mentioned that PO "broke the constitution" in 2015 by nominating new judges of the constitutional court and Zbigniew Ziobro (Suwerenna Polska, elected via PiS, government, Minister of Justice and General Prosecutor, 13.1.2016, LP 8, Session 8) provided a reminder that according to Gazeta Wyborcza, "a secret team was engaged in illegal, unlawful surveillance of journalists and people associated with the compromising of the Civic Platform government and leading Civic Platform figures" in the days of the Civic Platform government.

MPs also addressed the speed at which problematic situations change as a challenge to establishing effective institutions (Grzyb). They also agreed on the need to adopt a new constitution for ensuring the rule of law and to stabilise politics (Łuczak).

> Phenomena that were marginal or non-existent at the time when the police laws were drawn up, but which are now prime threats, not only disrupting order and security, but also, sadly, undermining the state, have grown up. (Andrzej Grzyb, PSL, government, 1.9.1994, LP 2, Session 28)

> By adopting a new constitution we want to confirm the new reality, strengthen democracy, but also, perhaps for a large part of society, an even more important matter – the creation of the necessary framework for strengthening the rule of law. Disputes at the highest levels of government, for example over electoral law, the questionable powers of the president, the unclear scope of the relationship between the government and the Sejm, the legislative hold-ups between the Sejm and the Senate, are just the most glaring examples. (Aleksander Łuczak, PSL, government, 10.10.1991, LP X, Session 77)

Despite the rhetoric overlap, parties held different positions on how the state institutions should be shaped to prevent phenomena such as corruption and clientelism without creating new problems.[100] They also failed to agree on a new constitution until 1997 because of party fragmentation, disputes over ideological issues and key features of the system (such as the position/power of the parliament and the governmental system) and—as a result of both—unstable governments.

In contrast to the general rhetoric overlap with regard to the lack of reliable and effective institutions, MPs were more divided in terms of 'decommunisation'. Mainly in the first and second waves of rule of law legislation, conservatives—particularly PC and ZChN, from 1996 on part of the post-Solidarity coalition AWS,[101] but also the Confederation of Independent Poland (KPN) and others—used the narrative that **a lack of decommunisation was hindering the establishment of a just state**. This narrative was most prominently related to the judiciary. The parties contested the 'thick line' policy, a Round Table talks compromise. Part of this agreement was that the judges remained in office and were assessed by their position towards the new state. This policy was justified with the need for trained personnel and with the argument, used mainly by leftist MPs (including the SdRP—Social Democracy of the Republic of Poland—the successor party of the Polish United Workers Party), that strong lustration would contradict principles of the rule

[100] In a debate on combating economic scandals through a new law on fiscal control, Władysław Reichelt (KLD, opposition, 13.2.1992, LP 1, Session 8) argued that poor payment of employees is the cause of corruption while the proposed new law "encourages the creation of an army of paid snitches who report hidden incomes to the control authorities", which "will have a brutalising effect on interpersonal relations, will unleash a wave of denunciations, both false and true, and will be used for personal scores".

[101] The electoral coalition (1996–2001) consisted of a large number of conservative, Christian democratic and liberal post-Solidarity parties, such as PC and ZChN, which formed the Polish Christian Democratic Agreement (PPChD) in 1999. For more information, see Sect. 3.1.

of law, e.g. the prohibition of retroactivity.[102] Its supporters stressed that judges must be irremovable, thereby protecting their independence under the new system. They also emphasised that the problems around "disposable, unworthy judges" cannot be satisfactorily resolved by means of a legal standard.[103]

Those who opposed this policy sought justice for people harmed by the previous regime. They criticised insufficient lustration or vetting, which was presented as damaging the rule of law.

> In 1989, we abandoned the vetting of judges as the only group of public officials. (. . .) We stabilised all judges with the 1989 reform by introducing the almost absolute principle of non-removal. This is a very important guarantee of independence. But we extended this guarantee to everyone, including those who in the past had very blatantly disregarded the principle of independence. The attempt to introduce Article 591 is an attempt to rectify this serious political mistake. (Teresa Liszcz, PC, government, 6.3.1992, LP 1, Session 10)

> These proposals are the result of the political situation created, inter alia, by the pursuit of the policy of the thick line (. . .). (T)he Polish judiciary (. . .) is largely made up of judges who are still judges under the old system of the communist regime, a system of judges who are largely corrupt, not economically, but certainly morally. (Maciej Srebro, ZChN, government, 6.3.1992, LP 1, Session 10)

In this view, the lack of lustration resulted from the socialist influence still relevant in the transition period and "disposable" judges/prosecutors "who have convicted unfairly, unjustly in various trials" (Mazurkiewicz). Leaving the courts out of vetting was seen as perpetuating the communist legacy of party dependence. Exceptions to non-retroactivity of the law were justified in political breakthroughs.[104]

> Until now, there is a belief in society that the only people who can get away with ignorance of the law are lawyers. This is a belief that has been instilled for many, many years. This infamous reputation has been fostered by a whole host of, but unfortunately disposable, judges, disposable prosecutors, who have been guided not by the law, but precisely by the directives of the authorities. In many cities, there is a problem of judges who have convicted unfairly, unjustly in various trials; of prosecutors who have participated in such trials and, contrary to appearances, this is not a marginal problem that can be ignored. The very existence of people who, by their actions, by their behaviour, have simply harmed the justice system by handing down such and not other sentences, demoralises society, people know this, they are familiar with such examples. (. . .) Conducting vetting is a must. (Andrzej Tadeusz Mazurkiewicz, KPN, opposition, 6.3.1992, LP 1, Session 10)

[102] They criticised a "climate of constant checks and accusations against entire large professional groups" (Wanda Sokołowska, SdRP, Contract Sejm, LP X, Session 25) and "generalisations that could lead to sui generis collective responsibility" (Jerzy Karpacz, PZPR, Contract Sejm, 6.4.1990, LP X, Session 25). See also the statement of Jacek Taylor (UD, opposition, 6.3.1992, LP 1, Session 10) quoted in Sect. 5.2.3.

[103] See Władysław Liwak, UD, opposition, 6.3.1992, LP 1, Session 10.

[104] See the statement of Teresa Liszcz (PC, government, 6.3.1992, LP 1, Session 10) quoted in Sect. 6.1.3.

The narrative continued to be used later due to the constitutional court's rejection of the lustration resolution in 1992 and political scandals involving state holders in the former communist secret service. From the late 1990s until the mid-2000s, especially when PiS was in power from 2005 to 2007, PiS and LPR parliamentarians pushed for changes due to perceived lustration delays, while SLD members again raised constitutional concerns.

> We are talking about the ruling of the constitutional court, which in its essential content confirmed the constitutionality of the lustration law. Thus, in its essence, this ruling represents a victory for the rule of law over the political line of those – and this includes the president of the Republic, and a group of MPs associated primarily with the Democratic Left Alliance – who wanted to use the constitution against the lustration law. Before the constitutional court, this attempt was thwarted. (Kazimierz Michał Ujazdowski, elected via AWS, government, 3.3.1999, LP 3, Session 45)

> (T)he cleansing of administration, the cleansing of local government, the cleansing of state institutions, the cleansing of many professions of people collaborating with the communist security apparatus is a condition for the rebirth of the Polish state elite. A normal, honest Poland cannot be built without this. We, in presenting this project, are creating the foundations of democracy. (Stanisław Pięta, PiS, government, 9.3.2006, LP 5, Session 12)

In that period, especially right-wing conservative politicians linked the policy of the 'thick line' also with corruption and lacking impartiality ('corrupt judges', see above). During the first PiS-led government (2005–2007) and its programme for a 'moral renewal of power' in the form of establishing a Fourth Republic, the fight against corruption, including corrupt judges, was used to justify various political measures, including the establishment of the anti-corruption agency and a new lustration law.

> In Poland, corruption is inextricably linked to another phenomenon, namely post-communism, i.e. a system of social relations in which people originating from the communist nomenklatura and the secret services have largely dominated the Polish economy, the banking system and the state apparatus. In many cases, the model for the distribution of wealth was not based on the law or on the principles of elementary justice, but was based on personal arrangements in which the behaviour of many people in power was determined by the desire to achieve material or personal gain, rather than to achieve the public good. (Przemysław Edgar Gosiewski, PiS, government, 16.2.2006, LP 5, Session 10)

After 2015, during the second and third PiS governments, the narrative was used frequently, while the perceived lack of political independence and impartiality of the judiciary was more often raised as a concern (see above).

6.3.4 Romania: Politicisation, Corruption and Rule Violations

The most widespread narratives on challenges to the rule of law in the Romanian parliament fell into the category 'Politicisation of the judiciary and public prosecution', which ranked first by a wide margin. 'Corruption/clientelism' and 'Rule-

Table 6.29 Narratives on challenges to the rule of law and democracy in Romania

	1990–2004	2004–2014	2014–2021
Politicisation/ restriction of judiciary and public prosecution		The lack of institutional independence of the judiciary and public prosecution can be exploited by the executive/ president to fight political opponents. (overlapping)	
		Those in power are misusing public prosecution and other law enforcement authorities to criminalise political opponents. (one-sided, PSD/ALDE)	
Corruption/ clientelism			Corruption and patronage are commonplace in politics, which undermines equality before the law. (overlapping)
Rule-stretching or violation/non-compliance		Public authorities exceed their powers through their actions or deliberate inaction, disrupting the system of checks and balances. (overlapping)	
Functioning of the judiciary, public prosecution and law enforcement	The judiciary lacks resources and competences to act effectively. (overlapping)		
Lack of trust		Due to the failure of the political class to build and stabilise a functioning and independent judiciary, citizens have lost considerable confidence in RoL. (overlapping)	

stretching or violation/non-compliance' followed at a distance (Table 6.29). 'Functioning of the judiciary, public prosecution and law enforcement' was also frequently mentioned as a challenge. An alleged 'Lack of trust' was deplored mainly during the second wave of rule of law legislation. Many statements referred to different kinds of challenges, together forming a more complex story of problems; in such cases, we assigned them to the category that received most attention by the speakers.[105] The most intensive debates on challenges to the rule of law were

[105] In addition to the mentioned narratives, one-sided narratives were used with regard to post-1989 transformation. In particular, weak lustration as well as slow and weak property restitution were criticised by relevant actors. However, these narratives were used with lower intensity than those presented here. No narratives centring on a politicisation of the administration/independent institutions, sovereignty, economic and other interest groups and juridification were identified.

identified in the documents of the second wave of rule of law legislation, dating from 2004 to 2014. Five narratives were used with high intensity in that time. One-sided narratives on challenges to the rule of law have not been typical for Romania. With only one key narrative found in our documents dating from the first period and two for the third, the debates seem to be less controversial in most of the periods under study. However, in practice, the politicians frequently accused each other of violating the rule of law.

Politicisation or restriction of the judiciary and public prosecution. Allegations of a politicisation of the judiciary and public prosecution were made by MPs throughout the three waves, and rhetorically the parties agreed that this was an important problem, with many statements using the same narratives about the kind of problems in this field. In the early 1990s, when the constitution, the Law on the Constitutional Court and other laws on the judicial system's bodies and institutions were debated in parliament, concerns regarding a possible politicisation of the judiciary and public prosecution were voiced on a general, conceptual level, but they did not raise an intense debate. For instance, the opposition MP Támas Csiha (UDMR) in the debate of the Law on the Organisation of the Judiciary stated:

> Provision para. 1 is in flagrant contradiction with the principle of separation of powers. The possibility of control by the Ministry of Justice obviously leads to the subordination of the judge, who is irremovable, to the administrative power, which from election to election may change its political colour, but in any case has such a colour. (Támas Csiha, UDMR, opposition, 24.6.1992, S, LP 1)

Parliamentary debates grew in intensity and became more concrete with piecemeal judicial reforms in the aftermath of the first change of government in 1996. In the period before and immediately after EU accession between 2004 and 2007, when President Băsescu and the minister of justice institutionally strengthened the fight against corruption in politics and the judiciary, there was a peak in the criticism of a politicised judiciary and public prosecution.

After that time, representatives from all parties frequently stressed that **the lack of institutional independence of the judiciary and public prosecution can be exploited by the government or the president to fight political opponents**. According to many MPs, the Superior Council of the Magistracy represented the judiciary as such, and its insufficient autonomy from politics was argued to be the root cause of the at times tense relation between the judiciary and the political branches of government. The opposition MP Viorel-Gheorghe Coifan (PNL), for example, criticised the PSD government reforms of the judiciary under Adrian Năstase:

> The new draft laws on judicial organisation and the statute of magistrates further demonstrate the PSD's desire to maintain its influence and control over the judiciary. Although the Superior Council of Magistrates is, according to the constitution, the guarantor of the independence of the judiciary, the budget of the judiciary remains at the discretion of the minister of justice, a politician and member of the government. There can be no independence of the judiciary without real budgetary autonomy. (Viorel-Gheorgher Coifan, PNL, opposition, 15.3.2004, CD, LP 4)

After the election in late 2004, the now opposition PSD represented by Ioan Chelaru attacked the newly appointed Minister of Justice, Monica Macovei, for discrediting the Superior Council of the Magistracy even more:

> The Superior Council of Magistracy is being reduced to a decorative institution at the head of the judiciary. Through continuous public discrediting, spearheaded by the minister, it is intended to turn it into an instrument acting on political orders. The council's debates are proving almost useless, politics is trampling it underfoot, has almost subjugated it, and the proposed new legislative changes practically finalise this, and the constitutional phrase that "the Superior Council of Magistracy is the guarantor of the independence of justice" has long since been eliminated by the minister's public treatment of the council's members. (Ioan Chelaru, PSD, opposition, 12.12.2005, S, LP 5).

When in 2021, after the two largest parties, PSD and PNL, who had bitterly fought each other for thirty years, had formed a grand coalition, the MP Beniamin Todosiu from the opposition party USR read some of the government's actions as an intimidation of the judiciary:

> The action looks more and more like an attack on justice, orchestrated from the political arena, and aimed at intimidating magistrates involved in the fight against corruption. Basically, this action looks like a warning to judges across the country who do not want to comply with the plans of the monstrous PNL-PSD coalition under the patronage of President Klaus Iohannis. (Beniamin Todosiu, USR, opposition, 15.12.2021, CD, LP 9)

The context of such criticism was the institutional arrangement (following the French model and returning to the interwar Romanian pattern) in the constitution of 1991 and the laws regulating the judiciary, according to which both components of the Superior Council of the Magistracy—judges and prosecutors—were partially and to a different degree under the command of the minister of justice. Though the Superior Council of the Magistracy was stipulated a self-governing and representative body of the judiciary, it was dependent on financial allocations from the minister of justice. While the judges were not subject to the minister of justice, their autonomy was hampered indirectly by the government as well.

The limited institutional autonomy of the public prosecutor has also been a matter of concern. When the opposition PNȚCD demanded in 1991 the removal of the minister of justice from the helm of the public prosecution,[106] the postcommunist parties and the majority of MPs from the so-called historic parties (like PNL and PNȚCD) rejected this.[107] According to the constitution, the office of public prosecution was regulating the judiciary directly subordinated to the minister of justice,

[106] Gabriel Țepelea, PNȚCD, opposition, 27.5.1991, CD, LP 1.

[107] Postcommunist MPs were arguing that now, when the parliament and the government are being constituted in a truly democratic process, the minister of justice is the right person to control public prosecution, an institution that was regarded in socialist times as an instrument of the communist one-party regime. The majority of the historic parties' MPs were reluctant to press for more autonomy of the public prosecution since they held the constitution of 1923, where the French model was in force, in high esteem.

and was therefore in an ambiguous position between the political and the judicial branches of government. The minister of justice had several instruments at hand to exert influence on the leadership of the office of public prosecution, on the career trajectories within the office, and ultimately on which cases are to be prosecuted and which are not. Opposition MP Cornel Ştirbeț (PD), for example, stressed:

> (A)ccording to the constitution, he works under the authority of the minister of justice, and according to the Law on the Organisation of the Judiciary, he can give a written order to any prosecutor in Romania, through the prosecutor general, to begin criminal proceedings in a given case. This is not independence, this is not impartiality, in the sense of the European Court of Human Rights. We believe that we should have first, I repeat, reformed the judicial system as a whole, and the public prosecutor's office in particular, and then come up with a law on the National Anti-Corruption Prosecutor's Office that would provide us with procedural guarantees that this institution will not be (. . .) a kind of political police, but will be an institution that corresponds to the rigours and rules of the rule of law. (Cornel Ştirbeț, PD, opposition, 3.6.2002, CD, LP 4)

During the second wave of rule of law legislation, after several governments from both the postcommunist and the liberal and pro-European camp had passed laws on the judiciary, another narrative was widespread, namely that **those in power are de facto misusing public prosecution and other law enforcement authorities to criminalise political opponents**. MPs from PSD and ALDE criticised that the public prosecutor's office was being used by the minister of justice to criminalise political opponents under the pretext of fighting corruption. As Traian Băsescu had run for presidency mainly on an anti-corruption ticket, the opposition perceived the new minister of justice, Monica Macovei, as his tool and both his and her actions as a politically motivated overreach. Macovei significantly strengthened or founded specialised institutions for public prosecution for fighting high-level corruption more effectively, such as the Directorate for the Investigation of Organised Crime and Terrorism (*Direcția de Investigare a Infracțiunilor de Criminalitate Organizată și Terorism* (DIICOT)) and the National Anti-Corruption Directorate (*Direcția Națională Anticorupție* (DNA)) (Sects. 3.2 and 3.3). This was done partly in response to EU pressure for further reforms in the judiciary.

These institutions as well as Băsescu's practice of personal interference in the judiciary by attending high-level meetings of the DNA and the Superior Council of the Magistracy came under heavy criticism. Politicians particularly from PSD, but also from ALDE, repeatedly criticised President Băsescu for furthering personal interests while prosecuting his political opponents for political reasons.

> Traian Băsescu has disregarded or blatantly violated the provisions of the constitution, when his personal or political interests required it, allowing himself gross interference in the act of justice. President Traian Băsescu's latest interference at the DNA meeting, when Mr Traian Băsescu, probably upset at the parliamentary action to suspend him from office, asked the prosecutors to reopen the criminal prosecution files involving representatives or close associates of the opposition (. . .). The seriousness of this interference, which is unimaginable in any state governed by the rule of law, is demonstrated by the promptness of the reopening of one of these cases (. . .). (Titus Corlățean, PSD, opposition, 28.2.2007, CD+S, LP 5)

> According to the statement of President Traian Băsescu, the instigator of the constitutional inquisition, who said that "never has the justice system of any EU state done as much harm to the country for which it works as the Romanian justice system has done", we cannot help but be horrified by the idea that he is the one who swore allegiance to the Romanian people and now betrays them with unparalleled cynicism. (Dumitru Chiriță, PSD, opposition, 15.6.2011, CD, LP 6)

The measures taken by the government and the president were described in harsh terms, as an "attack on the judiciary", as attempts to "intimidate", "undermine", "confiscate" and to "sub-ordinate the judiciary" with the ultimate effect of creating a "police" or "party state". Specific attempts to install or reverse some reforms were being called after the respective day as "the Black Tuesday" of the Romanian judiciary.

> However, what is becoming clear every day is that we live in a police state, a state in which justice is made a political weapon, a state in which people are divided into two categories: those who are on the side of those who control the prosecutors and those on whom the prosecutors have to work. (Gavrilă Vasilescu, PC, opposition, 26.8.2008, S, LP 5)

Despite abundant criticism of an institutionalised leverage of the minister of justice and the president on the judiciary and the public prosecution, no structural reform has been undertaken. This might have contributed to the fact that the narrative was still present in the third wave (but less used than during the second one).[108] Between 2015 and 2018, some of the corruption fighting methods were denounced as anti-constitutional.

> In Romania, under the pretext of fighting corruption, a welcome action that must be pursued with full respect for the law and constitutional guarantees, a non-transparent institutional cartel known as the 'SRI-DNA twin' was set up, outside the constitution and in order to violate the independence of justice. (Călin-Popescu Tăriceanu, ALDE, opposition, 17.11.2015, CD+S, LP 7)

In that time, a PSD-led government was trying to walk back some of the reforms. In 2018, when a PSD-led government attempted to restrict the powers of the DNA, Stelian-Cristian Ion, MP from the liberal and pro-European party USR, accused it of a politicisation of the public prosecution.

> To suggest that there is a need for greater control by the minister of justice over the prosecution services as a means of ensuring the accountability of the prosecutor to the public reveals exactly your intentions to politicise the prosecution services. Also, the

[108] Expressed, for example, by Stelian-Cristian Ion (USR, opposition, 30.10.2018, CD, LP 8): "Point 1. You have promoted the politicisation of justice. It is well known that you have been the promoter of harmful ideas to change the justice laws, such as absolute control, concentrated in the hands of the minister of justice, over the appointments of senior prosecutors, the creation of a special directorate for the investigation of magistrates, the transfer of the judicial inspectorate to the minister of justice etc."

> allegation that our prosecutors' offices, the DNA in particular, have absolute powers, similar to prosecutors' offices in the Soviet system, and that prosecutors' requests are almost automatically admitted by judges, is false. Moreover, at a later point, you complain precisely about the high number of acquittals. How does the automatic admission of all the requests of DNA prosecutors by judges reconcile with the "numerous acquittals in recent times" which you invoke? (Stelian-Cristian Ion, USR, opposition, 30.10.2018, CD, LP 8)

Corruption/clientelism. Corruption and clientelism were also an often-addressed theme in parliament. The CDR coalition that won the 1996 elections and even more so the party Alliance for Justice and Truth that won the 2004 elections together with Traian Băsescu ran on an anti-corruption platform. In the aftermath of such political changes, an increasing number of corruption allegations were made in parliament when the new governments adopted anti-corruption laws and founded or strengthened corresponding institutions. MPs across parties identified high corruption and clientelism as culturally deeply embedded social practices of violating the rule of law. But also MPs of majority factions referred to the issue and mentioned criticism of corruption and warnings from the EU that Romania must fulfil its membership obligations.[109]

Referring to the generally overlapping perspective that corruption and patronage are challenging the rule of law, the National Anti-Corruption Prosecutor's Office (the precursor of the DNA that was mentioned above) was founded in 2002. Then PSD MP Ionel Olteanu defined its task, speaking for the majority coalition:

> We need a specialised body, we need, more precisely, the anti-corruption fight that we have been proclaiming for years (. . .). Public opinion is more decisive than the statements we make. Citizens see and probably feel in their own pockets that corruption is at unacceptable levels for a constitutional state. (Ionel Olteanu, PSD, government, 3.6.2002, CD, LP 4)

At the same time, other parties argued that the fight against corruption was used by the ruling majority as a tool or pretext to criminalise and ostracise opponents. This became a very popular claim and was already covered by the narrative in the politicisation category described above. MPs also identified a politicised judiciary as the main facilitating instrument of high corruption and clientelism. Thus, the overlapping perspective that corruption is a problem did not imply agreement on the adequate policy solutions for the challenge.

Particularly during the third wave of rule of law legislation, MPs across party lines used the narrative that **corruption and patronage are commonplace in**

[109] To quote an example: "The most painful criticism concerns the fight against corruption. Rooting out the corruption that is ingrained in our society is a difficult and lengthy operation. We have legislation, albeit imperfect, that is slowly being applied. Cases of corruption in the military, the police, local or central government or even among politicians are reported daily by the media. The problem is their completion, because so far there is no final and irrevocable court ruling. We believe that the institutional framework for the fight against corruption must be strengthened, with substantial financial support, in order to double, if necessary, the number of staff investigating and prosecuting corrupt people." (Iulia Pataki, UDMR, supporting government, 15.3.2004, CD, LP 4).

politics, which undermines the principle of equality before the law.[110] Such statements were made in 2013 and from 2015 to 2018, when leading PSD and ALDE politicians such as Adrian Năstase, Victor Ponta, Călin Popescu-Tăriceanu and Liviu Dragnea were accused of facilitating high-level corruption, being corrupt themselves, and trying to roll back some of the anti-corruption legislation. Over time ministers, MPs and politicians at central and regional levels from all political parties who held office were accused, indicted and convicted of corruption. Politicians tried to prevent investigations. This included the 'Black Tuesday of the judiciary' when Victor Dragnea's PSD attempted (but failed) to lower the threshold for corruption in order to keep him out of jail. Other MPs saw this as proof that their allegations of corruption were true.

> Last week we experienced the regrettable 'Black Tuesday' of the Romanian legislature in the last quarter of a century. The USL [PNL+PSD] has managed to destroy the last shred of credibility of the parliament, by amending the criminal code, which does nothing but protect its corrupt from deserved punishment. The USL has proposed several legislative proposals for adoption without a transparent debate, in violation of procedural rules, in total secrecy. (. . .) With the amendments to the criminal code, parliamentarians, the president of the country and the liberal professions, including notaries and lawyers, have been removed from the category of public officials. They can therefore no longer be investigated for corruption offences. (. . .) The new amendments to the criminal code support bribery and abuse of office. In short, any mayor will be able to award contracts financed by public money or European funds to his own relatives. This is how the USL knows how to be fair to the people it represents. This is how we will end up being led, at all levels, by a USL-ist mafia gang. (Marian Andreea Paul, PD, opposition, 17.12.2013, CD, LP 7)

Rule-stretching and violation/non-compliance. MPs also often mentioned challenges to the rule of law which fell into this category. However, their content was diverse, with less than half of the statements in our material forming narratives. During the second wave of legislation,[111] the narrative was most frequently used that **public authorities exceed their powers through their actions or deliberate inaction, disrupting the system of checks and balances.** Whenever they were in opposition, representatives from all parties argued that those in power have created a mere façade of a state under the rule of law, and the norms and regulations laid down in the constitution and law remain dead letters. These allegations were directed against all persons and groups that represented and formed the institutions of the

[110] While there were no substantial accusations by MPs of corruption in the judiciary itself, several judges and public prosecutors were found guilty of such offences (Morar 2022).

[111] This pattern was already present in 1997, when Senator Virgil Popa (PDSR/PSD, opposition, 6.6.1997, CD+S, LP 3) denounced judicial reforms by the PNL as a "witch-hunt that disqualifies the institutions of the rule of law in the eyes of public opinion" and criticising that "central and territorial anti-crime and anti-corruption commissions have been set up, which both in their construction and in the activities they carry out stand outside the constitution and the law. The constitutional principle of the separation of powers in the state and the principle of non-interference of politics in the work of the institutions of the rule of law are seriously violated."

state: the president of the country, the government and its ministers, the parliament and the public prosecution office.

In more concrete terms, MPs criticised the president for overstepping his prerogatives to the effect that he was not acting as a mediator between the branches of government, but rather as a partisan actor. Two attempts were made to remove Traian Băsescu from office. His critics argued that he was trying to be a dictator, who wanted to change Romania into a police state, where public prosecution and law enforcement reign supreme.

> In these two years, we have witnessed, from the one who swore to respect the constitution, repeated violations of his prerogatives, of the president's role as mediator between the powers of the state, in order to ensure the proper functioning of public authorities, abuses and serious violations of the constitution, acts of defiance and denigration of the fundamental institutions of the state. (Titus Corlățean, PSD, opposition, 28.2.2007, CD+S, LP 5)

All governments were accused of an inflationary use of ordinances, thereby depriving the parliament of its legislative role (Ştirbeț). In addition, every government in all three waves of rule of law legislation had to face at least one motion of no confidence in parliament, which has become a standard political tool of the opposition. MPs criticised that reforms of the judiciary by governments do not aim at structural changes and that those in power use their influence on the judiciary, especially on the public prosecution, to serve their personal and party interests. When in government, they used the same instruments for reversing the alleged misdeeds of the past government. Evidently, the narrative was entangled with the narrative on politicisation and corruption/clientelism, forming a more complex story of guilt.

> While the constitutional court has established that emergency ordinances can intervene in the field of organic laws, it has expressly ruled that they can only intervene (. . .) in exceptional situations. Let me ask myself, at least, if not you or the government, how an exceptional situation can be envisaged when an emergency ordinance is intended to enter into force six months after publication in the Official Gazette. What kind of exceptional situation is that? Probably, if this is how the Năstase government understands the regime of emergency ordinances and exceptional situations, we can expect emergency ordinances to be issued that will enter into force in 2004, in order to ensure continuity of PSD power. This is a defiance, I repeat, unheard of in our constitutional practice. (Cornel Ştirbeț, PD, opposition, 3.6.2002, CD, LP 4)

Vasile Puşcaş, a frontbencher from the opposition PSD party, likewise accused the Tăriceanu government of abusing its executive powers, for example by issuing ordinances, and of sidelining the parliament:

> After six months of government of the Orange Quad, we can see that the principle of the separation of powers in the state, proclaimed by the leaders of the D.A. Alliance, has completely disappeared. Parliamentary debate has been almost completely eliminated. The executive prefers emergency procedures and political accountability, and the judiciary is increasingly stripped of its powers. (Vasile Puşcaş, PSD, opposition, 21.6.2005, CD, LP 5)

Functioning of the judiciary. MPs also mentioned problems with the functioning of the judiciary. During the first wave of rule of law legislation, a narrative was

used (with high intensity) across parties that **the judiciary lacks the resources and competences to act effectively**. This narrative was linked with the interpretation that governments have not done enough to provide the judiciary with the financial, material and institutional capacities and competences necessary for its independence. This allegation was voiced strongly by Gheorghe Gorun, a member of the small Liberal Party 93, early in 1996.

> The project, this bill, tries to remove what the whole responsible Romanian society recognises, namely that magistrates' salaries are humiliating, that they are not able, nor could they be, to ensure the material protection of those who work in this very important component of the rule of law. The draft law on the salaries and other rights of the staff of the judicial authorities, as substantially improved by the committee of the Chamber of Deputies, aims to ensure conditions for the normal performance of the act of justice in Romania. Among these conditions, I would highlight: increasing the prestige of magistrates; preventing migration from the judicial authority to other neighbouring areas; ensuring the material independence of magistrates and avoiding acts of corruption; correlating magistrates' salaries with the complexity and social responsibility that magistrates have in the rule of law. (Gheorghe Gorun, Partidul Liberal 93, opposition, 14.3.1996, CD, LP 2)

The context of such statements was that in the early 1990s, court cases in all areas of law (especially civil and criminal) were mushrooming because both market transactions and illegal social behaviour became more widespread. Judges, prosecutors and the supporting staff could not manage the rising caseload. At the same time, salaries in the emerging field of private business and in the to-be privatised state and public economic sector was far more attractive than in the magistratura. This situation caused a serious outflow of jurists from the magistratura towards other professional fields.

When the long-time government party PSD was in opposition in 2005, its MPs—such as senator Cristian Diaconescu in this case—accused the Tăriceanu government in a debate at the occasion of a motion of no confidence of having failed in continuing PSD policies that had aimed at the well-functioning of the judiciary:

> But what has the government done for the citizen who, as a person subject to justice, faces so many difficulties? Where are the implementing measures provided for in the safeguard clause on exorbitant fee reductions for the enforcement of judgments? Improving access to justice? Extension of free legal aid? Substantial investment in improving the working conditions of magistrates, which are also conditions for public access to justice? All these we have identified, we have assumed in the negotiation process with the European Union and we have started to implement them. Where are the draft laws to simplify and speed up the justice process? What about the IT system? What about social inclusion? Nowhere, I will answer. Nothing has been done on all the major themes of justice reform, apart from updating a strategy that the PSD government had been working on most anyway. (Cristian Diaconescu, PSD, opposition, 22.6.2005, CD+S, LP 5)

Later, MPs argued that the governments had engaged in superficiality or "window dressing" both for foreign and domestic consumption. In this view, they had paid only lip service to the requirements of an effective judiciary that provided for easy and affordable access to the law and that spoke justice in due time. For example, in

2007 MP Vasile Puşcaş, then in opposition with the PSD but who had been the Romanian chief negotiator with the EU in the accession period, looked back on the immediate post-accession period and criticised:

> One issue that has recently returned to the public agenda in a way that we would not have wished for in the post-accession environment is the situation in the judiciary. The institutional conflicts in this area are a demonstration of the superficiality with which the authorities have managed to reconcile legal practices and institutional relations in this area with the minimum requirements of a European state governed by the rule of law. Unfortunately, it does not take much applied knowledge to see the failure of the authorities in the management of judicial institutions, and this failure calls into question the very manner in which we have managed to implement the practices and norms of the rule of law. (Vasile Puşcaş, PSD, opposition, 9.10.2007, CD, LP 5)

Lack of trust. Romanian parliamentarians also often deplored a lack of confidence of citizens in the state, resulting from misbehaviour of politicians. In the second wave of rule of law legislation, such statements were made with higher intensity, complementing the story about a façade state under the rule of law. MPs across parties stated that it was **due to the failure of the political class to build and stabilise a functioning and independent judiciary that Romanian citizens had lost confidence in the rule of law**. In this perspective, the citizens were fully aware of the particularly high number of government members and MPs, but also judges and prosecutors who had been indicted and convicted for a range of high-level corruption offences. They interpreted this as proof of how rotten the Romanian system was. This rhetoric was triggered by the negative assessments of the state of the rule of law in the country (particularly a high level of corruption) by the EU, which slowed down a full and fast integration of Romania into the EU.

> It is difficult to know whether, at the end of these confused disputes, citizens will be left with the idea that a minister tried to dismiss a prosecutor whose incompetence was demonstrated by an independent report and took revenge by initiating a criminal investigation, or that the same official tried to protect certain economic interests by removing an inconvenient prosecutor. We cannot judge at this point what will result from the inflation of criminal cases involving several members of the government. The end of the dispute will be lost in the diffuse echo of mutual accusations, as has happened with all the major investigations launched after 2004. The public conscience will be left with the natural conclusion that we do not have credible and effective legal institutions capable of administering justice for all and ensuring their independence from the other two branches of government. Any sociological research will show that presumptions such as that the law protects only the rich and that any means are preferable to avoid recourse to the courts are certainties for large sections of society. (Vasile Puşcaş, PSD, opposition, 9.10.2007, CD, LP 5)

> The assessment of the community forums coincides to a large extent with that of Romanian citizens, who, in recent years, have placed their hopes more in the decisions of the community courts than in the decisions of the national courts. The European Commission's interim report on justice says that "the situation on the ground gives cause for concern" and points out that "in key areas, such as the fight against high-level corruption, convincing results have not yet been demonstrated". At the same time, the Commission stresses that the Romanian government's action plan lacks consistency and has a number of shortcomings. (Călin Potor, PNL, opposition, 24.5.2011, CD, LP 6)

6.3.5 Slovakia: Exceeding of Powers, Limited Trust and Politicisation

In Slovakia, the most prominent narratives on challenges to the rule of law in our selected parliamentary debates were related to our categories of 'Rule-stretching or violation/non-compliance' and 'Politicisation (or restriction) of the public prosecutor, law enforcement and the judiciary'. At a distance followed narratives falling into categories of 'Lack of trust' in the practice of the rule of law and 'Functioning of the judiciary and public prosecution'. Corruption and clientelism were also often mentioned as a challenge to the rule of law. Table 6.30 provides an overview of the main narratives and the periods in which they were used with particular intensity. Many of them were employed by only some parties, others were diverging, creating

Table 6.30 Narratives on challenges to the rule of law and democracy in Slovakia

	1992–1998	1998–2006	2006–2021
Rule-stretching or violation/non-compliance	Public authorities exceed their powers through their actions and deliberate inaction, disrupting the system of checks and balances. (overlapping)		
			Proposed laws violate the constitution or the fundamental principles of the RoL. (overlapping)
Politicisation/ restriction of the judiciary and public prosecution		Those in power are misusing public prosecution and other law enforcement authorities to criminalise political opponents. (one-sided, HZDS, Smer)	Significant parts of the judiciary and prosecution serve particular interests, including political ones vs under the guise of modernising reforms, the government attempts to gain control over the judiciary and prosecution. (diverging)
Lack of trust			Due to public officials' arbitrary behaviour and omissions, citizens have lost confidence in the RoL. (overlapping) Due to low effectiveness and cases of corruption in the judiciary, the trust in the RoL is undermined. (one-sided, liberal-conservative parties)
Functioning of the judiciary, public prosecution and law enforcement			Court proceedings are excessively long, which harms the rights of citizens. (overlapping)
Corruption/ clientelism			Prosecution and judiciary are part of a system of corruption that reaches into the highest echelons of politics. (one-sided, liberal-conservative parties)

potential for conflicts around the rule of law. In addition, overlapping narratives addressed severe problems such as the perceived erosion of the separation of powers, which parliamentarians agreed was a crucial element of the rule of law (see Sect. 5.2.5). Many of the mentioned issues appear to have structural causes. Over time, old and new parties promised to solve these problems, but their suggested solutions were contested by others, especially during the third wave of rule of law legislation.

Rule-stretching or violation/non-compliance. A disregard for rules, their manipulation and the exploitation of grey areas were frequent topics of parliamentary debates across all analysed legislative periods. The extensive pool of statements on this topic can be allocated to two main narratives on how such issues challenge the rule of law.

The first one was rather general. MPs argued that **public authorities,** including the government, the president and the parliament, **exceed their powers through their actions and deliberate inaction, disrupting the system of checks and balances**. This narrative has been used throughout the periods studied by all relevant parties. Primarily representatives of opposition parties highlighted such practices by the government. However, at certain moments, also government politicians criticised the actions of previous cabinets led by parties currently in opposition or the conduct of the head of state. Parliamentarians suggested that the public commitment of political powerholders to the principles of the rule of law was merely a façade that did not correspond to reality. Disregarding the principle of the separation of powers was said to undermine the very foundations of the rule of law.

> Regrettably, I must state that the relevant articles of the constitution of the Slovak Republic merely declare civil rights, but do not provide any guarantees for their implementation, and in everyday life, their fundamental rights are not upheld. (Ernő Rózsa, Spolužitie-Együttélés, opposition, 22.4.1993, LP X, Session 18)

> (I)f the constitutional court tells us, "Parliament, you are violating the constitution of the Slovak Republic, you are passing laws that are in conflict," we're looking for ways to clip the wings of that constitutional court so it can't tell us the same thing a second time. This conflicts with the principles of building and dividing power in any rule of law. (Vladimír Mečiar, HZDS, government, 4.3.2010, LP 4, Session 49)

> (W)hat honestly frightened me was when a politician starts talking about who they'll throw behind bars, who they'll confiscate assets from, and how they'll confront, clean the mess. In those moments, one must immediately be alert, because in a proper rule of law, they have no authority over any of that. (Dušan Jarjabek, Smer, opposition, 23.7.2020, LP 8, Session 10)

When mentioning this problem, MPs referred to specific issues relevant at a certain time. They criticised, for example, that the president of the Supreme Court was removed without adequate justification,[112] that President Ivan Gašparovič did not respect the constitutional limits of his powers and served the interests of the

[112] Melánia Kolláriková, SNS, opposition, 18.12.2000, LP 2, Session 43.

governing party,[113] and that the parliamentary majority did not elect candidates to the constitutional court.[114] In general, MPs frequently criticised the alleged lack of law enforcement. The speakers urged the government or its representatives to meet their commitments and not only advocate the rule of law rhetorically.

> It is not enough to just proclaim adherence to the principles of the rule of law and the enhancement of constitutionalism and legal foundations of the state, but it is crucial to respect the constitution and valid laws. (Michal Benčík, SDĽ, opposition, 19.1.1995, LP 1, Session 4)

> It is fully necessary to agree that in a state governed by the rule of law, it is not about enacting laws, but about their application. The Slovak Republic has been repeatedly alerted to the weak enforcement of the law. (Katarína Tóthová, HZDS, opposition, 6.12.2005, LP 3, Session 52)

> (O)ne of the main problems in our country is the low enforceability of the law. The fact that criminal acts happen in front of the public eye, everyone sees it, and nothing happens – the police can't keep up, the prosecution doesn't press charges, the courts don't judge. (Ondrej Dostál, SaS, opposition, 28.3.2017, LP 7, Session 14)

Disregard for the rulings of the constitutional court was also criticised by various speakers. At times, even representatives from the government and the opposition accused each other of this in the same debate, as the following quotes from Fehér and Prokeš show.

> The same members of parliament who were criticising me four years ago while they were sitting on the opposition benches now, merely by moving a bit further down the rows and becoming members of the ruling party, suddenly don't seem to acknowledge that the constitution is being violated. They refuse to accept the decision of the constitutional court. (. . .) The best constitutional lawyers from the ruling coalition are advising us to not accept the resolution, to not respect the decision of the constitutional court. What constitutional court? We are the parliament, we have the majority, and we do as we please. (. . .) This is undermining the rule of law, gentlemen. (Ján Danko, HZDS, opposition, 18.1.2000, LP 2, Session 26)

> A paradox of the current constitutional situation could be described as the fact that even decisions of a state authority with an exclusive right to protect constitutionality can remain without legal effects. Many times, we have witnessed and sadly watched decisions of the constitutional court being disregarded. (Miklós Fehér, SMK, government, 6.2.2001, LP 2, Session 45)

> Mr Prime Minister, how can we believe that you want Slovakia to be a state governed by the rule of law when you are not at all concerned about the violation of laws by members of your own cabinet? For example, by not respecting the decisions of the constitutional court. You mentioned the democratic opposition. Mr Prime Minister, it is here, but you are silencing it. (Jozef Prokeš, SNS, opposition, 7.2.2001, LP 2, Session 45)

[113] Gábor Gál, Most-Híd, opposition, 12.3.2013, LP 6, Session 15.

[114] Lucia Žitňanská, independent, elected for Most-Híd, opposition, 21.5.2019, LP 7, Session 45.

During the third wave of rule of law legislation, while in opposition, MPs of all relevant parties accused the parliamentary majority of abusing and misusing extraordinary 'fast-track' legislative procedures. Practically all governments used them, but opposition MPs pointed to restrictions on their rights as elected representatives of the people and to the failure of parliament to effectively check and balance the executive. Referring to the separation of powers as a fundamental principle of the rule of law, the speakers claimed that the laws adopted by expedited procedures are unconstitutional.[115]

> The Czech constitutional court expressed an opinion several years ago that not only a law whose content is contrary to the constitution is unconstitutional, but also a law for which the legal procedure was not followed during its approval. A procedure to which the constitution refers as the only possible one. If, therefore, the demand for the stability, persuasiveness and necessity of legal acts, on which the rule of law and the lives of citizens also depend, comes to the forefront in the legislative process, such acts and the attainment of the necessary authority of legislative bodies cannot be achieved other than by respecting the rules and principles of legislative activity that the Chamber of Deputies, as a significant bearer of this power, has established by law itself. (Erika Jurinová, OĽaNO, opposition, 6.8.2012, LP 6, Session 6)

> The parliament, which should be capable of controlling, managing and holding the government accountable, has become its obedient servant and is incapable of safeguarding the increasingly extensive distortions of our rule of law. The government is sending laws to the parliament in a fast-track legislative process as if on a conveyor belt, even though when in opposition, it vehemently criticised this practice. (Peter Pellegrini, Hlas, opposition, 3.2.2021, LP 8, Session 23)

The second narrative related to the stretching and violation of rules was more targeted and mainly used during the third wave of rule of law legislation. MPs argued that **proposed laws violate the constitution or the fundamental principles of the rule of law**, namely the principle of non-retroactivity. However, not all parties interpreted the prohibition of retroactive action as an absolute principle.[116]

> First, if the constitution of the Slovak Republic states in Article 1 that the Slovak Republic is a rule of law, then any attempt at direct or indirect retroactivity eradicates the concept of a rule of law. By adopting this retroactivity, we enter contradiction with whether we are still a rule of law. (Vladimír Mečiar, HZDS, government, 4.3.2010, LP 4, Session 49)

[115] E.g. Robert Fico, Smer, opposition, 12.9.2001, LP 2, Session 51; Lucia Žitňanská, SDKÚ-DS, opposition, 4.11.2008, LP 4, Session 28; Ján Budaj, OĽaNO, opposition, 28.3.2017, LP 7, Session 14.

[116] According to Ján Figeľ (KDH, opposition, 17.3.2015, LP 6, Session 48), for example, this prohibition "applies only in standard situations where everyone respects the principles associated with the rule of law. Nevertheless, we consider it immoral to invoke the rule of law in circumstances that led to the issuance of the so-called Mečiar amnesties. We are convinced that the acts, widely known, that preceded this mass pardon were both morally and legally heinous. Hence, the pardoning of the individuals involved is nothing but a cover-up or quasi-resolution of crimes using legal tools that were, are, and will always be designed for different purposes."

> Based on the conclusions and legal opinions expressed by the constitutional court of the Slovak Republic, it can be stated that the proposed legal regulation is retroactive, as it establishes effects in the past. The question of retroactivity, where we intend to take away someone's already acquired rights through legal regulation to make it apply retroactively, is a clear issue even for second-year law students, which is why I am surprised by the stance of a law associate professor. This is not permissible in the rule of law. (Andrej Kolesík, Smer, opposition, 1.2.2011, LP 5, Session 12)

Politicisation/restriction of the judiciary and the public prosecution. Narratives falling into this category were highly controversial. Allegations of a politicisation or restriction of the public prosecution and law enforcement bodies were present in all legislative periods, although with different focuses and increasing intensity over time. After the removal of Prime Minister Vladimír Mečiar and his party HZDS from power in 1998, several prominent figures from the former ruling group were prosecuted, including former Interior Minister Gustáv Krajči and the head of the intelligence service Ivan Lexa, both MPs. This situation triggered the narrative that **those in power are misusing the public prosecution and other law enforcement authorities to criminalise political opponents,** used by the HZDS parliamentarians.[117]

> So, these are the reasons (. . .) why investigators want me to be in pre-trial custody. They don't want it themselves. They received the order to do so. And they received the order in a way that is well known. Again, publicly known. This public order was issued by the minister of the interior to his direct subordinates about a month ago. (Ivan Lexa, HZDS, opposition, 14.4.1999, LP 2, Session 12)

> It is interesting that the government coalition and the government opposition talk about parliamentary immunity quite differently. This also proves that parliamentary immunity was probably primarily devised to protect opposition members of parliament. Not to mention that in a state like the one we currently live in, which lacks the attributes of a rule of law, where there is police arbitrariness and investigators persecute people, this becomes doubly important. (Ivan Hudec, HZDS, opposition, 14.2.2001, LP 2, Session 45)

> The goal of creating a special prosecutor to prosecute constitutional officials and serious criminal activity is not to achieve greater independence of the special prosecutor. On the contrary, (. . .) this prosecutor should be under the control of the government, and that he should be appointed on its proposal. When KDH failed to obtain even the last third position necessary for full control of the judiciary, the position of the attorney general, efforts are being made to create a new position that could be filled by their own person. This will lead to unrestricted surveillance, wiretapping and imprisonment of political opponents, specifically targeted by police officers, prosecutors and judges. (Gustáv Krajči, HZDS, opposition, 27.6.2003, LP 3, Session 13)

As indicated in the latter quote, in that period, representatives from HZDS and Smer (founded in 1999), the leading parties of Vladimír Mečiar's and the later Fico

[117] Similarly, for example, Jozef Brhel (HZDS, opposition, 11.11.1998, LP 2, Session 3) or Ján Cuper (HZDS, opposition, 8.12.2004, LP 3, Session 33).

governments, also criticised repeated efforts by liberal-conservative governments to bring about changes in the judiciary through profound legislative reforms. The line of argument was the same as for public prosecution. The main goal of the measures was said to be the subordination of the judiciary to the executive or political power, which was unacceptable in the rule of law due to the essential principle of judicial independence.[118]

> (I)f a member of the government starts calling for the reorganisation of the judiciary simply because he is not satisfied with how judges are applying the law according to his own views, then something is not right here. (Katarína Tóthová, HZDS, 30.8.1999, LP 2, Session 17)

> (T)he minister's intention is to once again subordinate the courts of the Slovak Republic under his own ministerial power. And here, for twelve years, we have been striving for the opposite tendency, to make the courts of the Slovak Republic independent judicial institutions that will govern themselves, as is common in democratic states governed by the rule of law. (Ján Cuper, HZDS, opposition, 9.12.2004, LP 3, Session 33)

This narrative gradually developed, and since the third wave of rule of law legislation, diverging narratives around that issue were established, one arguing that **significant parts of the judiciary and prosecution serve particular interests, including political ones**, the other arguing that **under the guise of modernising reforms, the government attempts to gain control over the judiciary and prosecution**.

Users of the first narrative, liberal-conservative parties, regardless of their current role in the government or opposition, argued that Robert Fico's first government (2006–2010) handed over the judiciary to Mečiar's HZDS, the junior partner in the coalition, which, through its influence on the justice system, supposedly sought to ensure impunity for its breaches of law while in power in the 1990s.[119] Thus, Fico's party Smer was seen as co-responsible for the critical situation in the judiciary, which was described as having partly degenerated into a tool to immunise the misbehaviour of politicians and their close allies from all shades of business.

> Who introduced such a level of politicisation into the judiciary as we have never seen before? I regret to say, it was the Smer party, it was Robert Fico, who allowed Mečiar to take over the Ministry of Justice. (. . .) I must ask, where were all the defenders of judicial independence when the network that now controls the judiciary was being created, a network of questionable individuals who now wield power over the judiciary, and whom you

[118] The same narrative was also, but occasionally, heard from the representatives of liberal-conservative parties while in opposition to the governments of Robert Fico.

[119] In this vein, Ján Figeľ (KDH, opposition, 17.3.2015, LP 6, Session 48) asked: "Who nominated Štefan Harabin for the position (. . .)? Which party? Which party leader? Wasn't it the same prime minister who granted the amnesty on the early morning of March 3rd for what happened before during his tenure? Wasn't it that Vladimír Mečiar who nominated Štefan Harabin for the position of justice minister? Why did justice matter so much? Because some need certainty, some do."

> probably need today as you are trying to protect them? (Lucia Žitňanská, SDKÚ-DS, government, Minister of Justice, 1.2.2011, LP 5, Session 12)[120]

> Slovak politicians (. . .) couldn't resist the temptation to influence the composition, both personnel and the rules, by which the judiciary is supposed to decide independently. Rules that actually allow influencing the selection and composition of the judiciary personnel. So, this constant interference with the independence of the judiciary, and on the other hand, we tell people here that we are in a state governed by the rule of law. No, we're not. Politicians are selling them only the illusion of a rule of law, but with our steps and this constant interference, we are undermining the rule of law, tearing down the foundations of the rule of law. (Igor Matovič, OĽaNO, opposition, 30.4.2013, LP 6, Session 18)

Critics stressed that many officials in the judiciary did not operate in the public interest, thus undermining the principles of impartiality and judicial independence and the system of checks and balances. This was described as a systemic threat that called for a personnel change and a comprehensive institutional reform.

> Unfortunately, among other things, we are also witnessing various corruption cases and connections between judges and politicians and mafias, even though judges should be representatives of law and justice without political and other interventions in their decision-making activities. (Petra Hajšelová, Sme Rodina, government, 28.4.2020, LP 8, Session 6)

> (T)here is no country in the world where thirteen judges have been arrested at once, all of them connected to the former government. There is no country where the judiciary has such a reputation as in Slovakia. Therefore, all these measures mentioned in this section of the government's programme statement need to be interpreted in light of the fact that we are under great pressure to really do something, that this is not just about some Potemkin villages, but truly something where we will expect results. (Alojz Baránik, SaS, government, 29.4.2020, LP 8, Session 6)

Since 2012, liberal-conservative MPs (opposition parties to the governments of Robert Fico) also claimed that the prosecutor general was too independent. In consequence, the institution would not always act in the public interest. Given the fact that the independence of the prosecutor general was guaranteed by the constitution, the speakers argued that this constitutional provision leads to a lack of accountability of the current holder of the office.

> And if the general prosecutor's office were not under the control of the party centre, these might come to light, someone might have to face investigation and court proceedings. That's why there's such a battle over the legal character of this state. That's why there's a fight over how the prosecutor's office will be staffed, and that's why it's important that the president has lent himself as an agent protecting the interests of one political party, which is trying to

[120] The same MP also argued earlier, when in opposition: "(T)he minister intends to concentrate power over judges in his own hands. We believe that no minister of justice should be granted powers that would allow the minister to enforce nepotism, favouritism based on acquaintances, friendships or political beliefs in the judiciary. In this case, it is highly likely." (Lucia Žitňanská, SDKÚ-DS, opposition, 4.11.2008, LP 4, Session 28).

> defend the law and the right for it to be upheld. And in doing so, it distorts the rule of law and violates the constitution. (Ľudovít Kaník, SDKÚ-DS, opposition, 12.3.2013, LP 6, Session 15)

> (I)f the government really had an interest in addressing the position of the prosecution, today, (. . .) it could even gain support for constitutional changes from the ranks of the opposition. (. . .) As far as I know, changes to the prosecution were also in the programmes or were being considered by MOST, SNS and SIEŤ. So, let's say that it's Prime Minister Robert Fico who's blocking it, but let's not pretend that we don't have the votes. There are enough votes here for many things! Tell the truth, that you don't want those votes. That you don't want to change the prosecution because you're satisfied with the current state. (Daniel Lipšic, OĽaNO, opposition, 26.4.2016, LP 7, Session 2)

> So, we need to bring the prosecutor's office to a state where it is accountable to someone. We cannot have the current situation, where the constitutional court has ruled that nobody has any authority over the prosecutor's office and that it's up to them how they carry out their duties. This is something we will have to deal with (. . .). (Alojz Baránik, SaS, government, 29.4.2020, LP 8, Session 6)

National-populist parties, particularly Smer, rejected legislative reforms and other measures as a mere guise for the efforts of the ruling parties to subject the judiciary to their influence, thus undermining the system of checks and balances.

> I have been closely following the steps taken by the Ministry of Justice in this area – steps aimed at gradually taking control of the judicial council and the Supreme Court. (. . .) (Y)ou are looking for different ways and methods through the amendment of laws and regulations, which are meant to control the Supreme Court and seriously harm the independent pillar of the judiciary in Slovakia. (Dušan Čaplovič, Smer, opposition, 19.10.2010, LP 5, Session 7)

> You've described a hundred articles about how you will form the judicial council, who will be there and who can, who cannot. Furthermore, of course, you will nominate non-judges there, which is very dangerous in the case of the judicial council, and then you write, after all that complicated, democratic, independent process, you write that you can dismiss them at any time and for any reason. So don't even write that before, just write this provision directly to make it clear. (Robert Fico, Smer, opposition, 21.10.2020, LP 8, Session 16)

The same allegation was made concerning the prosecutor's office. The criticism was persistent; statements regarding recurring legislative reforms after government changes did not differ much across time.

> (T)hrough the amendment of the Prosecutor's Office Act and other related laws, you are not pursuing any legitimate goal. The cause of this circus is solely and exclusively your inability to choose your candidate for the prosecutor general in the National Council. Any other reason is fabricated and serves solely to mask the true nature of the matter – the power takeover and politicisation of the prosecutor's office. The amendment of the Prosecutor's Office Act (. . .) amounts to the violation of the constitution and its principles as the principles of the rule of law. (Martin Glváč, Smer, opposition, 22.3.2011, LP 5, Session 16)

> (A)s formulated, the possibility of dismissing the prosecutor general and the expansion of this to the Special Prosecutor is simply nothing but a way to control the judiciary and the prosecutor general. And yet, they were all talking about how one must not interfere with

> investigations, must not interfere with entities involved in criminal proceedings. This is clear evidence that the rule of law is just a bubble created in the government's programme statement, about which I will continue to speak. (Juraj Blanár, Smer, opposition, 23.7.2020, LP 8, Session 10)

Lack of trust. The lack of trust in the rule of law in Slovakia has been a topic of parliamentary debates in all legislative periods since 1994, sometimes with explicit reference to opinion polls. It was primarily representatives of opposition parties who raised this issue. However, when it came to the situation in the judiciary, the parties in opposition to the governments of Vladimír Mečiar (1992–1998) and Robert Fico (2006–2010, 2012–2018) were the carriers of this narrative even while in government. In contrast, the representatives of Fico's Smer party tried to divert attention away from the judiciary.

Two assumptions were made with high intensity, mainly during the third wave of rule of law legislation, forming two distinct narratives. The first was used across party lines, the second only by some parties.

The first was that **due to public officials' arbitrary behaviour and omissions, citizens have lost confidence in the rule of law**. According to this narrative, public officials, through their arbitrary actions and deliberate inaction, were responsible for undermining confidence in the rule of law, as the public assumed that it was impossible to obtain justice through the mechanisms of the rule of law under these circumstances. Consequently, the public might disrespect the rules, taking justice into their own hands or supporting extreme parties in elections. This narrative was mainly used from parliamentarians while in opposition.

> The landfill case in Pezinok[121] (. . .) has become synonymous with how a functioning state based on the rule of law should not operate. It is one of those cases that erode the trust of citizens in the rule of law, in the system of state authorities and justice, and in the belief that justice can be achieved in this country. (Lucia Žitňanská, SDKÚ-DS, opposition, 6.2.2009, LP 4, Session 32)

> (I)n February of this year, the European Commission evaluated the entire Union in terms of the fight against corruption. (. . .) I mention this because Slovakia performed very poorly in this evaluation, below the average of the European Union, with the harshest criticism directed towards Slovak courts, the prosecutor's office and the police among the institutions analysed. Those who have the most responsibility in ensuring that laws apply to everyone and that the fight against corruption is effective fared poorly in this evaluation. Something needs to be done, and this is the legacy of recent years or even the past decade. This is closely related to public opinion, which is highly dissatisfied and lacks trust in these institutions,

[121] The inhabitants of the Slovak town of Pezinok had been fighting for more than ten years against the installation of a large-scale waste dump on its territory. Conflicting decisions by several state authorities, including the general prosecutor's office, the Supreme Court and the constitutional court, became a symbol of the alleged subordination of the rule of law institutions to business interests. The Court of Justice of the European Union also got involved in the dispute shortly before the authorisation for the building of the landfill was finally revoked in 2013. The legal representative of the association representing the protesting citizens was the late Slovak President Zuzana Čaputová.

> alongside politics and many state bodies. But in this case, it concerns the fundamental principle I mentioned earlier, that the rule of law should guarantee justice and legality for the citizens. (Ján Figeľ, KDH, opposition, 15.5.2014, LP 6, Session 35)

> This is not about gambling with the law, as Smer has been trying to claim for years. This is about gambling with people's trust in basic justice, which the rule of law is supposed to guarantee. (. . .) Because a rule of law is a state in which justice must prevail, and the state must be able to create a way in which justice can be applied. If we fail to do so, the feeling of resistance towards our democracy will only grow in people, and extremist forces will gain strength in Slovakia. In despair, people will seek desperate solutions. (Marek Krajčí, OĽaNO, opposition, 30.3.2017, LP 7, Session 14)

The second narrative used mainly during the third wave of rule of law legislation was that **due to low effectiveness and cases of corruption in the judiciary, the trust in the rule of law was undermined**. MPs representing this perspective—primarily from SDKÚ-DS and parties opposing Mečiar's (in the first wave of rule of law legislation) and Fico's governments—pointed explicitly to the slowness of judicial decision-making, which later was accompanied by references to corruption within the judiciary. MPs called for measures to overcome the lack of accountability in the judiciary. The narrative was also used as a supporting argument for implementing judicial reform once these parties entered government. Therefore, it was used by the same parties both in opposition and in government.[122]

> We probably agree – and I mean now both the coalition and the opposition – that the current state of the judiciary in the Slovak Republic is truly alarming. We all know that the process of its recovery since the fall of communism has been complicated. Not all steps, even well-intentioned ones, have yielded the expected results. However, colleagues, for us to reach a point where most of the society, up to 70%, perceives the third pillar of democracy and, above all, its independence as merely independence from law and justice, it is the most serious memento and message that those who elected us to office can send us. (Milan Hort, SDKÚ-DS, opposition, 15.10.2009, LP 4, Session 41)

> The issue of justice and the need for judicial reform has recently been widely discussed. Breakthrough decisions and changes in laws have also been made. I believe that it is necessary and that the state of the judiciary is alarming. I would like to reiterate that the judiciary, or its negative state, is considered by citizens as the second most pressing problem in Slovakia, with less than 30% of people trusting it. It is truly remarkable, and I don't know if there is any other country with such a situation. (Ľudovít Kaník, SDKÚ-DS, opposition, 4.7.2014, LP 6, Session 36)

> We have reached a situation where we have 15 judges in custody, and others who are accused and prosecuted while remaining free. We have reached a situation where judges in Slovakia have the lowest trust within the entire European Union. This has been a long-standing issue, not a phenomenon of a few days or months. (Juraj Šeliga, Za ľudí, government, 21.10.2020, LP 8, Session 16)

[122] For example, Minister of Justice Lucia Žitňanská (SDKÚ-DS, 19.10.2010, LP 5, Session 7) stressed that "It is a well-known fact that the current situation in the judiciary, the low level of law enforcement, as well as the manner and methods of court management, have created an atmosphere of general mistrust towards the courts, judges and the rule of law in general in Slovakia."

Functioning of the judiciary/public prosecution, and law enforcement. The Slovak parliament adopted numerous judicial reforms (occasions for speaking about the judiciary), some of which involved changes to the constitution, such as creating the judicial council as an overarching self-governing body of the judiciary. However, representatives of the conservative-liberal bloc have constantly criticised the state of the judiciary and claimed the need for further reforms. Beyond the question of perceived politicisation, the functioning of the judiciary has been repeatedly addressed in parliamentary debates, mainly in connection with the problem of excessive length of judicial proceedings, the supposedly closed and unreformed nature of the judicial sector and its inadequate personnel situation.

The issue that **court proceedings are excessively long, which harms the rights of citizens,** was raised across electoral periods and by representatives of a broad spectrum of political parties, both from the opposition and governing parties. MPs used it with particular intensity during the third wave of rule of law legislation. In a more general sense, this issue was related to the state's failure to ensure the enforceability of the law and accessible justice (Fronc, Hajšelová). Some speakers linked the shortcomings to the significant increase in caseload since 1989 without a substantial increase in human and financial resources; others highlighted that various governments could not solve the problem (Mečiar).

> I am aware that within the judiciary, everything is constantly shielded under the guise of judicial independence, but the number of cases, the ways in which many legal disputes are handled, the dragging on, and the records that we seem to be setting, probably Olympic ones, because legal disputes over seemingly simple matters, such as paying alimony, can go on for 16 or more years. These are the courts that are essentially depriving citizens, ordinary citizens, of their property. (Martin Fronc, KDH, opposition, 4.9.2008, LP 4, Session 26)

> Judges, with the same number ranging from 1,100 to 1,200, have received tens of thousands of additional cases. And now, what do we do about it? My government tried to address this issue, but we couldn't find the right solution. We searched for solutions. Your two governments tried to address it and couldn't solve it. Fico's government is addressing it. We managed to shorten the processing deadlines to five years, but even five years is a lot. (Vladimír Mečiar, HZDS, government, 15.10.2009, LP 4, Session 41)

> Courts must work faster, more efficiently and transparently, primarily for the benefit of citizens. Without a doubt, the length of judicial proceedings is one of the most crucial criteria for the functioning of the courts from a citizen's perspective, as it is said that justice delayed is justice denied. (Petra Hajšelová, Sme Rodina, government, 28.4.2020, LP 8, Session 6)

Some MPs (mainly liberal-conservatives) also argued that due to the absence of genuine judicial reform after the regime change and later developments, the judiciary had become a closed system. While maintaining the pretext of judicial independence, this system would resist any change and fall under the control of individuals who began to use it for their own interests. This would damage its internal functioning but also its effectiveness and credibility in the eyes of the public. The judiciary was described as having become "a stagnant state that clones itself (. . .). Competent

experts in this system have only a small chance of entering it because judicial positions are usually predetermined for the right people."[123]

> The problem is that over twenty years, all sectors underwent a certain transformation and cleansing. This did not happen in the judiciary. It did not happen because we all protected the independence of judges. However, endlessly protecting something that is also filled with a lot of bad is not sustainable. (Martin Fronc, KDH, opposition, 25.3.2014, LP 6, Session 33)

> It is no secret that cliques have formed within the courts, and one of the reasons for the prolonged court proceedings was the fact that judges were appointed without meeting the necessary qualifications and personal criteria but had political backing. (Petra Hajšelová, Sme Rodina, government, 28.4.2020, LP 8, Session 6)

> The problem has always been and still is that the judiciary is the only area of social life where there is a well-organised state power, well-equipped with knowledge, to oppose any changes. (. . .) This is the only area where we have incorporated a strong opponent who doesn't want any change, who wants things to continue as they are today. And this is a fundamental issue. (. . .) If we're talking about the fact that all public officials should be held accountable for their actions, why shouldn't judges do the same? After all, they identify themselves as a state power. Therefore, they should be held accountable just like a minister or a ministry official. (Alojz Baránik, SaS, government, 29.4.2020, LP 8, Session 6)

Corruption/clientelism. The issue of corruption as a challenge to the rule of law was present in the parliamentary debates analysed across legislative periods.[124] It was addressed already during the HZDS-led government of Vladimír Mečiar in the 1990s, whose representatives, while in opposition, criticised the new government's anti-corruption measures as ineffective, selectively repressive, and as window dressing for foreign audiences.[125] Generally, corruption and clientelism were not discussed as isolated problems; instead, the statements often focused on politicisation and restriction of the judiciary as prominent challenges and, therefore, were described above as part of the respective narratives. However, after the change in government in 2006 and in the following years of the third wave of rule of law legislation, the debates on corruption became more appealing, and the arguments formed a narrative that in Slovakia, **the prosecution and judiciary are part of a system of corruption that reaches into the highest echelons of politics**. This

[123] Lucia Žitňanská (SDKÚ-DS, Minister of Justice, 7.9.2010, LP 5, Session 5). Furthermore, she stressed that "a dubious group of people has taken over the judiciary, abusing the power that you placed in their hands, for example through harassing disciplinary proposals and the suspension of duties of selected judges. This power was enjoyed, for example, through scandalous and amoral rewards, such as those given by state secretaries at the Ministry of Justice, as well as by certain selected judges who, in quotation marks, were obedient and compliant in their decisions. This power continues to mock the public." Miroslav Kadúc (OĽaNO, opposition, 25.3.2014, LP 6, Session 33) argued that "Over the past years, individuals have entered the judiciary who have no place being there. These are people who lack expertise and moral integrity."

[124] E.g. Pavol Kanis (SDĽ, opposition, 14.7.1998, LP 1, Session 49) or Daniel Lipšic (KDH, government, Minister of Justice and Deputy Prime Minister, 6.12.2005, LP 3, Session 52).

[125] E.g. Gustáv Krajči (HZDS, opposition, 27.6.2003, LP 3, Session 33).

argument served as a ground for judicial reforms that a liberal-conservative government strived to implement after 2010, as it was mainly used by these parties.

> Let's be honest, one of the problems of today's judiciary is the suspected, perhaps hard-to-prove, corruption and influence within the judiciary. (. . .) Yes, I believe that if we want to change the perception of the judiciary, we must also acknowledge these uncomfortable matters. (Lucia Žitňanská, SDKÚ-DS, government, Minister of Justice, 8.12.2010, LP 5, Session 9)

Several huge corruption-related scandals, including the 'Gorilla case' (2011/2012) and the murder of investigative journalist Ján Kuciak and his fiancée (2018), led to the mass mobilisation of the public and the rise of an anti-corruption discourse adopted by many liberal-conservative parties. Such cases also contributed to the emergence of new political parties in parliament. The alleged involvement of law enforcement and judicial authorities in corruption schemes was addressed as a burning issue of the rule of law, regardless of the alteration of governments.[126]

> Slovakia is waiting for the rule of law, waiting for an end to political corruption in the highest positions (. . .). (Ján Budaj, OĽaNO, opposition, 26.4.2016, LP 7, Session 2)

> We now have a 30-year experience with democracy, of which 25 years have been as an independent Slovak Republic. (. . .) What we have seen over these 25 years, especially during tough times, is that the police are truly politically controlled. Even sensitive investigations have been halted (. . .). These things don't just happen under governments like Smer's, but even under better governments, a true rule of law, where "let the chips fall where they may" applies, has not been established in Slovakia. We have had too many scandals, too much corruption, and too much abuse of power to say that the problem lies solely with the Smer government. The problem is the high level of corruption in society as a whole, and (. . .) the high level of oligarchisation in our economy and politics. (Miroslav Beblavý, Spolu, opposition, 17.10.2018, LP 7, Session 35)

Several parliamentarians explicitly referred to the 'oligarchisation' of Slovak politics and society while criticising alleged close relations between some big business players, politicians and law enforcement authorities.[127]

> The cause of this situation is, on the one hand, the lack of the rule of law, and on the other hand, conversely, the existence of various groups and cliques parasitising on the state and its activities. Unfortunately, until now, this state of lawlessness and the situation where not even the biggest oligarchs, but also others, were milking the state, did not seem to bother the ruling coalition at least. It's only now that they've encountered a specific problem where a particular group or groups are causing trouble and dissatisfaction. (Jozef Rajtár, SaS, opposition, 11.5.2017, LP 7, Session 17)

[126] Ján Figeľ, KDH, opposition, 15.5.2014, LP 6, Session 35.

[127] "In the case of the investigation into the Gorilla case, it is interesting to note the unified stances of three entities: Special Prosecutor Kováčik, the financial group Penta and representatives of the Smer party. Their positions are essentially identical in principle", underlined Daniel Lipšic (KDH, opposition, 15.6.2015, LP 6, Session 52).

After the change in government in 2020, MPs continued to point to the systemic character of corruption in Slovakia when discussing new attempts to push forward anti-corruption measures and reforms of the public prosecution and judiciary.

> If we want to live in a true rule of law, and not just talk about it, the law and the state should be represented by the best. Today, the prosecutor's office is a closed system. The new prosecutors can be sons, daughters, nieces, nephews, cousins, not the best, but the closest. (Gábor Grendel, OĽaNO, government, 4.6.2020, LP 8, Session 8)[128]

> This constitutional law has the potential to deal once and for all with the judicial mafia in Slovakia. What we have learned over the past three years (. . .) shows us that there was a corrupt system controlled by Jankovská, Kočner in connection with the Smer party and the former government. They corrupted the courts, blackmailed judges, and influenced the acceptance and promotion of verdicts that suited them. (Juraj Šeliga, Za Ľudí, government, 21.10.2020, LP 8, Session 16).

References

Anders, Lisa H., Astrid Lorenz, Dietmar Müller, and Jan Němec. 2024. *Rule of Law in East Central Europe (Re-Act) – Sources and Methods Handbook*. Vol. V1. GlobeData. https://doi.org/10.48736/GD1ZDKDRH.

Enache, Marian. 2012. *Revizuirea Constituţiei României*. Bucureşti: Universul Juridic.

Morar, Daniel. 2022. *Puterea să fie altcumva. O istorie subiectivă a justiției după 1989*. Humanitas: Bucureşti.

Šimáčková, Kateřina. 2015. Lustration in the Case-Law of the Constitutional Courts of Czechoslovakia and the Czech Republic. CDL-PI(2015)024. *Council of Europe*. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2015)024-e. Accessed 22 March 2024

[128] And further: "Of course, there are also honest and courageous people among the prosecutors. However, it is equally true that mere affiliation with the prosecutor's profession is not automatically a guarantee of quality. In fact, our historical experience is such that even a career prosecutor who appears to be a decent prosecutor general at the beginning of their term can change for the worse." (Gábor Grendel, OĽaNO, government, 4.6.2020, LP 8, Session 8).

Lessons Learned and Policy Recommendations

7

Much has happened since the end of our study period in 2021, including a change of government in Poland following the 2023 general election and the return of Robert Fico as prime minister in Slovakia's snap elections in the same year. In both countries, these changes of government were swiftly followed by new attempts at reform pertaining, inter alia, to the judiciary, public prosecution and the media sector. However, patterns of rhetoric and conflict have persisted. As we will show in this concluding chapter, the new reform attempts did not come out of nowhere but, in part, corresponded to earlier processes (Sect. 7.1). Analysing long-term patterns of narratives about the rule of law thus helps to understand the roots and background of later developments. It can also inform future research on the rule of law in terms of topics, theory and methodology (Sect. 7.2). Finally, the study of narratives provides a basis for our recommendations for political practice (Sect. 7.3).

7.1 Patterns of Narratives in East Central European Parliaments

Our literature review in Chap. 2 revealed that patterns of narratives can be expected to occur along three dimensions. Specifically, we expected national and temporal differences, as well as differences between politicians in parliaments. However, the existing literature did not allow us to determine a priori which of these would have more weight for the individual cases or different time periods. Our introduction to the empirical background of the cases analysed was intended to sensitise the reader to the respective contexts. These included dynamic party systems, the many facets of the rule of law legislation adopted during our period of investigation, the incoherence of waves of legislation defined based on macro-structural factors (such as pre-EU accession), the relevance of processes in the judiciary, and a potential effect of European institutions. Our analysis of the parliamentary debates in five parliaments covering three decades reveals the following overall picture.

A. Lorenz et al., *Narrating the Rule of Law*, The Future of Europe,
https://doi.org/10.1007/978-3-031-66332-1_7

A liberal model of the rule of law was rhetorically supported in all parliaments. Czechia stood out, as the discourse in this country was much more affirmative and less controversial than in the other countries. The parliamentary discourses in the other countries shared some characteristics, notably an emphasis on effective rule of law institutions and an opposition that repeatedly accused the ruling majorities of violating the rule of law. However, the specific content of the narratives and the degree of conflict differed. Controversies emerged earlier in Romania and Slovakia (during the second wave of legislation), while the rhetorical divide between government and opposition was much more pronounced in Hungary and Poland during the third wave of legislation, and the problems discussed differed. The emphasis on the need to limit the power of elected majorities varied between countries, and parties typically blamed each other for (varying) violations of the rule of law principles. Their increasingly one-sided and diverging narratives were related to country-specific paths of reform and counter-reform. Overall, the narratives seemed to be influenced less by party ideology than by belonging to the governing or opposition camp and temporal context.

In this section, we present the main findings of our study with respect to national similarities and differences, temporal patterns and patterns of politicians' rhetoric by party affiliation and the status as government or opposition party. We then summarise the overall discursive development in each national parliament.

The **cross-national comparison** of the parliamentary debates on the rule of law reveals a number of important similarities. These concern in particular the narratives about the foundations of the rule of law and the importance of addressing the challenges and problems related to them.

In all parliaments, members overwhelmingly emphasised that the rule of law serves to limit the power of governing majorities and state institutions and to ensure the functioning of the system. In all countries and throughout the periods studied, parliamentarians frequently referred to legality, legal certainty and effective institutions as essential elements of the rule of law. Furthermore, representatives in all parliaments routinely referred to the national constitution when discussing rule of law issues and expressed that they saw constitutionality or legality as the core of the legitimacy of the rule of law. This means that the rule of law and rule of law issues in general were strongly associated with the constitution—the national fundamental law that prominently enshrines the rule of law and other key principles of the constitutional order.

Another similarity was that, in debates on the rule of law, MPs generally supported individual rights and often linked democracy to the rule of law, as formulated at the top of their national constitutions. In most cases, however, they did not elaborate on the relationship between these concepts. When they did so, differences of opinion came to the fore.

Finally, in all cases parliamentarians frequently referred to challenges to the rule of law. Such critical interventions were often accompanied by emphasising the constitution and the rule of law as its guiding principle, together with an outline of MPs' own ideas about the foundations of the rule of law. In this way, particular disputes over specific issues were opportunities to talk about the importance of the

rule of law and its purpose. At the same time, politicians also invoked the rule of law to bolster their arguments. These speeches productively complemented the more abstract commitments to the rule of law, for instance at ceremonial events. In their speeches, parliamentarians acted as guardians of the rule of law as enshrined in the constitution. When mentioning challenges to the rule of law, they also referred to European institutions, mainly the Council of Europe and the European Union, although these played a minor role in parliamentary discourses on the rule of law in general.

Differences in the patterns of narratives on the rule of law between national parliaments were primarily visible in the intensity with which MPs discussed the rule of law issues, in the formulation of narratives on rights, and in the extent to which they actively espoused liberal rhetoric. Variations could also be observed in the types of rule of law challenges that MPs addressed.

In Poland and Slovakia, frequent discussions explicitly referring to the rule of law, coupled with the expression of distinct positions, resulted in the highest number of narratives over time. In contrast, the lowest number of significant narratives were used in Czechia. Hungary and Romania were in between. Similarly, the range of aspects discussed within specific areas related to the rule of law varied across countries. For instance, while in Poland narratives covered various aspects of rights, in other countries parliamentary discussions on rights in the context of the rule of law focused on only a few facets. Moreover, several aspects were only mentioned in some parliaments with great intensity, e.g. minority rights in Romania and the right to abortion/life in Poland. Some other issues, such as the admissibility of restricting the individual rights of people who held positions in the pre-1989 non-democratic system, were debated with higher intensity only in Czechia and Poland.

When talking about the rule of law, Czech parliamentarians placed the greatest emphasis on the role of individual citizens, freedoms and equal rights, and the need to limit political power. These positions were widely shared across party lines. The discourse in the Hungarian parliament shared some of these features but was more divided in terms of the underlying ideas. After 2010, the liberal rhetoric was neutralised by the ruling majority. In Slovakia and Poland, certain aspects of a liberal model (protection of individual rights and autonomy of the judiciary, prosecution and other law enforcement agencies) were not fully supported by all parties. In the Romanian parliament, some MPs emphasised the nation (or Romanian interests in the world) rather than the individual when talking about the rule of law. They pointed to the necessity of convincing Euro-Atlantic organisations that the rule of law was working in their country. In fact, this goal was emphasised to a greater extent than the original benefit of establishing a system of checks and balances centred on the protection of the individual.

Czech parliamentarians used narratives about the challenges to the rule of law with less intensity than their counterparts in other countries, and they also focused on different problems. They criticised unconstitutional legislative proposals and, in some instances, attempts to exceed power. In Hungary, Slovakia and Romania, MPs were more likely to attack public authorities for breaking the rules or attempting to exceed their powers. In Poland, Romania and Slovakia, the politicisation of public

authorities was often mentioned as challenging the rule of law. This rhetoric was accompanied by repeated attempts at reform and counter-reform by successive governments, each of which provoked critical interventions from the opposing camp. In Hungary, Poland and Slovakia, MPs criticised ineffective institutions and attempts to centralise power. These accusations represent two sides of the same phenomenon, with parliamentary majorities justifying judicial and other reforms to make the institutions more effective for 'the people'. However, the narratives diverged in terms of the authorities accused of overstepping their powers (e.g. the president in Romania, the constitutional court in Czechia) and the institutions diagnosed as having become politicised (the judiciary in Hungary and Poland, the prosecution in Poland, Romania and Slovakia). Other narratives of challenges to the rule of law varied even more between countries, including the extent to which MPs actively criticised corruption (Romania, Slovakia) and limited lustration and decommunisation (Hungary, Poland).

Comparison over time. The similarities and differences of the narratives between the countries presented above summarise 30 years of parliamentary discourse. While this facilitates the identification of national specifics—such as the liberal profile of parliamentary discourse in the Czech Republic—it neglects case-specific trajectories. As we discuss below, the rule of law discourses have developed over time. Similarities of this development concerned the very existence of dynamics of the use of narratives since the second wave of legislation, the rise of criticism of rule of law deficiencies, and the degree of controversy.

In all parliaments, MPs actively discussed the rule of law issues during the first wave of rule of law legislation, when they debated the features of the new regime and many fundamental laws.[1] During this period, which was characterised by a prevailing sense of political optimism, narratives about the purpose and elements of the rule of law tended to be both rather vague and uncontroversial. In general, the constitution provided a stronger point of reference than the theoretical concept of the rule of law. Later, parliamentary discourse changed considerably. In all parliaments, the term 'rule of law' was used more frequently, while MPs still often referred to the national constitution. The narratives used with great intensity became more elaborate and tended to encompass a broader range of issues. References to the constitution tended to be routine rather than symbolic or emotionally charged. At the same time, MPs addressed a wide range of challenges to the rule of law, and the level of controversy increased. The narratives evolved into more elaborate 'stories' about the content of the rule of law, its elements and the challenges it faces. The rule of law became more closely associated with a liberal model centred on individual rights and checks and balances and with criticism of alleged shortcomings in this respect.

[1] We found fewer significant narratives in Czechia and Slovakia. However, this may be due to the fact that unlike in other countries, our period of study for these countries began only with the debate on their new constitutions in 1992, i.e. after the foundations of the new democratic regimes had already been laid in federative Czechoslovakia.

However, there were also notable differences between countries in terms of the temporal dynamics of rule of law patterns after the first wave of legislation. These differences related to the number of narratives that were used intensively during the second and third waves of legislation in each parliament, as well as to the degree of controversy reflected in these narratives in these waves and the topics of the narratives. In some cases, the temporal dynamics seemed related to changes in power constellations *within* a wave of rule of law legislation, e.g. in Poland and Romania during the second wave, while in others, this was not the case.

During the second wave of rule of law legislation, the paths of parliamentary discourse around the rule of law became heterogeneous. While in Hungary and Czechia, MPs used only a few narratives with high intensity, in the Romanian and Slovak parliaments there were heated debates on specific rule of law issues accompanied by many actively used narratives. In Romania, the conflicts were triggered by a difficult cohabitation between the president and the government, which prevented the parties in government from smoothly implementing their counter-reforms to the policies of previous governments. In Slovakia, an anti-Mečiar coalition used its constitutional majority to reshape many institutions through constitutional and legislative reforms, prompting criticism from the new opposition. Poland is a special case, with MPs using fewer narratives of particular intensity than during the first wave of legislation, but still more than their counterparts in Romania and Slovakia. In all three parliaments, the proportion of diverging and one-sided narratives increased.

During the third wave of rule of law legislation, in most parliaments the number of actively used narratives was almost as high as during the first wave. At the same time, the numbers differed between countries, with more actively used narratives in Poland and fewer in Romania. In Slovakia, the number of narratives used with particular intensity was significantly higher than during the first wave of legislation. The level of controversy increased significantly in all countries except Czechia. However, it took different forms. In Slovakia and Romania, where there were changes in government during this period, all parties criticised those in power for the way in which they handled the rule of law, resulting in a general controversy over the issue, distrust and dissatisfaction with the quality of the rule of law in the country. Such criticism was also expressed in Hungary and Poland, but only by the opposition, as there was no change in government.[2]

Narrative patterns of political actors. At first glance, the general pattern of the narratives across countries reveals a paradox. On the one hand, rule of law issues were relevant for party competition, for example when parties with an anti-corruption agenda achieved electoral success during the third wave of legislation, e.g. Andrej Babiš's ANO in Czechia or presidential candidate Zuzana Čaputová in

[2] Shortly after the change of government in Poland following the 2023 elections (which was outside our research period), PiS made the same accusations against the new coalition as the previous opposition. The same can be expected for a hypothetical change of government in Hungary. As a result, previously one-sided narratives overlap, although the degree of conflict around the criticised issues remains high.

Slovakia. Also, the rule of law problems in Hungary and Poland since 2010 and 2015 were clearly linked with specific parties coming to power and pursuing a specific political agenda while undermining the system of checks and balances. On the other hand, most narratives were used across party lines. On closer examination, it becomes evident that the government–opposition divide largely shaped the discourses about the rule of law, with opposition parties being more active in articulating narratives and circulating particular views, especially the need to limit governing majorities.

In particular, the narratives about the elements of the rule of law used in the three decades under study were voiced across party lines. This was particularly true for the Czech parliament. Taken together, these overlapping narratives formed a 'story' around the rule of law. Across all parliaments, parties rhetorically agreed that the rule of law serves to ensure the functioning of the system, that legality is particularly relevant to it, and that constitutionality and the provision of procedural guarantees are essential sources of legitimacy for the rule of law, generating people's trust in it. They also agreed that the rule of law, democracy and rights were interrelated achievements of the 1989 changes, but rarely discussed the relationship between these three principles. These narratives were still used when opposition representatives increasingly criticised the ruling parties for their apparent disregard of these principles. In general, however, there was no rhetorical disagreement about them.

Criticism of the quality of the rule of law in each country was also widely shared across party lines. In particular, the narratives of those in power stretching the rules, trying to misuse the judiciary, prosecutors and other institutions for their own purposes, or trying to exploit their political majority by pushing through policies that violate the rights of others were typical accusations used by all parties when in opposition.[3] Since the second wave of rule of law legislation, they have circulated in all parliaments, in parallel with the increased use of the term 'rule of law'. While in government, the parties adopted reforms to address the criticised problems, which provoked opposition accusations of regulatory overreach, unconstitutional behaviour, abuse of power and the like. Since these narratives focused on practices around what the parties declared to be the core of the rule of law, this pattern of criticism was highly relevant to the overall negative public image of the rule of law in these countries. This, in turn, contributed to the rise of the anti-corruption agenda and the parties that emphasised it.

It also seems relevant that the few narratives referring to European institutions—such as the European Court of Human Rights and the European Commission—were mainly used by parties in opposition (in Czechia, Hungary, Poland and Romania). This pattern may have contributed to the association of European institutions being

[3] Judicialisation, a topic widely discussed in American and Western European scholarship, was not a separate concern. It was, however, part of debates about judicial independence and the alleged politicisation of public authorities, including ordinary and administrative courts, constitutional courts and public prosecution.

linked to the national opposition and potentially limiting national political majorities, reinforcing the support of some parties for European institutions as well as the EU-sceptical views of other parties.

Despite many shared narratives, a rhetorical divide beyond the government–opposition line mentioned above was visible in each parliament at certain times. In such cases, parties with a particular position on the ideological spectrum (not necessarily all of them) used certain narratives more intensively, often but not exclusively when in opposition. There was no consistent pattern across cases in terms of such one-sided or divergent narratives based on party ideology. However, in Poland, Romania and Slovakia, especially left-wing parties tended to advocate for the absolute protection of individual rights and judicial independence. Conservative parliamentarians, in turn, more often emphasised the need for 'internally independent'—i.e. impartial—and uncorrupted judges and the importance of ensuring justice as a source of legitimacy for the rule of law. In their view, this implied exceptions to the principle of non-retroactivity (e.g. to redress past injustices) and to the absolute independence of judges and other authorities in certain circumstances for the sake of their accountability.

Nevertheless, the rhetoric of parties with a particular ideology varied from country to country. In Poland, the narratives of PiS and its predecessor parties were centred around the common good, Christian values and 'the people'. No other parties claiming to represent conservative values in the analysed countries used such narrow rhetoric in our selected documents. Fidesz also represented a political (instead of liberal) model of constitutionalism and emphasised the role of the nation, but this approach was not reflected in the rule-of-law-related narratives in parliament in our documents. In Romania, the role of the nation was also repeatedly emphasised, but across party lines. In Czechia, conservative parliamentarians stressed the protection of citizens' rights and their freedoms from state interventions. The Slovak conservative MPs underlined the necessity to establish and ensure equality before the law in order to promote justice. However, the ideological flexibility of some parties over time makes it difficult to assign narratives to party families. The rhetoric also seemed to be influenced by the need to compromise with coalition partners representing different ideological positions in the cabinet. The intermediating effect of coalition membership on the parties' narratives and policies can explain why the intensive use of narratives and their controversy during the second wave of rule of law legislation in Romania was followed by a wave with fewer narratives and less controversy.

A closer examination of the patterns of individual politicians discussing the rule of law reveals that a great number of parliamentarians mentioned the general relevance of the rule of law (and democracy), its purpose and its elements and challenges. For these topics, we found a broad discourse in terms of the individuals involved, which may have influenced the language of parliamentarians as a whole group of actors. Other issues—such as rights, sources of legitimacy of the rule of law and its relation to democracy—were of more special interest, with a relatively small number of MPs addressing them in the parliaments. The discourse on these issues

was mostly limited to expert politicians from their respective parties, resulting in a more closed and focused discourse on these issues.

Summarising the overall findings by country, parliamentarians in **Czechia** were particularly active in using the rule of law narratives during the first and third waves of rule of law legislation. Throughout the period under study, only a few narratives were one-sided or diverging. During the first wave, the narratives used with particular intensity focused on different issues. MPs from all parties emphasised that adherence to legal principles and regulations and respect for fundamental rights and freedoms are essential for the rule of law. In terms of challenges to the rule of law, they stressed that proposed laws violate the constitution or foundations of the rule of law and that the executive exceeds its powers and acts arbitrarily, undemocratically and against the principles of the rule of law. KSČM argued that the legitimacy of the rule of law requires a broader social base and that special procedures for punishing acts committed under the previous regime are illegitimate restrictions on citizens' rights. During the second wave, parliamentarians from all parties highlighted the role of the rule of law in protecting citizens' rights and emphasised the importance of constitutionality, legality and respect for fundamental rights and freedoms. Criticism of bills that allegedly violated the constitution or basic principles of the rule of law continued. The leftist parties ČSSD and KSČM often invoked the European Court of Human Rights as an important body for the protection of citizen rights in Czechia. In the third wave, elected representatives argued more strongly that the rule of law serves to ensure equal treatment before the law and promotes legal certainty. Equality before the law, effective institutions and an independent judiciary were more strongly emphasised as elements of the rule of law. Party representatives were unanimous in stating that the rule of law derives its legitimacy from codified legal rules, effective state institutions (to ensure trust), non-politicised rule of law processes and the idea of fairness and equality. MPs stressed that the right to an effective remedy and a fair trial is fundamental to the rule of law and that the rule of law constrains democratic majorities. They also shared concerns that proposed laws violated the constitution or fundamental principles of the rule of law, that the executive was overstepping its authority, that it was interfering with the police and prosecutors to drop criminal cases, and that its actions and rhetoric towards the judiciary and law enforcement agencies were leading to a loss of confidence among citizens in the rule of law. During the second and third waves, the leftist parties (KSČM and ČSSD) criticised the constitutional court for being too activist and thus undermining the system of separation of powers.

Parliamentary discourse on the rule of law in **Hungary** was most vibrant during the first and third waves of legislation. Until 2010, the level of controversy was low. During the first wave of rule of law legislation, MPs actively used different narratives. They agreed that the rule of law ensures checks and balances between the government branches and sustains or improves the functioning of the (political) system through legal stability, security and predictability. They highlighted legal certainty and the separation of powers (including local governments and various independent bodies) as elements of the rule of law. In their view, the rule of law was legitimised by law and constitutionality, as well as the will to establish democracy, a

free market and the protection of rights, and by procedures established by parliament. MPs also agreed on the need to guarantee rights and freedoms, including the rights of minorities. They identified frequent legislative amendments and the need to actively investigate, punish and compensate for crimes committed under the previous regime as important challenges. During the second wave of rule of law legislation, parliamentarians continued to emphasise that establishing various independent bodies was essential to shaping the rule of law. However, this was generally a period of 'silence' on rule of law issues. In contrast, during the third wave, MPs across party lines still agreed that the rule of law aims to limit the power of government and ensures the functioning of the system. There was also no controversy on constitutionality and legality as essential elements of the rule of law and that constitutionality and legal principles (including human dignity) are important sources of the rule of law legitimacy. At the same time, the opposition parties spread a liberal model of the rule of law in response to Fidesz's and KDNP's strategy of using their large parliamentary majority to determine the entire personnel and institutional set-up of counter-majoritarian institutions. The opposition parties pointed out that the rule of law ensures checks and balances and prevents the abuse of power, and that legal certainty, effective institutions and the separation of powers, including the independence of various organs, are essential. They underlined that the ruling parties restrict or endanger certain rights, thereby also violating the rights and fundamental values enshrined by the EU and human rights institutions. In their view, government parties violate the principles of the rule of law, seek to politicise the judiciary, the constitutional court and the prosecutor's office, limit the independence of officially independent institutions by appointing their loyalists to top positions, restrict media freedom, and interfere in public administration – all this through legal means.

In **Poland**, the number of narratives was highest during the first and third waves of rule of law legislation, and the level of controversy increased significantly since the second wave. During the first wave, MPs debated various aspects of the rule of law. Rhetorically, they agreed that the rule of law provides checks and balances, limits government by law and prevents arbitrariness. They considered as fundamental an independent, impartial and well-functioning judiciary and prosecution service, the supremacy of the law, law-abiding state institutions and correct implementation of the law, respect for and protection of fundamental rights and freedoms, and the separation of powers and checks and balances. Effective state institutions, legal principles and the idea that the rule of law is also guided by the will to establish democracy, a free market and the protection of rights were highlighted as the primary sources of legitimacy for the rule of law. MPs stressed that independent authorities are essential for the protection of democratic principles and civil rights and supported the need to establish and protect individual rights. They generally argued that, as a legacy of the old regime, the judiciary lacks the resources and competences to act effectively and is insufficiently independent, and that the lack of law-abiding and trustworthy state institutions and the absence of a stable legal system constitute problems. Prominent one-sided narratives were related to a lack of lustration, especially in the judiciary, which was depicted as an obstacle to the establishment of a just state. In the second wave of rule of law legislation, MPs from all parties

emphasised that the rule of law serves the functioning of the system and underpins citizens' security, trust and respect for constitutional principles. Some narratives on elements and challenges did not change much. However, the rhetorical divide between conservative and right-wing and other parties deepened. The former argued that a just state based on the rule of law guarantees justice for 'ordinary people' and that morality and the common good form the basis of a functioning and just state. They pointed out that the judiciary and the prosecution must be politically accountable and impartial, and identified the lack of all these qualities as the main challenges to the rule of law in Poland. This view of the rule of law guided PiS when it entered government in 2015. Now, the only key narrative emphasised by MPs from all parties was that effective state institutions are essential for ensuring trust in the rule of law. Opposition forces actively supported the liberal model of the rule of law, which was linked to their criticism of PiS policies. They emphasised that the rule of law serves to limit the ruling majority and that an independent judiciary and prosecution, and separation of powers in general, with effective checks and balances, are its crucial elements. Opposition forces also pointed out that legal principles, constitutionality, 'European standards' and citizens' rights must be respected. They argued that undermining the separation of powers and appointing one's own people to positions in formally independent institutions means undermining the democratic (state under the) rule of law, that the dependence of the prosecution on the executive is detrimental to its functioning, and that the PiS majority generally violates the principles of the rule of law.

In **Romania**, the parliamentary discourse on the rule of law was most vibrant and controversial during the second wave of legislation. During the first wave, representatives from all parties emphasised that the rule of law provides norms and procedures for the stable functioning of post-communist society and safeguards the moral values and justice of the 1989 revolution. They agreed rhetorically that legal certainty is a relevant element of the rule of law, that the state must guarantee citizens' rights and freedoms, and that the judiciary's lack of resources and competence is a problem. In the second wave, MPs discussed more challenges to the rule of law and almost half of the narratives were used by only some parties. They often mentioned the need for EU recognition of Romania's compliance with the rule of law to stabilise the functioning of the system. They stressed the need to respect legal procedures and the separation of powers, including the independence of the judiciary and the prosecution. Across party lines, MPs criticised the authorities for overstepping their powers, the judiciary for lacking the resources and competences to act effectively, and the political class for failing to build and stabilise a functioning and independent judiciary, which they said had led to a decline in people's confidence in the rule of law and the state. Initially, one-sided narratives were used only by the Hungarian minority party UDMR, which demanded more respect for specific collective minority rights. During the second wave, PSD and ALDE on the one hand and other parties on the other used diverging narratives. The former argued that the separation of powers was in danger because the president was overstepping his constitutional powers, especially with regard to the judiciary, that the prosecution was violating individual rights and the presumption of innocence, and that those in

power were misusing the prosecution to criminalise political opponents. The number of narratives used with great intensity was lower during the third wave of rule of law legislation. MPs across party lines stressed that the rule of law was a measure to end the application of the EU Cooperation and Verification Mechanism and that all political and judicial actors have to respect legal procedures and equal rights. They continued to point to the lack of institutional independence of the judiciary and public prosecutors and frequently criticised corruption and patronage in politics and the judiciary. Some parties, such as the liberal-conservative PNL but especially the pointedly pro-European USR, argued that European institutions were crucial in helping to protect citizens' rights.

In **Slovakia**, the number of narratives used intensively in parliament gradually increased over time, as did the level of controversy. In the first wave of rule of law legislation, MPs emphasised that the rule of law ensures checks and balances between the branches of government and that political goals must be translated into legal documents compatible with the constitution in order to be legitimate. They also agreed that ruling parties restrict certain rights, that some fundamental rights are under threat, and that public authorities exceed their powers and disrupt the system of checks and balances. The opposition parties argued that a state is perceived and accepted as truly constitutional if it guarantees (democratic) rights and freedoms to its citizens. During the second wave, the debate on rule of law issues intensified. MPs from all parties emphasised that the idea of the rule of law is to limit the state power through legislation to protect individual rights and create conditions that attract foreign investors and promote economic development. They also pointed out that respect for the law and its enforcement and equality before the law are fundamental elements. There was a continuity in the criticism. However, a rhetorical divide between HZDS, and later Smer, on the one hand and other parties on the other was evident. The former used the narratives that unconditional respect for the principle of non-retroactivity and the right to an effective remedy is crucial to the rule of law, that an independent judiciary is essential to ensure the protection of rights, and that those in power misuse the prosecution and other law enforcement agencies to criminalise political opponents. In the third wave, all parties stressed that the rule of law ensures checks and balances between the branches of government, and they continued to point to the need to attract foreign investors and promote economic development. They identified legal certainty, an independent and impartial judiciary, equality before the law, separation of powers with checks and balances and effective state institutions (especially the judiciary and law enforcement) as crucial elements of the rule of law. MPs agreed that the inadmissibility and possible punishment of arbitrary or unlawful actions by public officials was essential for legitimising the rule of law. They also continuously accused ruling parties of restricting certain rights and proposing unconstitutional laws. Moreover, public authorities were accused of overstepping their powers. Court proceedings were described as excessively lengthy, thus restricting citizens' rights. MPs also claimed that citizens had lost considerable trust in the rule of law because of public officials' arbitrary actions and omissions. In addition, the liberal-conservative parties used narratives that were not shared by others in the third wave of rule of law legislation.

They argued that the rule of law serves to limit the power of the state by law in order to protect the rights of individuals and to ensure justice, which implies redressing injustice by legal means if necessary. MPs also argued that trust in the rule of law is undermined by the ineffectiveness and relevance of vested interests in the judiciary, and that the prosecution and the judiciary are part of a system of corruption that reaches into the highest echelons of politics. They, therefore, called for fundamental reform of these rule of law institutions. Other parties, notably Smer, pointed out that the conservative-liberal government was trying to gain control over the judiciary and prosecution under the guise of modernising reforms.

7.2 Implications for Research on the Rule of Law

Guided by the metatheoretical assumption that theory-building is always embedded in given empirical contexts that (consciously or unconsciously) shape our perception and interpretation of the world, this study provides an in-depth overview of the patterns in the rule of law narratives in East Central European parliamentary debates. Our findings demonstrate the value of this theory-informed and context-sensitive approach, particularly in relation to the role of political parties and the concrete problems associated with law, institutions and specifically the judiciary in the five countries analysed. In this section, we discuss the broader implications of our research for the theorising of national, temporal and actor-related patterns of speaking about the rule of law. We also offer suggestions for future research and methods that we believe will help to critically examine, apply or extend findings from our study.

Based on our discussion of the different (neo-institutionalist) lines of theorising about the rule of law in Chap. 2, we decided to compare narratives over time, across countries and between different actors. Our analysis showed that this complementary approach allowed us to systematically shed light on different aspects of how actors shape and narrate the rule of law. Our study also suggested that party positions might be less relevant for the structuring of narratives in our cases than in Western countries and that the respective context was highly relevant for the content of parliamentary debates and the rhetoric on some critical challenges. Relevant context conditions included the high dynamics of rule-of-law-related legislative reforms in a relatively short period of time (Coman 2014; Sect. 3.2) and a particular situation in the judiciary, which was given a high degree of autonomy without significant personnel changes in the course of the system transformation, and which often lacked the resources to work effectively (Sect. 3.3).

National differences. The first implication of our study is that the relevance of belonging to a similar macro-region for rule of law issues should not be overstated. The parliamentary discourses in the five countries studied were clearly different, as were the changes of the narratives over time. By abstracting from the specific statements to more general narratives, we were able to understand certain overall similarities. However, this should not overshadow the many differences we observed. Even Czechia and Slovakia—two neighbouring countries that were part

of the same state until the end of 1992—did not share many narratives that were used with great intensity in their parliaments. This illustrates the importance of always testing whether groups of countries selected as empirical cases because of their geographical proximity or a shared political past perform well in explaining patterns. This does not mean that belonging to a macro-region may not be relevant for some questions or coincide with some empirical similarities, such as ambiguous party positions or a low level of trust in courts (Şerban 2018) in East Central Europe.

Moreover, our empirical findings indicate that the shared experience of the 1989 regime change, regained sovereignty from the Soviet Union, democratisation and economic liberalisation did not create a 'tabula rasa' situation leading to similar paths after the critical juncture. To different degrees, the long shadow of the pre-1989 past regarding the personnel in the branches of government as well as cultural and structural legacies (which differed among countries) was still relevant for subsequent national politics and the way parliamentarians debated rule of law issues. Even if in the 2010s the younger generation in particular did not address pre-1989 issues in their speeches, they were still present in the form of particular contextual conditions for institution-building and policymaking, e.g. as part of criticism of ineffective institutions and incoherent lawmaking. Individual national policies, expectations and contexts influenced the ways and sequences of dealing with the structural legacies of the past.

This is exemplified by the varying importance that MPs in different countries attached to the issue of lustration or vetting. In Romania, only a few MPs in the early 1990s called for officials under the communist regime to be banned from public offices. These demands were only directed at high-ranking officeholders if they had actively and evidently violated human rights. Thus, there was a high degree of elite continuity. Similarly, in Slovakia, parliamentarians did not express significant concern regarding people who had previously served the autocratic system in relevant positions within the judiciary. The lustration scheme adopted by the federal parliament of Czechoslovakia in 1991 was ineffective in practice in independent Slovakia after 1993, despite its formal legal force until the respective law eventually expired in 1996. The need to build a functioning state administration of the newly independent state obviously overshadowed the past. In Hungary and Poland, in contrast, various parties expressed dissatisfaction with the nature of lustration. Much later, this issue was still raised as a problem and it seems that parliamentarians were deeply divided in their interpretations of how 'just' the political changes in their countries were, even if only a small proportion of the pre-1989 officeholders were still in their position. However, as many studies have shown, factors such as a tendency to associate with people who share similar characteristics (in terms of class/habitus, gender, ideology etc.) and networking contribute to a self-reproduction of elites when recruiting the next generation of personnel, ultimately resulting in a homogeneous socio-cultural background of elites (Veit 2022; Purcell et al. 2010). Therefore, the country differences in lustration and personnel policies beyond lustration may have long-term effects (for Slovakia, see Spáč 2020).

This suggests that even more than three decades after the transition to democracy, in-depth research on enduring national trajectories and models of order is necessary

to understand today's rule-of-law-related associations and disputes, even if parliamentarians do not mention historical determinants as relevant. As theorised in Sect. 2.2, the challenges to the rule of law identified by parliamentarians varied across the cases, depending on factors that have yet to be systematically explored. Lustration was not mentioned as a challenge to the rule of law in all countries and all waves of legislation. The same is true for narratives of corruption which were present in Romania and Slovakia and of politicisation of the rule of law institutions in Hungary and Poland. What these narratives on different issues have in common, however, is that they address structural problems, legacies of past decisions and actions, e.g. reforms and counter-reforms. Therefore, it seems short-sighted to analyse the narratives around the rule of law only from the moment of the rise to power of a particular political party that has attracted political, media and academic attention with its controversial actions in this area.

In addition to long-term analyses, we also need more comparative analyses of how phenomena that parliamentarians in our cases addressed as challenges to the rule of law were handled in other countries facing similar challenges, albeit in different contexts. For example, it would be beneficial to compare how high-ranking officials and judges were treated after the collapse of the European autocracies after World War II or after the end of the South European dictatorships in the 1970s. How did parliamentarians, the public and later generations in these countries discuss the independence of the judiciary, including autonomy in the recruiting of new judges and senior judges? Moreover, did the rule of law help or hinder in coming to terms with questions around past moral guilt during the democratisation process in these countries?

We also need further studies to better understand how rhetorical action in parliaments is embedded in the broader parliamentary context. As mentioned above, of our five cases, the discourse on rule of law matters since 1989 has been the most intense in the Polish Sejm. However, so far, we do not yet know whether Polish MPs have debated other political matters and policy areas with similar intensity, or whether the rule of law is indeed an issue of exceptional salience. We also need to know whether the parliamentary discourse on all policy matters was much less vibrant in Hungary during the second wave of rule of law legislation or whether this was a peculiarity of rule-of-law-related issues.

Temporal differences. The highly dynamic nature of rule of law narratives is a key finding of this study. In all five parliaments, the rule of law narratives developed continuously. However, this did not happen in a linear way, as suggested by traditional democratisation, Europeanisation or consolidation research, nor did it occur in a similar pattern across countries. All parliaments underwent a transition to democracy, national sovereignty and a market economy as well as the accession to transatlantic institutions. However, these similarities were not accompanied by or resulted in the same rhetoric. The timing of conflicts and processes in the national parliaments seems to have been influenced by individual paths of conflict between government and opposition in each country, different modes of rule-stretching (see above) or amnesties which were used in some cases (Czechia, Romania, Slovakia) but not in others, different policy decisions (e.g. judicial reforms), particular scandals

(e.g. the leaked speech of MSZP leader Ferenc Gyurcsány in Hungary in 2006) or specific court decisions. It would, therefore, be worthwhile to investigate more systematically which factors foster the emergence, stabilisation and disappearance of narratives.

Our study also shows that in several parliaments, members disagreed sharply on how to deal with past decisions related to the rule of law. Three types of past decisions were debated with particular intensity: legislation concerning the judiciary and public prosecution, amnesties and personnel decisions (e.g. with regard to the constitutional court, ordinary courts and prosecution). The debates were particularly intense when relevant parties regarded such past decisions unconstitutional but, at the same time, they did not have constitutional means to correct them. These dynamics are perhaps different from established liberal democracies because they touch on serious problems. While "those fortunate to live where the rule of law is strong may have a lot to do to defend, secure, sustain, improve and extend it, … those enterprises are, by comparison, more in the nature of running repairs. They may be major repairs, but there is something, often a great deal, of structure and helpful material there to work with and on" (Krygier 2011). Such topics need to be investigated in more depth to understand the rule of law developments.

In some of the countries studied, MPs repeatedly discussed whether non-retroactivity as a rule of law principle should be observed or whether exceptions could be made. Although the national contexts differed, it is clear that this question will continue to arise with each major change of government. However, this topic has been more of an issue for jurisprudence in these countries since courts have been called upon to rule on the matter. It deserves more attention from legal and social scientists, also in other countries. They need to analyse empirically and discuss theoretically the relation between different—and potentially conflicting—principles of the rule of law and the relation between the rule of law and democracy (in the form of the constitutional sovereign) while being sensitive to the concrete cases and circumstances.

We also need more research on the possibilities and limits of adapting the institutional foundations of the rule of law to specific experiences. Such a perspective on the rule of law as an evolving or dynamic system (e.g. always considering its temporal dimension) presupposes an understanding of the functioning of the rule of law in different contexts (on the relevance of context knowledge, see Rech 2018, p. 343). For example, how can a separation of powers with checks and balances be established or adapted when there is a high degree of systematic mistrust by actors in the impartiality of state institutions central to the functioning of the rule of law? Under what circumstances is it possible to remove judges (and thus limit judicial independence) in favour of judicial accountability and constitutionality under the rule of law? Our study provides rich empirical material on how parliamentarians across party lines discussed these controversial questions. Future research could incorporate such reflections into theorising. This would mean also considering the various potential threats to judicial independence beyond the influence of politicians (which is already a well-established topic) and broadening the focus to include the potential influence of business networks or the existence of power camps within the

judiciary, which possibly favour certain conflicts within the branch without direct instructions or interference from executives (see on that topic Spáč et al. 2018).

We also need more research on how to handle amnesties under the democratic rule of law. What happens if, after a change of political power, amnesties are granted to enemies of the constitution or to serious criminals? Can such decisions be reversed at a later date? This question has received little scholarly attention, at least in political science. However, it may have greater practical significance in the future, given the rise of parties with an illiberal agenda in many countries. Their agenda may include amnesties for people who have been punished for system-damaging behaviour. Fruitful empirical material can be drawn from the discourses of parliamentarians in the countries studied to investigate the handling of amnesties under the democratic rule of law. The same is true for personnel decisions. A high degree of independence of judges, judicial councils, prosecutors and other officials relevant to the functioning of the rule of law only works well with an adequate recruitment model. It is still an open question whether, in addition to expertise and performance, other features should be assessed or reassessed at different points to qualify for a position.

Political actors. Our finding that the party affiliation of MPs was irrelevant for most patterns of narrating the rule of law in our cases should be further tested in analyses based on other empirical material (e.g. interviews). If this finding is confirmed, this would be highly relevant for theory-building. Our finding that all parties identified more or less fundamental problems with the rule of law when in opposition deserves critical examination in future studies of parliaments in the region and elsewhere. What effect does it have on citizens' trust in politics, the rule of law and democracy in their country if all parties rhetorically agree on the foundations of the rule of law—thus giving this principle a special significance in the public eye—but at the same time opposition representatives constantly criticise the governing parties for disregarding the principles of the rule of law? In the debates we analysed, several MPs argued that low levels of trust were the result of the misbehaviour of governing parties. In this case, future studies need to explore why parties ignore their convictions when in government. However, low levels of trust can also result from a *rhetoric* of perpetual wrongdoing by governing parties. We need systematic analyses of the link between the practices and quality of the rule of law, measured objectively, and the narratives of the rule of law over time in each country.

Our findings also suggest that more research is needed on the similarities and differences of narratives of parties from certain party families across countries also outside parliaments, e.g. in their manifestos, party conferences or election campaigns. The policy profiles of parties that claim to have the same ideological orientation vary from country to country, even within the European Union. This is also reflected in some heterogeneous political groups in the European Parliament (Kantola et al. 2022, p. 6f., 16). Analysing the relevance of ideology for narratives depending on context factors would contribute to a better understanding of the logic of political rhetoric and action and prevent the use of misleading ideological labels for parties in systems that are different from those of countries currently overrepresented in party research.

It is also worth considering other factors beyond party affiliation and the government–opposition divide potentially influencing MPs' narratives on the rule of law. As noted above, parliamentarians have discussed the principle of non-retroactivity in increasing detail over time. In this case, their arguments also referred to respective rulings of the constitutional courts, e.g. in Czechia and Slovakia. The same was true for the right to abortion in Poland, where different actors referred to court rulings. In general, when mentioning the constitution, MPs included its interpretation by the constitutional court. This raises the question of the relevance of court rulings for the debate on key political issues in the parliaments. Future analyses should review empirical patterns of invoking, citing or criticising courts, and compare them over time and by issue. This would contribute to a better understanding of national paths of the relations between parliamentarians and courts, or "local ecologies" (Krygier 2011, p. 86).

Methodological issues. Our findings underscore the need to understand how actors address the issues under study prior to compiling the relevant sources. For example, in our cases, parliamentarians used the terms 'rule of law' and the (national) constitution almost interchangeably. Also, the concrete language used (words, associations, reference systems) is embedded in contexts, as area and historical studies have shown. The relatively low frequency of the use of the term 'rule of law' in Czechia was related to the tendency to implicitly include this category in the notion of democracy, the restoration of which was the central message of the post-1989 changes. For Romanian parliamentarians, the notion of 'forms without substance' was relevant to the rule of law, which may not be apparent without case knowledge. In Slovakia, on the other hand, the debates around the rule of law were mainly linked to criticism of its abuse by officeholders. For this reason, it was necessary to assign positive content to the narrative arguments used in critical speeches to unravel narratives about the purpose or legitimacy of the rule of law, for instance. In Poland, the notion of 'thick line' was highly relevant and triggered a whole chain of (controversial) associations. This implies that all analyses of the rule of law issues—including legal and quantitative studies—should consider the particular context to produce meaningful results.

Another methodological implication is that studies of the rule of law are well advised to look 'below the surface'. For example, overlapping narratives of challenges to the rule of law reflected a high degree of conflict despite rhetorical agreement. Parliamentarians' rhetoric also overlapped with regard to the relationship between the rule of law and democracy, but politicians rarely communicated their underlying views. The same applies to rights, which were discussed in the context of the rule of law in a very general way while the rhetorical consensus on them was often superficial. Or in the case of Slovakia, our selected debates did not cover disputes over the rights of ethnic and national minorities, although they existed. It is therefore important for research to be aware that the empirical material may not fully capture the apparent reality. This underlines the usefulness of our approach of triangulating case literature and knowledge, media coverage and background interviews to ensure the validity of the interpretations of the parliamentary documents.

Another methodological implication is that scholars interested in the debates surrounding the rule of law should not focus their attention too narrowly on the specific topic of interest. As our findings suggest, it would be misleading to limit analyses of the rule of law to just those categories or 'standards' of the rule of law that have been identified in international comparative research. While these are very helpful in structuring the material and have become more sophisticated over time, they do not cover issues that were highly relevant in our cases. These include (in)effective institutions, personnel and other resources in the judiciary, problems of retroactive legal action and questions of justice and guilt in democratisation processes. To understand conflicts and actors' positions on some rule of law principles, it is necessary to know how they are empirically embedded.

The need to contextualise more specific research also applies to EU studies. The plethora of publications on the rule of law and the EU, as well as the rigorous EU accession requirements that necessitated the transfer of thousands of legal provisions to the candidate countries, may suggest that the EU has figured prominently in the domestic parliamentary discourses in general and those related to the rule of law in particular. However, our study reveals that, except for Romania, the EU did not play an important role when national parliamentarians spoke about the rule of law. They referred more to general or national developments, and when mentioning the international or European level, they often also cited the European Court of Human Rights' ruling on violations of the European Convention on Human Rights, the Council of Europe and transatlantic institutions. The EU formed part of this overall package of international linkages and commitments, except for brief periods.

Studies on the transfer of specific institutions such as judicial councils have suggested that Czechia, for example, would be the 'black sheep' (Bobek 2007) in terms of its resistance to establishing this model of judicial self-government. However, our research has shown that in several countries where parliaments established a judicial council, it has—at least in the eye of parliamentarians—been captured by power groups, for example in Slovakia and Poland. In general, EU studies should contextualise their findings by studying the overall political rhetoric and developments in the countries and determining the relevance of the EU in this context. In addition, more interdisciplinary studies are needed on the relevance of the European Convention on Human Rights and the jurisdiction of the European Court of Human Rights for domestic processes and interactions between legislators, executives and judges, not just analyses from a legal perspective (see, e.g., Keller and Stone Sweet 2018b; Letnar Černič 2018).

General suggestions. As the reflections above have underlined, our empirical study—like any other empirical study—does not provide definitive answers to all questions regarding the rule of law narratives. It is also important to remember that rhetoric and action are not identical. While narratives can have a tangible impact when employed to justify legislation or to elicit feelings of opposition or solidarity, the effect of this varies across empirical cases (Coman and Volintiru 2021). It is crucial to distinguish between narratives and the perceptions and mindsets of actors. As outlined in Chap. 2, the way actors refer to issues can have strategic reasons and diverge from their actual thoughts and actions.

In addition, although MPs are important actors in the political discourse of a country, there are other key players, such as judges, the media and NGOs. It would be beneficial to study their narratives and discourse coalitions related to the rule of law in a systematic way across countries and time. Moreover, narratives regarding the rule of law may be interwoven with narratives on other issues and concepts, such as power, sovereignty or the nation. These broader intellectual narratives are suitable for framing the public debate and views of the world. Therefore, it is essential to investigate linkages to other narratives. Our in-depth regional analysis also does not allow for assessing the extent to which the observations represent regional deviations from other EU member states. Further studies on other cases would be necessary to broaden our understanding of the empirical patterns and causalities in one region and to assess the extent of similarities and differences.

Finally, it is important to note that our study does not provide answers to the normative questions surrounding the rule of law. What constitutes an adequate concept of the rule of law and what are the appropriate institutional arrangements for it? Our analysis did not address this question, yet our findings that in most parliaments the rule of law was not centred around individual rights but more associated with questions of state order (horizontal separation of powers) and system functioning (including effective institutions) can inform this critical intellectual debate. In accordance with the assumption that theory-building is embedded in empirical environments, we also suggest that greater attention is paid to the rich intellectual heritage of East Central Europe and other European regions when discussing these essential normative questions. This would facilitate a more representative debate, encompassing a broader range of perspectives and backgrounds.

7.3 10 Suggestions for Policymaking

Our findings are also relevant for those engaged in the practical application of the rule of law. As members of the Council of Europe and the EU, Czechia, Hungary, Poland, Romania and Slovakia must fulfil their international obligations and align with the rule of law frameworks of both organisations. In the following, we assess to what extent the narratives used in the parliaments correspond to the concept of the rule of law of the Council of Europe and the EU and propose suggestions for policymaking.

In general, the parliamentarians' narratives on the foundations of the rule of law aligned with the definitions of the rule of law set out by both the Council of Europe and the European Union. These definitions emphasise the principles of legality, legal certainty, the prohibition of arbitrary exercise of power, an independent judiciary, the separation of powers and the exercise of any public authority within the applicable law. At the rhetorical level, there was no disagreement on these issues. Consequently, the parliamentary discourses did not confirm the claim of some parties (mainly in Poland and Hungary) that different national cultures of the rule of law would justify the non-compliance with international obligations or other forms of local exceptionalism.

However, compared to the approaches of the Council of Europe and the EU, the narratives in the parliaments under study placed a stronger emphasis on the necessity of effective institutions and a lesser emphasis on legal protection and courts. In their speech acts, the parliamentarians demonstrated greater attention to the relevance of the rule of law for the general functioning of the system. They also frequently cited the national constitutions as the most important source of legitimacy for the rule of law.

Another difference is that the rule of law narratives used in parliaments were less aligned with the EU's prioritisation of fundamental rights as an element of the rule of law (European Commission 2020, 2024; European Commission 2021). Only in Czechia did (equal) rights feature as part of the key narratives on elements of the rule of law. In Poland, especially in the first wave, rights, freedoms and equality were also mentioned as elements of the rule of law in the new democratic system. In the second and third waves, criticism of alleged rule of law violations was also directed at breaches of rights, including the right to a fair trial. In the other parliaments, there were no major rights discourses under the heading of the rule of law, and when rights were discussed, the debates included controversial issues.

The EU has identified democracy as a relevant rule of law criterion. While parliamentarians supported the notion of the 'democratic state under the rule of law' long before entering the Union, the concrete relationship between the rule of law and democracy was not extensively discussed. In general, the view that the rule of law is about constraining elected majorities prevailed. However, this narrative was mainly propelled by parties in opposition who sought to criticise the government and protect their own rights and interests through non-majoritarian institutions. Thus, their self-interest served as a catalyst for their role as guardians of the rule of law.

The narratives of various challenges to the rule of law, growing criticism of governments for ignoring and actively undermining rule of law principles, and the increasing relevance of parties with an anti-corruption agenda indicate that the national discourses have paid much attention to shortcomings in the field of the rule of law. This might have contributed to the impression that many things were going wrong in the countries and that the term 'rule of law' means limiting the will of the sovereign people by individual, opposition and other minority rights. How can policymakers at the European and national levels address rule of law issues under these circumstances? Based on our study, we make the following suggestions:

(1) Understand that national constitutions play a major yet ambiguous role in debates on the rule of law. In Romania, actors regularly associated the constitution with the transition to democracy after the 1989 revolution. In Czechia and Slovakia, this was less the case, as the constitutions were mostly negotiated behind closed doors during hectic times that led to the dissolution of the Czechoslovak federation. In Hungary and Poland, the revision of the constitutions after 1989 and the drafting of new constitutions were linked with power struggles between different political camps. In all countries studied, the post-1989 paths of constitution-making and constitutional reforms (including those in preparation for EU accession) resulted in the experience that the constitution is not untouchable and uncontroversial. Thus,

constitutionalism was supported in a very abstract sense and the constitution was accepted as the fundamental law guiding democratic political action, but this was not necessarily linked to the idea of constitutional supremacy in our period of analysis.

(2) Point out that international commitments were entered into voluntarily. The parliaments under study voluntarily and often enthusiastically agreed to join the European Convention on Human Rights, the Council of Europe, the European Union, NATO and other Western frameworks. By doing so, they committed themselves to complying with the respective norms and standards. This was perceived as a natural step reflecting the convictions of parliamentarians and complementing the national rule of law framework. It is evident that the transfer of institutions, knowledge and funding from international organisations has assisted in the efforts of the countries under study to establish and protect the rule of law. However, narratives that claim that the establishment of democracy and the rule of law in the member states was a genuine achievement of European organisations and institutions would be incompatible with the national parliamentary discourses and the 'stories' of causes and effects.

(3) Spotlight how far the parliaments have come. Various observers noted an EU 'accession fatigue' in East Central European countries and a general disappointment with the post-1989 developments (e.g. Krastev and Holmes 2019). People and political actors may have underestimated the concrete effects of the transition to democracy, a market economy, the rule of law and membership in European and transatlantic organisations. Since 1989, they have constantly dealt with countless policies related to the rule of law for which there was no blueprint (e.g. privatisation of the whole economy) and negotiated rules in complex national and multilevel systems. They had to address the structural legacies of the pre-1989 system, which impacted the functionality of the new institutions, and readjust their institutional decisions several times. In parallel, the demands on the rule of law have increased. Against this background, one should keep in mind that many political efforts in the field of the rule of law were successful, despite shortcomings and setbacks. It is necessary to continue to spotlight the efforts and achievements of parliamentary action in this field in times of general dissatisfaction with deficiencies in the rule of law.

(4) Create more opportunities for debate on the rule of law to raise awareness of it and its purpose. The purpose of the rule of law is a topic of general interest that is linked with broader societal ambitions and visions. As mentioned, parliamentarians particularly emphasised the relevance of the rule of law in maintaining order within the state and society. Providing more room for debate on the overall value of the rule of law—be it in parliament or in civil society fora—could facilitate the development of narratives that are used across the ideological spectrum and bridge divides on concrete policy positions. In three parliaments studied, the second wave of rule of law legislation was marked by relative 'silence'

on rule of law issues. Parliamentarians seem to have been preoccupied with the legislative workload on diverse issues in preparing for EU accession. Most notably, we did not find any active debates on rule of law issues in Hungary for this wave of legislation in our selected documents, where the parliament also failed to reach a compromise on a planned new constitution. This 'silence' in the parliamentary arena meant a lack of mobilisation for a broader consensus on common rule of law objectives, and may have contributed to the emergence of more one-sided narratives in the third wave of rule of law legislation.

(5) Use the appropriate language. In order to reach the target groups effectively, it is essential to understand and use their language. This entails employing original phrases and wording that are familiar to national politicians to make the rule of law policy authentic, comprehensible and capable of mobilising support. When addressing rule of law issues, actors should be sensitive to the fact that parliamentarians in the five countries, with the exception of Czechia, generally did not strongly associate the rule of law with individual rights. Therefore, one way for politicians to avoid misunderstandings when advocating for the protection of individual rights might be to explicitly delineate this concept from the broader notion of the 'rule of law'. Additionally, it is crucial for politicians to be aware of sensitive terms and issues relevant in given countries, like amnesties, problems around retroactivity, and sequences of reforms and counter-reforms of the judiciary in Slovakia and other countries. Referring to overlapping narratives could also help to establish constructive dialogue between opposing sides of the rule of law conflicts. In the Romanian parliament, for example, the notion was widely established that the rule of law means returning to Europe and to one's own national history simultaneously. Also, politicians violating the rule of law principles should be reminded of what they have said in the past in support of the rule of law and its elements. All of this requires expertise in the narratives involved.

(6) Strengthen the discourse among national parliaments. Such an inter-parliamentary discourse could focus on relevant rule-of-law-related issues that promise practical benefits (e.g. strengthening the effectiveness of institutions and better oversight of the executive). It would be a welcome occasion to discuss national similarities and peculiarities, share views and experiences, elaborate best practices and inform each other. International linkages and mutual inspirations have a long historical tradition. In our empirical material, we found references to other European countries. Poland, for example, learned from Italy when establishing its National Council of the Judiciary in the 1980s. The Nordic countries were an example for Romanian politicians when establishing the institution of the ombudsperson. Our countries studied also share many experiences with the current candidates for EU membership, e.g. regarding transformation and related problems (corruption, clientelism, role of old elites) and EU accession requirements. This offers parliamentarians the opportunity to engage in more productive exchanges of authentic and reliable advice on an equal footing. Such interactions could also

strengthen the role and visibility of parliaments vis-à-vis their executives and the public.

(7) Acknowledge that others associate the rule of law with different things. Our findings demonstrate that despite overarching similarities, parliamentarians spoke differently about the rule of law. In the parliaments studied, entrenched narratives across party lines underpinned deep structural issues beyond the usual differences in political positions observed in democracies. They consisted of accounts of a politicised judiciary, endemic rule violations and governments utilising the rule of law for their own interests. Parliamentarians also claimed that public trust in the rule of law was low. The optimism associated with the transition to democracy and the rule of law seems to have dissipated. This can be partially attributed to the fact that in the 1990s, there were instances of politicians who claimed to be committed to the rule of law but abused their powers, restricted the rule of law, or at least neglected to develop it, and engaged in transformation-related corruption. However, such a mismatch between political rhetoric and practice can also be traced in the post-transition period. Even if the challenges to the rule of law are resolved in the future, the established narratives that the rule of law is compromised and that politicians can manipulate regulations will endure for an extended period, making the systems vulnerable to distrust and instability. Effective cooperation presupposes respect for multiple experiences with the rule of law and diverging views of it to build a constructive debate about differences.

(8) Integrate national parliaments into the eu's rule of law discourse and build on existing narratives. Together with the European Parliament, national parliaments are a key pillar of the democratic legitimacy of the European Union. While EU actors have broadened their rule of law dialogue to domestic stakeholders such as judges and NGOs, there is still room for intensified communication between EU actors and national parliaments. For example, the 2023 Rule of Law Reports on Czechia, Poland, Romania and Slovakia did not mention any meetings with parliamentarians (European Commission 2023a, p. 29f, 2023b, p. 45f., 2023c, p. 35f., 2023d, p. 35f). The Commission engaged solely with executive and judicial authorities, multiple non-governmental organisations and occasionally with the parliamentary administration. Productive dialogue with MPs may enhance the effectiveness of policymaking pertaining to the rule of law and resolving conflicts. To gain support from parliamentarians in Czechia, Hungary, Poland, Romania and Slovakia, such a dialogue should centre around the purpose of the rule of law to ensure checks and balances between the branches of government and to ensure the functioning of the whole political, economic and societal system. In doing so, narratives and examples of different national parliamentary discourses could be applied to make communication meaningful for national actors.

(9) Debate the relationship between democracy and the rule of law. In our selected documents, there was no detailed debate about the relationship between elected officials and non- and counter-majoritarian agencies that interpret and

enforce the law. However, current disputes over the rule of law and other aspects of liberalism do touch on this relationship. Parliamentarians, as elected representatives, have been granted legitimacy by virtue of their popular mandate. They agreed, with broad rhetorical consensus over time, that the power of elected majorities cannot be unlimited but needs to be constrained under the rule of law. Nevertheless, much of their shared criticism referred to violations of this principle. In our view, there is an urgent need to discuss the concrete system of checks and balances between the branches of government and the relationship between the majority, minority and individual rights at the different levels of policymaking and judicial decision-making. This debate should be conducted with appropriate objectivity and depth. It also applies to the (s)election of decision makers in the political realm and the judiciary: the more extensive the scope of their competences and influence, the more crucial it is to ascertain the selection process and the criteria employed.

(10) Highlight the role of national parliaments in building a common european rule of law. The parliamentary debates analysed in this study demonstrate that, at least rhetorically, parliamentarians did not oppose the emergence or creation of a trans-European rule of law conception. Such a transnational conception was not a significant issue, although the rule of law concepts in the five states overlap in many respects. National parliamentarians, who play a pivotal role in addressing and convincing national publics, could emphasise their role as decisive creators and protectors of a transnational rule of law framework. European recommendations related to the rule of law should cite more views of national MPs (and members of the European Parliament elected in a given country) to demonstrate the overlapping views. Why not establish a virtual European Hall of Fame for Rule of Law? It would enable the public to gain insight into the various approaches to the development of the rule of law across Europe, showcasing active creators of the democratic rule of law in the European countries (and perhaps beyond). It would also provide an opportunity to examine the challenges faced and the strategies employed to resolve them. Furthermore, the use of original sources would enhance the educational value of this initiative, making it a prominent resource for civic education in schools and beyond.

It is unlikely that these recommendations for European and national policymakers will resolve all conflicts related to the rule of law. Violations of the rule of law, for example, will have to be sanctioned by other means. However, there is no harm in exhausting all the possibilities of parliamentary discourse, including the deliberation across political camps and national boundaries. Moreover, it is a relatively simple process that can be implemented at low cost and can help to resolve existing conflicts. Our study has revealed how numerous narratives were created, developed and changed in vibrant parliamentary debates.

References

Bobek, Michal. 2007. Iudex Ex Machina: Institutional and Mental Transitions of Central and Eastern European Judiciaries. In *Judicial Reforms in Central and Eastern European Countries*, ed. Ramona Coman and Jean-Michael de Waele, 107–134. Brugge/Baden-Baden: Vanden Broele/Nomos.

Coman, Ramona. 2014. 'Quo Vadis' Judicial Reforms? The Quest for Judicial Independence in Central and Eastern Europe. *Europe-Asia Studies* 66: 892–924.

Coman, Ramona, and Clara Volintiru. 2021. Anti-Liberal Ideas and Institutional Change in Central and Eastern Europe. *European Politics and Society* 24: 5–21. https://doi.org/10.1080/23745118.2021.1956236.

European Commission. 2020. *2020 Rule of Law Report. The Rule of Law Situation in the European Union*. COM(2024) 800 final.

———. 2021. *2021 Rule of Law Report*. COM/2021/700 final.

———. 2023a. *Perceived Independence of the National Justice Systems in the EU Among the General Public*. Flash Eurobarometer 519. Report.

———. 2023b. 2023 *Rule of Law Report. Country Chapter on the Rule of Law Situation in Czechia*, SWD(2023) 803 final.

———. 2023c. *2023 Rule of Law Report. Country Chapter on the Rule of Law Situation in Poland*, SWD(2023) 821 final.

———. 2023d. *2023 Rule of Law Report. Country Chapter on the Rule of Law Situation in Romania*, SWD(2023) 823 final.

———. 2024. *2024 Rule of Law Report. The rule of law situation in the European Union*, COM (2024) 800 final.

Kantola, Johanna, Anna Elomäki, and Petra Ahrens. 2022. Introduction: European Parliament's Political Groups in Turbulent Times. In *European Parliament's Political Groups in Turbulent Times*, ed. Petra Ahrens, Anna Elomäki, and Johanna Kantola, 1–23. Cham: Palgrave Macmillan.

Keller, Helen, and A. Stone Sweet., eds. 2018. *A Europe of Rights: The Impact of the ECHR on National Legal Systems*. Oxford: Oxford University Press.

Krastev, Ivan, and Stephen Holmes. 2019. *The Light That Failed: A Reckoning*. London: Penguin.

Krygier, M. 2011. Four Puzzles About the Rule of Law: Why, What, where? And Who Cares? In *Getting to the Rule of Law*, ed. James E. Fleming, 64–104. New York/London: New York University Press.

Letnar Černič, Jernej. 2018. Impact of the European Court of Human Rights on the Rule of Law in Central and Eastern Europe. *Hague Journal on the Rule of Law* 10: 111–137.

Purcell, David, Kelly Rhea MacArthur, and Sarah Samblanet. 2010. Gender and the Glass Ceiling at Work. *Sociology Compass* 4: 705–717.

Rech, Walter. 2018. Some Remarks on the EU's Action on the Erosion of the Rule of Law in Poland and Hungary. *Journal of Contemporary European Studies* 26: 334–345.

Şerban, Mihaela. 2018. Stemming the Tide of Illiberalism? Legal Mobilization and Adversarial Legalism in Central and Eastern Europe. *Communist and Post-Communist Studies* 51: 177–188.

Spáč, Samuel. 2020. The Illusion of Merit-Based Judicial Selection in Post-Communist Judiciary: Evidence from Slovakia. *Problems of Post-Communism* 69: 528–538. https://doi.org/10.1080/10758216.2020.1806080.

Spáč, Samuel, Katarína Šipulová, and Marína Urbániková. 2018. Capturing the Judiciary from Inside: The Story of Judicial Self-Governance in Slovakia. *German Law Journal* 19: 1741–1768.

Veit, Sylvia. 2022. Preservation of Differences or Adaptation to Western Germany? Descriptive Representation, Career Patterns and Politicisation of Top Civil Servants in Eastern Germany. *German Politics* 32: 149–168. https://doi.org/10.1080/09644008.2022.2061463.