

INTERGOVERNMENTAL RELATIONSHIP: A COMPARATIVE ANALYSIS BETWEEN THE EUROPEAN UNION, POLAND, HUNGARY AND ISRAEL

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Abstract

This article conducts a comparative analysis of the political and legal systems of three democratic nations—Poland, Hungary, and Israel—specifically exploring changes within their intergovernmental relationships. Originating from doctoral research on the legislative and judicial dynamics in Israel, the study delves into the challenges posed by populism in these countries and examines the role of the European Union (EU) as a potential umbrella organization. The article scrutinizes the response of EU systems to shifts within the political landscapes of Poland, Hungary, and Israel. Additionally, it addresses the intricate relationship between populist parties and the legal system, grappling with these issues through a combination of substantive and procedural approaches. The research aims to contribute insights into the impact of populism on democratic structures and the EU's efficacy in navigating these complexities within its member states.

J.E.L Classification: K4, P1, P2

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1. Introduction

This article focuses on the relationship between the political and legal system and presents a comparative analysis between three democratic countries - Poland, Hungary and Israel, which have undergone a change or an attempt to change the governmental relationship. The article also focuses on the description of the two systems of government in the European Union and the way these systems respond to the aforementioned changes. This article was written as a result of doctoral research addressing the relationship between the legislative authority and the judiciary in Israel. This article deals with two issues concerning the doctorate.

The first issue pertains to the populism phenomenon as it is reflected in the reviewed countries, and to the usefulness of an umbrella organization, i.e., the European Union (EU), with regard to these countries. The second issue pertains to the way the populist parties relate to the legal system. These two issues face a struggle that the doctorate tries to resolve with substantive and procedural tools. The article relies on a systematic literature review and brings insights that can shed light on the struggle through populist processes whose essence is to weaken the legal system so that it does not pose a threat to the legislative authority and allows the ruling party to rule under the claim that it is the will of the people.

2. Literature Review

"The Oxford Handbook of the European Union" by Erik Jones, Anand Menon, Stephen Weatherill: This handbook is a comprehensive collection of essays that provides an in-depth examination of various aspects of the European Union (EU). It covers topics such as the history of the EU, its institutions, policy

areas, challenges, and future prospects. The contributors, experts in their respective fields, offer insights into the political, economic, and legal dimensions of the EU, making it a valuable resource for scholars, students, and policymakers interested in European integration.

"Central and East European Politics: From Communism to Democracy" by Sharon L. Wolchik, Jane L. Curry: This book explores the political transformations in Central and Eastern Europe from the collapse of communism to the establishment of democratic systems. It provides a historical overview of the region, examining the challenges and opportunities faced by these countries during the transition period. The authors analyze political developments, institutions, and societal changes, shedding light on the complex processes that shaped the political landscapes of Central and East European nations.

"Israel's National Security Law: Political Dynamics and Historical Development" by Amos Guiora: Amos Guiora delves into the legal framework governing Israel's national security in this book. Focusing on the intersection of law, politics, and historical context, the author explores the development of Israel's national security laws over time. The book likely addresses key events and policies that have influenced Israel's approach to national security, offering a legal and political analysis. It provides insights into the complexities and challenges associated with safeguarding a nation's security within a legal framework.

3. Methodology

The main objectives of this research are:

- a) Understanding and analyzing various aspects related to the European Union (EU) and its evolution, particularly in the context of political, economic, and legal dimensions.
- b) General Review of EU Institutions: Examining the political and judicial institutions within the EU, including the European Council, European Commission, European Parliament, and the European Court of Justice (ECJ)
- c) Circles of Relationship between Israel and the EU: Exploring the various levels of relationship between Israel and the EU, with a focus on the EU-Israel Agreement of Association, European Neighborhood Policy (ENP), and EuroMed.
- d) Comparison between Poland, Hungary, and Israel: Investigating the changes in the relationships between government authorities and judiciaries in Poland, Hungary, and Israel. Exploring similarities and differences in the mechanisms of these changes, specifically focusing on alterations in judge selection processes and the impact on the independence of the judiciary.
- e) Comparative Analysis between Israel, Poland, and Hungary: Conducting a comparative analysis between Israel, Poland, and Hungary, highlighting key similarities and differences in the shifts in government-judiciary relationships.

The main hypotheses are:

1. *The EU has both political and economic goals. Politically, the EU aims to ensure peaceful borders within Europe and empower all member countries, exerting political power beyond individual member states.*
2. *The evolution of the EU is outlined in distinct phases, ranging from a transition period (1958-1969) to the establishment of the EU through the Maastricht Treaty (1993-1997). Key stages include removing taxes and barriers, creating common policies, freezing economic integration, and forming a complete internal market.*
3. *Focusing on political and judicial institutions, including the European Council, European Commission, European Parliament, and the European Court of Justice (ECJ). The European Parliament is seen as a democratic organ representing broad interests and participating in the legislative process.*
4. *Israel's relationship with the EU is centered around the EU-Israel Agreement of Association, followed by the European Neighborhood Policy (ENP) and the more distant circle of EuroMed.*
5. *Changes in relationships between government authorities and the judiciary are observed in Poland, Hungary, and Israel.*

The main research question is:

"How have the political and economic goals of the European Union (EU) manifested and evolved over time, particularly in terms of guaranteeing peaceful borders, empowering member countries, and advancing efficiency in the international arena through unified monetary and economic policies?"

Additionally, how has the institutional structure of the EU, especially its political and judicial components, contributed to or hindered the realization of these goals? Moreover, what is the impact of the EU's relationship with third-party countries, such as Israel, and how do changes in the relationships between government authorities and judiciaries in Poland, Hungary, and Israel influence the democratic regimes and the definition of populist parties in these countries?

The European Union (EU) has political and economic goals. At a political level, the Union is meant to guarantee peaceful borders within Europe and empower all countries. Hence, the Union has a political power over and above all its member states. The economic goals seeks to advance efficiency and ability to progress in the international arena by creating a unified monetary economic policy, to the extent that in 1992 the Euro was established as a single European currency.

4. Evolution of the European Union

The evolution of the EU unfolded through distinct phases. The subsequent stages are outlined below:

1. 1958 – 1969: Transition period – removing taxes and barriers between the six member states, creating a common tax and common agricultural policy (CAP). Creating homogeneity between founding states.
2. 1970 – 1984: Interim period – community increased to 10 member states. Institutional changes. Freezing economic integration processes. EEC Charter unchanged for approximately 30 years.
3. 1993 – 1995: Complete internal market – The European 92 Plan through the Single European Act (signed in 1986 and enacted in 1987), enacted a majority requirement for many sections – the importance was that more laws could be passed through majority vote than unanimity, because one country did not approve a law for any reason. In this period the EEC was central.
4. 1993 – 1997: EU process – the Maastricht (Netherlands) Treaty – establishment of the EU, formulating single policies in the fields of social policy, internal security, judiciary, foreign and security, and monetary policy (Euro currency). Subsidiarity principle – preference for arrangements by member states, but if more efficient (through substantive examination) to carry out at EU level, only then would legislative and policy authority be given to the EU in itself. The EEC became the EC (removal of the economic aspect). The term “federation” was rejected, but the word UNION was agreed upon.
5. IGC – Intergovernmental Conference – The process itself establishing the EU is seen as "on the move". It appears its jurists and economists failed to take into account that every country and nation strove to preserve its unique culture, which influenced the Union's rate of progress and its citizens assimilating its decisions.

5. General Review of EU Institutions

This review focuses on the political and judicial institutions. The political institution includes the European Council, European Commission and European Parliament. The judicial institution includes the European Court of Justice made up of two courts. Every official document contains the 23 languages of the EU.

The European parliament is meant to represent broad interests and is the democratic organ. The democratic parliament is required to participate in the legislative process. Its makeup and members are elected from all member states in direct, general and relative elections throughout the community every five years.

The European Court strengthened the parliament in a number of rulings, such as the ruling of a French company that appealed to invalidate a council regulation setting a production quota [Case 138/79 Roquette Freres v Council], when the council legislated without consulting the parliament contrary to what is stated in EEC paragraph 43. The court decided that consultation with the parliament was a feature of democracy. To consult means to acquire an opinion. The court increased the duty of consultation to acquire an opinion.

Another case [Case C-65/93 European Parliament V Council, 1995] ruled that the European Parliament failed to cooperate with the Council. The parliament requested invalidating a regulation claiming that it had not been consulted. This regulation was intended to change the list of developing countries to which the Union gives trade benefits. This had to be passed throughout the Union. The Council wanted to pass the matter with urgent consultation. The parliament delayed it. The Council considered these countries' interests and the strong economic interest of the Union and finally legislated and changed the list without parliamentary consultation. Although the previous ruling was emphasized in the claim, the court balanced between the two institutions and found that parliament had been given an opportunity for urgent consultation and not taken it up in time.

EU Court of Justice – (CJEU) expresses the judicial and supra-national nature of the Union. Its first instance – General Court (GC) – was established in 1989 to ease the court's workload. There is a great deal of "judicial activism". Therefore, there are two courts, the GC and CJEU established beforehand. Both sit in Luxembourg, and each has one judge from each member state (currently 27), judges are appointed for six years as agreed with each state. The court president is chosen by these judges. Makeup: usually 3-5 judges, in special cases 13 judges. Principal language spoken – French. The General Court areas of authority are: competition laws, import and export laws, trademark issues, civil or country claims against Union institutions (administrative, damages or contractual). In 2005, the European Civil Service Tribunal was established to remove community claims from the GC. Appeals against this court's rulings are brought to the GC. It also has authority for preliminary judgments in certain areas. Appeals in this case go to the CJEU.

The authority of the CJEU is claim against countries for not fulfilling their commitments according to the treaty (can lead to countries being fined, (TFEU 258, 259) – international judicial authority. Claims against community institutions (TFEU 263,265), administrative judicial authority. Submissions from local courts for preliminary CJEU rulings (TFEU 267). Thus, it is similar to the Israeli H CJ – it is more to establish precedents than providing opinions.

If such cases arise in international courts of member states, that must be interpreted – question of interpretation of Union judgments – must be addressed to the CJEU. If a citizen in one of the countries wants to sue authorities – if they come from the same country that has no appeal court, and the question is one associated with the Union, then the question is submitted to Luxembourg for a CJEU opinion. However, the citizen must go through the whole process in his own country first, and cannot apply directly to Luxembourg.

One of the reasons for all these steps is efficiency, so that people will use their own judicial and policy systems. Another reason is for integration – that there be emissaries from Luxembourg in all states, work to be distributed and the essence of interpretation of Union justice. Additionally the CJEU cannot overturn opinions, but every state can, which is why it is such.

An example of the relationship between the state of Israel and the EU can be found, for example in the Bulk Oil V. Sun ruling (1985) in which the British government oil company Sun cancelled a contract to sell oil to Bulk Oil, because of the British government's embargo on oil sales to Israel. Bulk argued that the embargo was null because it contradicted a trade agreement (Israel-EU), and in any case constituted a breach of contract, when there is a free trade agreement.

The CJEU recognized that in principle there can be a direct influence between the EU and third party countries – in other words countries such as Israel have the right to appeal to European courts, enforce and use parts of the agreement, but export restrictions are not covered by the agreement, and therefore the claim was denied.

The heart of Israel's relationship with the EU is the EU-Israel Agreement of Association. This is followed by the ENP (European Neighborhood Policy) – a more intense cooperation than the Agreement of Association and therefore, more desirable in terms of Israel. The external and most distant circle is EuroMed. The agreement reached in 1995, is monumental for Israel, mainly because of the environment in which we live, Israel are extremely dependent on world economy, and therefore, this agreement with a large and important body such as the EU is highly significant. The EU is our largest trade partner – larger even than the U.S.A. This is most positive, despite all the politics and the negative implications of this agreement, as will be seen below:

6. Comparison between Poland, Hungary and Israel

There are different relationships between authorities in Poland, Hungary, and Israel. However, in all three there have been changes in relationships between the government authority and judiciary.

In Hungary, this change occurred at the start of the second decade of the 21st century with the rise of Prime Minister Victor Orbán, head of the Fidesz for Government party. In Poland, this process began in the middle of the second decade of the 21st century with the rise to power of the Law and Justice Party led by Andrzej Duda. In Israel at the beginning of the third decade of the 21st century with the rise of the Likud party to power under Benjamin Netanyahu's authority.

This short article reviews the changes in relationships between authorities in these three countries, discuss what is different and similar between them and explore whether these changes meet the definition of populist parties.

□ Poland

With rise of the Law and Justice party after it won a majority in Parliament in 2015, it did not have a majority to formally change the Polish constitution. Therefore, it addressed changing the makeup of the constitutional court by appointing five judges to the Constitutional Court, thus increasing the number of judges in this court, who sit in the trials in most cases to 13 out of 15 judges, and instead of a normal majority to issue a ruling that binds the government authorities, it was stipulated in legislation that any ruling given by the Constitutional Court would require a two-thirds majority [Adv. Dafne Benvenisti, 2023]. That is How changes in Judge Selection Mechanism Predicted Changes in the Democratic Regime in Poland and Hungary. The Israel Democracy Institute.]. Another change was in the manner petitions are heard, such that the order in which they are heard is according to their order of submission and not their degree of urgency.

In other instances, the government changed judge selection processes. Until 2017, judges were selected by the judiciary only, then an amendment to the law regarding changing the composition of the National Judicial Council determined that candidates for the composition of the committee would be recommended to the chair of the lower house of parliament who was not obligated to accept their recommendations. Furthermore, it was determined that all judges serving in the National Judicial Council would actually stand down immediately. Likewise, it was determined that all judges serving on the national justice council would stand down immediately [Adv. Dafne Benvenisti, 2023]. That is How changes in Judge Selection Mechanism Predicted Changes in the Democratic Regime in Poland and Hungary. The Israel Democracy Institute.]. Hence parliament took control over judges' appointments and politicians appoint most judges.

The judicial authority was weakened compared to the governmental system as it lost its independence. In terms of the Law and Justice party, the change sought to connect judges in Poland to the wishes of voters and increase their responsibility toward the electorate and thus better reflect the nation's will.

Another change increasing the judiciary's dependence on government authority was passing laws allowing judges to be dismissed or their salaries affected. Hence, the government authority earned legitimization to its legislation through the judicial system and reduced the judicial system's possibilities of criticizing it.

□ Hungary

Whereas the change in relationship between the authorities in Poland was gradual and was opposed by the state president and many demonstrators, in Hungary, Victor Orbán was elected president in 2010 [Adv. Dafne Benvenisti, 2023]. That is How changes in Judge Selection Mechanism Predicted Changes in the Democratic Regime in Poland and Hungary. The Israel Democracy Institute.]. when he established a coalition with a two-thirds majority in parliament, in Poland this was not the case.

This majority allowed Orbán to change the Hungarian constitution in April 2011 and adopt a new constitution. Changes included lowering the age of judges' retirement from 70 to 62 [Adv. Dafne Benvenisti,

2023. That is How changes in Judge Selection Mechanism Predicted Changes in the Democratic Regime in Poland and Hungary. The Israel Democracy Institute.], which allowed the immediate dismissal of numerous judges, and especially Supreme Court judges.

The judge selection process was also changed. If until Orbán's rise to power, judges were appointed by the judiciary council, an independent body with judges carrying most weight, after his election, a national justice office was established, which appointed 15 judges. Its head is chosen by two-thirds of parliament and has great authority over the appointment, dismissal, promotion or punishment of judges. Although changes were made to the president's authority as a result of international criticism, in practice presidents of the national justice office were close to the ruling party and coordinated judges' appointment with the ruling party's agenda. Another body established as a counterbalance to this body did not reduce its power or status of its president.

Constitutional court judges also had to be approved by a special parliamentary committee with a two-thirds majority to be appointed. This structure was different in the past, whereby every party had one vote on the committee, today the makeup of the parliamentary committee reflects parliamentary makeup. This change in how judges are appointed to the constitutional court made the opposition's agreement to constitution court judges appointments redundant.

□ Israel

With the establishment of the coalition in January 2023, the ruling party, the Likud, presented a proposal to change the relationship between the judiciary and government authorities so that, among others, it attempted to acquire a majority on the Judge Selection Committee (JSC) with the main reason being that in the judicial system's desire to interfere in legislation, it should reflect voters' wishes. Another reason was that the government authority has the responsibility for all results of laws legislated in parliament therefore the judicial system only has the authority to intervene or invalidate laws without carrying the responsibility for this intervention.

Examples of this were given in relation to conservative policy relating to migration to Israel whereas the intervention of the Supreme Court made it easier to enter the country and left the state of Israel and its residents with a problem of many migrants living in Israel because of a Supreme Court ruling. Table 1 illustrates a comparative analysis between Israel, Poland and Hungary.

Table 1. Comparative Analysis: Israel, Poland and Hungary

	Poland	Hungary	Israel
Time of Change	2010	2010	2023
Factors causing wish to change	Rise to power of the Law and Justice Party, Andrzej Duda Prime Minister	Rise of Fidesz for Government party, Viktor Orbán Prime Minister.	The Likud party rises to power - Netanyahu prime minister.
Motivation for change	No majority to formally change the Polish constitution	Adapting judge selection to ruling party's agenda	- If the judiciary seeks to intervene in legislation, it must reflect the voters' will. -HCJ's intervention facilitated entry of foreign workers and left the State of Israel with the problem of migrants remaining in Israel by virtue of the HCJ ruling
Essence of Change	♦ Changing Constitutional Court Composition ♦ Changing method of hearing petitions - not by urgency, but by order of submission	♦ Changing the constitution and adopting a new one ♦ Lowering judges' retirement age from 70 to 62 ♦ Changing the judge selection method	Changing judge selection method
Results of change	♦ Weak judicial system. Lost its independence ♦ Dismissal of judges and damage to their salaries ♦ Judiciary depends on governmental system	♦ Dismissing judges ♦ Courts lost independence ♦ Composition of the Judge Selection Committee reflects that of Parliament	Not completed
Implications for Democracy	♦ The governing authority receives legitimacy for legislation through the judiciary ♦ Reducing judiciary's possibility to audit government	♦ The judiciary cannot criticize government ♦ Constitutional Court Judge selection method made opposition's consent redundant.	Not completed
Public Response	Weak protests and demonstrations	No protests and demonstrations	Intense protests and demonstrations
Implementation of change	Implemented slowly	Implemented	Not implemented

7. Comparison Findings

Similarities

The three countries took an approach of weakening the judicial system vis-a-vis the government authority, in their words, to reflect the wishes of voters' whose desires are an expression of democracy

through elections. They did so by weakening the judiciary, taking over judge selection and the personalities that will be appointed to judge.

Differences

In Hungary, where the ruling party had a two-thirds' majority it was easier and thus they addressed the constitution directly without any significant citizens' disturbance.

In Poland, where the ruling party did not have such a large majority and because of civic opposition, changes were seen more slowly. In Israel where there is no constitution, attempts to change the JSC have led to strong civic opposition, hence changes the government proposed have not yet been introduced.

8. Conclusion

The EU grants the judicial system considerable weight, and the European parliament is an umbrella organization for different countries. However, every country developed its inner judicial and government systems relationships differently. The example this article discusses is Poland and Hungary as part of the EU. Israel is not part of the EU but is its point of reference.

In each country reviewed in this article, ruling parties attempted to weaken the judiciary with populist arguments in which voters' wishes must be reflected in the judiciary.

Populist claims accompany the weakening of the judiciary so that it will not have control over the action of government elected by the people and legitimize the government. In a democracy, majority wishes are not everything, and only a strong civic society can significantly repel the will of the majority to make a change in the relations between government branches so that the executive branch cannot do as it pleases, and this is in order to retain the balance between the branches which will act not only according to the will of the majority but also to preserve the rights of the minority as is the case in the State of Israel.

Freedom of expression is the central tool for this, not only through demonstrations but that all information reaches the electorate especially where the ruling party does not have a clear majority as a result of elections giving it the power to make changes weakening the judiciary.

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