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## **Policy Transfer in the Rule of Law Crisis: The Case of Romania**

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### **Citation**

Modan, S. (2021). *Policy Transfer in the Rule of Law Crisis: The Case of Romania*.

Version: Not Applicable (or Unknown)

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# ***Policy Transfer in the Rule of Law Crisis: The Case of Romania***



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**The European Union in Crisis: Challenges, Compromises and Results**

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**May 21<sup>st</sup>, 2021**

**Words: 7981**

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# 1. Introduction

## 1.1 Rule of Law: What it is and why it is essential in the European Union

The European Union (EU) is based on democratic values such as the rule of law (RoL), which means that any member state should have equality before the law, fundamental human rights, a transparent lawmaking process and independence of the judiciary (Merkel, 2012, p. 22). RoL started to be a fundamental concept of the European Union in 1986 when the Court of Justice announced that the European Community is an institution where both the member states and their institution are built according to the rule of law (Sousa, 2020, p.144). Some scholars argue that the rule of law is the arbitrary ‘body’ that guard political rights and democratic practices and helps secure institutions' independence in a state from influence (Raube & Costa-Rei, 2021, p.628). Also, the RoL provides that each citizen, civil servant, politician obeys the law equally and that the law cannot be changed or influenced during a process (Kelemen, 2019, p. 250). As is defined by the Commission, RoL establishes a pluralistic and democratic law-making process, a judiciary with an effective judicial review that protects fundamental rights (Kelemen, 2019, p. 250).

In recent years, the EU had experienced multiple threats from the Member States (MS) regarding the RoL (Palombella, 2017, p. 5). In 2010, respectively 2015, Hungary and Poland started an ‘illiberal’ path that put the European institutions in a challenging situation regarding what actions needs to be done to stop the breaches. The breaches done by the Hungarian and Polish governments mainly were in the judicial area. However, they also breached fundamental rights for ethnic and sexual minorities, as well as capturing the press and trying to place it under governmental influence (Zamecki & Glied, 2020, pp. 62-74). Therefore, for the first time since its foundation, the EU had member states that act as ‘illiberal democracies’ (Zamecki & Glied, 2020, pp. 58). Furthermore, the EU response was a weak one since it did not take concrete actions and avoided taking the ‘nuclear option’ (Soyaltin-Colella, 2020, pp. 12-14). For this reason, other EU MS, which are ruled by a party like those in Hungary and Poland, may be encouraged to follow the same breaches since there is no strong EU response in the RoL breaches. For instance, Romania is a crucial case which, according to Transparency International, had the lowest score on corruption between 2000 to 2007 from the current EU MS (Transparency International; Dimitrov & Plachkova, 2020, p. 6; Iusemn, 2015, pp. 593-595). Moreover, according to the same Corruption Index between 2008 and 2016,

it had the second-lowest score from the EU MS (Transparency International; Dimitrov & Plachkova, 2020, p. 6). Therefore, this thesis addresses the following question: *‘To what extent does the weak EU response in the case of the Rule of Law crisis in Hungary and Poland impact/encourage the other Member States to do the same breaches?’*

In the following sections, this thesis will present the policy transfer of RoL breaches from Hungary and Poland to Romania. The policy transfer is expected to happen through institutional transfer from Poland and Hungary to Romania. In the research design part, it will be presented the main concepts used in this research and how they have been analysed. Moreover, the research methods section will present the method of process-tracing used to explain the research question. The findings establish that a policy transfer of RoL breaches to Romania occurred, and the weak EU response is a reason for it.

## 2. Breaching the rule of law in the EU: a short overview

### 2.1. The breaches of the Hungarian state

In Hungary, the RoL crisis had theoretically started in 2010; however, since 2006, when the rising populism speech of the Hungarian Civic Alliance (Fidesz), influenced the Hungarian population to see the former governments as the reason why the country's financial situation ended up bad (Zammecki & Glied, 2020, p. 63). In 2006 Fidesz, which was in the opposition at that time, launched a political attack on the socialist party showing that the country development is based mainly on loans and not direct investments for long-term prosperity (Zammecki & Glied, 2020, p. 63). The speech of Fidesz gained the attention of an angry electorate, which in 2010 voted massively for the party (Zammecki & Glied, 2020, p. 63). The newly installed government of the Fidesz did not wait too long, and the same year it started to amend the Constitution (Smith, 2019, p. 570). Later in the same year, Fidesz adopted a new Constitution, which scholars described as an ‘illiberal constitution’ (Drinoczi & Bien-Kacala, 2019, p. 1142).

Since then, Orban’s cabinet and the parliamentary majority started to go around the RoL values by creating illiberal policies (Raube & Costa-Reis, 2021, p. 631). Significantly, they replaced judges by creating new laws concerning the retirement age, they put the public service broadcasting under control of the government and started to diminish minorities rights (Smith, 2019, p. 571; Raube &

Costa-Reis, 2021, p. 631). The Hungarian government also created a new church law, a law against the philanthropist George Soros by permitting a ban on the organisations owned or funded by his foundation in Hungary (Zammecki & Glied, 2020, pp. 66-67). It also increased the hate against refugees through political speeches, created a special tax for immigration, and continuously attacked through hate speech the LGBTQ community (Zammecki & Glied, 2020, pp. 66-67). Orban's cabinet created policies to facilitate foreign investment, which for many ordinary people is something worth more than RoL values (Rech, 2018, p. 337)

## 2.2. The breaches of the Polish state

In Poland's case, the breaches in the RoL started with the election of the Law and Justice Party (Prawo i Sprawiedliwość, PiS) as the majoritarian party in 2015. PiS is the first party in the history of democratic Poland which created a government without being supported by other parties (Zammecki & Glied, 2020, p. 71). As in the case of Hungary, the Polish leader started to portray himself as a saviour of the ordinary people who will bring the traditions and conservative values back (Rech, 2018, p. 338). Also, the reason why the right-wing party won is similar to the one in Hungary. The Polish people felt that the country is going in the wrong direction, lacking employment possibilities and a flawed welfare system (Zammecki & Glied, 2020, p. 71). Poland started to breach the rule of law with the same procedures as Hungary did earlier in the 2010s (Raube & Costa-Reis, 2021, p. 631). It started with breaking and imposing fear of speech freedom, trying to retire judges, putting media under the influence of the government, breaching minorities rights and tried to curtail civil liberties (Raube & Costa-Reis, 2021, p. 631; Kelemen, 2019, p. 255). In Poland, the government did not change the constitution as in Hungary (Smith, 2019, p. 570). However, it tried to 'capture' the Constitutional Court by putting it outside the separation of powers and giving it no power (Smith, 2019, p. 572; Kelemen, 2019, p. 255). Thus, the Constitutional Court of Poland could not exercise its meaning which is ensuring the check and balances in the state (Smith, 2019, p. 572; Kelemen, 2019, p. 255). As some scholars argue, Poland's actions can be categorised as a 'coup d'état' because it worked over the Polish Constitution by abusing it (Raube & Costa-Reis, 2021, p. 631). The Polish people, like the Hungarian ones, seemed to believe in the populist policies that the government did in matters of

economy and social welfare; thus, they let their governments adopt new laws which are breaching the RoL (Zammecki & Glied, 2020, pp.72-73).

### 2.3. The EU Response to the breaches of the rule of law

The EU response against the Hungarian breaches that started in 2010, was slow and it seemed that the EU was avoiding taking actions (Sedelmeier, 2017, pp. 345-346; Kochenov & Pech, 2016, pp. 1065-1066). President Barroso called article 7 a ‘nuclear option’ and avoided activating the article (Kochenov & Pech, 2016, p. 1064). Thus, the European Commission remained with no other procedures to combat the RoL crisis in Hungary, therefore in 2014, Barroso announced the creation of the Rule of Law Framework (ROLF) (Kochenov & Pech, 2016, p. 1063). The ROLF, accordingly to Barroso, was created to fill the gap between the existing procedures laid down in Art. 7 of the Treaty of the European Union (TEU) and Arts. 258-260 in the Treaty on the functioning of the EU (TFEU) (Kochenov & Pech, 2016, p. 1064). The ROLF had as a goal to evaluate when a member state is breaching the RoL and also to serve as a clear structure that needs to be followed in case of a breach (Soyaltin-Colella, 2020, p. 8). The new procedure made the European Commission have a dialogue with the member state by creating recommendations to what needs to be done and to evaluate if the member state is implementing the guidelines (Kochenov & Pech, 2016, p. 1066).

However, in 2015, the Vice-President of the Commission, Frans Timmermans, said that the Commission could not act against ‘polemics or speeches’, and only when there are concrete policies that break the RoL can the Commission act (Kochenov & Pech, 2016, p. 1068). Moreover, in December 2015, the Commissioner for Justice, Vera Jourova, declared that in the EU, there are still ‘no grounds’ to create a window of opportunity for activating ROLF or Art. 7 (Kochenov & Pech, 2016, p. 1068). In 2016, after a thorough examination of the situation in Poland, the Commission decided to start with the first phase of ROLF (Kochenov & Pech, 2016, p. 1069). However, the activation of ROLF for Poland through an ‘absolute discretion’ of triggering the framework and the lack of structure for implementation of the next phase without a clear agenda shows the Commission political influence for both triggering and moving forward in these types of circumstances (Kochenov & Pech, 2016, p. 1070). Moreover, the Polish government did not

cooperate through ROLF with the European Commission, therefore in December 2017, art. 7 was activated against Poland for continuously breaching the RoL (Kelemen, 2019, p. 255). However, the European Commission activation of art. 7 for Poland and not Hungary showed a partisanship problem in the Commission (Closa, 2020, pp. 4-5). The partisanship in EP occurred because Fidesz is a member of the European People's Party (EPP), which also happens to have the majority in the Commission (Closa, 2020, pp. 4-5). Thus it did not activate art. 7 against Hungary even though the Hungarian RoL breaches started in 2010 (Closa, 2020, pp. 4-7).

Furthermore, The Council of the European Union has been the most silent EU institution regarding taking actions on the breaches made by Hungary and Poland (Closa, 2020, p. 10). However, the situation of RoL in Poland and Hungary was discussed during meetings. It created the Annual RoL Dialogue, which had the goal to make the member states cooperate and promote their values, as well as to reveal each other breaches and call for actions against each other (Closa, 2020, p. 10). This Dialogue was not successful and created much tension because it would have promoted police-like behaviour from the member states, putting them in tension with one another (Closa, 2020, p. 10). However, the Council was cautious in taking any stand against Hungary and Poland because it believes that the EU is based on mutual prosperity instead of having common standards regarding RoL (Soyaltin-Colella, 2020, p. 9).

The European Parliament (EP) tried to sanction the democratic backsliding of Hungary and Poland the most from the EU institutions (Smith, 2019, p. 573). In Hungary's case, it voted for six resolutions between 2011 and 2018 to show the need of triggering art. 7 against Orbans' government (Smith, 2019, p. 573). In Poland's case, the EP had similar behaviour; however, it acted faster because, since the first breaches of RoL in 2015, it took less than three years to trigger art. 7 in March 2018 (Smith, 2019, p. 57). In the case of triggering art. 7 against Hungary, the EP avoided this, and 57 members of the parliament from EPP voted against it (Closa, 2020, p. 7). However, the EP managed in 2018 to vote for a preliminary inspection of whether Hungary is breaching art. 7 (Smith, 2019, p. 573).



As shown above, the EU institutions were avoiding taking concrete actions against Hungary and Poland. Also, the member states with a similar background as Hungary and Poland, primarily the Central and East Europeans, have been hesitant in taking a stand against the breaches of RoL out of fear of not giving involuntarily more power to the Commission or because of not caring enough about the situation (Closa, 2020, p. 11; Soyaltin-Colella, 2020, p. 9). This literature review showed that the EU failed to take concrete actions, and the measures taken have only deepened the RoL crisis. Thus, it is important to analyse if the weak EU response influenced other member states to follow along with the breaches done by Hungary and Poland, as they were not sanctioned for their actions.

### 3.Theoretical Framework

#### 3.1 Policy transfer and the rule of law

To evaluate how does the weak EU response in the case of the RoL crisis from Hungary and Poland encourage other new democracies to follow the same path of breaches, this thesis will focus on theories developed in the literature of policy transfer as well as on building a more tailored theory. Over time, the policy-transfer literature has developed in multiple ways. The following section presents a tailored framework expected to explain the RoL breaches in other new democracies (Dolowitz & Marsh, 2000, pp. 6-7). To clarify the meaning of policy transfer, it is best to use the definition of Diana Stone (2004) and Mark Evans (2009), which presents policy transfer as the way through which ‘cross-cultural knowledge’ is transferred from a country to another country, this includes an institutional transfer of policies or models of institutions (Evans, 2009a, p. 238; Stone, 2004, p. 545). The policy transfer framework presented by Dolowitz & Marsh (2000) shows how the policy transfer is tested for analysing the RoL breaches transfer (Dolowitz & Marsh, 2000, p. 8).

The policy framework of Dolowitz & Marsh (2000) focuses on the voluntary transfer of policies when local actors willfully seek policies from abroad because they are blocked by ‘structural obstacles’ from inside (Dolowitz & Marsh, 2000, p. 9; Legrand, 2012, p. 333). The transfer can have three modes: ideational, institutional, and networks of how the policies are transferred (Evans, 2009, p. 254; Stone, 2004, pp. 561-562). Therefore, the institutional model of transfer can

explain the transfer of policies from Country A to Country B (Stone, 2004, pp. 561-562). As argued by Stone (2004), the primary agents of transfer are the politicians who copy legislation or policy projects to follow the same path (Stone, 2004, pp. 561-562). The copying of policy is done from other states and implemented in the nation-states by the elected politicians, and they usually copy legislation and policy approaches (Stone, 2004, pp. 561-562). Also, Stone (2004) presents the institutional transfer as being 'path-dependent', which means that the politicians who are copying follow the same approaches, sometimes even in the same order (Stone, 2004, pp. 561-562). The lesson drawing as presented by Dolowitz & Marsh (2000) in the institutional transfer occurs when the agents of transfer are in the decision-making or implementation of the policy (Dolowitz & Marsh, 2000, p. 9; Stone, 2004, pp. 561-562). However, this can be blocked if the society is resistant to the changes; therefore, it can produce an internal blockage of the transfer and stop it (Stone, 2004, pp. 561-562). The blockage can occur because of external influences from an institution or internal resistance such as protests, 'political inertia' to the transfer (Stone, 2004, pp. 561-562).

The policy transfer theories presented by the scholars do not include an International Organisation (IO) such as the EU as being a moderator that impacts the transfer directly; therefore, the approach to the transfer is made through a 'multi-level approach' (Evans, 2009b, p. 254). In other words, the weak EU response is not present in the theoretical framework presented by Dolowitz & Marsh (2000) or Stone (2004); thus, it is essential to expect both 'direct' and 'indirect' transfers that occurred because of a crisis (Evans, 2009b, p. 254). 'Direct' transfer means a consciously copying and implementation of policies, and 'indirect' means a transfer that occurred more voluntarily with a more open path (Evans, 2009b, p. 254).

Therefore, the situation of a policy transfer that is inspired from Country A to Country B, through an opportunity seen by Country A in the lack of concrete punishments against Country B by Institution X it is not presented in the theoretical framework of the cited scholars (Dolowitz & Marsh, 2000, p. 9; Evans, 2009b, pp. 244-247; Stone, 2004, pp. 561-562). The scholars' theoretical framework of policy transfer is focusing on horizontal impact from an international organisation or a country; thus, it lacks vertical transfer from country A to country B because of horizontal impact on both countries from institution X (Legrand, 2012, pp. 333-334).

Furthermore, the policy transfer theory tested in this thesis expects that Country A and B are members of a supranational organisation to which they transferred some decisional powers and signed a binding treaty. The transfer of policy occurs at the institutional level, and it is done by the politicians in country A as a result of a weak action by the international civil servants/bureaucrats of the institution X to punish country B (Stone, 2004, pp. 561-562; Sousa, 2020, p. 144; Kochenov & Pech, 2016, p. 1064). In country A, a political party similar in doctrine to the one that does the breaches in country B is elected through a legitimate election. The politicians from country A, seeing that country B is breaching the law and is not being punished accordingly with the sanctions framework, gradually start doing the same breaches. Moreover, country A's politicians continue with the breaches and avoid criticising country B for the breaches since the policies implemented are encouraged and inspired by country B. Afterwards, the political transfer is completed, and country A reaches the level of country B in similar policies or country A as presented by Stone (2004), experienced stricter internal pressure from civil society and other political participants and does not finish the transfer (Stone, 2004, pp. 561-562). Therefore, as presented by Dolowitz & Marsh (2000), the transfer may end up being uninformed or incomplete (Dolowitz & Marsh, 2000, p. 9). As has been mentioned above, the theoretical expectation is that Country B, due to the weak response from the supranational institution, will do a transfer of policy from Country A.

## 4. Research Design

### 4.1. Conceptualization & Operationalization

To answer this thesis research question, the terms that need to be explained are 'the rule of law breaches', 'weak EU response' and 'same type of breaches'. The 'rule of law breaches' represents deviations of the EU MS from the treaties signed before they acceded to the EU (Kochenov & Pech, 2016, p. 1064; Blauberger & Kelemen, 2017, p. 325; Kelemen, 2019, p. 250). As is defined by the Commission, RoL establishes a pluralistic and democratic law-making process, a judiciary with an effective judicial review that protects fundamental rights (Kelemen, 2019, p. 250). Therefore, in this thesis, a breach will represent any noncompliance with the protection of all the values that a democracy must have: human rights, human dignity, pluralism, RoL and freedom of speech (Art. 2 TEU; Rech, 2018, p. 335). Thus, the concept of the role of law breaches' will be measured as changing the constitution towards an 'illiberal' one, as well as trying to replace judges

or diminishing minorities rights (Raube & Costa-Reis, 2021, p. 631; Dinoczi & Bien-Kacala, 2019, p. 1142),).

Moreover, another concept that will be used is the one of ‘weak EU response’. As presented in the literature review, the weak EU response is characterised by the avoidance of activating the designated frameworks or protocols, such as article 7 and by imposing sanctions in the measure of infringement procedures (Kochenov & Pech, 2016, pp. 1067-1070; Closa, 2019, p. 705). The weak response can come from any EU institution with jurisdiction to take actions in situations like this, The European Commission, the European Parliament and the Council of the European Union (Soylatin-Collela, 2020, pp. 2, 7-10). Therefore, it will be measured how long it took to the actors mentioned above to answer to the breaches that happened in Hungary and Poland with a resolution, activations of frameworks or infringement procedure (Raube & Costa—Reis, 2021, pp. 637-638; Smith, 2019, pp. 573-574). Lastly, the concept of ‘same type of breaches’ is understood as the breach by another country which is similar to the breaches made in Poland and Hungary by their governments (Smith, 2019, p. 570; Kelemen, 2019, p. 255). Therefore, constitutional changes to enlarge the government powers for longer, creating reforms in the judiciary system to facilitate the ruling party, promoting hate speech towards minorities and creating restrictive policies against the marginalised groups (Drincozci & Bien-Kacala, 2019, p. 1142; Raube & Costa-Reis, 2021, p. 631; Smith, 2019, p. 571). The same path of breaches is measured through the attempts of the ruling party to catch power undemocratically for the own benefit (Zammecki & Giled, pp. 72-73). Such as breaching and imposing fear of speech freedom, the retirement of judges or pardoning prisoners for political gains, reducing minorities rights and trying to capture civil liberties (Raube & Costa-Reis, 2021, p. 631; Kelemen, 2019, p. 255).

## 4.2. Case Selection

To further understand the theoretical framework, Romania it will be chosen as a crucial case to be investigated (Halperin & Heath, 2020, pp. 236-237). Iusmen (2015) used Romania as a crucial case for democratic backsliding in Central and Eastern Europe compared to Hungary (Iusemn, 2015, 593). Therefore, as argued by Closa (2020), we can observe that countries such as Romania and Bulgaria avoided in one way or another talks about the RoL crisis presented in Hungary and

Poland. For example, in early 2018, the Social Democratic Party – Partidul Social Democrat (PSD) delegation to the EP voted against the resolution to activate art. 7 against Poland (Digi24a, 2018). Therefore, it is crucial to analyse PSD's governance of Romania between 2016 to 2019 (Costea, 2019). Also, other member states had a fear to act against the breaches done by Poland and Hungary (Closa, 2020, p. 11). Therefore, this thesis will analyse Romania, which is a revelatory case that will help to apply the theory because it can show the impact of Hungary and Poland on Romania following the same breaches. This can raise critical questions for other East European countries (Halperin & Heath, 2020, p. 235). Moreover, Romania is a crucial case since it may confirm or not the theory presented two sections above; thus, it may create a path for understanding the risk of the RoL crisis for the EU (Halperin & Heath, 2020, pp. 236-237).

### 4.3. Hypotheses

As presented in the introduction, the research question of this thesis is *'To what extent does the weak EU response in the case of the Rule of Law crisis in Hungary and Poland impact/encourage the other Member States to do the same breaches?'*. The independent variable (IV) is the weak EU response in the case of the RoL crisis that happened in Hungary and Poland (Soyaltin-Colella, 2020, p. 2). In contrast, the dependent variable (DV) is the extent to which other Member States transferred the same breaches at the national level; even if not through the same channels, the breaches' goal is the same. The alternative hypothesis (H1) that will be tested in the research is *'The weak EU response in the RoL Crisis from Hungary and Poland, impacted Romania to follow the same path because it saw no consequences'*. Moreover, the null hypothesis (H0) that will prove that there is no relationship is *'The weak EU response in the Rule of Law Crisis from Hungary and Poland did not impact the other Member States to do the same breaches'*. These hypotheses lie in the neopositivism-rationalism because the impact can be falsified and empirically tested (Halperin & Heath, 2020, pp. 35-37, 46-47).

Therefore, to answer this question, the thesis is designed using a qualitative Single-N case study on Romania. The topic and the theory presented need an in-depth and intensive examination of the data collected (Halperin & Heath, 2020, pp. 234-236). To study the meaning of the case in accordance with the research question, the thesis will analyse both primary and secondary data,

such as documents, speeches, resolutions, media and newspapers articles (Halperin & Heath, 2020, pp. 196-202). The thesis will be analysed by using process tracing due to needed investigation of how the policy transfer happened and what policies are transferred (Ricks & Liu, 2018, p. 842). Process-tracing accordingly to Beach & Pedersen (2013) is defined as the need to go further than just research a correlation between variables (Beach & Pedersen, 2013, pp. 1-2). Process-Tracing aims to track the causal mechanisms behind phenomena, therefore offering a more complete analysis of the facts than other methods (Beach & Pedersen, 2013, pp. 1-2). Thus, doing an audit over the 'causal mechanisms' creates strong assumptions of the internal correlations, therefore the results of the correlation can be argued with an assurance that the variables explain the case (Beach & Pedersen, 2013, pp. 1-2).

Accordingly to Ricks & Liu (2018), process tracing focusing on a case study helps to create a testable causal inference since it focuses on details over a time period and selects a specific pool of events that are excluded until there is new evidence (Ricks & Liu, 2018, p. 846). Therefore, this thesis will focus on a period of three years by analysing different data to diminish any alternative explanation of why there are RoL of breaches in Romania (Ricks & Liu, 2018, p. 845). Thus, the data analysis will be a design composed of analysing the findings, which will provide in-depth explanations of the primary and secondary data (Halperin & Heath, 2020, pp. 195-205). Furthermore, the process tracing will provide substantial within-case assumption of the case study; thus, it will increase the internal validity of the research (Beach & Pedersen, 2013, p. 2). Moreover, it is essential to acknowledge that this thesis used a single-case study, therefore, it has high internal validity for the findings, but it lacks external validity. Thus, it is crucial to consider this aspect when generalising Romania to other countries from East Europe (Halperin & Heath, 2020, pp. 234-236). The empirical data used by this research include various sources such as journalistic investigation, speeches of politicians, around 40 newspapers and blog articles and information obtained from the official sites of the political parties. Therefore, the data analysed came from many sources that increase the quality of the analysis.

## 5. Background

Since 1989, after the falling of the iron curtain in East Europe, Romania started a transition to democracy. However, Romania had one of the slowest paths to democracy than countries such as

Hungary and Poland (Nitoiu, 2015). The slow progress was mainly because 42 years of communism impacted the society incredibly deep that the new democratic values were seen as too extreme for the conservative Romanian society (Nitoiu, 2015). In 2007, Romania managed to join the EU and seemed to be on a good track, even though it still had high corruption in the public institutions and low transparency (Nitoiu, 2015, Iusmen, 2015, p. 594). As a condition of EU accession, Romania had to implement a 'co-operation and verification mechanism (CVM) which had the main goal to allow the Commission to control how Romania's anti-corruption fight is evolving (Iusmen, 2015, p. 594). In fact, Romania is generally perceived as suffering from systematic corruption since in 2019, the Freedom House gave Romania 57 point in the democratic index and between 1989 to 2018, Romania increased from 7 (Not Free at All) points to only 2 (PartlyFree), making Romania second from the last in Europe on the freedom rating (FreedomHouse, 2019; Puddington, 2019). Therefore, accordingly to Freedom House, Romania is still not a completely free country (Puddington, 2019).

Five years after the ascension to the EU, Romania had the first RoL crisis when PM Victor Ponta violated protocols and constitutional law by using emergency ordinances (OUG) to impeach President Traian Basescu (Iusmen, 2015, p. 595). The PM Victor Ponta and his coalition Social Liberal Union (USL) ignored the ombudsman in calling a referendum to impeach the President (Iusmen, 2015, p. 595). However, the referendum failed due to quorum requirements (Iusmen, 2015, pp. 594-596).

Moreover, because President Basescu was not dismissed from office, the RoL in Romania still had an institution of support and protection against the USL wish to capture the judiciary system for its benefit (Iusmen, 2015, p. 596). In 2015, a tragic fire ended up in the loss of lives due to a club working under a fake authorisation (Nitoiu, 2015). The fire has been interpreted as a result of the corruption existent in the system (Nitoiu, 2015). Thus the PM Victor Ponta has been forced to step down (Nitoiu, 2015). A new technocratic government came to rule the country for one year until the legislative elections in 2016 (Nitoiu, 2015). Furthermore, in the 2016 legislative elections, PSD won the elections with around 45% of the votes support which made the same party that created a RoL crisis in 2012 rule Romania again (Volintiru & Stefan, 2016).

## 6. Presentation of the data

### 6.1. Judicial Reforms - Pardoning of prisoners

Romania, through PSD, tried to transfer judicial reforms such as legislative proposals to retire earlier the judges, to create ways to control the judicial bodies, to changes the way prosecutors and judges are nominated (RadioEuropaLiberaRomania, 2019). They also gave power to the government to create an emergency ordinance - Ordonanta de Urgenta (OUG) on judicial policies (RadioEuropaLiberaRomania, 2019). Therefore, the government of PSD can create judicial reforms transfer without going through the Parliament (Stanescu, 2017; PS News, 2020).

To show the policy transfer of Romania, it is essential to explain the speech of Liviu Dragnea from December 2018, two years after the election of PSD as the ruling party and then explain what breaches have occurred in Romania since the election of PSD (Stanescu, 2017). Liviu Dragnea, between 2017 and 2019, was not the PM of Romania but was the Leader of PSD and the one who created the whole governmental plan for his party (Stanescu, 2017). In December 2018, the National Council of PSD (CN), which is the body that analysis and develops public policies, had a meeting in which Liviu Dragnea offered a two-hour speech (PSD, 2021; Dragnea, 2018). In this speech, Liviu Dragnea argues that the European authorities have wrongly seen his party's measures from the past two years as breaches of the RoL (Dragnea, 2018). He says that Romania has been accused of 'stuff' that happens all over Europe; therefore, the policies implemented by PSD are not the only ones of this kind in the EU (Dragnea, 2018).

In a reproduced conversation between him and the European authorities, he argues that the European authorities told him to stop the procedure regarding judicial reforms, pardon of prisoners and to ensure that Romania Constitutional Court – Curtea Constitutional Romana (CCR) is independent and transparent (Dragnea, 2018). Hearing this, the leader of PSD presents as a reason for all this critique from the EU, the membership of PSD at Socialists & Democrats (S&D), and Orban's party Fidesz at EPP (Dragnea, 2018). Therefore the EU authorities punish PSD only because they 'need someone from S&D as well' (Dragnea, 2018). Later on, Dragnea makes direct reference to Hungary being punished for the RoL breaches. He is saying that he is not aware of the situation there and is not in the position to criticise a country that is democratic and has a



government that has been elected by a majority of its citizens (Dragnea, 2018). Also, he argues that ‘Any country (who is democratic) has the right to decide its own destiny [...]. Any legitimate institution from any country which has the legitimacy of the voting given by the citizens has this right’ (Dragnea, 2018).

Therefore, Dragnea argues that Romania should also have the right to choose its own destiny as well as Hungary and Poland do (Dragnea, 2018). The leader of PSD also mentions that CVM can be resolved in a year (Dragnea, 2018). However, he believes that the following year, the European authorities will bring new fake points that need to be reformed, only to keep Romania silenced at the European level (Dragnea, 2018).

The first cabinet of PSD after the legislative election in 2016 was the one of Sorin Grindeanu (Stanescu, 2017). PM Grindeanu, nominated by PSD after the election in December 2016, had started to breach the RoL in Romania from the first month in office (Stanescu, 2017). As in Hungary and Poland, the Grindeanu cabinet started the crisis with judicial reforms (Stanescu, 2017; Raube & Costa-Reis, 2021, p.631; Kelemen, 2019, p. 255). The PM of Romania, during an emergency meeting scheduled in the night, adopted the OUG 13 (Stanescu, 2017; PS News, 2020). However, the OUG is allowed only when there is an emergency, and the situation makes it impossible for the law to take the traditional way through Parliament (PS News, 2020). Therefore, the PM argued later that this is an emergency because of a decision from the European Court of Human Rights (ECHR) that accused Romania of having too busy prisons and possible fines that may come from the ECHR (Stanescu, 2017; PS News, 2020.)

Furthermore, the OUG 13 included reforms for the Penal Code and Penal Procedure Code and a legislative proposal to pardon some punishments such as abuse of power and negligence at work which would have also helped the Leader of PSD Liviu Dragnea (Stanescu, 2017). Even though the PM argued that they need to apply the ruling from ECHR and some CCR decisions, they did more judicial reforms than needed, some with a particular target group (Stanescu, 2017). For example, it tried to decriminalise abuse of power when the prejudice is smaller than 40.000 euro; therefore, some PSD politicians will benefit from the reform (Stanescu, 2017). The decriminalisation of the abuse of power included the public servants such as mayors, President of the Regional Council (Presedinte de Consiliu Judetean), to not be anymore directly responsible for

normative acts they created, therefore they would not have been anymore accountable for what they do (Stanescu, 2017). Thus, these reforms made by PSD tried to make Romania look like Hungary and Poland, with less stable separation of powers and undemocratic measures (Smith, 2019, p.571; Raube & Costa-Reis, 2021, p.631; Kelemen, 2019, p. 255). However, after mass protests, the largest protests since the 1989 revolution, the OUG 13 has been cancelled, but this did not end the judicial reforms attack from PSD (PS News, 2020; Matei, 2017).

During 2016-2019 legislation, PSD's judicial reforms continued with three different PMs (Andrei, 2020). Each of them being dismissed by its party because they continuously failed to find a way for transferring judicial reforms that will capture the independence of justice in Romania for the benefit of PSD politicians and associates (Andrei, 2020). However, the judicial reforms moved into the Parliament where the coalition led by PSD voted to create the Special Section for Investigation of Criminal Acts in Justice (SIIJ) to pressure the judges and prosecutors not to investigate or accuse politicians of their acts of corruption (Burla, 2020).

Moreover, the SIIJ most anti-democratic, pro-corruption action, similar to Hungary and Poland judicial reforms to put the justice under political influence, was the accusation of National Anti-Corruption Directorate (DNA) Director-Prosecutor, Laura-Codruta Kovesi (Burla, 2020; Zammecki & Glied, 2020, pp.69-73; Drinoczi & Bien-Kacala, 2018, pp. 1143-1153). The accusations against Laura-Codruta Kovesi were mainly because, under her control the DNA, had the most active cases opened against politicians for corruption or abuse of power investigations in the history of democratic Romania (Nita, 2018; Burla, 2020; Mediafax, 2018). Therefore, the PSD tried to capture this part of the judicial system and put it under the control of the political bodies (Nita, 2018; Burla, 2020; Mediafax, 2018). PSD politicians managed to put pressure on President Iohannis to dismiss DNA Director-Prosecutor and put in place a less independent prosecutor that will be reductant in combating corruption around the Romanian politicians (Mediafax, 2018; Burla, 2020). Moreover, these actions of PSD since the day of one of its new mandate show how it tried to do precisely what Hungary and Poland did, to capture the judicial system in a way or another (Burla, 2020; Mediafax, 2018; Raube & Costa-Reis, 2021, p. 631). If Poland and Hungary obliged judges to be retired earlier, Romania tried to control them as well as the prosecutors by

creating SIIIJ and make them more scared to act independent (Burla, 2020; Mediafax, 2018; Raube & Costa-Reis, 2021, pp. 631-633; Kelemen, 2019, p. 255; Smith, 2019, p. 571).

## 6.2. Referendum ‘Traditional Family’ & Victimized Feeling

In this section, it will be argued that another policy transfer that PSD tried to implement it copying Hungary and Poland, is the referendum for ‘Traditional Family’ (Drinoczi & Bien-Kacala, 2019, p.1142; Udistanu, Munteanu & Marin, 2018). Moreover, the same type of action has happened in Hungary in 2011 and Poland in 1997 (Gray, 2012; Gulyas, 2010). The Hungarian Referendum for changing the constitution organised under Orban’s ruling to turn a democratic constitution into an ‘illiberal constitution’ also included a ban on gay marriage, and it can be argued that it followed the same path as Poland did in 1997 (Gulyas, 2010; Gray, 2012; Drinoczi & Bien-Kacala, 2019, p.1142). If, in the case of Poland, at that time, PiS did not exist as an individual party that supported the new Constitution (Gulyas, 2010; Easton, 2019). In the case of Hungary, Fidesz was the main actor that wrote and campaign for the new Hungarian Constitution, which in regards to LGBTQ rights it was inspired by the Polish one (Gulyas, 2010; Easton, 2019).

In 2018, PSD decided to take into account a petition organised by the Coalition for Family (CPF) together with the Orthodox Church of Romania – Biserica Ortodoxa Romana (BOR) to change the article regarding how a family is defined in the Constitution of Romania (Viski, 2019). PSD tried to ban any possible future gay civil partnerships/gay marriage rights, including the term “a man and a woman” in the definition of a family (Viski, 2019). The Referendum was not the idea of PSD from the beginning. However, the leader of PSD saw it as an opportunity to gain capital of image after the hard 2017 in which they continuously tried to capture the justice system (Viski, 2019). As Fidesz and PiS, PSD political benefits comes from association with the Church, and therefore, supporting and helping to obstruct gay rights in Romania, it is seen as an excellent opportunity to gain more popular support (Easton, 2019; Viski, 2019; Palickova, 2019). Thus, the Romanian Parliament, where PSD has the majority, voted to organise the referendum for changing article 48 from the Constitution of Romania (Digi24b, 2018; Mediafax, 2018). The question raised at the referendum asked the citizens to agree or not with the new version of art. 48: ‘A family is made by marriage between a man and a woman’ (Digi24b, 2018).

Furthermore, during the campaign for the referendum that was organised in October 2018, on the period of two days to be able to gain as much as possible people to come to the polls, PSD publicly mentioned that they would not campaign for the referendum (Rotaru, 2018; Mediafax, 2018; V.M, 2018). The S&D tried to assure that PSD does as it says and invited the PM Viorica Dancila at the EP to meet all the S&D members in the EP (V.M., 2018; Udistanu, Munteanu & Marin, 2018, Rotaru, 2018; Michalopoulos, 2018). In the meeting from Bruxelles, the S&D continually asked the Romanian PM to assure that it is not following the same path as Hungary and that it sticks with the left-wing ideology (V.M, 2018; Udistanu et al., 2018; Michalopoulos, 2018). As showed by Recorder (2018) in their journalistic investigation, the PM Dancila argued during the S&D meeting that PSD would only do a campaign of informing the population about the referendum and will not take sides (Udistanu et al., 2018). However, PSD organised with their political body of mayors, senators and priests, multiple ‘campaign of informing’ around rural Romanian villages, which were not impartial and showed that the representatives of PSD are telling citizens to go and vote at Referendum (Udistanu et al., 2018; Rotaru, 2018; V.M., 2018).

Moreover, another journalistic investigation showed that PSD paid different advertising spots to be delivered on the TV posts under their influence (M.K., 2018). Thus, it can be argued that PSD was saying something at the European level and was portraying a democratic impartial image. However, at the local level, it was doing the opposite. In the last week prior to the referendum, PSD leader Liviu Dragnea declared that he is going to vote because he believes in the traditional orthodox family and because he understands that some citizens are afraid that Romania in the future may legalise the marriage between “a human and an animal’ (Digi24b, 2018).

Furthermore, the referendum did not pass the voting threshold because the opposition campaign of boycotting the voting won over the traditional family (Viski, 2019). Therefore, even if 93% of the referendum votes were for banning future gay marriage, those only made 20% of the total voting population (Viski, 2019). Thus, the strategy of PSD failed, and their political advisor, which happens to be the same as those of Viktor Orban from Hungary, failed to de-stabilize the RoL in Romania and gain a better image for PSD (Michalopoulos, 2018).

In the first half of 2019, the PSD leader Dragnea declared in an open letter to the Vice-President of the Commission Frans Timmermans that Romania does not have any unconstitutional judicial

reforms and that RoL in Romania has not suffered (Agerpres, 2019). However, after the EP elections in May 2019, Liviu Dragnea received the sentence for one of his corruption trials and was put in jail (Digi24, 2019). Therefore, PSD started to slow down with the judicial reforms, and in late 2019, the government of Dancila received a vote of no confidence and has been replaced by a liberal government (Andrei, 2020; Costea, 2019).

## 7. Evaluation

The analysis presented above shows that PSD tried to implement a policy transfer from Hungary and Poland. Mostly, the leader of PSD, Liviu Dragnea, controlled the judicial reforms done by PSD. They tried to create a lesson drawing through institutional transfer as presented in the theoretical framework (Dolowitz & Marsh, 2000, p. 8; Stone, 2004, pp. 561-562). The transfer was done mainly by the politicians, and they tried to copy both legislation and policy approaches (Stone, 2004, pp. 561-562). As shown above, the judicial reforms implemented by PSD and Liviu Dragnea's interview from December 2018 shows that in one way or another, they looked at Hungary and Poland as examples to copy policy transfers. Also, the weak EU response in Hungary and Poland encouraged PSD not to be scared by any reform they are doing in destabilising the RoL. Liviu Dragnea or other PSD ministers continuously accused the EU of being political in criticising when Romania has been accused of going on a wrong path or that it has too much corruption (Agerpres, 2019; Digi24, 2017). The evidence presented has shown that the referendum for the traditional family is clear evidence of PSD trying to obscure minority rights as well as Hungary and Poland did to gain more trust from the citizens and to create their 'illiberal' state.

In line with the hypothesis presented two sections above, and after the analysis, the null hypothesis (H0) was rejected. Therefore, the alternative hypothesis states that the weak EU response in the RoL crisis from Hungary and Poland impacted Romania to follow the same type of breaches because it saw no consequences. Thus, the analysis proved the policy-transfer theory presented in the theoretical framework. Also, as presented by Dolowitz & Marsh (2000), the policy transfer may end up being uninformed and incomplete, and this happens precisely in the case of PSD. PSD received a lot of local opposition for all the judicial reforms and referendum for the traditional family. Therefore, their transfer suffered from divergence and ended up being incomplete (Stone, 2004, pp. 561-562; Dolowitz & Marsh, 2000, p. 9; PS News, 2020; Matei, 2017).

## 8. Conclusion

The evidence presented has shown that RoL crisis breaches spread to Romania through policy transfer because the European institutions had a weak response in combating the first two countries doing these types of breaches. The weak European response went hand-in-hand with the more conservative-populist parties, which saw it as an opportunity to do the same breaches and more. Additionally, the speech of PSD leader, Liviu Dragnea, exposes the source of the policies done by PSD in judicial and therefore establish that Romania tried to follow Hungary and Poland. It has been demonstrated that Romania tried to change judicial bodies independence through retirement, changing the nominations process of magistrates, they tried to capture the neutrality of prosecutors, and they tried to limit minorities rights. Furthermore, PSD was not successful from the first try with the judicial reforms; however, they tried to capture the Director-Prosecutor of DNA to ease the investigations over corrupted politicians. Also, they continuously tried to make judicial reforms and any time the EU comment on the reforms, PSD argued that also other countries do the same breaches and are not punished. Therefore, this proves that the policies were not only standard; these policies were transferred from Hungary and Poland with the objective of creating a similar situation in Romania.

During the referendum for ‘traditional family’, PSD tried to show a neutral image regarding LGBTQ rights at Bruxelles. However, they were doing the exact opposite in Romania. The PSD campaigned, while they said they would not, and made people vote for a ‘traditional family’. These actions showed that PSD was looking over at Fidesz and PiS to adopt the policies and the approach on the population to gain their support for other further reforms. Clearly, all the above-presented breaches had also happened in Hungary and Poland. The only difference is that in Romania, the policy transfer ended being incomplete since Liviu Dragnea ended up in prison in May 2019. This thesis has some limitations. For instance, the process-tracing single-case study research methods have high internal validity, but it may be hard to generalise other countries' cases. Even though the research question has been proven, a possible generalisation to other East European countries needs to be made with caution to a country with a similar background as Romania.

Also, this thesis could have analysed in more depth the meaning of the words to establish a higher causality. This leaves us with some notes. First, the weak response of the EU has been confirmed

that it is a window of opportunity for other countries to follow Hungary and Poland breaches. Secondly, if the EU does not find concrete solutions to punish Hungary and Poland in the future, then other countries will try to do a policy transfer as Romania did, and they may do a complete transfer. Thirdly, even though PSD did not finish the policy transfer, that does not mean that it is impossible to try it again when they may win again. Lastly, more scholars must research policy transfer in the EU regarding the RoL breaches to help us understand the process of how countries encouraged each other to follow the same breaches.

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