



Issue: Establishing measures to strengthen the separation of powers

Forum: European Council

Position: Chair and Deputy Chair

Name: Ece Ağalar and Oscar Bonnefon

Introduction

Separation of powers is a form of governance. It is based on the system proposed by Montesquieu which is to distribute the political power among a legislature, a judiciary, and an executive. The principle of separation of powers is important for a state since it distributes the power to different bodies preventing its cumulation to a single hand. States need the distribution of power to acquire a better run state inspected by various branches which are the professionals of their field.

There are states which are not run by this system and some who are failing to properly impose it on their way of managing. There are some countries within the second group mentioned above in Europe. It is very crucial to protect and strengthen the system in these countries in order to keep the objectivity of the actions and to prevent the overuse of power by a single hand.

Definition of Key Terms

Checks and balances: This is the principle of supervision of each branch over the other two. By doing this the state doesn't only divide the power into branches but it also guarantees that this division is protected. It gives the legislative power to branches to defend themselves and also to have a say on each other's actions. With this principle, the branches balance each other while avoiding the abuse of state power.

Fusion of powers: This is a component of some parliamentary systems. This form can be contrasted with separation of powers since in it the legislative and executive branches overlap.

Autocracy: In this form of government exactly the authority is fully in the hands of one person giving that individual absolute power. The system of separation of powers is also important to hinder the countries tendencies to move back to this system.

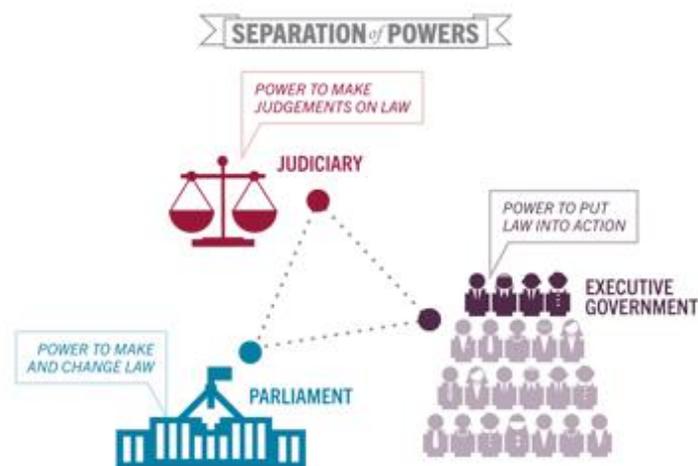
General Overview

As stated before the system was first suggested by Montesquieu but in today's society, degrading the meaning of the principle separation of powers to only the separation of three main branches of the state would be a mistake. In today's society separation of

powers gained a new dimension which is on a social level. This doesn't only refer to the separation of state organs but also to the balance of the social forces which affect the decision-making process

within these organs. So the representation of different ideas of groups of people should be a part of the discussions.

The only thing that is balanced and supervised shouldn't be the branches. These branches also need supervision within themselves for this system to work effectively. At this point, the representation of different ideas becomes noteworthy. In order for the branch to be checked and supervised within itself, it



needs different voices. This means that if a government is electing and designating officials to these branches without objectivity, by favoring the opinions of themselves, they would be deactivating the inspection and controlling mechanisms working for the decisions coming out of the branches. This lack of representation would also harm the effectiveness of the control mechanism, checks, and balances, between the separated branches.

This idea is embedded in the concept of democracy in which everyone's voice counts. Democracy, contrary to the conventional understanding, doesn't only refer to the electoral process of choosing a governor. Democracy refers to opportunities for declaring the opinions of various social groups. This would require the right to speak in the decision-making processes. Therefore, leaving the full power of a branch to one representative would be hindering the principle of separation of powers to perform its responsibilities and the progression of democracy. Considering all these, it should be unacceptable, when states which claim to practice separation of powers, also claim that it doesn't mean that the principle is violated if the branches are run by the individuals from the state.

On a different level, this principle can be violated by the hands of the

government itself. In some cases, when the government designates individuals, intervene with the decisions and exercises of the branches or single-handedly gives decisions and makes changes with the way things work it directly shifts the concept of separation of powers to its

Separation of powers vs. fusion of powers

Separation of powers		Fusion of powers
Executive	Legislature	Executive
↑ <i>elect</i>	↑ <i>elect</i>	↑ <i>elect</i>
Voters	Voters	Legislature
		↑ <i>elect</i>
(Presidential systems)		Voters
		(Parliamentary systems)

contrary: the fusion of powers. In this case, the power starts to accumulate on a single hand, this hand can be the government, the prime minister or a political party, corrupting the democratic way the countries work. If left uncontrolled, this situation could even lead to an autocratic regime. In order to prevent this, the separation of powers should be well understood, strengthened and protected by each state.

Major Parties Involved

Hungary: Hungary, officially changed the article about the separation of powers in the constitution with the fourth amendment despite the oppositions and protests in the country and the efforts of the European Union. Former Hungarian president, Laszlo Solyom said that this change says that there will be no separation of powers in Hungary anymore. With this change, the judicial branch lost a lot of power. For instance, they became only eligible for reviewing and passing a decision procedural wise but not content wise making it easier for the leaders to present amendments without much supervision and chance of getting opposed.

Poland: In Poland, the government started to interfere with the constitutional branch by designating individuals in 2015. When an amendment to change the constitution to limit the powers of the judiciary, meaning the courts,



was proposed, the courts objected to it creating a constitutional crisis. Later, a couple of laws were passed which made it possible for the Ministry of Justice to appoint the judge they want to any lower court. This is a situation similar to that of Hungary's which raised concerns in the public and the European Union.

Previous attempts to solve the issue

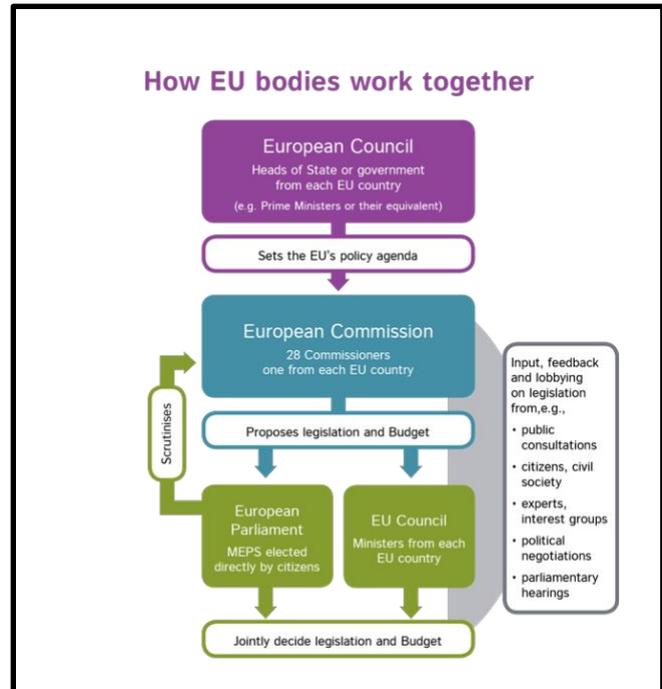
To this day, there have been no major attempts to help reform countries such as Hungary and Poland. The media does little to no coverage on the matter, outside of their own country, and the only real opposition the governments of the aforementioned countries have faced is the general uproar of the populous. Hungary has seen many public demonstrations calling out the government for centralizing the power over jurisdiction and law in the country.

The President of the European Union *did* attempt to set up discussions and urged the former president of Hungary to revise their actions, and stop the path towards power centralization. But the European Union does not hold the power to meddle in the internal affairs of its members, only on the external affairs such as trade, movement through Europe.

Possible solutions

Follow European Union Structure

The European Union has already set up a few institutions within the Union in order to help not only to run the entire operation but to also to aid in the separation of power. It has created the **Council of the European Union**, which is the heart of the Institutions and takes care of executive and legislative matters. It founded the **European Commission** and the **European Council** which take a role in legislative/judicial matters and



executive affairs respectively. Furthermore, there is the **European Court of Auditors**, which takes care that the budget of the EU is being used correctly and constantly looks for possible corruption or misuse of the funds. Then, there is the **European Parliament**, who takes care of legislative matters. Lastly, we have the **Court of Justice of the European Union**, which is a judicial court for procedures regarding the EU.

The EU has one of the most transparent and clear structures to implement the separation of power, and if a country or organization truly wants to implement such ideas, a great place to start is to take example on the structure and various institutions of the EU and adapt it as one likes. What makes the structure of the EU effective is that there are multiple checks and debates in various other institutions rejecting and amending laws and regulations produced, meaning that

no institution can impose any kind of decision without the approval of all other sectors of the Union, and its members.

Give Incentives

As the E.U does not hold the power to change the government structure of its members, and can only advise, and let the country govern itself. It is crucial that the European Council finds a way to give an incentive to countries such as Poland and Hungary, and make them want to change for their benefit by their own free will, not force them and face “consequences”. The European Union is not here to force decisions upon countries.

Maybe an idea is to create campaigns to inform Europeans about the happenings in such countries and help fund opposition to radical politicians who are trying to centralize power.

But in conclusion, there should be benefits for a country if they chose to separate powers, such as maybe closer ties to the E.U’s already existing institutions. (Be creative!)

Timeline of Key Events

Date	Description
1787	This form of governance was implemented for the first time in the Constitution of the United States.
1831	Belgium implemented the tripartite system, the power is divided into three main branches, with the constitution prepared.
12 July 2017	Poland passed two laws which enable the government to interfere with the judiciary branches.
July 2018	The European Commission opened a legal case against Poland because of the new framework of the constitution.
12 December 2018	Hungary passed a law to establish courts that are directly monitored by

	the government interfering with the freedom of the judiciary.
--	---

Appendix/Appendices

<https://www.dw.com/en/hungarys-parliament-ends-separation-of-powers/a-16665707>

http://www.europarl.europa.eu/doceo/document/E-8-2017-005406_EN.html?redirect

<https://www.reuters.com/article/us-eu-poland-chronology/chronology-poland-clashes-with-eu-over-judicial-reforms-rule-of-law-idUSKBN1JU25U>

Bibliography

Çelik, İrfan, Dr. "Kuvvetler Ayrılığı: Bir İndirgeme Ve Dönüşüm." *Liberal Düşünce* 64 (2011): 135-59. Web.

Heath, Sheena. "Separation of Powers vs. Fusion of Powers." *Slideplayer*, Slideplayer.com Inc.

Károlyi, Georges, Ambassador. "Le Mot De L'Ambassadeur De La Séparation Des Pouvoirs." Ambassade De Hongrie à Paris - Magyarország Nagykövetsége, Párizs. Facebook, 19 July 2017. Web. 15 Jan. 2019.

"New Laws Undermining the Separation of Powers in Poland." European Parliament. European Union, 31 Aug. 2017. Web. 22 Jan. 2019.

"Poland's Assault on the Separation of Powers." *Financial Times*. The Financial Times Limited, 18 July 2017. Web. 15 Jan. 2019.

"Separation of powers." Wikipedia, Wikimedia Foundation, 14 Jan. 2018.

Skarzynski, Janek. "People demonstrate in front of the presidential palace in Warsaw after the president announced he would veto two

controversial bills on Monday.” *Getty Images*. Lindsay Maizland, Vox Media, 24 July 2017.

Than, Krisztina. "Hungary to Set up Courts Overseen Directly by Government." Reuters. Thomson Reuters, 12 Dec. 2018. Web. 22 Jan. 2019.

Włodarczak-Semczuk, Anna. "Chronology: Poland Clashes with EU over Judicial Reforms, Rule of Law." Reuters. Ed. Gareth Jones. Thomson Reuters, 04 July 2018. Web. 24 Jan. 2019.

Verseck, Keno. "Hungary's Parliament 'ends Separation of Powers'." DW. Deutsche Welle, 12 Mar. 2013. Web. 15 Jan. 2019.

https://en.wikipedia.org/wiki/European_Court_of_Auditors

https://en.wikipedia.org/wiki/Institutions_of_the_European_Union