

Appendix: International Comparison

Attacking the Courts: Lessons from Overseas

Authoritarian leaders in Turkey, Hungary, and Poland have followed a similar pattern of verbally attacking the legitimacy of the courts when the judiciary takes steps to curb executive actions. These strongmen have then acted upon this dangerous anti-judicial rhetoric by purging the courts, increasing the ruling party's power to appoint loyalist judges, diminishing the courts' jurisdiction, and refusing to abide by adverse court orders. President Trump's attacks on the courts are alarming not only because they delegitimize the judiciary, but also because they resemble the scripts these authoritarian leaders have employed to pave the way for the demise of the courts and the decline of democracy in their regimes.



Statements That Subvert the Courts

- **IN THE WAKE OF** a 2013 corruption scandal, Turkish President Recep Tayyip Erdoğan accused the courts of engaging in a “judicial coup” and seeking to develop a “parallel state” to overthrow his regime.
- **ERDOĞAN** mused that he would like to be able to supervise the judges:

“Now I ask: who will judge the [Supreme Council of Judges and Prosecutors]?...I

Actions That Undermine the Judiciary

REASSIGNING, DISMISSING, AND ARRESTING JUDGES

- **FOLLOWING DECEMBER 2013** corruption allegations, Erdoğan's ruling AKP party passed laws giving the justice minister greater authority over judicial operations, including appointing, promoting, transferring, disciplining, and dismissing judges.
- **SUBSEQUENTLY**, 45,000 police officers and 2,500 judges and prosecutors were reassigned to

Statements That Subvert the Courts

would like to judge them, if I would have adequate authority.”

- **ERDOĞAN OUTRIGHT defied** a 2014 ruling finding the construction of the presidential palace to be illegal:

“Let them tear it down if they can. They ordered suspension, yet they can’t stop this building. I’ll be opening it; I’ll be moving in and using it.”

- **ERDOĞAN denounced** a 2014 court order blocking legislation expanding the justice minister’s power over the courts, claiming that the ruling was political:

“If someone wants to be involved in politics, he should leave his chamber and put the robe away and start to do politics.”

- **SIMILARLY, JUSTICE Minister Bozdag said** he hoped that courts

“can be kept out of politics.”

- **ERDOĞAN dismissed** the courts as biased and compared them to a disease infecting the country:

“judges and prosecutors, who are at the disposal of certain powers instead of law and conscience, cannot maintain justice... For a great Turkey, for a new Turkey, we must cleanse all our institutions of cancer cells, starting with our justice system.”

- **ERDOĞAN cast doubt** on the court’s authority following its determination that the detention of two journalists was

Actions That Undermine the Judiciary

new jobs.

- **ALTHOUGH THE COURT LATER annulled** these legal changes, the government had already removed or reassigned a significant number of judges, and installed over 100 AKP-affiliated judges.

- **DESPITE THIS COURT RULING**, the trend of reassigning and removing judges continued for years. In 2016, the government issued a decree reassigning 3,750 judges and prosecutors, and promoting judges ruling in the government’s favor.

- **AFTER A FAILED 2016 COUP**, an additional 2,745 judges and prosecutors were suspended within hours of the failed coup.

- **AT LEAST 2,200 JUDGES** and prosecutors were placed in pretrial detention on suspicion that they were members of a terrorist organization, and 3,400 judges were permanently dismissed for the same reason.

- **IN ALL**, over one-fifth of Turkey’s judiciary has been removed.

LIMITING THE COURT’S AUTHORITY

- **FOLLOWING THE 2016 COUP ATTEMPT**, the government declared a state of emergency that remains ongoing.

- **THIS EMERGENCY** declaration grants the executive great power and prevents the courts from reviewing the president’s actions.

ENHANCING ERDOĞAN’S POWER TO SELECT JUDGES

- A 2017 law both reduced the number of judges and consolidated Erdoğan’s power to select judges. Erdoğan’s was granted greater power to appoint

Statements That Subvert the Courts

unconstitutional:

“I do not abide by the decision or respect it... The media should not have unlimited freedom.”

• **IN THAT SPEECH**, broadcast on live television, he also **warned** the court not to

“again attempt such ways which will open its existence and legitimacy up for debate[.]”

Actions That Undermine the Judiciary

judges and more influence over parliament, the other source of judicial appointments.



Hungary

Statements That Subvert the Courts

- **HUNGARIAN PRIME MINISTER VIKTOR ORBÁN** openly defied a 2012 court decision rejecting the government’s institution of a judicial retirement age, publicly stating that “the system remains.”

- **ORBÁN denounced** a 2013 decision overturning the government’s state-imposed natural gas price cuts:

“On behalf of the government I must say that the decision of the court is scandalous.”

He also said he would not accept the decision and would instead submit a proposal for even larger price cuts to parliament.

- **NUMEROUS LEADERS** within Orbán’s Fidesz party have condemned a 2013 ruling on foreign currency debt as “cowardly,” “irresponsible,” and raising “uncertainties” about the courts.

- **IN A 2014 speech** laying the foundation for building “an illiberal state,” Orbán derisively referenced that the U.S. courts could rule that the U.S. President had exceeded his power:

“Imagine this in Hungary, if Parliament were to sue the prime minister for encroaching on his power, and the court even sentenced him! For how much time can I stay in power in a situation like this?”

Actions That Undermine the Judiciary

FORCING JUDGES TO RETIRE

- **IN 2011, FIDESZ PASSED** a constitutional amendment instituting a judicial retirement age that forced nearly 300 judges into early retirement.

- **ALTHOUGH LATER annulled**, many judges were still removed from the courts prior to the ruling. (Notably, all of the judges appointed by Orbán dissented from the holding).

PACKING THE COURTS WITH POLITICAL ALLIES

- **ANTICIPATING THE NEED** to fill the vacancies caused by forcing hundreds of judges to retire, Fidesz passed a 2011 law establishing a National Judicial Office (NJO), entrusting the power to appoint, transfer, and replace judges to a single individual closely aligned with Orbán.

- **FIDESZ ALSO MADE** a slew of legislative changes to appointment rules for the constitutional court to place their political allies on the court, including:

- Allowing the parliamentary majority to appoint new members without input from the minority
- Increasing the number of judges on the court from 11 to 15
- Increasing the newly appointed judges’ term from 9 to 12 years, and
- Eliminating the age limit for the court

Due to these changes, the Fidesz government unilaterally appointed all 11 judges put on the Constitutional Court between 2010 and 2014, and

Statements That Subvert the Courts

- **FIDESZ MINISTER JÁNOS LÁZÁR** ridiculed a 2017 ruling requiring the government to disclose information about the use of public funds as resulting from the judge's personal animus against the government.

- **FIDESZ MP GYULA BUDAI** criticized the judiciary as a whole saying,

"They're all communists."

Actions That Undermine the Judiciary

rulings in recent years have tended to favor the government.

LIMITING THE COURT'S AUTHORITY

- **THE GOVERNMENT AMENDED** the constitution to curtail the court's jurisdiction over certain budgetary and taxation matters.

- **IT ALSO** restricted the ways in which people can access the court.

- **IT LATER** prohibited the Constitutional Court from reviewing all future constitutional amendments and nullified legal decisions made prior to the newly enacted constitution.

UPDATING THE CONSTITUTION TO OVERRULE KEY COURT RULINGS

- **THE GOVERNMENT** has also added constitutional provisions regarding the criminalization of homelessness, the definition of family, and the registration process for churches, reversing previous court decisions on these matters.



Poland

Statements That Subvert the Courts

- **SHORTLY AFTER COMING** to power in 2015, Polish ruling party leader Jarosław Kaczyński attacked the courts as

“the bastion of everything in Poland that is bad” because “all our actions could be questioned for whatever reason.”

He elaborated,

“If we are to have a democratic state of law, no state authority, including the constitutional tribunal, can disregard legislation.”

- **PIS LEADERS** undermined the court’s review of PiS laws seeking to restructure the court and limit the court’s ability to review legislation, refusing to participate in the court hearing, and calling it a meeting over

“espresso and cakes.”

- **THE PIS JUSTICE MINISTER** announced that the decision finding the laws unconstitutional

“doesn’t have any legal force and is not legally binding.”

- **ANOTHER** PiS minister said after the verdict that the court’s president

“increasingly reminds me of an Iranian ayatollah.”

Actions That Undermine the Judiciary

INTERFERING WITH JUDICIAL APPOINTMENTS

- **AT THE START** of his 2015 term, PiS-aligned president Andrzej Duda, refused to swear in judges appointed to the constitutional tribunal by the previous government and instead appointed new PiS selected judges.

- **WHEN THE PRESIDENT** of the constitutional tribunal’s term expired in 2016, PiS was criticized for procedural irregularities surrounding its appointment of a new PiS-affiliated judge for this prominent post.

LIMITING THE COURT’S REVIEW

- **PIS PARLIAMENT** passed several pieces of legislation regarding the role and functioning of the constitutional tribunal that diminished its ability to review cases, including:

- Ending the court’s ability to hear more significant cases first and requiring the court to hear cases in chronological order
- Requiring a quorum of 13 of the tribunal’s 15 judges to hear cases
- Changing the definition of a majority needed for a verdict from one-half to two-thirds.

- **PIS THEN PASSED** additional legislation:

- Instituting an age limit that would force

Statements That Subvert the Courts

Actions That Undermine the Judiciary

all the existing Supreme Court judges to resign

- Granting the National Council for the Judiciary the power to appoint judges and ensuring that this Council is staffed with PiS appointees.
- Giving the justice minister the power to fire judges

• **THE STATUS** of these latest changes is uncertain because Duda vetoed the portions dealing with the resignation of the existing Supreme Court Judges and ruling party's unilateral authority to appoint new judges via the National Council.

• **HE LATER DRAFTED** his own version of the legislation that would:

- Impose a retirement age that would cause about 40% of the Supreme Court judges to resign
- Increase lawmakers' role in selecting judicial nominees
- Create a Disciplinary Chamber within the Supreme Court to sanction judges for suspected corruption
- Permit "extraordinary appeals" of final judgments at the discretion of the justice minister

REFUSING TO ABIDE BY COURT ORDERS

• **THE PIS** controlled printing press has refused to print several constitutional court rulings preventing them from taking legal effect