

What the Rule of Law Is About. Narrating Its Foundations

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The term ‘rule of law’ has been present in the parliamentary debates analysed since the beginning of our period of investigation in all countries. Our study of the hundreds of documents for Czechia, Hungary, Poland, Romania and Slovakia shows that the term was often used interchangeably with concepts such as ‘(national) constitution’, ‘constitutional state’ or ‘constitutionality’ (in Czech, for example, *ústavnost*). In general, national constitutions were used as a point of reference and symbol of the rule of law, often combined with an invocation of the political self-empowerment of 1989. When MPs spoke about the purpose of the rule of law, they often considered the historical context and the significance of the democratic transition, emphasising that the constitution and the rule of law have meaning beyond technical and legal aspects. In such cases, a reference to the constitution was much more than a remark about a specific legal document. Politicians associated the constitution with the choice of a particular political regime, as could be deduced from the reference context.

In this chapter we present our analysis of how MPs referred to the foundations of the rule of law, more specifically their narratives about the purpose, elements and sources of legitimacy of the rule of law. We show that in their speeches parliamentarians in these countries agreed on relevant aspects of the foundations of the rule of law and that the mentions of these aspects followed a similar pattern (e.g. that mostly opposition parties used them when criticising the government), although concrete narratives varied. The high proportion of overlapping narratives implies that party ideology only partially structured the way parliamentarians spoke about the purpose, elements and legitimisation of the rule of law. Obviously, other factors also influenced the narratives.

Summarising the detailed country reports on the use of narratives in this chapter by country, we found overlaps around a liberal (democratic) conception of the rule of law in the Czech parliament, with narratives established across parties focusing on individual citizens’ rights, the limitation of power and the functioning of the system (for the citizens) since the second wave of rule of law legislation outlined in Chap. 3. Throughout the three waves the constitutionality of law or the legality of measures as

an essential element of the rule of law were mentioned most often, and the codified law tended to rank first when actors spoke about the sources of legitimacy of the rule of law. A greater number of (mostly uncontroversial) narratives were used in the second and third waves of legislation.

Parliamentary discourse in Hungary was characterised by a 'silence' on the foundations of the rule of law during the second wave of post-1989 rule-of-law-related legislation (1998–2010). Before and after, the narratives centred around the limitation of power and the functioning of the system as the principal purposes of the rule of law. Legal stability and certainty, as well as the constitution as a source of legitimacy for the rule of law, received recognition across party lines. There was also rhetorical support for the separation of powers. However, MPs from different parties disagreed on whether the transition beginning in 1989 had led to real system change and whether the rule of law and the legal principles enshrined in the constitution were respected in practice. In the course of these disputes, some established narratives became one-sided, particularly after Fidesz-KDNP took office in 2010.

The discourse in the Polish Sejm shifted from emphasising the purpose of the rule of law of limiting power to its role in making the system work (since the early 2000s). In this context, more attention was paid to effective institutions, the need to fight corruption, and the improvement of the efficiency of the judiciary. From the 1990s onwards, conservative and right-wing parties highlighted the importance of justice and moral values for the rule of law and questioned the legitimacy of the 1989 transition, with its perceived lack of lustration, and the 1997 referendum on the constitution. While the expressed consensus had been fragile before, after 2015 most previously overlapping narratives collapsed along the lines of government and opposition. In a deeply divided discursive climate, the only overlapping narratives on the legitimacy of the rule of law related to procedures.

In the Romanian parliament, speakers stressed the importance of the rule of law for the functioning of the system since the 1990s and linked this to EU accession since the second wave of rule of law legislation. During the first cohabitation under President Traian Băsescu (2007), the limitation of power as the purpose of the rule of law and the separation of powers as an element of it received greater attention. In the 1990s, the rule of law was often legitimised with reference to the constitution, which was described as the result of the 1989 revolution. After the turn of the millennium, however, more emphasis was placed on legal processes as a source of legitimacy of the rule of law. Most narratives were used across party lines, including those typically associated with criticism of the government.

Members of the Slovak parliament focused on the limitation of power as the primary purpose of the rule of law, followed by the functioning of the system to attract foreign investment and promote prosperity in general. Constitutionality was emphasised as an element of the rule of law. While, in general, the narratives were shared by all relevant parties, the discourse was marked by repeated controversies between the liberal-conservative bloc and other parties over the relevance of morality and justice in relation to the amnesties granted by Prime Minister Vladimír Mečiar in the 1990s. In addition, overlapping narratives were often linked to

Table 5.1 Focus of the key narratives on the foundations of the rule of law

	CZ	HU	PL	RO	SK
Purpose of the RoL	Limiting power and ensuring the functioning of the system for the citizens	Limiting power and ensuring the functioning of the system	Limiting power and ensuring the functioning (and justice) of the system	Convincing the EU and limiting the president	Limiting power and ensuring the functioning of the system for prosperity
Elements of the RoL	Legal certainty, (equal) rights and effective institutions	Legal certainty, separation of powers and effective institutions	Effective institutions and legality	Separation of powers and legality	Legal certainty and effective institutions
Sources of legitimacy	Codified law and procedures	Codified law and (partly contested) ideas	Procedures and (increasingly contested) ideas	Ideas and procedures	(Contested) ideas and procedures

opposition criticism of the government. The rule of law was perceived to be legitimised mainly through its effective procedures.

A cross-country comparison reveals similarities between parliaments in the way MPs talked about the purpose of the rule of law and its elements. At the same time, we found differences in the legitimation of the rule of law (Table 5.1).

Concerning the **purpose**, parliamentarians emphasised in many statements that the rule of law is about limiting power and ensuring that the system as a whole functions. Particularly with regard to the functioning of the system, MPs from different parties all used similar overlapping narratives. The same cannot be said about the narratives about the limitation of power as the purpose of the rule of law, which were often voiced by opposition parliamentarians criticising the government. This constellation seems to be a dominant pattern of rule of law narratives. It suggests that overlapping narratives should not be interpreted as a lack of competition between the speakers.

When addressing **elements** of the rule of law, MPs in all the parliaments studied paid much attention to legal certainty (or constitutionality and legality in general). Moreover, they frequently emphasised the need for effective institutions across party lines, and there was little dispute about the importance this has for the rule of law. This finding is important because effective institutions receive little attention in various concepts of the rule of law, which often focus on legal principles or norms and at best capture effective institutions indirectly. Another general pattern was that narratives about the separation of powers were more likely to be associated with opposition criticism of the government and with one-sided or divergent narratives than narratives relating to other elements of the rule of law.

In sum, ensuring the functioning of the state or the whole system and limiting power as the purpose of the rule of law and constitutionality of law and legal certainty as an element of it were parts of the key narratives in all parliaments. Despite being highly esteemed, the purpose to limit power and also the separation of powers as elements of the rule of law were typically associated with criticism of government action by opposition parties. Thus, they became strongly connected to inter-party competition.

The patterns of narrating the **legitimation** of the rule of law, by contrast, differed across national parliaments (Table 5.1). While MPs in Czechia tended to emphasise codified law—more precisely, the national constitution—as the primary source of legitimacy, in Romania, Slovakia and Poland ideas played a more prominent role (even though the narratives on legitimation often included different types of ideas). In Hungary, both codified law and ideas were emphasised. At the same time, certain narratives on the relevance of ideas were not supported by some actors in the Slovak, Hungarian and Polish parliaments. Such ideological differences overshadowed domestic politics (see also Chap. 6).

Other differences included that in our selected sources parliamentarians did not express disagreement about the purpose of the rule of law in Czechia, less disagreement about elements of the rule of law in Romania, and no general disagreement about the sources of legitimacy of the rule of law in the Czech and Hungarian parliaments. In general, the intensity with which the foundations of the rule of law were addressed was lower in the Czech and Romanian parliaments than in the other parliaments.

Concerning the temporal dimension of the narratives of the foundations of the rule of law, the patterns in the five parliaments again exhibited some similarities, namely an increasing number of one-sided or divergent narratives used with high intensity during the second and third waves of legislation described in Sect. 3.2. This reflects the political conflicts of that time (Sects. 3.1 to 3.4). A high intensity of use means that MPs actively addressed a narrative that was also more elaborated and not just briefly or superficially mentioned. Regarding the purpose of the rule of law, we found a few narratives used intensively in the first wave of legislation after 1989. After that, the number of narratives used with particular intensity in a certain wave increased, with most of them being used in the third wave of rule of law legislation. As mentioned, this was accompanied by an increase in one-sided or divergent narratives. The most intensively used and one-sided or divergent narratives on the purpose of the rule of law were found in the parliaments of Hungary, Poland and Slovakia in the third wave of rule of law legislation.

Regarding the elements of the rule of law we identified intensively used narratives mainly in the first and third waves of rule of law legislation. In contrast to the narratives on the purpose of the rule of law, the number of intensively used narratives about elements of the rule of law decreased significantly during the interim period. The number of one-sided or divergent narratives on elements of the rule of law increased in the second wave and was especially high in the third period of rule of law legislation, with particular intensity in that time in Hungary, Poland and Slovakia.

Most narratives on the sources of legitimacy of the rule of law were used with particularly high intensity in the third wave of rule of law legislation, followed by the first and then the second waves. Overall, this shows that narratives about the foundations of the rule of law were used most intensively in the third period. The increased use of narratives on the sources of legitimacy of the rule of law was not accompanied by a notable change of the number of overlapping, one-sided or divergent narratives.

On closer inspection, the temporal dimension of the narratives about the foundations of the rule of law was also influenced by country specifics, such as the recurring debate about the admissibility of retroactive action with regard to the 'Mečiar amnesties' in Slovakia, the relevance of the judiciary in Poland and the alleged need to complete the system change that began in 1989 in Hungary, or the independence of the judiciary as an element of the rule of law in Romania. In relation to such issues, the dynamics of the composition of the parliaments described in Sect. 3.1 contributed to the weakening, disappearance, re-emergence or strengthening of certain narratives over time.

5.1 The Purpose of the Rule of Law

When politicians in the different parliaments referred to the purpose of the rule of law, they often focused on its importance in ensuring checks and balances or, more generally, the limitation of power. At the same time, the specific narratives varied from country to country. *Within* national parliaments, narratives about the purpose of the rule of law overlapped for a considerable time, regardless of the different party affiliations of those using them. This makes the differences in the concrete narratives between countries all the more striking. As mentioned above, the rhetorical consensus eroded after 2006.

As statements on the purpose of the rule of law, we coded those speech acts that referred to its purpose for citizens, society or the political system. We also included statements that addressed the purpose of key elements of the rule of law, such as judicial independence or the separation of powers in general. This approach allowed us to gain a comprehensive understanding of the way MPs addressed the purpose of the rule of law, as arguments about the purpose of the rule of law were often intertwined with arguments about its elements. While, for example, checks and balances were cited as a purpose of the rule of law, the separation of powers was sometimes also named as an element of the rule of law (Sect. 5.2). In such cases, the rule of law was argued to be an end in itself, rather than serving other purposes, and the particular element of the rule of law mentioned was perhaps most closely associated with what the rule of law is about.

MPs in our five countries rarely explicitly stated what they saw as the purpose of the rule of law. Instead, they often made implicit statements, highlighting the relevance of the rule of law (or its specific elements) in relation to other issues. Speakers thus tried to clarify the 'spirit' of the rule of law and its essence. Signal words and phrases that helped us to identify notions of the purpose of the rule of law

in a comparable way across cases included the “function” of the rule of law, and phrases such as the rule of law “should”, “serves”, “is a basis/guarantee/foundation for”, “can provide”, “fulfils a certain role” or similar expressions.

Three subcodes were identified based on the state of research and the empirical material. They capture the most frequent themes mentioned in the hundreds of statements related to the purpose of the rule of law.¹ They are broad enough to group most statements and prepare them for comparison yet nuanced enough to capture different lines of argumentation. Under the subcode ‘System functioning’, we collected all statements in which speakers argued that the rule of law maintains or improves the functioning of the system, provides certainty of expectations, or guarantees security, stability, predictability or legal certainty. The subcode ‘Limitation of power’ encompasses statements regarding the function of the rule of law in limiting political power or the dominance of specific groups, ensuring the separation of powers (checks and balances), or any other form of restraint of power. We also used this subcode for statements about the existence of equal and individual rights, as well as their exercise and protection. The subcode ‘Morality and justice’ was assigned to statements that mentioned the role of the rule of law in upholding or enhancing morals or values, such as justice.

Table 5.2 presents the narratives that politicians in parliament used when discussing the purpose of the rule of law. They mostly appeared across the sources over time, but often with greater intensity in a specific period (wave of legislation), as indicated in the table.

The comparative analysis uncovers distinct national temporal patterns. In general, narratives on the limitation of power were used with highest intensity and in all five countries in the third wave of legislation in all parliaments. Narratives about the functioning of the system were particularly significant in the second wave for four of the five cases. Morality and justice was only relevant in three of the cases and without a general temporal pattern.

When speaking about the purpose of the rule of law to limit power, parliamentarians mostly argued that it ensures checks and balances among government branches, especially in the initial legislative terms after 1989, as shown in Table 5.3. This group of narratives on the purpose of the rule of law was utilised by both government and opposition parties. Although specific narratives were almost identical in their content, their users often employed them for political purposes by accusing the government of shortcomings concerning this function of the rule of law. Since the second wave of rule of law legislation, one-sided narratives in this category emerged or were strengthened in Hungary, Poland, Romania and Slovakia.

As Table 5.4 shows, narratives relating the purpose of the rule of law to the functioning of the system were more diverse across the countries. At the same time, we did not find one-sided or diverging narratives in this category.

¹All statements that mentioned a purpose other than the three mentioned were coded with a ‘Remainder’ subcode.

Table 5.2 Narratives on the purpose of the rule of law by topic

	1st wave					2nd wave					3rd wave				
	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK
Limitation of power		✓	✓		✓	✓			✓	✓	✓	✓	✓	✓	✓
System functioning		✓		✓		✓		✓	✓	✓	✓	✓			✓
Morality and justice				✓				✓					✓		✓

1st wave: CZ 1992–1998, HU 1990–1998, PL 1990–1997, RO 1990–2004, SK 1992–1998

2nd wave: CZ 1998–2006, HU 1998–2010, PL 1997–2015, RO 2004–2014, SK 1998–2006

3rd wave: CZ 2006–2021, HU 2010–2021, PL 2015–2021, RO 2014–2021, SK 2006–2021

Table 5.3 Narratives on the rule of law as limiting power

	CZ	HU	PL	RO	SK
<i>Overlapping narratives</i>					
RoL serves to ensure checks and balances among government branches.		✓ (1, 3)	✓ (1)	✓ (2)	✓ (1, 3)
RoL serves to limit the state power by law to protect individual rights.	✓ (2, 3)				✓ (2)
RoL is to ensure that everyone is treated equally before the law.	✓ (3)				
<i>One-sided or diverging narratives</i>					
RoL serves to ensure checks and balances and to prevent the abuse of power/to limit the ruling majority/the president.		✓ (3)	✓ (3)	✓ (2)	
RoL serves to limit the state power by law to protect individual rights.					✓ (3)

Waves of rule of law legislation where a particular narrative was used most intensively are indicated in brackets

Table 5.4 Narratives on the rule of law as ensuring the functioning of the system

	CZ	HU	PL	RO	SK
<i>Overlapping narratives</i>					
RoL is to maintain or improve the functioning of the (political) system by ensuring legal stability and predictability.	✓ (2, 3)	✓ (1, 3)			
The EU's recognition of the country's compliance with the RoL in itself serves to stabilise the functioning of the system.				✓ (2, 3)	
RoL creates conditions that attract foreign investors and foster economic development.					✓ (2, 3)
RoL (in terms of effective law enforcement, a well-functioning judiciary and legal stability) underpins citizens' security, public trust and compliance with constitutional principles.			✓ (2)		
RoL provides norms and procedures for a stable functioning of the post-communist society.				✓ (1)	
RoL is to enable the functioning of society and ensure the prosperity of its members.					✓ (3)
<i>One-sided or diverging narratives</i>					
<i>No established narratives were identified in the analysed sources.</i>					

Waves of rule of law legislation where a particular narrative was used most intensively are indicated in brackets

Morality and justice as goals of the rule of law were less frequently mentioned in parliamentary debates. When we identified such narratives, they were often one-sided, with only a few actors using them. It was only during the early 1990s, when actors framed the new rule of law as a means to safeguard the values linked to

Table 5.5 Narratives on the rule of law as ensuring morality and justice

	CZ	HU	PL	RO	SK
<i>Overlapping narratives</i>					
RoL is to safeguard the moral values and justice of the 1989 revolution as enshrined in the constitution.				✓ (1)	
<i>One-sided or diverging narratives</i>					
A just state under the RoL guarantees justice for ‘ordinary people’ and implies the need for morality and impartiality on the part of the judiciary.			✓ (2, 3)		
RoL has to achieve justice and, if necessary, rectify injustice caused through legal means.					✓ (3)

Waves of rule of law legislation where a particular narrative was used most intensively are indicated in brackets

the departure from the previous communist system, that such narratives overlapped. Table 5.5 displays overlapping narratives on morality and justice solely for Romania during the transition phase. We found no established narratives regarding morality and justice in the analysed sources in Czechia and Hungary.

As Table 5.6 summarises, one-sided or diverging narratives were related to issues around the limitation of power and morality and justice. Is shows that they were mainly used in the third wave of rule of law legislation. We usually did not identify counter-narratives, i.e. with a competing argumentation. Instead, the actors continued with their established narratives or disregarded the new one-sided narratives (or they officially/rhetorically shared the view despite policy differences, as in Hungary).

5.1.1 Czechia: Limiting Power and Ensuring the Functioning of the System for the Citizens

In the Czech parliament, narratives about the purpose of the rule of law centred around citizens’ rights, their effective exercise and protection. Statements most frequently referred to the limitation of power and the functioning of the system (for the citizens), and less to issues around morality and justice. In our empirical material, narratives on the purpose of the rule of law dated particularly to the period since the late 1990s, i.e. the second and the third waves of legislation related to the rule of law. Narratives concerning the limitation of power were the most prominent, and they were used across parties. Statements emphasising the functioning of the system as a purpose of the rule of law also overlapped across parties. References to morality and justice were the least frequent, with only episodic appearances across all three waves, which is why they do not qualify as a narrative. Table 5.7 provides an overview of the narratives found in the sources.

Limitation of power. One of the most prominent narratives referring to the limitation of power addressed **the importance of the rule of law in safeguarding citizens’ rights**. In general, the law-related speech acts analysed in Czechia centred

Table 5.6 One-sided or diverging narratives on the purpose of the rule of law by general theme

	1st wave					2nd wave					3rd wave				
	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK
Limitation of power									✓			✓	✓		✓
System functioning															
Morality and justice								✓					✓		✓

See Table 5.2 for temporal specification of the waves

Table 5.7 Narratives on the purpose of the rule of law in the Czech Republic

	1992–1998	1998–2006	2006–2021
Limitation of power		RoL safeguards citizens' rights. (overlapping)	RoL is to ensure that everyone is treated equally before the law. (overlapping)
System functioning		RoL promotes legal certainty through the clarity, transparency, predictability and enforcement of rules. (overlapping)	
Morality and justice	<i>No established narrative identified in the analysed sources</i>		

around citizens. Despite the wording of Article 1 (1) of the Czech constitution adopted by the parliament in 1992, which stipulates that “The Czech Republic is a sovereign, unitary, and democratic state governed by the rule of law, founded on respect for the rights and freedoms of man and of citizens”, in the founding days of the Czech Republic, statements on the relevance of the rule of law in safeguarding citizens' rights appeared sporadically in our selected documents. They became prominent from the late 1990s to the mid-2000s, when the constitution, the Charter of Fundamental Rights and Freedoms and relevant international human rights documents were often referred to in this context.

In the area of the rule of law, the legislation, the government has sought to ensure that citizens are assured of justice within a reasonable time, (...) that the justice system successfully fulfils its role as guarantor of citizens' rights and freedoms, and that the authority of the law is consistently upheld. (Václav Klaus, ODS, government, Prime Minister, 7.7.1997, LP 2, Session 12)

While focusing on individual citizens is not surprising for a politician from a liberal-conservative party like the ODS, representatives of both leftist (KSČM) and centre-left (ČSSD) parties used similar arguments.

According to Article 17 of the International Covenant on Civil and Political Rights and the provisions of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which is directly applicable, everyone has the right to respect for their private life. The state is obligated to not only respect this right but also to protect it. (Vojtěch Filip, KSČM, opposition, 13.1.1999, LP 3, Session 8)

(I)f Article 3 (1) of the Charter of Fundamental Rights and Freedoms says “fundamental rights and freedoms are guaranteed”, it means not only that the state undertakes not to prevent anyone from exercising their rights and freedoms but also that it has an obligation to take all necessary steps to ensure that everyone actually enjoys their fundamental rights and freedoms, including the establishment of effective mechanisms for protection against their infringement in the relevant legal regulations. (Pavel Dostál, ČSSD, government, Minister of Culture, 2.7.1999, LP 3, Session 15)

The subject of such speeches changed over time, including debates on public officials' conflicts of interest, but the argument that the rule of law means limiting power and serving individual rights was still used.

So, where is the procedural protection of the rights of participants, their right to defence, the right to have the possibility of representation etc.? These are rights that even a public official in a democratic state governed by the rule of law should have guaranteed. (Jiří Pospíšil, ODS, opposition, 17.8.2005, LP 4, Session 46)

MPs also argued that the **rule of law ensures equal treatment for all before the law**, establishing another narrative on the limitation of power. Again, this narrative emphasised individual citizens, and it was used by representatives of various political parties, often when they belonged to the opposition. Politicians addressed a broad range of issues, from rather technical legal arrangements to more political questions of limitation of parliamentary immunity. The narrative was most present in the period from the second half of the 2000s, i.e. in the third wave of the rule-of-law-related legislation.

If my argumentation has been somewhat elaborate, let me summarise it into a few points. (...) I insist that, in a democratic rule of law, legal norms, however imperfect, apply at all times to everyone. (Miroslav Kalousek, KDU-ČSL, opposition, 5.1.2001, LP 3, Session 30)

When relating the purpose of the rule of law to equality before the law, speakers emphasised the need for a neutral or balanced effect of the law. This means that neither party in a dispute should be given an advantage. Achieving this requires high-quality laws and effective functioning of the institutions that apply them.

What other protection can there be in a democratic rule of law if not judicial protection? The court is the only body that can provide such protection. (...) And if we proceed in the order of the law and potentially through legal means, then we must regulate the court process so that both parties have procedural rights and obligations. It is not possible to reward one party and shift the burden of proof, all obligations, and thus completely disrupt the principles of equal standing in the judicial process on the other side. (Jiří Pospíšil, ODS, government, Minister of Justice, 26.9.2007, LP 5, Session 21)

Where the law was bent, it must be straightened. Prosecutors who allowed this must step down and be dismissed. This is not what Zaorálek and the Social Democrats want. This is what the public in this country necessarily demands. They want judges and prosecutors who administer justice fairly, who simply do not consider who holds what position, who does not care about how someone looks. Law means nothing, and a law is not a law, and it does not belong in the rule of law if it does not apply equally to everyone. (Lubomír Zaorálek, ČSSD, opposition, 3.3.2009, LP 5, Session 51)

The principle of equality before the law was also invoked in debates about the extent of parliamentary privileges, namely concerning the immunity of MPs. Its historically very extensive setting was criticised, mainly in the context of discussions on anti-corruption measures.

We can consider limiting criminal liability to speeches made in the Chamber of Deputies, the Senate and the constitutional court, or even abolishing it altogether, which is what our Slovak colleagues have done, and no earthquake has taken place in Slovakia. When the going gets tough, virtually every legislator is stripped of his immunity in the relevant

chamber of parliament. The wording of Article 1 of the Charter of Fundamental Rights and Freedoms, according to which people are equal in rights, gives me the right to do so. We are all to be equal before the law. (Jiří Paroubek, non-affiliated MP elected for ČSSD, opposition, 23.10.2012, LP 6, Session 47)

Arguments that politicians should not stand above the law were also raised in the context of discussions and votes on the admissibility of criminal prosecution of specific MPs.

Perhaps in the discussion, we should very well clarify the purpose of political immunity. Its purpose is not to avoid criminal proceedings. It aims to prevent the blocking of the Chamber, to prevent MPs from being hindered in performing their mandate, to be harassed in this way for their political activities. (...) Simply put, we, as MPs, even if equipped with a certain immunity, are not superhumans who should avoid criminal prosecution. When justice takes its course, it is, of course, a chance for vindication, a relevant vindication that has a high level of credibility in the rule of law. The public should not have the impression that as someone's influence increases, their impunity also increases. (Jiří Dolejš, KSČM, opposition, 6.9.2017, LP 7, Session 60)

System functioning. In statements addressing the functioning of the system, speakers often argued that the **purpose of the rule of law is to promote legal certainty through clarity, transparency, predictability and enforcement of rules, regardless of whether they are laws or executive measures.** The usage of this narrative extended over the second and the third wave of rule of law legislation with similar intensity. However, the pattern of speakers using it changed. During the second wave (1998–2006), it was used by the leading government and the main opposition parties (ČSSD and ODS, respectively).

The debate we are having here is a debate about whether it is in line with the principles and the regime of the rule of law to change, colloquially speaking, the rules of the game in the middle of the game itself. The debate we are having is about whether those affected by this law should respect the rules set by this law, just like those on whom this law will impact ex ante, meaning going forward, who had and acted in some faith, in some matter. In the midst of such conduct, we are changing the rules for them with the law and causing them property or other damage. (Ivan Langer, ODS, opposition, 8.3.2000, LP 3, Session 23)

The alpha and omega of the rule of law is the guarantee and strengthening of legal certainty for individuals and legal entities to which the state primarily addresses its legal regulations. Individuals and legal entities can participate in legal relationships within a rule of law only if they are ensured the ability to properly and promptly become familiar with the content of legal regulations that directly concern them, or on the basis of which their rights and obligations are created, changed or terminated. (Václav Votava, ČSSD, government, 4.11.2004, LP 4, Session 37)

On several occasions, such statements mentioned problems which must be solved to secure the aim of the rule of law, including effective legal protection (Rychetský) or deficient legal certainty because of the growing relevance of international courts that can decide on a matter after national courts have ultimately done so (Pospíšil).

I would like to say that the government of the Czech Republic is aware that a much more significant problem in the functioning of the law and the state of legal certainty in this country than the state of current legislation is the state of the judiciary. In most cases, the courts do not currently provide effective – meaning real-time – protection of rights, and unfortunately, it cannot always be said that they provide it at a sufficient level of quality. (Pavel Rychetský, ČSSD, government, Deputy Prime Minister for Legislation, 20.5.1999, LP 3, Session 13)

I believe that as this amendment is drafted, it will mean a significant strengthening of the international court in relation to our national justice. More or less, it will be possible, based on the decision of the Strasbourg court, to indirectly re-examine a matter that has already been conclusively decided. (...) Legal theory has written stacks of books about two fundamental legal instruments or two fundamental legal values, namely legal certainty on the one hand and the correct decision of the matter. These two values conflict at some point (...). However, at some point, it must be said that the matter is conclusively decided for clarity and certainty for the participants in the proceedings. (Jiří Pospíšil, ODS, opposition, 16.5.2003, LP 4, Session 16)

During the third wave of rule-of-law-related legislation, most prominently after 2017, the narrative that the rule of law serves to promote legal certainty and the functioning of the whole system was used by a wide range of parties, mainly while in opposition to criticise the government. For example, it was argued that a functioning rule of law stimulates responsible behaviour of individuals.

Improving the work of the police also means strengthening all the functions of the rule of law to create a legal environment that stimulates responsible individual behaviour in relation to other people and society as a whole. This implies tougher penalties for serious crimes, timely enforcement of the law, as some are harmed by protracted enforcement, and zero tolerance for corruption and organised crime. (Zdeněk Maršíček, KSČM, opposition, 19.1.2007, LP 5, Session 9)

MPs also argued that the eroding trust of people in the state resulted from deficiencies in the rule of law.

Lawyers state that every judicial process or court decision must not only be impartial and objective but must also appear to be so. (...) This is an important principle that can be generalised and applied to our role and responsibilities as well. People have the right to trust the state, and we have the obligation to make decisions in a way that people can truly trust and have confidence in the state. (Petr Fiala, ODS, opposition, 23.11.2018, LP 8, Session 23)

(...) even though there's a state of emergency and the threat to lives and health persists, some rule of law should still apply. I assume that the rule of law should be understandable, predictable and subject to review. The same must apply to government regulations (...). Unfortunately, it doesn't seem this way. (...) People's trust in the state, trust that things happen according to some presumed plan, is eroded. (Vojtěch Píkal, Pirates, opposition, 28.4.2020, LP 8, Session 47)

How in the world, in a rule of law, in a democratic state governed by the rule of law, is it possible that some government decision is announced at 7 p.m. and becomes effective at midnight? (...) For heaven's sake, the law should be predictable! (Dominik Feri, TOP09, opposition, 28.4.2020, LP 8, Session 47)

Morality and justice. In statements on the rule of law serving morality and justice, it was not possible to identify an established narrative or clear differences over time. Nevertheless, MPs referred to a ‘moral climate’, ‘justice’, ‘common interests of the people’ or ‘values’ that the rule of law has to promote. Such statements were made by representatives of different political parties, both in government and in opposition, in several legislative terms.

As the following quotation shows, one concern was that the prohibition of retroactivity and other elements of the rule of law would make it difficult to sanction the actions of the previous regime, especially since creating a new ‘moral climate’ (Novák) had been among the principal goals of the 1989 Velvet Revolution (see Sect. 2.3). Condemning unjust action at least symbolically in a political declaration was seen as a way to cope with this problem.

(In 1989, the citizens of Czechoslovakia made it clear that they wanted to build a democratic society in this country with an appropriate legal system. Part of such a society is the creation of a proper moral climate. It should be clear to everyone what is good and what is evil. (...) [The introduced bill] (...) is a declaratory assessment, an assessment that does not individually define (...) the guilt or the honour of any citizen of this country. But it says quite clearly that there was non-democracy, injustice, that crimes were committed here, that laws and international treaties were violated here, and that a decent citizen of this country had no right to express freely what kind of country he wanted. (Libor Novák, ODS, government, 9.7.1993, LP 1, Session 11)

Achieving the public perception that a legal system is just was also mentioned as a task for the rule of law. It was argued that the state and its institutions should always “defend the common interest of the people” (Paroubek).

I believe that it is entirely evident that the foundation for the successful functioning of the legal system is that those sanctioned by criminal or administrative norms must at least fundamentally... or at least a significant majority of the public must be convinced that the punishment is just. Because the fundamental legal principle is that the law must be enforceable, respected by society, and based on a natural assessment that such punishment is just. (David Šeich, ODS, opposition, 25.3.2004, LP 4, Session 30)

I urge constitutional judges to stop perceiving problems from the position of their inviolability and excellent security and to think about the people. (...) The constitutional court should always and foremost defend the common interests of the people. That’s how I see it, and much more knowledgeable key figures in Czech legal science see it the same way. (Jiří Paroubek, ČSSD, supporting caretaker government, 8.9.2009, LP 5, Session 60)

Some argued that the national constitution embodies the fundamental guiding values, which implies that the law should be tested not only formally, but also against the “values underlying positive law and human rights”. Such a test of constitutionality in the broader sense of the word means qualifying if the core of the rule of law was observed, as embodied in the constitution and in the Charter of Fundamental Rights and Freedoms.²

²Helena Válková (ANO, government, 11.1.2017, LP 7, Session 54), quoted in Sect. 5.3.1.

5.1.2 Hungary: Limiting Power and Ensuring the Functioning of the System

In the Hungarian parliament, narratives about the purpose of the rule of law referred mainly to the limitation of power and the functioning of the system (Table 5.8). In our empirical material, such narratives tended to date from the early 1990s and after 2010, with a gap in between. Narratives about the importance of the stability, legal certainty and, above all, predictability of the law for the functioning of the whole system overlapped across parties. The same was true of narratives linking the rule of law with checks and balances and the protection of individual rights. However, after Fidesz returned to power in 2010, government policies officially declared to serve these purposes were interpreted by opposition actors as damaging them, so that overlapping general narratives did not prevent political conflict between the parties. Like in Czechia, issues of morality and justice or other issues were mentioned only rarely. They had a general character and were mainly present in the early 1990s.

Limitation of power. Particularly in the post-1989 transition phase and after the 2010 parliamentary elections, the rule of law was described as serving primarily to limit power. Compared to the other countries, the rule of law was linked with diverse counterbalancing institutions. In the early 1990s, the newly elected deputies emphasised the **critical need to ensure checks and balances among the branches of government** and to separate legislative and executive powers due to their experience of the previous political system.³

Table 5.8 Narratives on the purpose of the rule of law in Hungary

	1990–1998	1998–2010	2010–2021
Limitation of power	RoL serves to ensure the checks and balances among the branches of government and at the local level. (overlapping)		RoL serves to ensure checks and balances and to prevent the abuse of power. (one-sided, opposition) Judicial independence as an essential element of the RoL is relevant for limiting the power of government. (overlapping)
System functioning	RoL is to maintain or improve the functioning of the (political) system by ensuring legal stability, security and predictability. (overlapping)		RoL, especially predictability, is a fundamental requirement of the democratic system. (overlapping)
Morality and justice	<i>No strong narrative identified in the analysed sources</i>		

³See also József Szájer (Fidesz, opposition, 22.5.1996, LP 35, Session 178), cited in Sect. 5.2.2.

(T)he tripartite negotiations on the road to the rule of law have essentially failed to resolve several tasks. In order to move towards the rule of law in a way that is visible to everyone, it is obvious that the legislative and executive powers must be separated. If the current structure were to survive, this fundamental need would not be met. (József Torgyán, FKGP, government, 9.5.1990, LP 34, Session 3)

According to MPs both in government and opposition, ordinary courts and the constitutional court help to preserve the internal consistency of the legal system and to ensure that decisions are taken on a legal basis and in a fair and just manner. In this way, they were argued to contribute to the stability and security of the (political) system, to defend the constitution and to limit the power of the state. Notably the liberal SZDSZ emphasised that a state governed by the rule of law must entail a multifaceted system of checks and balances (Hack), including also local self-administration (Sect. 5.2.2) and rights for trade unions (*Haraszti*).

We want to fight for a society in our country where the law is not the handmaiden of politics, and where it can continue to guarantee respect for the constitutional and human rights of all in the decades and centuries to come, and where state power remains within the limits set by the constitutional court's decision. (Gábor Fodor, Fidesz, opposition, 8.12.1992, LP 34, Session 254)

I very sincerely hope that this consensus will be reached in such a way that the Parliamentary Commissioner for Citizens' Rights will be seen as a real check on the current government (...) and not just as a check on the future government (...) because we believe (...) that the majority in parliament (...) cannot do everything, unlike my fellow members of parliament who took part in the demonstrations, and we believe that the mandate of this majority, which sends you or the future majority in parliament, is not unlimited, not unconditional, not unhindered, but is subject to certain limits and obstacles. (Péter Hack, SZDSZ, opposition, 1.9.1992, LP 34, Session 220)

However, it is precisely from the point of view of the rule of law, and in defence of the rule of law, that the position of the Free Democrats argues when it says that parliament should exercise self-limitation in the interests of the rule of law when it pursues an otherwise historically and legally correct objective, namely equal opportunities for trade unions. (Miklós Haraszti, SZDSZ, opposition, 19.11.1991, LP 34, Session 148)

Along with the constitutional court, the newly established State Audit Office, an independent prosecutor's office and the Commissioner for Citizens' Rights (ombudsperson) should provide support to ensure checks and balances and the protection of individual rights, rhetorically linking them to the rule of law. MPs also emphasised the **role of decentralised local authorities** in protecting the rights and interests of citizens and limiting the power of individual authorities (see Sect. 5.2.2).

Under the first Orbán government (1998–2002), the then opposition parties (MSZP and SZDSZ) were among the first to argue that the balance of power had shifted.⁴ However, the purpose of the rule of law was not a major issue in parliament,

⁴In particular, they pointed to the weakening of parliament (e.g. Pál Vastagh, MSZP, opposition, 18.10.2001, LP 36, Session 233).

and there were no vibrant narratives during this period. This changed in 2010 when this criticism was restrengthened. Several opposition parties (mainly MSZP and LMP) strongly criticised Fidesz-KDNP for using its two-thirds majority mandate for political gain, for interlocking powers and for bringing the judiciary under its control. This criticism was accompanied by the argument that the **rule of law serves to ensure checks and balances and prevent the abuse of power**. No single branch of government should become dominant to protect society from government overreach. Such statements were made, for example, during the vote on the constitutional court bill and on amendments to the Fundamental Law.

It is a characteristic of a state governed by the rule of law that none of the branches of power is dominant. (...) Whether you get a two-thirds mandate, a four-fifths mandate or whatever mandate you get from the electorate, you have to know that in a state under the rule of law, the functioning of parliament is also limited. (András Schiffer, LMP, opposition, 21.2.2012, LP 39, Session 165)

The constitutional power is not an unlimited power in a state under the rule of law. The constituent power can indeed amend the constitution, but it cannot do so in such a way as to effectively annul or take over the role of another branch of power. And if it does so by simply overriding, in practice by constitutionalisation, the decisions of the constitutional court that it does not like, then it is not exercising its power, but abusing it (...) (Gergely Bárándy, MSZP, opposition, 7.3.2017, LP 40, Session 204)

The governing parties defended their policy. They highlighted that the **independence of the judiciary, as an essential element of the rule of law, was relevant for limiting the power of government**. This narrative was also used by the opposition forces, which, however, criticised the Fidesz-KDNP legislation as being completely different from their rhetoric.

The constitutional court is the supreme body for the protection of the Fundamental Law, (...) in order to safeguard the democratic rule of law, the constitutional order and the rights guaranteed by the Fundamental Law, to preserve the internal consistency of the legal system and to enforce the principle of the separation of powers. Since its creation, the constitutional court has continued to perform its functions of protecting fundamental rights, ensuring the democratic functioning of the state and establishing and maintaining the balance of powers at the highest level (...) (Márta Mátrai, Fidesz, government, 14.11.2011, LP 39, Session 133)

Fidesz-KDNP also argued that the introduction of administrative courts (see Sect. 6.3.2 for more details) was an instrument for strengthening the system of checks and balances.

Judicial independence – as I have long been saying and as I have recently stated within these walls during the debate on the proposal for the seventh amendment to the Fundamental Law – is the shining star of democracy, a constitutional principle and value that is in itself a priority. (László Trócsányi, Fidesz, government, 12.12.2018, LP 41, Session 50)

(T)he rule of law itself can also be described as the binding nature of public power, i.e. it presupposes the existence of independent institutions that control the actions of state bodies that have legal effect. The most important such institution is the separate administrative court. The adjudication of administrative disputes requires special expertise and a particular judicial attitude, which is capable of defending the citizen against an authority that necessarily has a dominant position. Clearly, ladies and gentlemen, this raises the level of legal protection in Hungary. (Imre Vejkey, KDNP, government, 1.4.2019, LP 41, Session 64)

System functioning. Almost all political parties in the Hungarian parliament, when mentioning a purpose of the rule of law, argued that it is also to **maintain or improve the functioning of the (political) system by ensuring legal stability, security, certainty and predictability**. Especially in the first wave of rule of law reforms, the rule of law was mentioned as a goal to be achieved, one which would lead to a stable constitutional political system and a predictable legal order in Hungary, as in other European democracies. Against the background of the authoritarian past, (legal) security and stability were described as important not only for politicians but also for society (or the nation) as a whole. Representatives across parties stressed that society expected politicians to guarantee successful system change. They agreed that in order to create stability, security and a stable democratic system were necessary. The opposition linked such arguments with criticism of the government.

The Hungarian nation elected this House (...) to implement the regime change. I emphasise that this is not a vague reorganisation which is good for some, but a change of system which is in the interests of the overwhelming majority. Hungarian society wanted sober, calm and considered politicians at the head of the country, whose integrity was a guarantee that their promises would be fulfilled within the framework of a state governed by the rule of law, on the basis of a democratic programme. Today, this same nation is increasingly disillusioned by the reality of a world without prosperity, social security or a secure future. (Péter Prepeliczay, FKgP, government, 4.3.1991, LP 34, Session 83)

Democracy is the foundation of the rule of law, equal rights and equal opportunities for citizens, regardless of their nationality, religion or any other differences. Since the well-being of society depends to a large extent on the reality or lack thereof, and since even the slightest attack on this well-being damages the rule of law as a whole, it is essential that the legislature, through its responsible work, creates a legal framework for the rule of law that provides security for citizens. Just as every civilised, self-respecting country in the world declares the ideals of democracy and the rule of law in its laws, so in our country, too, this is done in agreement with the values of the overwhelming majority, almost the whole, of the population in this House. (Zoltán Hajdú, SZDSZ, opposition, 1.3.1993, LP 34, Session 274)

Since the transition period, both government and opposition parties gradually strengthened the rhetorical link between the rule of law and legal certainty for both the legislator and the citizens. In the majority of the speech acts, we found the narrative that the rule of law is not only about the existence of and compliance with the law but also about clear and predictable law. Related to these arguments, MPs criticised the practice in the early 1990s and again after 2011 of continuously amended legislation.

We are of the opinion that amending the constitution for the umpteenth time in such a short space of time to such an extent, and back and forth, is unnecessary and even harmful, because it weakens hopes in the functioning of the rule of law. And without stable basic constitutional provisions, the rule of law and legal certainty are an illusion. (Csaba Hámori, MSZP, opposition, 9.5.1990, LP 34, Session 3)

More generally, I want to point out that the much-vaunted rule of law is in stark contrast to the almost constant amendment of key laws. The rule of law is not characterised by a large number of laws, but by good laws, laws that are long-lasting, time-tested and that citizens voluntarily follow. (Miklós Gáspár, KDNP, opposition, 12.5.1997, LP 35, Session 268)

Legal predictability and certainty were regularly mentioned as goals to be achieved, especially when they were perceived as being under threat since the third wave of legal reforms. Rhetorically, however, the criticised governing parties Fidesz and KDNP also emphasised that the rule of law serves to ensure predictability as a fundamental requirement. As a result, both sides used this narrative despite opposing views of the current government's policies.

Legal certainty is an indispensable element of the rule of law, a concept that has been given substance by the uninterrupted practice of the constitutional court. Legal certainty is the duty of the state, and primarily of the legislator, to ensure that the legal system as a whole, its individual subdivisions and individual pieces of legislation are clear, unambiguous, predictable and foreseeable in their operation for the addressees of the norm. (Pál Völner, Fidesz, government, 7.3.2017, LP 40, Session 204)

The other important fact is that millions of Hungarians do not feel legal certainty in Hungary at the moment. And it is not just that a new structure, the administrative court, is being set up, but also that Hungary's current attorney general is a former candidate for parliament, a certain Péter Polt, who is now at the point of admitting in a response that electoral fraud was committed in Hungary with Ukrainian votes, and yet nothing is being done. (Zsolt Gréczy, DK, opposition, 1.4.2019, LP 41, Session 64)

Statements differed with regard to the relevance of legal or 'political' guarantees in a state governed by the principles of the rule of law. Opposition MPs criticised the lack of such guarantees, while KDNP, the minority party in government, confirmed the need for them.

(T)he essence of the rule of law is that it is not your intentions, not the justifications that no one checks, not the government's intentions that are not subject to public debate, but the laws that have been debated and duly adopted that bind the lawmakers. (Gergely Arató, DK, opposition, 30.10.2018, LP 41, Session 35)

Obviously, in a state governed by the rule of law, the most important and fundamental guarantees should be legal guarantees, but I would add two more: guarantees based on facts and political guarantees. (István Hollik, KDNP, government, 24.3.2020, LP 41, Session 114)

Morality and justice. We found few references to the **rule of law serving moral ends and justice** for Hungary. It was argued that constitutionalism must be "value-centred and value-based" (Bihari) in the sense of a liberal spirit, in contrast to the

previous authoritarian regime. Justice, in the sense of equal treatment, also played a role. However, the references were relatively general, without precise notions on causes, content and effects.

The new constitution must be value-centred and value-based. Not only its spirit, but also its concrete provisions must incorporate universal human and political values of freedom, the specific legal values of a democratic state based on the rule of law, in such a way that this value system functions as a normative legal basis for both legislation and law enforcement, but also has a role in shaping legal culture and legal attitudes towards social legal consciousness. (Mihály Bihari, MSZP, government, 14.7.1994, LP 35, Session 4)

(T)he role of the constitutional court today is rooted in the idea of the rule of law. Namely, the idea that everything in a modern state must be done justly or, more modestly, according to law and justice. In our country, the constitutional court, established in 1989, has an even more important role to play. After all, after decades of total dictatorship, it had to take decisions on the basis of a constantly patched-up constitution, in the wake of regime change, on sensitive and controversial constitutional issues, and the constitutional court's activities have contributed effectively to the establishment and consolidation of the rule of law. (Tamás Isépy, KDNP, opposition, 2.4.1996, LP 35, Session 163)

Fidesz-KDNP repeatedly criticised a lack of justice with regard to the old communist elites and Christian social values. Some of its politicians argued more intensively in this way after 2010. Jobbik has also employed this rhetorical figure since then. However, the statements did not form a strong narrative. The same was true for statements by opposition parties criticising Fidesz-KDNP for their agenda of establishing a Christian democracy to the detriment of equal rights.

We believe that the heart and soul of constitutional identity is the common defence of these equal rights; you believe that constitutional identity is a mandate to restrict freedoms for some higher purpose. We cannot support that. You talk about Christian democracy; we want a democracy without adjectives that guarantees equal rights for all citizens of Hungary (...). (Gergely Arató, DK, opposition, 28.6.2018, LP 41, Session 14)

5.1.3 Poland: Limiting Power and Ensuring the Functioning of the System (and Justice)

Most statements covering the purpose of the rule of law that we found in our sources from the Polish Sejm were related to the limitation of power, followed by the functioning of the system and morality and justice. Until the end of the 1990s, the main narratives were overlapping. Actors emphasised the relevance of the rule of law for ensuring checks and balances and preventing arbitrariness (Table 5.9). Later narratives focused on its importance for the functioning of the system. Such statements were made in the early 2000s when judicial reforms were adopted to align the system with the constitution and to adjust it to EU requirements, but also in the mid-2000s when the PiS-led government planned anti-corruption and lustration reforms. However, the parliamentarians' justifications and perspectives on how to achieve these aims differed. From the end of the 1990s, right-wing conservative MPs

Table 5.9 Narratives on the purpose of the rule of law in Poland

	1990–1997	1997–2015	2015–2021
Limitation of power	RoL serves to ensure checks and balances, to limit the government by law and to prevent arbitrariness. (overlapping)		RoL (esp. judiciary) is to ensure checks and balances and to limit the ruling majority. (one-sided, opposition)
System functioning		RoL in terms of a functioning state (effective law enforcement, well-functioning judiciary and legal stability) underpins citizens' security, public trust and compliance with constitutional principles. (overlapping)	
Morality and justice		A just state under the RoL guarantees justice for 'ordinary people' and implies the need for morality, and guarantees impartiality on the part of the judiciary. (one-sided, PiS)	

linked the rule of law with morality and justice, especially under the PiS-led government (2005–2007) and when PiS was able to form a single-party government (2015–2021). This was visible, for example, in the disputes between the opposition and the government over judicial and other reforms after PiS won the parliamentary elections in 2015.

Limitation of power. The reference to the limitation of power as an aim of the rule of law was invoked by MPs in all legislative periods analysed, with most statements dating from the early and mid-1990s, when a new political system was shaped. In the debates on the new constitutional framework, actors argued that the **rule of law serves to ensure checks and balances, to limit government by law (including the constitution) as interpreted by the judiciary, and to prevent the arbitrary use of power.** In this sense, Janusz Korwin-Mikke (UPR), for example, stated during a debate on the 1992 amendment to the Judicial and Prosecutorial System that

(T)he people want laws that would also guarantee and protect them against the tyranny of the majority, against sudden changes of the majority. The rule of law, not the rule of the people, is what Poland needs. (Janusz Korwin-Mikke, UPR, opposition, 6.3.1992, LP 1, Session 10)

Members of parliament, particularly from the liberal and left-wing parties, highlighted the need to decentralise political power in order to protect civil rights, for example in the debate on the draft Charter of Rights and Freedoms presented by then-President Lech Wałęsa (Szańkowski) and during the debate on the constitutional court in 1997 (Ciemniewski).

We have not the slightest reason to question the principle that public authorities, all state, local, labour and professional bodies and economic actors should be guided primarily by respect for citizens' rights in order to achieve economic and social progress. They must guarantee security, legal and political security, protecting against bad laws and abuses of power. (Stefan Szańkowski, PSL-PL, government, 21.1.1993, LP 1, Session 35)

I think it is very good that we begin the process of implementing the constitution in the life of our state with a law that essentially constitutes the basic guarantee of creating a state under the rule of law or strengthening a state under the rule of law, and not in some abstract way, but from the point of view of changing the status of the citizen in the state. I am speaking here primarily of the institution of the constitutional complaint. This is an institution (...) of defence against excessive temptations of the state towards his constitutional rights. (Jerzy Ciemniewski, UW, opposition, 6.6.1997, LP 2, Session 108)

These aspects were often discussed as a clear departure from the communist system, which was organised around a party-centred regime that did not allow for any separation of powers or institutions to control the legislative and executive.

Giving the principle of separation of powers, the rank of a fundamental principle of the political system makes it possible to construct a coherent system of institutions of a democratic state under the rule of law. It also fulfils another role. It gives expression to the final break in the continuity of the constitutional system shaped by the 1952 constitution with its Jacobin-Leninist genealogy and the only ostensibly democratic construction of the supremacy of the representative body. (Jerzy Ciemniewski, UD, opposition, 2.4.1992, LP 1, Session 12)

The constitutional principle that we consider fundamental for the future constitution is the idea of the state under the rule of law. Enshrining it in the new constitution must be a confirmation of the break with the system of the People's Republic of Poland, with the system of the party state. We understand the idea of the state under the rule of law as an expression of the primacy of legislated laws – and the constitution itself – over politics. (Longin Pastusiak, SdRP, government, 22.9.1994, LP 2, National Assembly Session 1)

The principle of the state under the rule of law is the culmination of the aspirations of the advocates of a civic state, a state guaranteeing equal rights to all citizens without exception, a state which is, by extension, the common good of all citizens, i.e. the Republic.(...) Introduced after the memorable elections of June 1989 with a constitutional amendment in December, it marked a breakthrough in the history of Polish statehood, as it laid down the principle of the rule of law, constituting a far-reaching postulate for the construction of a system in which state organs act only with the explicit permission of the law, while citizens may do whatever the law does not prohibit them from doing. (Tadeusz Jacek Zieliński, UW, opposition, 23.9.1994, LP 2, National Assembly Session 1)

The rule of law was described as a framework of rules (and courts interpreting them) that assists in dealing with unstable governments and power struggles between branches of government, which were typical in the early and mid-1990s.

By adopting a new constitution we want to confirm the new reality, strengthen democracy, but also, perhaps for a large part of society, an even more important matter – to create the necessary framework for strengthening the rule of law. Disputes at the highest levels of government, for example over electoral law, the questionable powers of the president, the

unclear scope of the relationship between the government and the Sejm, the legislative hold-ups between the Sejm and the Senate, are just the most glaring examples. (Aleksander Łuczak, PSL, government, 10.10.1991, LP X, Session 77)

Who is to ensure that Poland is a state under the rule of law and democracy? Obviously, the courts and tribunals, sometimes referred to as the judicial authority. All drafters agree that judges should be independent, non-removable and subject only to the law. (Katarzyna Maria Piekarska, UW, opposition, 21.9.1994, LP 2, National Assembly Session 1)

In addition to the courts, other limitations on power were highlighted, such as an independent civil service, the institution of the ombudsperson or the public prosecutor's office (see Sect. 5.2.3).

The independence of the courts remained a topical issue in the Sejm and was also mentioned in connection with the selection and election of judges and lustration laws. Later, from 2015, a one-sided narrative emerged that the **rule of law—especially the judiciary—should ensure checks and balances and limit the ruling majority**. The opposition used this narrative when it emphasised the need to limit the power of the PiS majority. The focus on the judiciary corresponded with the strong safeguards for its independence in the Polish constitution (Sect. 3.3). The constitution was also used as a synonym for the rule of law.

(...) what is the principle of separation of powers for? That is also what this amendment is about. It is to protect citizens' freedoms, because citizens' freedoms are forged from a dialogue of authorities, and what you are proposing is a monologue by one political group. (Krzysztof Brejza, PO, opposition, 19.11.2015, LP 8, Session 1)

An independent judiciary with a central role for the Constitutional Tribunal is supposed to guarantee citizens that the basic principles of democracy will not be violated, it is supposed to guarantee that there will never be a return to authoritarian or even totalitarian power in Poland. The role of the judiciary is particularly important in a situation where control of the executive or legislative authorities is taken over by one political option. (Kamila Gasiuk-Pihowicz, N, opposition, 19.11.2015, LP 8, Session 1)

The constitution is an anchor, and the safeguards it provides are precisely intended to prevent this kind of situation, so that the institutions whose competences it defines are not juggled, their composition not changed, their term of office not shortened depending on who is currently in power. (Wojciech Wilk, PO, opposition, 10.2.2016, LP 8, Session 11)

System functioning. In our documents we also found many statements saying that the rule of law serves the general functioning of the system. However, this theme was mentioned much less frequently than the limitation of power. References were made particularly in the transition period, when actors stressed the need for a stable, effective constitution to clarify the legal system and guarantee legal certainty, but even more so in the early 2000s, when several judicial reforms and a draft amendment to the constitution were introduced (Sects. 3.2 and 3.3). During this period, the narrative that the **rule of law in terms of a functioning state (effective law enforcement, a well-functioning judiciary and legal stability) underpins citizens' security, public trust and compliance with constitutional principles**

was used very prominently. In the context of ensuring legal compliance with the constitution and EU requirements, MPs from different political groups stressed the need for a functioning judiciary.

(...) the third reason for the necessity of rebuilding the system of the Polish judiciary – who knows whether it is not the most important one, but certainly an urgent one – is the low efficiency (...) of the currently functioning courts, or even their inefficiency. (...) Today we are dealing with a collapse or pre-crash state of the Polish courts. (Grzegorz Kurczuk, SLD, opposition, 3.3.2000, LP 3, Session 72)

This is yet another piece of legislation tidying up the sphere of the Polish judiciary and adjusting its shape to the requirements of the 1997 constitution. The draft concerns an institution of fundamental importance for the functioning of a modern and efficient state under the rule of law, and at the same time concerns a special group of people – the judges of the Supreme Court (...). (Paweł Graś, PO, opposition, 6.6.2002, LP 4, Session 23)

A necessary condition for state security and stability was discussed with reference to the effective fight against corruption and crime. A well-functioning prosecutor's office, police force, law-abiding secret service and anti-corruption agency were seen as important to provide citizens with security and stability, to increase public trust in the state, to meet international and European standards and to make Poland more attractive to investors. Although MPs from different factions generally agreed on this rule of law purpose with regard to law enforcement and legal stability, some underlying party ideological differences were also evident in the statements.

In the mid-2000s, debates on the establishment of the Central Anti-Corruption Bureau (CBA) and the functioning of the prosecution service were shaped by statements by national-conservative MPs (though not exclusively) referring to the need to fight corruption more vigorously in order to, as they argued, "repair the state".

The CBA is supposed to prosecute corruption, including in public institutions and local governments. (...) It is an imperative, a sine qua non condition for the restoration of hope and faith in the law and the rule of law, an indispensable condition for the repair of the state. How do I know this? From the electorate, from the inhabitants of the countryside, small and large towns, from entrepreneurs who have already lost faith and strength in pursuing their wrongs and who, psychologically broken, extremely exhausted, have come to believe anew in the law and in justice. (Czesław Hoc, PiS, government, 16.2.2006, LP 5, Session 10)

The decision of the Banking Supervision Commission (...) is a decision which we must carry out in an appropriate and lawful manner, using all the institutions set up for this purpose, first and foremost so that all those investors who come to Poland and who invest their money here can be sure that the times in Poland when things could be done are over (applause) and that in Poland all state institutions which uphold the law operate efficiently and in accordance with the law. (Kazimierz Marcinkiewicz, PiS, government, Prime Minister, 10.3.2006, LP 5, Session 12)

The opposition also stated that the rule of law serves the functioning of the system. However, it often used the floor to criticise the government. It stated that the Fundamental Law should not be treated as a tool to be changed by legislation, nor

should the powers of important constitutional institutions be infringed, as this would undermine the effectiveness of the rule of law in ensuring the functioning of the system.

Morality and justice. Morality and justice as the purpose of the (state under the) rule of law or its components were mentioned by MPs on various occasions throughout the empirical material. From the late 1990s onwards, however, such themes played a more prominent role, with politicians frequently invoking them to support proposed legislation or to criticise the policies of the ruling majority, for example for failing to ensure social justice. The narrative used was that **a just state under the rule of law guarantees justice for ‘ordinary people’ and implies the need for morality and impartiality on the part of the judiciary**. This narrative was employed mainly by national-conservative MPs who argued that courts/judges would violate the principles of a just state.

In the preamble to the 1997 constitution and its Articles 1 and 2, human dignity and the character of the Republic as the “common good of all its citizens” and a “democratic state ruled by law and implementing the principles of social justice” were cited as guiding principles of the constitutional order. In our selected sources it was mainly conservative MPs who argued that legislation or the state under the rule of law should ensure social justice and the common good, emphasising the relevance of ‘unwritten law’ and the importance of the community rather than individual rights, or that the common good should be maintained in the exercise of individual rights. This argument was used when actors debated the aforementioned prosecution of crimes and corruption, which were intended to ensure a sense of justice in society, but also the contentious issue of abortion/right to life and protection of the family or religious rights.

In the jurisprudence of our court, the conviction has already become firmly established that principle of a state under the rule of law cannot be reduced to the observance of democratic procedures, but also, and perhaps above all, implies a specific content of substantive law implementing fundamental values, the foremost of which is human life. (Teresa Liszcz, PC, elected via AWS, government, 17.12.1997, LP 3, Session 6)

A substantial part of the statements about the purpose of the rule of law in terms of morality and justice related to ensuring justice for citizens through an impartial, efficient and fair judiciary. In this sense, lengthy trials were framed not only as a form of ineffective statehood, as mentioned above, but also as a problem for citizens in “finding justice”.

The crisis of the judiciary is one of the greatest weaknesses of the Third Republic, a weakness exposed in all significant reports on the state of the law and the state of state institutions in Poland, and what is more, a weakness most strongly felt by citizens. The right of a citizen to have a case heard within a short period of time is becoming a fiction, the lengthiness of court proceedings in civil cases is undermining the very foundations of the law, and the high-profile criminal cases unsolved for years offend the elementary sense of justice. (Kazimierz Michał Ujazdowski, elected via AWS, government, 3.3.2000, LP 3, Session 72)

In contrast to liberal and left-wing parties (UD/UW, SdRP/SLD, PO, PSL), which emphasised the role of the rule of law and in particular of the courts in guaranteeing citizens a fair trial and the limitation of power, right-wing/conservative parties argued that the rule of law serves to protect a material core and justice for ‘ordinary people’, which implies the need for morality and independent judges. Statements about this impartiality were often combined with calls for the vetting of judges to establish justice and a just and lawful state (see also Sect. 6.3.3). For example, when the PiS-led majority introduced a (second) lustration law in 2006, it cited a perceived lack of lustration after 1989. It also repeatedly criticised judges for their decisions and introduced legislation that it claimed would allow citizens to challenge unjust decisions.

Some judges – but only some, literally some – have decided that their independence in adjudicating includes independence from the applicable law. (...) That is why one hears more and more in private conversations that during the communist era an ordinary citizen who did not have a political case in court could count on a fairer verdict than today. (Wanda Łyżwińska, SRP, opposition, 27.7.2005, LP 4, Session 108)

Taking up the matter in question, that is, the issue of disclosing the files of the SB and other services of the communist state, now in this parliament is yet another attempt to bring Polish law into line with normality, with a democratic, sovereign and, in addition, just state. (...) The history of the last dozen years or so shows that Poland, although it is a sovereign and democratic state, is at the same time deeply unjust. (Marek Suski, PiS, government, 9.3.2006, LP 5, Session 12)

Today, after 27 years, we are working on a project which (...) provides for an extraordinary complaint. Today, ladies and gentlemen, we can say: at last we will be able to look at this independence, impartiality and infallibility of judges, and at last there will be an opportunity to look at the injustice in judgments, in decisions, which we have to deal with in the deputies’ offices. Finally, it will be possible to help all these people. (Waldemar Buda, PiS, government, 22.11.2017, LP 8, Session 52)

5.1.4 Romania: Convincing the EU and Limiting the President

When addressing the purpose of the rule of law, actors in both chambers of the Romanian parliament most often spoke of its role in providing norms and procedures for a functioning system. The functioning of the system was particularly emphasised during the transition period in the early and mid-1990s. In the pre-EU accession period the need to meet the Copenhagen criteria became an end in itself which counted for more than substantive arguments related to the purpose of the rule of law (after 2000; Table 5.10). Only during Traian Băsescu’s presidency from 2004 to 2014 was there a significant narrative on the purpose of the rule of law to limit power. In that period, actors accused the president of overreaching his powers in relation to the legislative and judicial branches. Morality, justice and values were of lesser importance for actors referring to the purpose of the rule of law. They were mentioned mainly at festive occasions as emanations of the 1989 revolution and the 1991 constitution, which aimed to decisively break with the communist past.

Table 5.10 Narratives on the purpose of the rule of law in Romania

	1990–2004	2004–2014	2014–2021
System functioning	RoL provides norms and procedures for a stable functioning of the post-communist society. (overlapping)	The EU's recognition of Romania's compliance with the RoL in itself serves to stabilise the functioning of the system. (overlapping)	RoL is a measure to escape the CVM. (overlapping)
Limitation of power		RoL is to ensure effective limitation of power, including the president. (one-sided, opposition)	
Morality and justice	RoL is to safeguard the moral values and justice of the 1989 Revolution as enshrined in the constitution of 1991. (overlapping)		

Compared to the other countries, Romanian speakers in parliament mentioned Romanian society more frequently than Romanian citizens, especially in the first two decades after 1989.

Table 5.10 shows that when actors in parliament referred to the rule of law, there was no principled dissent between government and opposition, even across ideological divides. MPs from the governing party or coalition were positively invoking laws or discussing the judicial and political realities of the country, while opposition actors referred to the rule of law when criticising the government for alleged rule of law deficiencies in these areas. Throughout the three decades studied, politicians communicated similar views of the purpose of the rule of law and warned of similar dangers when in opposition (Sect. 6.3.4).

System functioning. In both chambers of the Romanian parliament, many actors argued that the rule of law was important because it **provides norms and procedures for the stable functioning of the post-communist system**. The rule of law was described as a main pillar of the new system, which, in clear contrast to the previous authoritarian regime, responded to the aspirations and needs of the whole society.

The Romanian Revolution was also characterised by the farsightedness and political horizon of the objectives it stated programmatically and which responded to the broadest aspirations of Romanian society. The communiqué to the country of the council of the National Salvation Front that I presented on the evening of 22 December 1989 (...) defined in unequivocal terms the essence of the revolution, envisaging the abandonment of the communist system and the monopoly exercised by the single party, the establishment, through free elections, of a democratic, pluralist system, respect for human rights and the rights of ethnic minorities, the separation of powers in the state and the restructuring of the economic system, the opening up of Romania to the world and its integration into European, democratic structures. (Ion Iliescu, PDSR/PSD, opposition, 20.12.1996, CD+S, LP 3)

During the period of analysis, this narrative was linked with a particular emphasis on the principle of legality (in Romanian, *domnia legii*, i.e. the law is supreme). Politicians stated that no one should be above the law, that citizens must have access to the courts, and that the judiciary must be provided with financial and administrative resources. When Alexandru Athanasiu, an MP from the then ruling PSDR (later renamed PSD), supported a law on judicial personnel, he argued as follows:

(T)o materially reward loyalty to an institution is an obligation of any society that truly believes in the virtues of that institution. In fact, the fundamental question that we must ask ourselves is whether we consider justice to be one of the mandatory pillars supporting this new construction that we want to achieve in Romania, namely a truly democratic society governed by the rule of law. (Alexandru Athanasiu, PSDR/PSD, government, 14.3.1996, CD, LP 2)

Another narrative about the purpose of the rule of law emerged in the second wave of rule of law legislation. It focused on the **rule of law as a precondition for EU membership, ensuring the functioning of the system**. The desire to join the EU was shared across party lines. The need to meet the Copenhagen criteria, including the rule of law, became an end in itself, overshadowing arguments about the substance of the rule of law. In 2005, for example, Prime Minister Călin Popescu-Tăriceanu linked the freedom of Romanians to EU accession.

Freedom is closely linked to the way society works. Romania is free if the rule of law is strong and really works. (...) If we do not reform the justice system from the ground up, as we committed to do for accession, then the rule of law will never work in Romania. Without a functioning rule of law, freedom is illusory. (Călin Popescu-Tăriceanu, PNL, government, Prime Minister, 17.5.2005, CD+S, LP 5)

In the same year, he stressed the importance of getting approval from the EU in a debate over a motion of non-confidence against his government and used the EU conditionality as an argument for getting support for measures against the “morass” of previous governments. This quotation also shows that despite the overlap of the general narrative, political competition was still present.

It is not by chance that Brussels considers the reform of justice and property to be criteria for compatibility with the European community. I would like to stress here, before the Romanian parliament, that we are fighting for an independent and honest justice system, because we govern in Romania and we do not want to leave behind us something of the morass that you tried to sell to Romanians in 2004. The draft law on justice and property reform responds to Romania’s need to have a functioning rule of law and to join the European Union in 2007. (Călin Popescu-Tăriceanu, PNL, government, Prime Minister, 22.6.2005, CD, LP 5)

In this period, statements on the purpose of the rule of law were often linked with references to how the EU assessed the functioning of the Romanian rule of law system and which parties or governments performed better in fulfilling the accession criteria. When together with Romania’s accession to the EU the EU established a mechanism for monitoring the country’s compliance to its recommendations (the Cooperation and Verification Mechanism (CVM)), the early CVM reports became a

yardstick for Romania's political system under the rule of law. The narrative was used now by different parties that **the rule of law is a measure to escape the CVM**. Throughout the 2010s, the PNL and later the USR accused the coalition government of PSD and ALDE of undermining the purpose of the rule of law of furthering the functioning of the political system.

So, how long will it be before Romania's turn comes to receive sanctions like Hungary and Poland, when everything the PSD and ALDE are doing today is taking us further away from the European Union? The repeated attacks on justice and the rule of law by the PSD and ALDE will lead to Romania's isolation at European level, at a time when we should have demonstrated, with the Presidency of the EU Council, that we are an active, responsible, stable and reliable member of the European Union. (Ilie-D. Barnea, USR, opposition, 19.9.2018, CD, LP 8).

The failure to achieve Romania's major domestic and international political objective in the field of justice, i.e. the lifting of the Cooperation and Verification Mechanism by the European Commission, has you at the forefront, as a champion of the PSD-ALDE. You are directly responsible not only for not having achieved the removal of any benchmark from the Cooperation and Verification Mechanism, but for having caused a regrettable setback. There are no longer just eight, there are now 20 benchmarks to meet. The CVM report shows that the Romanian justice system is still not up to the quality standards agreed in the European Union. (Ioan Cupşa, PNL, opposition, 5.3.2019, CD, LP 8)

However, PSD and ALDE MPs, including Tudorel Toader, Minister of Justice in a PSD-led government, stated that Romania had made significant progress under their rule. He requested that the EU should provide clear guidelines for Romania to be certified as a state under the rule of law. This (again) linked the purpose of the rule of law to the EU and its aspirations.

The CVM – the Cooperation and Verification Mechanism – had four recommendations at the time of December 2016. Over time, the Ministry of Justice and the Romanian government have asked [the European Commission] that those recommendations be clarified, that they not be moving targets that change from one period to another, that we know exactly what we have to meet. This is why the Commission has explicitly specified the particularities, the content of the recommendations. And if one says generically – the laws on the administration of justice, strengthening the rule of law, this time the Commission tells us – the execution of final judgments in which the state is the debtor, the confiscation of criminal assets, the functioning of ANABI [National Agency for the Administration of Seized Assets⁵] and others. (Tudorel Toader, PSD, government, Minister of Justice, 5.3.2019, CD, LP 8)

Limitation of power. Limiting the power of the government and the state was not a major issue for the parliamentary parties until 2004. Some actors, including Ion Raţiu, a leading member of the National Peasant Party, stressed the importance of the rule of law in protecting citizens from the state, but this was not a widespread narrative.

⁵ Agenţia Naţională de Administrare a Bunurilor Indisponibilizate.

(...) in drafting the constitution we must never forget that the purpose of a constitution is the rule of law, the idea for which the state was created is the protection of the individual, not of the collective, the very defence of the collective that results from it is not the defence of each individual. (Ion Rațiu, PNȚ, opposition, 13.2.1991, AC, LP 1)

The parliament also introduced the ombudsperson (Avocatul Poporului—the People’s Lawyer) to hold the executive and legislative branches of government accountable in the event that they acted against the law and thereby infringed on the rights of the citizens.⁶ However, this was not linked with established narratives on the purpose of the rule of law to limit power.

It was mainly during the presidency of Traian Băsescu (supported by the PNL and the PD) that the limitation of power gained more attention. This was the first time since 1990 that a president was faced with governments led by parties other than his own. Until 2007, the Romanian presidents had worked alongside their respective governments to pursue their political agendas. Now, in times of cohabitation, major institutional political actors such as the president, the prime minister, ministers or the presidents of the two chambers of parliament were accusing each other of overreaching their constitutionally enshrined roles, damaging the separation of powers or blocking proper cooperation. A new—this time one-sided—narrative emerged that **the rule of law is to ensure effective limitation of power, including the president**. However, actors referred more often to the constitution and the constitutional limits than to the rule of law when speaking about the need to limit power.

President Traian Băsescu began his mandate by repeatedly showing clear tendencies of authoritarian leadership, with serious overstepping of constitutional limits, behaviour incompatible with the role of a head of a constitutional state based on the principles of pluralist democracy, with the spirit and principles of the Romanian constitution, primarily with the provisions of Article 80 of the fundamental law. (Titus Corlățean, PSD, opposition, 28.2.2007, CD+S, LP 5)

All they want is absolute power. Their most important goal is an all-powerful executive, using a weakened legislature to create a malleable judiciary in its own image. They strive to destroy the separation of powers in the state. And in place of the present system, they seek to establish a system in which power is unified and serves a narrow ideology in the service of a narrow set of interests. (Marian-Florian Săniuță, PSD, opposition, 6.10.2009, CD, LP 6)

After two failed attempts to remove Băsescu from the presidency, the narrative was established that the rule of law is about limiting power.

In Romania, under the presidency of Traian Băsescu, there has been a serious erosion of the rule of law and democratic mechanisms, which we cannot passively witness. Political will and action have been concentrated in the hands of a single man, who dictates to the government, who has set up false majorities, who no longer accepts even the appearance of judicial power. In this context, the move to suspend Traian Băsescu is (...) a duty we

⁶See Ion Dinu, PNȚCD, opposition, 22.2.1996, CD LP 2.

have, namely not to overlook the violation of fundamental law and to make every effort to restore a natural order in a state governed by the rule of law. (Radu E. Coclici, PSD, opposition, 29.11.2011, CD, LP 6).

The above-mentioned narrative had an especially sharp edge when MPs made semantic allusions to past communist or other authoritarian times. Allegations such as “authoritarian tendencies”, seeking “all-power executive” (*executiv atotputernic*) were levelled against politicians in leading positions.⁷ Accusations of treating Romania “as a feudum proprium” (*feudă proprie*)⁸ were even reaching back to the times of Ottoman domination.

Morality and justice. Compared to references to the functioning of the system and the limitation of power, fewer statements about the purpose of the rule of law were related to issues of morality, justice and values. This theme was mainly present in the first wave of rule-of-law-related legislation. The parliament enshrined in the 1991 constitution that Romania is “a democratic and social state governed by the rule of law, in which human dignity, the rights and freedoms of citizens, the free development of the human personality, justice and political pluralism constitute the supreme values” (Article 1 (3)). As Ioan Muraru (FSN), for example, argued during the constitution-making process, the establishment of human rights was also linked to values. However, this statement did not explicitly contain the notion of the ‘rule of law’.

The evolution of the institution of human rights has seen declarations of undeniable moral, political and legal value, such as the Declaration of Independence of the United States (. . .). All these moral, political or legal rules consider that ignoring, forgetting or despising these natural, inalienable and sacred freedoms and rights are the only causes of public sufferings and the corruption of the governments, of the acts of barbarism which have revolted the conscience of the world; by these regulations they declare solemnly as the highest aspiration of men and the aim of all society organised into a state, the proclamation, preservation and protection the natural liberties and rights of man. (Ioan Muraru, FSN, government, 12.3.1991, AC, LP 1)

As mentioned above, later statements referring to morality, justice and values in relation to the purpose of the rule of law were mainly found in ceremonial speeches on occasions such as the anniversaries of the revolution and the constitution, but also on accession to NATO or the EU. They did not mark shifts or waves of understanding. Politicians contrasted the rule of law with communism and associated it with the Romanian revolution and its goals, which were enshrined in the constitution, and with the restoration of ‘European values’ in a broader sense. For example, when the Romanian parliament approved the country’s accession to NATO in 2004, Prime Minister Adrian Năstase declared:

⁷Marian-Florian Săniuță, PSD, opposition, 6.10.2009, CD LP 6.

⁸Sorin Constantin Stragea, PSD, opposition, 22.11.2011, CD LP 6.

It is worth emphasising here today that preparing for accession to the European Union and NATO meant for Romanians the rediscovery of our European values, of national harmony and reconciliation with the past, it meant a systematic action to cleanse Romanian society of facts and phenomena contrary to the rule of law, contrary to human values. And I recall my speech here in parliament in April 2002, when I made it clear that the action plan for NATO membership meant at the same time fighting discrimination, fighting corruption, taking firm action against the practices perpetuated over the last decade in child protection institutions, reforming access to classified information and definitively removing the shadows of the past. (Adrian Năstase, PSD, government, Prime Minister, 26.2.2004, CD+S, LP 4)

There was an overlap in the statements made on this point across the parties. Verginia Vedinaş from the far-right PRM party, for example, said:

Moreover, this is also confirmed by the Romanian constitution, which, in Article 1(3), proclaims Romania as a democratic and social state governed by the rule of law, in which human dignity, citizens' rights and freedoms, justice and pluralism are supreme values in the spirit of the democratic traditions of the Romanian people and the ideals of the December Revolution and are guaranteed. (Verginia Vedinaş, PRM, opposition, 20.12.2006, CD+S, LP 5)

Over time, as Nicușor Dan (USR) seemed to argue, Romanian and European moral values have become identical, and Romanian citizens are staunch defenders of them:

(T)here is a strong attachment of Romanian citizens to European values. And we saw it at the beginning of this year, (...) when, spontaneously, hundreds of thousands of citizens demonstrated their belonging to the European area of values. For weeks, they demonstrated in the streets for the values of the rule of law, of democracy, demanding respect for a principle that says that no one is above the law. (Nicușor Dan, USR, opposition, 11.5.2017, CD+S, LP 8)

5.1.5 Slovakia: Limiting Power and Ensuring the Functioning of the System for Prosperity

In the Slovak parliament, discussions about the purpose of the rule of law most frequently addressed the issue of limiting power, followed by the functioning of the system. MPs were much less likely to associate the rule of law with the pursuit of morality and justice. The narratives related to the limitation of power considered both the protection of individual rights vis-à-vis the state and checks and balances within the state. Unlike the other four cases, the narratives related to the functioning of the system emphasised the importance of the rule of law for foreign investment and the promotion of social order and prosperity in general. These narratives were used by representatives of different political parties, in some periods more than in others (Table 5.11). The pursuit of morality and justice was raised mainly in the context of the alleged need to rectify past injustices through legal means. Proponents of this narrative saw the achievement of justice as the primary purpose of the rule of law, even if it goes against formal law. The narrative emerged in the mid-2000s and

Table 5.11 Narratives on the purpose of the rule of law in Slovakia

	1992–1998	1998–2006	2006–2021
Limitation of power	RoL serves to ensure checks and balances among the branches of government. (overlapping)	RoL serves to limit the state power by law to protect individual rights. (overlapping)	RoL serves to limit the state power by law to protect individual rights. (one-sided, liberal-conservative parties) RoL serves to ensure checks and balances among the branches of government. (overlapping)
System functioning		RoL creates conditions that attract foreign investors and foster economic development. (overlapping)	RoL creates conditions that attract foreign investors and foster economic development. (overlapping) RoL is to enable the functioning of society and ensure the prosperity of its members. (overlapping)
Morality and justice			RoL has to achieve justice and, if necessary, rectify injustice caused by legal means. (one-sided, liberal-conservative parties)

was propagated by representatives of parties that opposed Prime Minister Vladimír Mečiar’s rule in the 1990s.

Limitation of power. A strong narrative found in our documents was that the **purpose of the rule of law is to ensure that state power and authorities are effectively limited to what is permitted by law**. This narrative emerged after 1998. Statements often linked this limitation to the protection of individual rights and to the constitution, quoting its provisions or recalling its relevance. In so doing, they indirectly confirmed that this concept of the rule of law was enshrined in the constitution.

The rule of law is characterised by the fact that it is the laws that govern over the citizens, not the other way around. In a state governed by the rule of law, authorities can only act within the bounds of the law and only to the extent permitted by the law. (Pál Csáky, MKDH, opposition, 19.6.1997, LP 1, Session 29)

I genuinely want to remind you that many people in this assembly and very high-ranking officials have signed the valid Slovak constitution. And when Article 1 states that “the Slovak Republic is a sovereign, democratic and rule of law state”, this right, dear colleagues, should be respected by all of us. And the authorities, including the National Council, state bodies, according to Article 2, act within the bounds of the constitution, within the scope and manner established by law. (Anton Poliak, ZRS, government, 5.2.1998, LP 1, Session 43)

The narrative on the purpose of the rule of law to bind authorities to the law was used on various occasions by representatives of both ruling and opposition parties across the political spectrum.

The constitution of the Slovak Republic, adopted on 1 September 1992, introduced human rights and freedoms in a new way, which clearly and unequivocally declared a new relationship between the citizen and the state. Fundamental rights and freedoms are firmly based on the sovereignty of the citizen, from whom state power derives. As a sovereign democratic rule of law state, it explicitly stipulates that state bodies can act only on the basis of the constitution, within its limits, and in the scope and manner determined by law. (Jozef Kalman, HZDS, opposition, 27.4.2000, LP 2, Session 30)

After 2006, however, only representatives of the liberal-conservative parties used this narrative. Therefore, what was once an overlapping narrative became one-sided.

The fundamental characteristic of the rule of law is the absolute supremacy of the law, which binds the state, that is, all state authorities, and the law governing the exercise of state power. (Pavol Minárik, KDH, government, 18.5.2005, LP 3, Session 42)

In a truly compact legal system, (...) every individual can enter into a legal dispute, even against the state, and no one can overpower a citizen through any form of force, whether economic or official. Every participant in the dispute is entitled to equal justice under the same conditions (...). (Mária Ritomská, OĽaNO, opposition, 9.5.2012, LP 6, Session 2)

In the rule of law, the legal order and the judiciary protect citizens and their individual rights and freedoms from the arbitrary exercise of state power. In contrast, in other systems where the law doesn't function, the legal order and the judiciary protect the arbitrary state power from citizens. (Andrej Hrnčiar, Most-Híd, opposition, 26.9.2012, LP 6, Session 7)

A second narrative, used mainly from 1992 to 1998 and again after 2006, was that the **purpose of the rule of law is to ensure checks and balances between the different branches of government**. This narrative was often used by representatives of opposition parties and linked to criticism of the actions of the governing majority. Its users emphasised that the rule of law serves to prevent the concentration of power, especially in the hands of the executive. Some MPs contrasted democracy and the rule of law, stressing that elections can potentially bring individuals with power-grabbing tendencies into positions of authority (see also Sect. 6.2.5). In this context, the primary objective of the rule of law was to protect against such tendencies.

The fundamental prerequisite for the existence of the rule of law is the balance of power between the executive, legislative and judicial branches. The constitution should strictly secure this separation of powers to prevent any centralisation of power. (Árpád Duka-Zólyomi, Spolužitie-Együttélés, opposition, 1.9.1992, LP X, Session 5)

In all developed countries, democracy is essentially based on the separation of state power into legislative, executive and judicial powers. (...) If one of these components dominates, or one is pushed into the background, their continuity is lost, the democratic system is disrupted. This increases political instability and the threat to the rule of law. (Imrich Móri, HZDS, government, 18.3.1993, LP X, Session 17)

There is sometimes a certain tension between politics and the law, that's just how it is, and it even happens in well-established democracies. It is simply a fact that from time to time, one branch of power falters in established democratic countries, but there is always another branch of power that corrects these failures. That's the essence of the rule of law, that there is always another branch of power that corrects mistakes, failures, abuses of power and trampling on rights. (Lucia Žitňanská, SDKÚ-DS, opposition, 18.6.2013, LP 6, Session 21)

System functioning. When actors related reasoning about the purpose of the rule of law to the functioning of the system, they frequently argued that the **rule of law creates conditions that attract foreign investors and foster economic development**. As the quotations below demonstrate, this narrative is often presented with a negative formulation related to the criticism of a specific aspect of the rule of law in Slovakia. Since the beginning of the 2000s representatives from all significant parties across the political spectrum employed it with increased intensity.

(If investors discover that the judiciary is politicised, and there are already initial indications, no foreign capital will invest here. (Ján Sitek, SNS, opposition, 18.12.2000, LP 2, Session 43)

Investors are not satisfied with cheap labour in Slovakia and the fact that the government was formed by the SDKÚ. This alone would have resulted in an investment surplus between 1998 and 2002, but it didn't happen. Even an invitation to NATO may not be an immediate certificate for a massive influx of investments, although we would all be very pleased. Smer perceives the basis for attracting quality, non-speculative investments to be the trust of business partners in the rule of law and political stability. (Robert Fico, Smer, opposition, 12.11.2002, LP 3, Session 3)

The current state of justice today is not just a problem for the rule of law, it's a problem for the economy and new investments. Who, when the crisis ends, will come to Slovakia with new investments if they are under the threat of our courts jeopardising their investment? (...) Who will provide jobs for the people – the prime minister, us or new investors? (Daniel Lipšic, KDH, opposition, 15.10.2009, LP 4, Session 41)

Politicians frequently referred to issues in the justice system, including weak enforceability of the law and corruption. They argued that these problems made the country unattractive to foreign investors, complicated business operations and impeded economic growth. Both the government and the opposition addressed these issues, as represented by the following selected quotations.

I'm aware that the ideal notion of an independent judiciary that decides in all cases in a reasonable time and produces quality verdicts is not something we can achieve in a year or two. (...) Today, the poor enforcement of the law, the malfunction of judicial institutions, and corruption are hindrances to further economic development. (Lucia Žitňanská, SDKÚ-DS, government, Minister of Justice, 6.8.2010, LP 5, Session 3)

Entrepreneurs are saying that the business environment is deteriorating under your government. They complain about the enforceability of the law, they can't collect their receivables, and they have no faith in the Slovak judiciary. (...) Where have we come to? What should investors think? Will they invest in a country where it's probably very difficult to talk about the rule of law? (Alojz Pridal, KDH, opposition, 16.4.2013, LP 6, Session 17)

Several governments took measures to officially combat the problems. However, the purpose of the rule of law to create attractive conditions for foreign investors and foster economic development was still mentioned as a goal that was not achieved at the end of our period of analysis in 2021.

In connection with the 'Rule of Law Initiative', the government will continue to diligently implement the action plan to strengthen the Slovak Republic as a rule of law, in all three of its parts: transparency, predictability and participatory legislative processes; corruption as a negative and harmful factor for the 'Slovakia brand'; and transparent and efficient justice as a solid foundation for both domestic and foreign investors. (Peter Pellegrini, Smer, government, Deputy Prime Minister, 18.4.2016, LP 7, Session 2)

However, the low level of trust in the Slovak judiciary is alarming, and it is dangerous for democracy and also for foreign investment. When there's a high level of corruption and a lack of trust in the judiciary, foreign entrepreneurs will certainly reconsider whether to invest in our country, making it a serious problem. (Miloš Svrček, Sme Rodina, government, 4.12.2020, LP 8, Session 18)

Another narrative regarding the rule of law and the functioning of the system was that **the rule of law is not an abstract concept but a practical tool whose purpose is to enable society to function and ensure the well-being of its members**. This narrative was most often used as a general support for the rule of law, emphasising that it impacts everyday life and the whole of society. In such statements, the rule of law was considered in connection to other fundamental principles rather than being viewed in isolation.

(...) a clear, simple, and understandable legal order is an essential part of the rule of law and democracy in general, as the legal order is the fundamental instrument of the state. (Peter Briňák, HZDS, opposition, 12.9.2001, LP 2, Session 51)

This narrative was used with increasing intensity by representatives of various political parties, both in government and in opposition, from the mid-2000s onwards.

As a lawyer and someone who has observed the activities of the National Council of the Slovak Republic with interest, albeit from the sidelines, I was quite dismayed when I witnessed the degradation and the misrepresentation of the term 'rule of law'. This is not an empty, profaned concept; it is a fundamental condition for the functioning of any society and state. (Mojmír Mamojka, Smer, government, 3.8.2006, LP 4, Session 2)

The state can and should intervene and stimulate development by making it achievable through well-defined and predictable rules and laws to address undesirable changes in the global environment. (Mária Ritomská, OĽaNO, opposition, 9.5.2012, LP 6, Session 2)

Notwithstanding the underlying cross-party agreement on the importance of the rule of law for the day-to-day functioning of society, representatives of different political parties, based on their ideological backgrounds, emphasised different approaches to, for example, promoting individual prosperity.

I would like to conclude, respected colleagues, with a vision that I consider to be current and historical. [A vision of] Slovakia as a free, European, and for the third time, creative and prosperous nation. The aspect of freedom remains a challenge, not only over these 23 years but also in the future because it's about responsibility, democracy, plurality, even in education, for example. It's about the rule of law, which is not just a theory but a practice. It's about the fact that it's not the rich who have the right, but the law enables people to become richer, stronger and more capable when promoting legitimate interests. (Ján Figel', KDH, opposition, 16.4.2013, LP 6, Session 17)

I think it's time to focus on issues and topics in parliament that can have a positive impact on the lives of Slovak citizens, making their lives easier and better. People want to live happier, more joyful lives, they want to feel safe, they want a functioning healthcare system, social security, fast, fair justice, and a fully functioning rule of law. (Karol Farkašovský, SNS, government, 28.3.2017, LP 7, Session 14)

Morality and justice. During the three decades under study, discussions on the purpose of the rule of law in terms of morality and justice were not common in Slovakia. However, we identified a narrative suggesting that **the purpose of the rule of law is to achieve justice and that injustice caused by legal means must be rectified**. This narrative was mainly linked to the issue of the so-called Mečiar amnesties of 1998 and the repeated attempts to revoke them. Advocates of this perspective often rejected a formalistic interpretation of the law. They argued that conflicts between law and justice could arise and that in cases where a law is immoral, subsequent annulments could be justified as moral acts. However, they maintained that amnesties granted for selfish reasons were not justified. Representatives of liberal-conservative parties, such as KDH, Most-Híd and OĽaNO, used this narrative to advocate for the abolition of the 'Mečiar amnesties'.

Amnesties prevent justice from being served. If, in this country, there has ever been an irreconcilable conflict between the law and justice, it was in this case. Therefore, these immoral amnesties, most likely self-amnesties, must yield to justice. (...) An unpunished crime must not be erased from memory. Otherwise, the law can become a means not only to achieve justice but also to achieve injustice. (Pavol Minárik, KDH, opposition, 18.5.2005, LP 3, Session 42)

Although the 'Mečiar amnesties' date back to 1998, the issue was only legally solved in the late 2010s. Therefore, it reappeared in the parliamentary debates over time when MPs emphasised the relevance of the material essence of the rule of law and justice.

The problem with the mentioned [Mečiar] amnesties is that (...) the respective legal act is in line with the law only formally, but it deviates from its material essence. It's a material injustice, an injustice of the Slovak Republic against its own citizens in the interest of certainties, which means criminals or alleged criminals if the matters are not properly investigated. (Ján Figel', KDH, opposition, 17.3.2015, LP 6, Session 48)

(L)aw cannot arise from lawlessness, (...) the loud and fundamental essence of law is the achievement of justice and that when the law escapes justice and exceeds the tolerable limits, it is legal and legitimate not to respect such law, and to do something about it. (Peter Kresák, Most-Híd, government, 6.12.2016, LP 7, Session 11)

It's about gambling with people's trust in the elementary justice that a rule of law should guarantee. (. . .). Because a state governed by the rule of law is one where justice must prevail, and the state must know how to establish a method for applying justice within the state. (Marek Krajčů, OLaNO, opposition, 30.3.2017, LP 7, Session 14)

5.2 Elements of the Rule of Law

In parliaments, MPs do not usually give theoretical presentations on all the elements they associate with the rule of law. They comment on specific bills or reports and need to focus on specific arguments. Nevertheless, our extensive empirical material has allowed us to identify elements that they most commonly associated with the rule of law. Thus, in this chapter, we do not provide exhaustive lists of the elements of the rule of law discussed in parliamentary debates, but rather key points that were associated with the rule of law. One of the main findings is that while MPs highlighted the limitation of power as a vital purpose of the rule of law (Sect. 5.1), they did not rank the separation of powers first among the elements of the rule of law. Instead, in the sources we analysed, they clearly focused on legality or, more specifically, legal certainty and adherence to the law.

Legality is part of many concepts of the rule of law worldwide, including 'thin concepts'. Thus, its emphasis is consistent with many approaches to defining the rule of law. However, effective rule of law institutions are rarely included in rule of law catalogues and are mostly perceived as means, enabling mechanisms. In our cases, parliamentary debates have highlighted the discrepancies between the written law and its practical implementation, leading actors to demand strong institutions to enforce and safeguard the law.

These and other findings presented below stem from the coding of all statements in our selected sources in which speakers referred to specific subjects as elements, pillars or attributes of the rule of law. We also included speeches where it was clear from the context that politicians discussed the element in question in connection to the rule of law, like, for example, "Without x, the rule of law is an illusion", "It is important to note that the rule of law relies on x" or "In a state under the rule of law, it is essential to guarantee x".

While the rule of law theories and conceptual frameworks contain diverse elements, many of them include three core pillars or (groups of) elements: legality, separation of powers and equal rights. Legality, as a broad concept, means that laws are clear, stable and predictable and that the law is implemented in practice. It also includes the principles that legislation cannot be retroactively amended and that the same laws and rules apply equally to everyone. The separation of powers entails an independent judicial branch. It also implies that judges decide independently of political, religious and economic influences, that they may be dismissed only in exceptional cases and that the arbitrary use of executive powers is prohibited. The notion of (equal) rights encompasses, among other things, respect for fundamental rights and freedoms in general, respect for non-discrimination of any member or part of society, and free access to justice.

Many of the MPs' statements that we coded as references to elements of the rule of law could be assigned to the three themes mentioned above (Table 5.12). In each case, however, the main pillars did not cover a large residual area that was best grouped under the category of 'Effective institutions'. Narratives related to effective institutions were used in all three waves of rule of law legislation in all countries except Romania. This underlines the particular importance of this aspect for parliamentarians. (Equal) rights and the separation of power were also frequently mentioned by MPs throughout the periods of rule of law legislation, but we found fewer narratives relating to them.

As Table 5.13 reveals, MPs in all parliaments except Romania used the narrative that constitutionality/legality/legal certainty is a crucial element of the rule of law, most intensively in the second or third wave of rule of law legislation. Politicians in Hungary and Poland shared the narrative—mainly during the first wave—that legal certainty (including predictable and stable frameworks) is necessary for the new political system. Other narratives were country-specific, including two narratives on legality as an element of the rule of law used only by some parties (one-sided narratives).

Narratives on effective institutions as an element of the rule of law differed more across countries and in one case (Slovakia) also over time. Table 5.14 provides an overview of how MPs referred to this issue in their speeches. The focus was on a judiciary independent from the executive (Czechia) or from political and economic interests in general (Slovakia), on an independent and effective judiciary and prosecution (Poland), on the need to establish diverse independent organs (Hungary), or on respect for the law and its effective enforcement (Slovakia). In general, these narratives were used across party lines. Only in Hungary and Poland did the formerly overlapping narratives become one-sided during the third wave of rule of law legislation.

Narratives addressing (equal) rights as an element of the rule of law were used with greater intensity in Czechia and Slovakia, but we also identified them in Poland and Romania (Table 5.15). In Czechia (in the first and the second wave of rule of law legislation) and Poland, the focus was more on respecting and protecting fundamental rights and freedoms; in Slovakia and Czechia (the third wave), on equality before the law. In Romania, only some MPs employed a narrative on this issue, which focused on the rights of national minorities. This narrative was used by the party that represents the Hungarian minority (see also Sect. 6.1.4).

Narratives on the separation of powers as an element of the rule of law were mainly used in Hungary and Poland (Table 5.16). While MPs in Poland and Slovakia focused on the need to combine the principle of the separation of powers with mutual control (checks and balances), their colleagues in Hungary concentrated more on the separation of powers at different levels of government. Half of the narratives were one-sided narratives.

Although most parties shared narratives on the elements of the rule of law, in all countries except Czechia we identified some narratives that were unique to certain parties. This was most often the case during the third wave of rule of law legislation. References to elements of the rule of law in Hungary and Poland were linked to very

Table 5.12 Narratives on elements of the rule of law, 1990/92–2021

	1st wave					2nd wave					3rd wave				
	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK
Legality	✓	✓	✓	✓		✓		✓		✓	✓	✓			✓
Effective institutions	✓	✓	✓				✓			✓		✓	✓		✓
(Equal) rights	✓		✓	✓		✓				✓	✓			✓	✓
Separation of powers		✓	✓						✓			✓	✓		✓

1st wave: CZ 1992–1998, HU 1990–1998, PL 1990–1998, RO 1990–2004, SK 1992–1998

2nd wave: CZ 1998–2006, HU 1998–2010, PL 1997–2015, RO 2004–2014, SK 1998–2006

3rd wave: CZ 2006–2021, HU 2010–2021, PL 2015–2021, RO 2014–2021, SK 2006–2021

Table 5.13 Narratives on legality as an element of the rule of law

	CZ	HU	PL	RO	SK
<i>Overlapping narratives</i>					
Constitutionality/legality/legal certainty as a crucial element of the RoL.	✓ (2, 3)	✓ (3)	✓ (2)		✓ (3)
Legal certainty (including predictable and stable frameworks) is necessary in the new political system.		✓ (1)		✓ (1)	
Adherence to legal principles and regulations is necessary.	✓ (1)				
Supremacy of the law, law-abiding state institutions and correct implementation of the law as guarantees for RoL.			✓ (1)		✓ (3)
<i>One-sided or diverging narratives</i>					
Unconditional respect for the principle of non-retroactivity is crucial in the rule of law.					✓ (2, 3)
Legal certainty and effective institutions are intrinsically interconnected elements of the RoL.		✓ (3)			

Waves of rule of law legislation where a particular narrative was used most intensively are indicated in brackets

Table 5.14 Narratives on effective institutions as an element of the rule of law

	CZ	HU	PL	RO	SK
<i>Overlapping narratives</i>					
Judiciary that operates independently from influence, especially from the executive, is highly relevant.	✓ (3)				
Establishing diverse independent organs is essential in shaping the RoL.		✓ (1, 2)			
Independent, impartial and well-functioning judiciary and prosecution service are key elements of the RoL.			✓ (1)		
Respect for law and its enforcement are fundaments of the RoL.					✓ (2)
Independent and impartial judiciary is a pillar of the RoL.					✓ (3)
<i>One-sided or diverging narratives</i>					
Independence of diverse organs is essential for restoring the RoL.		✓ (3)			
Independent judiciary and prosecution service are key elements of the RoL.			✓ (3)		

Waves of rule of law legislation where a particular narrative was used most intensively are indicated in brackets

similar criticisms of practical shortcomings. However, in Poland, they were captured by two narratives, while in Hungary they were captured by three elaborated narratives. Again, this is an example of country specificity despite some overarching commonalities (Table 5.17).

Table 5.15 Narratives on (equal) rights as an element of the rule of law

	CZ	HU	PL	RO	SK
<i>Overlapping narratives</i>					
Respecting and protecting fundamental rights and freedoms as an essential pillar of the RoL.	✓ (1–3)		✓ (1)		
Equality before the law is fundamental for the RoL.	✓ (3)				✓ (2, 3)
Safeguarding the constitutional principle of equality of rights is a duty for all political and judicial actors.				✓ (2)	
<i>One-sided or diverging narratives</i>					
The constitutional rights of citizens belonging to national minorities to preserve their language, traditions and cultural identity must be respected.				✓ (1)	

Waves of rule of law legislation where a particular narrative was used most intensively are indicated in brackets

Table 5.16 Narratives on separation of powers as an element of the rule of law

	CZ	HU	PL	RO	SK
<i>Overlapping narratives</i>					
Separation of powers with effective checks and balances as an integral part of the RoL.			✓ (1)		✓ (3)
Separation of powers (including local governments) as a fundamental element of the RoL.		✓ (1)			
<i>One-sided or diverging narratives</i>					
Separation of powers (which is undermined by the government) is fundamental for restoring the RoL.		✓ (3)			
Separation of powers and checks and balances as a guarantee to protect rights under the RoL.			✓ (3)		
Separation of powers is in danger due to the president or government engaging in overreach of their constitutional rights, esp. concerning the judiciary.				✓ (2)	

Waves of rule of law legislation where a particular narrative was used most intensively are indicated in brackets

5.2.1 Czechia: Legal Certainty, (Equal) Rights and Effective Institutions

Issues related to legality (including legal certainty and non-retroactivity) were the most frequently mentioned elements of the rule of law in the analysed Czech parliamentary debates. Statements mentioning effective institutions or (equal) rights followed at a considerable distance. There were only a few statements mentioning

Table 5.17 One-sided or diverging narratives on elements of the rule of law

	1st wave						2nd wave						3rd wave					
	CZ	HU	PL	RO	SK		CZ	HU	PL	RO	SK		CZ	HU	PL	RO	SK	
Legality											✓			✓				✓
Separation of powers										✓				✓	✓			
Effective institutions														✓	✓			
(Equal) rights				✓														

See Table 5.12 for the definition of the waves

Table 5.18 Narratives on elements of the rule of law in Czechia

	1992–1998	1998–2006	2006–2021
Legality	Adherence to legal principles and regulations is necessary. (overlapping)	Constitutionality/legality/legal certainty as a crucial element of the RoL. (overlapping)	
(Equal) rights	Respecting and protecting fundamental rights and freedoms as an essential pillar of the RoL. (overlapping)		Equality before the law is fundamental to the RoL. (overlapping)
Effective institutions			Adequate legal measures and a judiciary that operates independently from others, especially from the executive, are highly relevant. (overlapping)
Separation of powers	<i>No established narrative identified in the analysed sources</i>		

the separation of powers, but these did not form an established narrative.⁹ In the selected sources, narratives on legality and (equal) rights as elements of the rule of law were present over time, yet with varying intensity of their use. Statements mentioning effective institutions appeared mainly in the third wave of rule-of-law-related legislation. All narratives were used across party lines (Table 5.18).

Legality. As mentioned, legality issues ranked first when actors in the Czech parliament spoke about the elements of the rule of law, also because MPs often referred to legality when they spoke about the purpose of the rule of law (Sect. 5.1.1). From 1992 to 1998, MPs across parties emphasised the **importance of adhering to legal principles and regulations, and respecting constitutional norms and professional standards**. As the following quotations show, such arguments were made towards the executive and parliamentary majority (Kačenka) and the Prosecutor General (Wagner). In addition, such statements were made as a commitment of the government.¹⁰

The validity of the acts of the National Council of the Republic undoubtedly belongs to the general principles of the rule of law. From this principle, it follows that legitimate and legal acts of the National Council of the Republic should be transformed by any legal regulation and remain in force for the entire period established by the relevant law. (. . .) The proposed regulation essentially means bypassing universally applicable legislative principles and the rule of law (. . .). Unjustified adoption of new legislation can be considered an abuse of legislation for political purposes. (František Kačenka, HSD-SMS, opposition, 20.5.1993, LP 1, Session 9)

⁹Note that these findings are based on the analysis of extracts from selected documents that explicitly dealt with elements of the rule of law.

¹⁰E.g. Václav Klaus (ODS, government, Prime Minister, 7.7.1997, LP 2, Session 12), quoted in Sect. 5.2.1.

If we claim to be building the rule of law, we are building it first and foremost by our actions, by our insistence that the law be respected. If we leave as the guardian of the rule of law in this country a man who himself breaks the law, then we ourselves do not have a clear conscience and we do not honour the main principle (. . .). (Jozef Wagner, ČSSD, opposition, 17.6.1993, LP 1, Session 10)

During the second wave of rule of law legislation (1998 to 2006), MPs emphasised that **constitutionality and legal certainty are crucial elements of the rule of law**, with a particular relevance of legal clarity, stability and fairness in upholding the rule of law and fostering citizens' trust in the legal system. There was a broad consensus that legal norms, including international treaties, should be applicable universally and non-retroactively, and that they cannot be tailored to specific circumstances.

In a state governed by the rule of law, legal norms, and therefore international treaties, should not be tailor-made for specific situations. A legal order should be created that applies to everyone, and treaties and laws should not apply retroactively. (Jiří Payne, ODS, opposition, 15.2.2002, LP 3, Session 46)

In particular, this time too, the economic and legal position of the beneficiaries is worsening, which threatens to violate the constitutional principle of legal certainty and trust in the law, as it is derived from Article 1 of the constitution of the Czech Republic, which speaks of the rule of law. (Vlasta Parkanová, KDU-ČSL, opposition, 31.3.2004, LP 4, Session 30)

Parliamentarians repeatedly mentioned trust in law and the perspective of the norm addressees when highlighting the relevance of legal certainty. It was argued, for example, that legal certainty implies the addressees of law are familiar with it (Votava), and that there is no retroactive lawmaking (Sobotka).

The rule of law is required to enable those on whom it imposes obligations or confers rights by its legislation to know about them. (Václav Votava, ČSSD, government, 4.11.2004, LP 4, Session 37)

One of the basic features of the rule of law is the principle of legal certainty and citizens' trust in the law, which includes the prohibition of retroactivity of legal norms. According to the constitutional court's 2001 ruling, true retroactivity has no place in the rule of law. (Bohuslav Sobotka, ČSSD, government, Deputy Prime Minister and Minister of Finance, 25.11.2005, LP 4, Session 51)

This narrative was also used from 2006 to 2021, slightly adapted to the occasions for speaking on the matter, e.g. contracts with churches and religious societies or the parental allowance system. It was widely shared across parties.¹¹

¹¹ In addition, Miroslav Kalousek (TOP09, opposition, 19.1.2016, LP 7, Session 39) argued, for example, that "it is not possible to behave like this in a democratic state governed by the rule of law where the law exists, and we must either adhere to it or, if it doesn't exist, it cannot be that you now decide it will exist, be effective, and at the same time be satisfied with the reassurance of the Minister of Finance: 'When it becomes effective, we won't really act according to it, don't worry, and until then, we will amend it'."

(W)e will significantly strengthen what we keep talking about here, the principles of the democratic rule of law. It is only on the basis of a good law that a settled and stable jurisprudence of the highest courts can emerge, which will bring a high degree of legal certainty to citizens. The citizen will be able to predict how the courts will rule on his case. (...) So first you need a good quality law, and then you can have stable case law. (Jiří Pospíšil, ODS, government, Minister of Justice, 9.11.2011, LP 6, Session 30)

The principle of legality says that the law must be followed. The principle of legitimacy says that it is not possible for laws to be made in contradiction with the constitution, in contradiction with the expectation that the citizen of the Czech Republic has of the decision of the legislator. (Vojtěch Filip, KSČM, opposition, 13.7.2012, LP 6, Session 41)

I think that the rule of law always requires a certain stability, certainty and predictability of the law. (Helena Válková, ANO, opposition, 10.11.2021, LP 9, Session 1)

Again, the prohibition of retroactivity was invoked repeatedly as ensuring legal certainty and citizens' trust in the law. Different MPs cited the constitutional court's interpretation of 'true retroactivity', employing a more differentiated reasoning about the matter than before.

Regarding the ban on retroactivity, the constitutional court stated that it is a fundamental part of the rule of law. In line with previous case law, the constitutional court insists that only true retroactivity is generally prohibited, meaning even unconstitutional retroactivity. (...) According to the constitutional court, such a legal norm simultaneously constitutes an interference with the principle of protecting the citizen's confidence in the law and legal certainty, or an interference with acquired rights. (...) (Petr Hulinský, ČSSD, opposition, 1.11.2011, LP 6, Session 25)

The moment you retroactively change contracts that have been made, you are committing a change in what is a legitimate expectation, and you are simply changing something that is supposed to be respected. (...) This law has already been examined once by the constitutional court, the law, I mean now, on compensation, on property settlement with churches, and the constitutional court has stated that it is in order, that it is in line with the constitutional order. (Jan Farský, STAN, opposition, 23.4.2019, LP 8, Session 28)

The rule of law is based on legal certainty. Whoever decides to act or behave in the rule of law must know in advance the legal consequences of that behaviour. Every citizen in a state governed by the rule of law must move on a playing field that has boundaries that are given and known to him or her. And if those boundaries shift or change, it is only in the future, not retrospectively. (Jan Bauer, ODS, opposition, 17.12.2019, LP 8, Session 39)

(Equal) rights. Throughout the whole period of analysis, MPs consistently emphasised that safeguarding and promoting fundamental human rights and freedoms is a crucial aspect of democracy and the rule of law. This narrative was employed by representatives of various political parties, including those in opposition, and it aligns with the emphasis on citizen-centred arguments regarding the purpose of the rule of law (Sect. 5.1.1).

I believe that here we have approved the government's programme statement, the first point of which was that we want to be a democratic and rule of law state and that we will, therefore, respect the current constitution and all international human rights documents, including the equality of all citizens. (Vladimír Řezáč, LB, opposition, 17.6.1993, LP 1, Session 10)

(W)e live in a democratic state governed by the rule of law, in which people are not divided according to colour, religion or political affiliation, but according to their compliance or non-compliance with the law (. . .) (Ivan Langer, ODS, opposition, 5.5.2005, LP 4, Session 44)

The Czech Republic is internationally recognised as a democratic state governed by the rule of law. Under the rule of law, respect for fundamental human rights, including the right to protection of property and the right to a fair trial, should be a matter of course. (Vojtěch Filip, KSČM, opposition, 13.2.2020, LP 8, Session 40)

While the narrative remained unchanged, we found more statements by government representatives since 1998. ČSSD politicians referred to broadly defined rights as a central pillar of the rule of law. ODS MPs highlighted the principle of the right to privacy and the principle of punishing offenders.

(E)very decent democratic government and every decent rule of law takes care of the human rights of its citizens and citizens of other countries. (Egon Lánský, ČSSD, government, Deputy Prime Minister, 19.8.1998, LP 3, Session 3)

The government intends to develop a democratic rule of law based on the values of freedom, equality, justice, democracy, tolerance of differences and, above all, solidarity with the weak, vulnerable and defenceless. This is the first priority of the government's efforts. The democratic rule of law is perceived by this government as a state which, through its legal order and its effective applicability, provides all citizens and legal persons with equal access to the rights and freedoms guaranteed by the Charter of Fundamental Rights and Freedoms and the ratified human rights conventions. It sees the way to a truly emancipated society in the concept of a state that is bound by law without exception and serves its citizens, who are guaranteed the freedom to decide their present and future. (Vladimír Špidla, ČSSD, government, Prime Minister, 6.8.2002, LP 4, Session 3)

(T)he democratic rule of law at the beginning of the twenty-first century is based on different constitutional principles and postulates, and that, among other things, there are two equally important constitutional postulates, namely, firstly, the principle of the right to privacy and, secondly, the principle of punishing offenders. (Jiří Pospíšil, ODS, opposition, 23.6.2005, LP 4, Session 45)

For the period between 2006 and 2021, another narrative centred around the equality of people before the law. This topic was addressed more intensively than before, for example in debates on crime and equal treatment before courts. MPs also discussed the economic crisis and possible solutions, strategies for the fight against corruption, as well as the issue of equal rights in relation to the anti-communist resistance. They argued that **equality before the law is fundamental to the rule of law** and that a state cannot honestly claim to be under the rule of law if it fails to protect the rights of

all its inhabitants. Maintaining equality before the law was considered as essential for upholding the integrity and legitimacy of the rule of law, preventing the legal system from being manipulated for political purposes or leading to injustices.¹²

(T)o a certain extent, it may break through what European civilisation has achieved in two thousand years under the rule of law. This means the principle of the equality of citizens before the law, the principle of equality of parties within the framework of legal proceedings, but also principles such as the proportionality of punishment, that is to say, everyone should be punished for the crime committed, or the aspiration, even though it will never be fulfilled in its ideal form, of the immediacy of punishment. (Jiří Pospíšil, ODS, supporting caretaker government, 9.2.2010, LP 5, Session 68)

I would only ask that we stick to the constitution of the Czech Republic and the Charter of Fundamental Rights and Freedoms so that we do not move our democratic society beyond the principles of the rule of law. I hope that no one will be deprived of their judge and that those who will judge certain matters will have the courage and ability not to prevent such a thing. I would like to see that there are no first and second class citizens here and that we remain equal before the law. (Vojtěch Filip, KSČM, opposition, 11.2.2011, LP 6, Session 13)

The narrative was also frequently used by the opposition parties, whose representatives repeatedly linked such statements with demands on or criticism of the government. This was done, for example, in cases of alleged limited independence of the judiciary from politics (Zaorálek), perceived discriminatory treatment in the context of church restitution (Křeček) and regarding President Klaus's amnesties (see Sect. 3.2).

What we have here is perhaps the most serious case – I repeat – of an organised group that has (...) the method and the ability to influence a political cause, and now it is up to us what we do about it. (...) You are responsible for moving this country a little bit further towards not having the law apply equally to everybody, because when something like this happens, it is a scandal in the rule of law. (Lubomír Zaorálek, ČSSD, opposition, 13.6.2008, LP 5, Session 33)

Differential treatment in the same cases is perceived as a fundamental break in the functioning of the pillars of the rule of law. Both all European constitutional courts and the European Court of Human Rights in Strasbourg perceive such treatment very negatively, and thus the state could face significant damage to the restituted property. (Stanislav Křeček, ČSSD, opposition, 13.7.2012, LP 6, Session 41)

If this form of amnesty, as approved by the president and the government, is in fact a disgrace, if this form of amnesty is something that undermines the confidence of a large part of the public in the rule of law, in the principles of equality before the law, if this form of amnesty raises justified suspicion that it was tailored to a few chosen ones to save them from ongoing criminal proceedings, then I believe that the Chamber of Deputies has no other option but to make this amnesty the subject of a vote of no confidence in the government of Petr Nečas. (Bohuslav Sobotka, ČSSD, opposition, 17.1.2013, LP 6, Session 50)

¹²See also Jiří Bláha (ANO, government, 23.11.2019, LP 8, Session 26), as quoted in Sect. 5.3.1.

Effective institutions. Statements regarding effective institutions as an element of the rule of law mostly referred to the independence of the judiciary and trust in the law, particularly in connection with legal certainty. Other aspects that were addressed, such as the confidentiality of lawyers or the efficiency of judicial and administrative proceedings, did not serve as a basis for the elaboration of a specific narrative.

Most of the statements referring to the independence of the judiciary as a critical element of the rule of law were made from 2006 to 2021, most commonly in connection with the criminal prosecution of several prominent politicians. In connection with a corruption scandal in 2012, police requested a waiver of the parliamentary immunity of the opposition frontbencher David Rath, who was detained in the act of accepting a bribe. Later, the possible influence of politics on the judiciary was raised after ANO joined the government coalition as junior partner in 2013 and took over the Ministry of Justice while its leader, Andrej Babiš, was under investigation for fraud ('Stork's Nest affair'). In 2017, the police asked parliament for consent to the prosecution of Babiš and the parliamentary party group leader Jaroslav Falťánek. In that period, MPs emphasised the importance of a judiciary, public prosecution and police that operate free from undue influence or manipulation, especially from the executive branch.

(I)t is a question of whether the Czech Republic is still a democratic state governed by the rule of law, where the police and the courts are truly independent. If it were so, a man accused of accepting a seven-million bribe would hardly be sitting in detention in a situation where all the witnesses in his case have already been questioned; he no longer holds any position that would allow him to continue his criminal activities (. . .). That is also why – I emphasised also – I personally vouched for David Rath when applying for his release from custody. (Jiří Šlégr, non-affiliated, elected for ČSSD, opposition, 7.9.2012, LP 6, Session 45)

I am an optimist in life and I believe that I live in the rule of law. I believe in the professionalism of prosecutors and the independence of the courts. We have done nothing wrong, let alone illegal. And in the end, I think the truth will prevail, and we will clear our name. In our case, and to the detriment of Czech democracy, unfortunately after the elections, because nothing will happen before the elections. But the purpose of this political plot to damage our movement has been fulfilled, but unfortunately that is our Czech politics so far. (Jaroslav Falťánek, ANO, government, 6.9.2017, LP 7, Session 60)

Another occasion to address this issue was the allegation that the close collaborators of the president attempted to influence judges' decisions in cases directly related to the office of the president.

I think that all of us who took the constitutional oath know that the independence of the judiciary is one of the fundamental pillars of the rule of law and that the president of the Republic, who is part of the executive and who seeks to influence that independence in his favour, is doing nothing other than tearing down the very pillars of the rule of law, and that the House, as the supreme representative of the legislature, simply cannot remain silent on this. (Miroslav Kalousek, TOP09, opposition, 22.1.2019, LP 8, Session 26)

Separation of powers. In the parliamentary debates analysed, the separation of powers was mentioned as an element of the rule of law rather sporadically. However, from the context it can be assumed that this is not because MPs did not embrace this concept but that it was generally accepted and not worth discussing. Only in the period from 2006 to 2021 did we identify more statements with reference to it. Politicians argued that **maintaining separate and independent branches of government helps to prevent power from becoming centralised and abused**. Respecting judicial decisions was described as critical for maintaining the legitimacy of government actions and preserving the constitutional order.

The constitutional system of the rule of law and its separate existence are based on the division of powers among the legislative, executive and judicial branches. This has been reiterated several times, and every elementary school student knows it. The constitution, the primary law of the state, then enshrines the balancing of these powers, mutual control, checks and balances, and thus the tools to maintain that balance. (Alena Gajdůšková, ČSSD, government, 26.9.2019, LP 8, Session 34)

While all parties regarded the separation of powers as an essential element of the rule of law, it was sometimes interpreted in a more nuanced way. For example, as the following quotations show, MPs argued that not “any action on the floor of the Chamber of Deputies would be some kind of improper interference in the exercise of judicial power” (Hašek) and that “the nature of a delict” should not be defined only in judicial decision-making practice (Ožanová). Moreover, the rather general narrative was used by opposition parties to criticise government measures.

(D)emocracy and the democratic rule of law is based on three pillars – the legislative, executive and judiciary. I want to shatter the myth that any action on the floor of the Chamber of Deputies would be some kind of improper interference in the exercise of judicial power. I will tell you why. The public prosecutor’s office – and that is the main point – is subject to the ministry of justice, i.e. the executive. And personnel matters relating to the public prosecution service are also the responsibility of the executive, namely the minister of justice. If the executive does not act, then, in our firm belief, it is the legislative power that comes next, from which the legitimacy of the government derives. (Michal Hašek, ČSSD, opposition, 13.6.2008, LP 5, Session 33)

In view of the principle of the separation of powers, it is unacceptable that the nature of a delict, that is, the factual basis of such conduct, should be defined only in judicial decision-making practice. (Zuzana Ožanová, ANO, government, 26.9.2019, LP 8, Session 34)

We will not support any government bill that would restrict the system of checks and balances and the independence of institutions on which the democratic rule of law stands. (...) That was part of our common programme, and now, you, the left-wing party, ANO movement, have removed it, but we will abolish the quarantine period. We will advocate for a major legal clean-up in laws. (Zbyněk Stanjura, ODS, opposition, 11.7.2018, LP 8, Session 17)

5.2.2 Hungary: Legal Certainty, Separation of Powers and Effective Institutions

In the parliamentary material analysed, speakers in the Hungarian parliament most often mentioned legality (with a focus on legal certainty as well as predictable and stable frameworks) when referring to elements of the rule of law. This was followed at a considerable distance by the separation of powers and effective rule of law institutions, which were mentioned with similar frequency and generally not very often. Rights, mostly concrete rights, were rarely mentioned as an element of the rule of law, not forming an established narrative. With regard to time, we found more statements on elements of the rule of law from 1990 to 1998 and from 2010 to 2021. In between, speakers did not mention this topic, except regarding the relevance of effective institutions. Most of the narratives have been used across parties (Table 5.19). From 2010, some narratives became one-sided, being used only by opposition parties. However, no narratives with completely new contents emerged in that period.

Legality. In our sources from the Hungarian parliament, issues of legality were referred to throughout the periods as elements of the rule of law and a state governed by the rule of law. More specifically, in the early 1990s, **legal certainty was often cited as necessary in the new political system** and parliamentary actors stressed the need to create it. The constitutional court was mentioned as an important body for clarifying the principles or elements of the rule of law when reviewing legislation, but legal certainty and legality were mentioned as obvious elements and benchmarks also for the court.

Table 5.19 Narratives on elements of the rule of law in Hungary

	1990–1998	1998–2010	2010–2021
Legality	Legal certainty (incl. predictable and stable frameworks) is necessary in the new political system. (overlapping)		Constitutionality/legality/legal certainty as a crucial element of the RoL. (overlapping) Legal certainty and effective institutions are intrinsically interconnected elements of the RoL. (one-sided, opposition)
Separation of powers	Separation of powers (including local governments) as a fundamental element of the RoL. (overlapping)		Separation of powers (which is undermined by the government) is fundamental for restoring the RoL. (one-sided, opposition)
Effective institutions	Establishing diverse independent organs is essential in shaping the RoL. (overlapping)		Independence of diverse organs essential for restoring the RoL. (one-sided, opposition)
(Equal) rights			

(T)he interpretation of the concept of the rule of law is one of the important tasks of the constitutional court. When reviewing legislation, the constitutional court examines the principles which constitute the fundamental value of the rule of law in accordance with, and on the basis of, a specific provision of the constitution. However, the principle of the rule of law is not a subsidiary, secondary rule to these specific constitutional rules and is not a mere declaration, but a constitutional norm in its own right. (...) In the practice of the constitutional court, legal certainty is closely linked to the constitutional principle of the rule of law. (János Schiffer, MSZP, opposition, 8.2.1993, LP 34, Session 268)

Legal certainty is a fundamental element of the rule of law, which requires the legislator to ensure that the law as a whole, its individual subdivisions and its individual rules are clear, unambiguous, predictable in their effects and foreseeable for the addressees of the norm in criminal law. A change to the rules of criminal procedure which, unlike in the past, allows for the prosecution and even the imposition of a sentence for an offence committed in the past is a breach of this predictability and foreseeability. (Gábor Fodor, Fidesz, opposition, 8.2.1993, LP 34, Session 268)

Legal certainty and predictability were also mentioned in many debates later on as an indispensable element of the rule of law, for example before Hungary's accession to the European Union. The first Fidesz government was accused by others, e.g. by MSZP, of not following the law, despite their declarations. In this context, parliamentarians also identified several other features that they believed characterised the rule of law.

Clientelism is rampant (...). Freedom of the media is being infringed, and access to information of public interest is being blocked, racism is on the increase and the rights of minorities are being curtailed. The dysfunctions of the rule of law are striking, the balance of powers has been upset, the National Assembly has been devalued, it has become an episode in political life, there are recurrent serious conflicts between the executive and the judiciary, and there is no meaningful dialogue in society. The civil service has become politicised, and legal certainty is seriously compromised, because it is not the government that follows the law, but the law that follows the government. (Pál Vastagh, MSZP, opposition, 18.10.2001, LP 36, Session 233)

In post-2010 sources, the narrative that **constitutionality or legality is a crucial element of the rule of law** was used with great intensity. MPs from LMP and Jobbik criticised the threat to legal certainty, emphasising its close link to a democratically functioning rule of law. They argued that the courts' case law alone is insufficient to provide legal certainty, and that it must also be ensured by the legislator, for example by enshrining the prohibition of retroactive legislation in the constitution (Schiffer) and ruling out 'government by decree' (Gaudi-Nagy).

And one more thing: also a constitutional court principle and a principle derived from Article 2, the rule of law, is the prohibition of retroactive legislation. If the constitutional basis for legislation is introduced now, then this is an important principle of legal certainty, where we cannot be satisfied with the interpretation of the law by the judges of fundamental rights from time to time, and the prohibition of retroactive legislation should be included in the text of the constitution, quite simply in the interests of the security of the Hungarian legal order. (András Schiffer, LMP, opposition, 12.10.2010, LP 39, Session 34)

Linked to this is the unacceptable regulatory concept, (...) whereby the government can determine the division of powers and responsibilities in relation to terrorism by decree. I believe that this is also a provision that seriously violates the principles of legal certainty and the rule of law, since, once again, the implementing rules would not provide for parliamentary powers, but would essentially determine by governmental decree who, where, under what conditions and in what way surveillance can be carried out. (Tamás Gaudi-Nagy, Jobbik, opposition, 23.11.2010, LP 39, Session 51)

However, officially Fidesz also emphasised legal certainty as a relevant part of the rule of law, which resulted in MSZP criticising the ruling party again for its hypocrisy, arguing that Fidesz's rhetoric contradicted its own policies.

Legal certainty is an indispensable element of the rule of law, a concept that has been given substance by the uninterrupted practice of the constitutional court. Legal certainty is the duty of the state, and primarily of the legislator, to ensure that the legal system as a whole, its individual subdivisions and individual pieces of legislation are clear, unambiguous, predictable and foreseeable in their operation for the addressees of the norm. (Pál Völner, Fidesz, government, 7.3.2017, LP 40, Session 204)

I find it hypocritical that Fidesz wants to celebrate the establishment of democracy and the rule of law at the National Assembly's ceremonial sitting, when the prime minister and 133 brave people have just downgraded the National Assembly, and have just divided the real legislative system in two, citing the epidemic emergency. The government has been given the power to take virtually any measure without any time limit, undermining legal certainty and driving another nail into the coffin of democracy. (Bertalan Tóth, MSZP, opposition, 27.4.2020, LP 41, Session 122)

Like legality in general, legal certainty in particular was frequently mentioned as a crucial element of the rule of law in the debates over the period covered. During the transition period, politicians from both the right and the left also emphasised the importance of predictable and stable law in their speeches, agreeing that the rule of law cannot be achieved without it. Later the statements were related to more diverse aspects. Access to justice for citizens to ensure that the law is correctly implemented and the public's accessibility to the law¹³ were, for example, discussed in parliamentary speeches in 2008, particularly by politicians from the then-ruling MSZP-SZDSZ party. After 2010 mainly DK and Jobbik as well as representatives of other opposition parties highlighted the relevance of legal certainty.

The government has tabled this bill with the intention of ensuring that the fundamental rule of law requirement of access to justice is implemented as fully as possible in line with the requirements of the modern day. (Gábor Csizsár, MSZP, government, 22.4.2008, LP 38, Session 140)

¹³To quote Gábor Velkey (SZDSZ, government, 22.4.2008, LP 38, Session 140): "One of the indispensable prerequisites for the rule of law, access to justice and law-abiding behaviour is that people should be able to familiarise themselves with the law and keep up to date with changes and amendments to the law. This can only become common, everyday practice and expected not only from professional actors but also from citizens if they can access the information they need easily, quickly, inexpensively and without having to search for it."

(T)he essence of the rule of law is (...) [not] that no one checks, not that the government's intentions are not subject to public debate, but the laws that have been debated and adopted in an orderly manner that bind the lawmakers. (Gergely Arató, DK, opposition, 30.10.2018, LP 41, Session 35)

On different occasions, MPs have expanded the list of elements of the rule of law associated with legality. This was the case when, for example, the administrative procedural law was being discussed.

For this reason, but also in order to protect the values of the democratic rule of law, we believe it is important to have an administrative procedural law that respects and enforces fundamental constitutional rights and the principles of the rule of law. That is to say, the rule of law, impartiality, fairness, a decision within a reasonable time, the right to compensation for damage caused to the client, objectivity, proportionality, protection of acquired rights, openness, fairness and courtesy. Abuse of rights, misuse of powers, unauthorised use of data, breach of confidentiality and so on should be prohibited and sanctioned. (György Gémesi, MDF, opposition, 7.9.2004, LP 37, Session 162)

Separation of powers. The separation of powers was addressed as an important element of the rule of law particularly in the post-transformation period, but also in the 2010s. During the initial wave of political and economic transition and the establishment of the rule of law, all political parties considered it a goal to be achieved, and it was enshrined in the constitution and later in the new Fundamental Law adopted in 2011. When discussing the separation of powers as an element of the rule of law, actors mainly focused on the horizontal separation of powers.¹⁴

(T)he question of whether the endeavour to separate the branches of power is alive and whether it is successfully enforced is still one of the criteria of constitutionality and the rule of law. (György Szabad, MDF, opposition, 4.7.1994, LP 35, Session 2)

Fidesz is for the rule of law. Therefore, it wants a strong state that is controllable by citizens and their communities, limited by laws guaranteeing human and civil rights and the separation of powers. (József Szájer, Fidesz, opposition, 22.5.1996, LP 35, Session 178)

Although the rhetoric remained consistent, opposition voices (primarily MSZP and Párbeszéd-Zöldek politicians in our selected parliamentary debates) accused the Fidesz-KDNP government of dismantling the system of checks and balances in the second half of the 2010s. In such statements, the separation of powers was frequently associated with the rule of law and democracy (see Sect. 6.3.2).

Between 2010 and 2014, the constitutional barriers to their power were demolished. The system of checks and balances, the most important operating principle of the rule of law, has already been dismantled. (Gergely Bárándy, MSZP, opposition, 19.4.2017, LP 40, Session 214)

¹⁴ See also József Torgyán (FKgP, government, 9.5.1990, LP 34, Session 3), cited in Sect. 5.1.2.

The separation of powers is an institutionalised barrier to the abuse of power, arguably the basis of the democratic rule of law. These branches must also be separated in terms of institutional and personal powers. The legislature limits the judiciary and the executive by law, the executive limits the legislature, perhaps by dissolving parliament, by the right to call new elections, and the judiciary controls the constitutionality of legislation and, through it, the legislators. This is the foundation of democracy. (Olivio Kocsis-Cake, PM, opposition, 19.11.2019, LP 41, Session 94)

Although the separation of powers was generally discussed in terms of its horizontal dimension, politicians in the early 1990s understood it in a broader, vertical sense, which included the competences of local governments. As the following quotations show, members of all political parties stated that local governments were an integral part of a democratic state under the rule of law due to their ability to counterbalance the dominant central power.

Local authorities are not external entities, but are integrally integrated into the mechanism of the rule of law, as part of which they are subject to the territorial division of labour. (István Illéssy, MDF, government, 23.7.1990, LP 34, Session 27)

A real change in the institutions and the way in which power is exercised, in keeping with the nature of the modern European rule of law, will only occur if the familiar threefold division of powers, now institutionalised in the constitution and in laws, is supplemented by the organisational systems of local government or local authority, which embodies the fourth branch of power and is completely independent and autonomous from the central governmental power. (Ferenc Wekler, SZDSZ, opposition, 2.7.1990, LP 34, Session 18)

Already during the pre-election programme preparation period, the parties agreed that the local government system established in 1990 was a decisive step in the establishment of the rule of law. (Mónika Lamperth, MSZP, opposition, 6.9.1994, LP 35, Session 9)

Effective institutions. When discussing elements of the rule of law, MPs from all political parties also mentioned the relevance of strong institutions, including the ombudsperson, the public prosecutor's office, the constitutional court and ordinary courts. These institutions were primarily discussed in the early 1990s and after Fidesz-KDNP won a two-thirds majority in 2010. During the initial wave of rule of law legislation, the independence of these institutions was not a significant concern. However, after 2010, opposition parties emphasised the importance of their independence from politics as a prerequisite for a functioning rule of law.

All parties have declared the constitutional court as one of the most crucial institutions for upholding the rule of law. Since the 2010s, several opposition parties have raised concerns about the independence of the constitutional court, which poses a threat to the rule of law.¹⁵

¹⁵ A similar quote by Jobbik: "A very important guarantee of the rule of law is the independence and the inviolability of the constitutional court, so that it has these powers. It is very dangerous when the powers of the constitutional court are curtailed because we have some momentary political interest." (Csaba Gyüre, Jobbik, opposition, 16.11.2010, LP 39, Session 47)

Hungary fundamentally changed the social structure of the country, and it was a bloodless change, the result of a kind of revolution in the rule of law. In order for this to be stable in Hungarian society, the positive role of the constitutional court was necessary, along with many other things, right at the dawn of the regime change, and the activities of the constitutional court of the time, which described the concept of the invisible constitution, and in the spirit of which it protected freedoms and defended the democratic system, helping to establish its norms. (Gábor Fodor, SZDSZ, government, 29.9.2003, LP 37, Session 89)

(T)he constitutional court is the cornerstone of our rule of law, the protector of fundamental constitutional rights and the maintainer of the balance between the branches of power. (Márta Mátrai, Fidesz, government, 14.11.2011, LP 39, Session 133)

The main check on political power is the constitutional court. (...) That is why Fidesz is reshaping the constitutional court so that it does not prevent them from exercising power, but if other parties were to come to government – and yes, let us be optimistic about other parties coming to government – it could paralyse the legislature, and if it can, let us be under no illusion, it will want to paralyse it. (Mónika Lamperth, MSZP, opposition, 14.11.2011, LP 39, Session 133)

The same patterns of general rhetoric overlap, but one-sided criticism of limited independence and thus real functionality of the formally established institution applied to ordinary courts.

Judges may be removed from office only for a reason and in accordance with a procedure laid down by a cardinal law. Judges may not be members of political parties or engage in political activity. The importance of these provisions and their guaranteeing nature cannot be overestimated, since they define the most important elements of the status of judges, which, in addition to the declaration of judicial independence, also provide constitutional guarantees for them. (László Trócsányi, Fidesz, government, 12.12.2018, LP 41, Session 50)

The independence of the judiciary is a fundamental criterion of the rule of law and democracy, and you are dismantling it. (Bernadett Szél, Independent, 12.12.2018, LP 41, Session 50)

I think that one of the most fundamental criteria for the rule of law is whether or not judicial independence is established in a given state; whether the government itself, the executive, wants to influence the work and the activities of the courts, whether it wants to influence the outcome of individual judicial decisions, and that is indeed a very, very important problematic (...). (Csaba Gyüre, Jobbik, opposition, 16.2.2021, LP 41, Session 180)

Also, an independent prosecution office was cited as an important element of the rule of law.

By the way, the Public Prosecutor's Office is a similar organisation, obviously it does not have the same function as the court, but it is an independent organisation of the judiciary, and in the Hungarian constitutional system the Public Prosecutor's Office is not an organisation subordinate to the government, but an independent organisation. This has also been confirmed by a decision of the constitutional court. Therefore, the imposition of a legal or constitutional technique on these two organs of the judiciary should not be regarded as an exception, but as the main rule, because this is the only way the rule of law can function, if the actors of the judiciary are independent of the elections, the government majorities and the

political pressures of the time. (Róbert Répássi, Fidesz, government, 27.10.2010, LP 39, Session 40)

(O)ne of the main criteria, one might say the cornerstone of the rule of law, is the independent functioning of the prosecution service. The Attorney General also mentioned in his introduction that it is right that the work of the prosecution should be free from party politics. (István Józsa, MSZP, opposition, 10.12.2014, LP 40, Session 39)

All parliamentary parties argued that the ombudsperson was necessary for a democratic state based on the rule of law.

The constitutional obligation to implement the democratic rule of law is a highly complex and never-ending task, of which the constitutional institution of the Parliamentary Commissioner for Citizens' Rights is a fundamental element. The report notes as a new element that, reflecting the experience of the whole cycle, the anomalies detected are increasingly often not attributable to the classical protection of a fundamental right against state interference, but to the shortcomings in the objective institutional protection of fundamental rights. This should be seen as an important lesson. (Ferenc Kondorosi, MSZP, government, 9.5.2007, LP 38, Session 69)

In the post-2010 wave, the governing parties proposed the re-establishment of administrative courts as a significant institution for upholding the rule of law. While opposition parties raised objections to certain aspects of the re-establishment, they did not oppose the establishment of the courts themselves (for more information, see Sect. 6.3.2).

(Equal) rights. Rights were not explicitly listed as prominent elements of the rule of law. However, some parliamentary debates did mention certain rights as components of the rule of law. For instance, during the first Fidesz government (1998–2002), a representative stated that property rights are essential for the rule of law and legal security. Additionally, minority rights were discussed in the context of the rule of law, particularly in the early 1990s, when the state regulated its approach to minorities and the protection of their rights in the Law on Minority Rights. The selected debates did not express any disagreement on this matter. Since 2010, social rights have been increasingly mentioned in the context of the rule of law. Opposition parties, particularly LMP, accused the government of dismantling social security and what they called the social rule of law (see also Sect. 6.1.2).

5.2.3 Poland: Effective Institutions and Legality

In the Sejm, two themes clearly dominated when it came to the elements of the rule of law: effective institutions and legality. Issues of (equal) rights and the separation of powers as a general principle¹⁶ were discussed to a lesser extent. Although

¹⁶The particular issue of the independence of the judiciary has been regularly mentioned. Considering the respective context of speaking, we found it more appropriate in most cases to assign such statements the code 'Effective institutions'.

Table 5.20 Narratives on elements of the rule of law in Poland

	1990–1997	1997–2015	2015–2021
Effective institutions	Independent, impartial and well-functioning judiciary and prosecution service are key elements of the RoL. (generally overlapping)		Independent judiciary and prosecution service are key elements of the RoL. (one-sided; opposition)
Legality	Supremacy of the law, law-abiding state institutions and correct implementation of the law as guarantees for RoL. (overlapping)	Constitutionality/legality/legal certainty as a crucial element of the RoL. (overlapping)	
(Equal) rights	Respecting and protecting fundamental rights and freedoms as an essential pillar of the RoL. (overlapping)		
Separation of powers	Separation of powers and checks and balances as precondition for the RoL, preventing power usurpation. (overlapping)		Separation of powers with effective checks and balances as a guarantee to protect rights under the RoL. (one-sided, opposition)

legality was often mentioned, only half of the statements formed narratives. In the first wave of rule of law legislation, parties used similar narratives while taking different positions on certain issues such as lustration and accountability (Table 5.20). In the second wave, the previously expressed consensus on rights protection collapsed and other narratives were not used as much as before. In the third wave, opposition parties reactivated previously overlapping narratives, but the government parties stopped using them. As a result, there were no established narratives about elements of the rule of law employed across the government–opposition line in that time. In all periods, the constitution or constitutional principles were frequently cited as a point of reference, sometimes instead of or alongside the term (state under the) rule of law.

Effective institutions. The design of rule of law institutions and effective law enforcement were repeatedly mentioned in all considered legislative periods when actors referred to elements of the rule of law. But only in the post-1989 transition phase, when the shape of the new democratic system was generally discussed in parliament, did members of different parties use the same narrative on that topic. They argued for effective institutions against a background of corruption, increasing and changing crime, which was perceived negatively in the population, and other

problems that accompanied the system change.¹⁷ These arguments were accompanied by accusations against political elites.¹⁸

The other side, as it were, of the process of fighting corruption is simply the creation of the state under the rule of law, and I would suggest that the High Chamber adopt this point of view. (...) There is no state under the rule of law if there is room for organised scandals which then go unpunished. (Józef Orzeł, PC, government, 13.2.1992, LP 1, Session 8)

Politicians argued that an **independent, impartial and well-functioning judiciary and prosecution service are key institutions to effectively implement the rule of law**. Other bodies outside the parliament, including the ombudsperson and the state administration,¹⁹ were also mentioned as relevant.

It seems that in a democratic state under the rule of law, there must be reference points outside parliament to make the principles of the democratic state under the rule of law relevant and non-illusionary. (Jerzy Jaskiernia, SdRP, government, 22.9.1994, LP 2, National Assembly Session 1)

Most such statements outlined independent and impartial courts as a necessary element of a functioning judiciary in a democratic state under the rule of law. Particularly in the early and mid-1990s, there was a common view among MPs that the authority of the judiciary needed to be strengthened in order to pave the way for a new political order.

Finally, the restoration of the authority of an independent and impartial judiciary as necessary conditions for the rule of law. This requires a careful consideration of the needs of the courts during the enactment of the state budget. (Michał Chałosiński, UD, opposition, 13.2.1992, LP 1, Session 8)

The foundation of a democratic system and a law-abiding state is, of course, an independent judiciary. The guarantees of judicial independence (...) should be strengthened in the new constitution of the Republic. (Longin Pastusiak, SdRP, government, 22.9.1994, LP 2, National Assembly Session 1)

¹⁷ See, for example, Marek Lewandowski (SdRP, government) and Andrzej Grzyb (PSL, government), 1.9.1994, LP 2, Session 28.

¹⁸ As Bogdan Pęk, (PSL, government, 6.3.1997, LP 2, Session 102), put it: “(A)ccusations have been made publicly against the highest representatives of state bodies, various important officials, members of parliament, in a word, people who are in the limelight of politics, and today there is no mechanism that would make it possible either to exonerate those who were potentially unjustly accused, or to prove beyond doubt that the accusations were justified. Such a situation causes a part of Polish society to lose faith in the fundamental principle that should characterise the state under the rule of law – in the effectiveness of the law, as well as in the purity of the political elite”.

¹⁹ The institution of an ombudsperson, established already during the PRL period (1987), was predominantly cited by left and liberal MPs as an important institution for a democratic state under the rule of law. See for example Stanisław Rogowski, UP, opposition, 23.9.1994, LP 2, National Assembly Session 1. For the relevance of a ‘properly organised’ civil service independent from the government see Zbigniew Bujak, UP, opposition, 26.4.1995, LP 2, Session 48.

The third basic condition for the proper state of the rule of law is the appropriate structure and legal and material conditions for the functioning of the organs of justice and control in the broad sense. (...) (T)he most important conditions on the fulfilment of which the effectiveness of the activities of these bodies depends (...) are: independence from other state authorities, in particular from the executive; constitutional guarantees of lifetime in office – in the case of judges – or tenure, without the possibility of dismissal (...) and, finally, appropriate terms of reference and structure. (...) The constitutional court must also have its proper place. (Stanisław Rogowski, UP, opposition, 23.9.1994, LP 2, National Assembly Session 1)²⁰

Furthermore, MPs from different factions underlined the need for an independent and well-working prosecution service to build an effective system under the rule of law, prosecuting/fighting crime and corruption and thus ensuring security for citizens.

The role of the prosecutor's office and its position among other organs of the state cannot be underestimated. This institution in a democratic and thus legal state, as defined by the constitution of the Republic of Poland, should have strong and well-defined grounds for action (...). Only such a positioning will effectively realise the principles of impartiality and equal treatment of citizens. It is a correct principle that a prosecutor is prohibited from belonging to a political party or participating in political activities while holding this position. Worse is the implementation of such a provision. (Marek Boral, LD/KP, Contract Sejm, 22.3.1990, LP X, Session 24)

While parliamentarians from different parties argued this way, some aspects were controversial, especially the impartiality of judges. In the context of the vetting/lustration process, conservative/right-wing MPs argued that a “cleansing” of the judiciary was necessary for an effective judicial system and that the governance of the judiciary should not be unrestricted.

The proposal to introduce the possibility of dismissing judges who breach the principle of independence should be supported. In our view, however, such a very limited means of vetting judges is necessary in the light of the experience of the last two years. Similarly, we believe it is right to allow the dismissal of prosecutors not only on the basis of the results of disciplinary proceedings, as has been the case to date, but on the basis of a negative assessment of their professional preparation. (Piotr Wójcik, PC, government, 6.3.1992, LP 1, Session 10)

Others supported strong judicial self-governance and argued that possible negative effects are a price that has to be paid for the rule of law.²¹

After 1998, various politicians still demanded effective rule of law institutions in light of perceived shortcomings of rule of law standards.²² However, such

²⁰ See, for similar arguments, Katarzyna Maria Piekarska (UW, opposition), as quoted in Sect. 5.1.3.

²¹ Jacek Kurczewski (KLD, opposition, 6.3.1992, LP 1, Session 10) put it this way: “I think there are a lot of practical considerations that make there inconveniences to the functioning of self-government, as is usually the case, but (...) this certain organisational malaise that is being talked about here, is the price that has to be paid for the rule of law to be strengthened in Poland.”

²² See, for example, Józef Oleksy, SLD, opposition, 24.7.2001, LP 3, Session 114.

statements were not made in the form of a concrete and actively used narrative. In that time PiS, in its first term of office, emphasised the key role of the judiciary for guaranteeing the rule of law. In this governmental draft (PiS-led, with LPR and SRP) it was intended to limit the lay judges in civil (family, labour law) and criminal cases in favour of a professional judiciary to make the judicial decision-making more efficient and professional.²³ Opposition MPs accused the PiS-led government of limiting the “social factor” and thereby making courts’ decisions more “in line” with the governmental programme while getting rid of lay judges who are not “loyal”.²⁴ Again, the prosecutor’s office as part of the rule of law regime was debated.²⁵ While in their statements the members of the parties agreed upon its relevance, legislative amendments planned by different governments were highly controversial among parties regarding its design and relation to politics.

After PiS returned to power in 2015, then opposition forces reactivated the narrative on the key role of independent courts and prosecution service as elements of the rule of law in their criticism of the government.

We appeal (...) to give the judiciary a chance to be independent of politicians and not to storm, not to interfere with the tripartite division of power that is sacrosanct to the democratic state under the rule of law. (Krzysztof Paszyk, PSL, opposition, 5.4.2017, LP 8, Session 39)

A little advice at the end: respect the constitution and the standards of the European, democratic state under the rule of law, because in the near future you will care a lot about honest judges, a fair trial and the right to a defence. (Hanna Gill-Piątek, PL2050, opposition, 26.2.2021, LP 9, Session 26)

Rhetorically, PiS and its supporters also declared the judiciary and the constitutional court as important elements of the rule of law. However, they focused on their efficient functioning.

Without an efficiently and transparently functioning Supreme Court, it will not be possible for that court to properly supervise the rule of law and the justice of decisions made by common courts, as well as to ensure that the line of rulings is based on principles of logical reasoning and life experience. (Ireneusz Zyska, WiS, not in government, but supporting PiS on many issues, 22.11.2017, LP 8, Session 52)

I was very, very pleased when one of the representatives of the Civic Platform, but also others, because it was repeated in several speeches, quoted the words of a true statesman, Professor Lech Kaczyński, President of the Republic of Poland. (...): The Constitutional Tribunal is an integral part of the constitutional system of the state under the rule of law. So it was, is and will remain as long as Poland is. Let us hope forever. (Stanisław Piotrowicz, PiS, government, 17.12.2015, LP 8, Session 5)

²³ Ewa Malik, PiS, government, 13.7.2006, LP 5, Session 21.

²⁴ Jerzy Kozdroń (PO, opposition) and Mirosław Pawlak (PSL, opposition), 13.7.2006, LP 5, Session 21.

²⁵ E.g. “It is well known that [the] prosecutor’s office is a specific state organ appointed to uphold the rule of law and prosecute crimes.” (Jarosław Matwiejuk, elected via Lewica i Demokraci (LiD), parliamentary group Lewica, opposition, 26.6.2008, LP 6, Session 18).

A presidential draft for the reform of the Supreme Court of 2017 aimed at introducing jurors' involvement, which was now criticised by the opposition as a means to subjugate the Supreme Court.²⁶

Legality. Similar to effective institutions to ensure the rule of law, legality was present throughout the analysed documents when actors in the Sejm named components of the rule of law. However, a narrative used by many parties in a similar way was mainly present during the first and second waves of rule of law legislation.

From 1990 to 1997, when significant legislation on the judicial system and its axiology was discussed, parties argued that **the supremacy of the law, respect for it, and its correct implementation guarantee that the rule of law is “established in reality”**. MPs emphasised that all institutions must obey the law. These steps were necessary to establish a modern democratic state under the rule of law, often contrasted with the legal arbitrariness of the communist regime. The opposition often criticised the ruling majority for allegedly infringing the rule of law, while government MPs cited legal certainty when justifying new draft laws.

The implementation of the bills under consideration today should bring us closer to a situation in which state bodies can only do what the law allows them to do, while citizens can do everything that the law does not prohibit them from doing. Thus, thanks to these laws, we are to find ourselves in a situation hitherto completely unknown to Poles born after the Second World War. This is a very beautiful prospect (...). (Ryszard Zieliński, UChS, Contract Sejm/government, 6.4.1990, LP X, Session 25)

There is a lot of evidence that the law in Poland is still treated instrumentally, that the state authorities, including the Sejm, are ready to subordinate the principles of lawmaking and its material principles to ad hoc political needs. Many politicians believe that the proper response to past violations of human and civil rights is to repay the favourable for the favourable. (...) This cannot be reconciled with this Convention, cannot be reconciled with the respect for the rule of law expressed in its preamble (...). (Włodzimierz Cimoszewicz, SdRP, opposition, 22.5.1992, LP 1, Session 15)

The Charter captures the relationship between the authority and the citizen in a constructive way (...) Article 3(1) states: “Everyone may do that which is not prohibited by law” – which statutes the primacy of the law in the state, known to all lawyers; this refers to the assertion in the preamble that Poland is to be a state under the rule of law. (Marek Markiewicz, S, opposition, 21.1.1993, LP 1, Session 35)

Adherence to the law and thereby guaranteeing legal stability and the defining of legal procedures was also invoked with regard to lustration and restitution. In their statements the MPs from different parties held different positions on these topics, indicating the ambiguities of theoretical principles when it comes to concrete policies.

²⁶“The jurors you bring into the Supreme Court will vote out the judges. And who will select the jurors? Your colleagues in the Senate. That is to say, you want to have a majority on the Supreme Court bench thanks to your people.” (Robert Kropiwnicki, PO, opposition, 22.11.2017, LP 8, Session 52)

As for those who have abused their opportunities in the past, they must be held accountable as in any democratic and legal state by eliminating them when applying the requirements of the law, even if the procedure was convoluted and laborious. (Marek Boral, LD/KP, Contract Sejm, 22.3.1990, LP X, Session 24)

The statute of limitations for disciplinary rulings in such far-flung cases [of judges infringing in the past the oath of political impartiality] has long since passed; on the other hand, it is not since yesterday that we have called our country a state under the rule of law. Breaking the principle that the law is not retroactive would perhaps be a greater evil than leaving a group of unworthy people in the judiciary. But we are also firmly against the use of the universal vetting of judges, because we do not deny the past functioning of an entire segment of the state, which is the judiciary. (Jacek Taylor, UD, opposition, 6.3.1992, LP 1, Session 10)

Doubts arise as to how to deal with claims made after the sale of property or part of it. The issue of how far to review the settlement of property taken from owners should be resolved in the manner most consistent with the state under the rule of law, i.e. anything taken in breach of the law must be returned (...) and, where this is not possible, because the property no longer exists, for example, financial compensation. I hope that the ministries will quickly take the decisions that are within their remit. (Stefan Bieliński, SD, Contract Sejm, 12.7.1990, LP X, Session 35)

From the second half of 1990s, the main narrative regarding legality was slightly different. In that time, in various debates on bills and also on the report of the president of the constitutional court, MPs from different political parties pointed out that **constitutionality/legality/legal certainty is a crucial element of the rule of law**. Since its adoption in 1997 (which had been opposed by conservative and religious groups) the constitution has been referred to several times as the supreme law, whose principles, such as the principle of transparency, must be respected. MPs from most parliamentary parties expressed this view in their public utterances in parliament.

Despite a brutal and often manifestly untrue political campaign against the constitution (...), the people voted in favour of the constitution in a referendum by an overwhelming majority of those who took part in the vote, over 55%. (...) A further stage has been initiated in the consolidation of the Polish democratic state under the rule of law through the implementation of the institutions of the constitution, or at any rate such an obligation was imposed on the government by its provisions. (Marek Mazurkiewicz, SdRP, opposition, 8.1.1998, LP 3, Session 8)

It is the duty of the Chamber in the context of Article 2 of the constitution to bring legislation into conformity with the constitution. (Jerzy Jaskiernia, SLD, opposition, 24.7.2001, LP 3, Session 114)

Especially opposition parties linked their commitment to legality and legal certainty as an important element of the rule of law with criticism of the government's action at that time.

The provisions of the Fundamental Law²⁷ are clearly disregarded by the authors of the draft, proposing, for example, to demote all officials appointed so far to the lowest position in the civil service. This would be a blatant violation of the rule of law principle that the law cannot operate retroactively. The formal violation of the constitution by the government's proposed law in failing to provide guidance on the content of the implementing act of the law, as stipulated in Article 92 of the Fundamental Law, pales next to these rights-breaking provisions. (Małgorzata Okońska-Zaremba, SLD, opposition, 17.7.1998, LP 3, Session 24)

The constitutional principle of the state under the rule of law carries a norm obliging the legislator to observe the principles of good legislation. The very vagueness and imprecision of a provision may already be a reason for its unconstitutionality. (Tadeusz Maćkała, PO, opposition, 27.7.2005, LP 4, Session 108)

(Equal) rights. Throughout the analysed period, the concept of (equal) rights for all citizens before the law was consistently highlighted as a fundamental aspect of the rule of law. This emphasis was particularly strong during the early and mid-1990s, when MPs from all parties stressed that **respecting and protecting fundamental rights and freedoms is an essential pillar of the rule of law**. In general, the parliamentarians argued for the implementation of provisions that protect citizens from the arbitrariness of the ruling elite and ensure their fundamental human rights and freedoms in practice. Left-wing MPs, in particular, emphasised individual rights, including those of prisoners.

Unfortunately, practice provides sad examples confirming the thesis that, despite all the declarations from all sides about the state under the rule of law and civil society, human rights are still treated in an instrumental way. They continue to be treated as privileges granted by the state and not as rights immanently belonging to man, stemming from the essence of humanity. (Zbigniew Siemiątkowski, SdRP, opposition, 22.5.1992, LP 1, Session 15)

The proposed law affirms the natural rights to which every human being is entitled. In our understanding, the three main principles of dignity, equality before the law and freedom are principles that are universally recognised and accepted as the basis of the legal order in a democratic state. (...) These are precisely the guarantees that a constitutional law must contain: fundamental civil rights and freedoms, political rights and a basic minimum of social rights. (Stefan Szańkowski, PSL-PL, government, 21.1.1993, LP 1, Session 35)

There is also no dispute that Poland is to be a state under the rule of law, in which legal institutions will protect the rights of citizens, build effective capacity of the executive and control the executive. There is also no dispute that there is a need to enshrine clear civil and social rights, in line with world standards and with accepted civilisational standards. (Aleksander Kwaśniewski, SdRP, government, 23.9.1994, LP 2, National Assembly Session 1)

Access to courts and to the ombudsperson and the constitutional complaint to the constitutional court were depicted, especially by left and liberal MPs, as an important

²⁷ In Polish, the term 'Fundamental Law' or 'Basic Law' (*ustawa zasadnicza*) is often used interchangeably with 'constitution' (*konstytucja*). However, in our sources the latter term was more commonly used.

step to ensure a fair and lawful enforcement of rights.²⁸ In addition, parliamentarians suggested that lawmaking should be improved for a better implementation of rights. Thus, the arguments for effective institutions to implement the rule of law were also used regarding the individual rights situation.

The second consequence of the [ECHR] Convention's regulations is precisely the need to improve the quality of the work, the judgments, of our administrative bodies and courts. For, as we know from the Ombudsman's Report for 1991 (pp. 20, 275 and others), they are still, unfortunately, not aware of the existence of European standards for the protection of these rights and freedoms, and that is why they do not apply them, although they should. This does not help Poland to become a democratic state under the rule of law. (Georg Brylka, MN, opposition, 22.5.1992, LP 1, Session 15)

In the ideological declarations of the parties, in the drafts of their constitutions, great words are spoken, while everyday life and practice are governed either by bad tradition or by ever-growing absurdities. (...) For, in my opinion, the unsatisfactory state of observance of the law (...) [is due to] the hitherto too vague definition of what is meant by the concept of the state under the rule of law, particularly in the context of citizens' rights, the poor provision of means and forms for citizens to directly shape the law and to protect themselves in the event of its violation, and the inadequate legal and organisational regulation of the judiciary and control bodies. (Stanisław Rogowski, UP, opposition, 23.9.1994, LP 2, National Assembly Session 1)

Throughout the legislative periods, equality before the law was emphasised by MPs from various factions as a key aspect of a democratic state under the rule of law, again with a greater proportion being from liberal factions.

For me personally, and for the women's parliamentary group that I represent here, it is also important that the criterion of the equal status of men and women features among the elementary principles of the protection of human rights and fundamental freedoms. (Barbara Labuda, UD, opposition, 22.5.1992, LP 1, Session 15)

While in their statements MPs from different parties agreed on this in general, there was no consensus when it came to particular policies. For the SdRP, for example, equality before the law included not prioritising certain religious groups,²⁹ a position that was not shared by conservatives. Left-wing MPs also argued much more than others for individual rights protection as an element of the rule of law when the practicalities of lustration were debated in parliament.³⁰

²⁸See Jacek Kurczewski (KLD, government, 21.1.1993, LP 1, Session 35) or Irena Lipowicz (UD, opposition, 7.4.1994, LP 2, Session 17).

²⁹"We say that no church or religious association can be privileged by any law or international agreement. (...) Equality, tolerance, freedom to believe and not to believe are important. We believe that this is the standard of a democratic state under the rule of law (...)." (Jerzy Jaskiernia, SdRP, government, 23.9.1994, LP 2, National Assembly Session 1)

³⁰"We talk a lot about building a state under the rule of law, but in practice we often introduce a climate of constant verification and bringing charges against entire large professional groups." (Wanda Sokółowska, SdRP, Contract Sejm, 6.4.1990, LP X, Session 25)

From 1997 to 2015, statements on rights as an element of the rule of law were made with lower intensity, not reaching the level of actively used narratives. Actors also expressed different positions regarding the relevance of individual or collective rights protection and the right to life/abortion (see Sects. 6.1 and 6.2). Opposition MPs primarily raised concerns about rights and equality in the context of alleged infringements by the PiS government from 2015 onwards, emphasising in this context that both are relevant elements of the rule of law.³¹

Separation of powers. The separation of powers as a general principle was less frequently invoked by Polish MPs as an element of the rule of law. Instead, parliamentarians often emphasised more specific aspects related to it, such as the need for effective functioning of certain institutions, particularly the independence of the judiciary, which was captured by our code ‘Effective institutions’ (see above). Most statements that focused on the separation of powers as an element of the rule of law date back to the early 1990s, especially to the debate on the new constitution. All MPs argued that the separation of powers is a key principle and an undeniable step towards a modern democratic state under the rule of law, preventing any branch/ruling majority from usurping excessive power. It was also argued that a clear and sustainable system of checks and balances between the different branches would ensure a functioning and efficient state.

(I)t is necessary to know the goal to which one is aiming, and that is a democratic, social state under the rule of law. There is no single path leading to this goal, and it also takes different forms. The fundamental rules governing such a state are known, with the principle of separation of powers playing a fundamental role (...). This means that the individual authorities are separate from each other, counterbalancing and inhibiting each other, but also cooperate with one another. Each authority has constitutionally defined functions to perform. (Erhard Bastek, MN, opposition, 2.4.1992, LP 1, Session 12)

It is a truism to state that in a democratic state under the rule of law, an efficient system of judicial review of administrative decisions by state or government authorities, as well as of local laws issued by local authorities, is one of the main guarantees of the rule of law and the protection of citizens’ rights against infringement as a result of administrative arbitrariness. I am old enough to remember a time when society did without administrative justice. It got by because it had to. (Piotr Chojnacki, PSL, government, 7.4.1994, LP 2, Session 17)

Another principle, the principle of separation of powers, prevents the concentration of state power in the hands of a single body. The balancing of the three basic branches of power – legislative, executive and judicial – guards against the abuse of public authority, and the demarcation of their competences serves the efficiency of the actions of the various organs of the state. (Tadeusz Jacek Zieliński, UW, opposition, 23.9.1994, LP 2, National Assembly Session 1)

³¹For example, Hanna Gill-Piątek (PL2050, opposition, 26.2.2021, LP 9, Session 26), Kinga Gajewska (PO, opposition, 22.11.2017, LP 8, Session 52) or Barbara Dolniak, N, opposition, 5.4.2017, LP 8, Session 39).

Later, in 1997 and 2006, the role of courts and institutions dealing with lustration was also sensitively debated with regard to the separation of powers and the rule of law,³² but no established narrative emerged.

After 2015, opposition MPs reactivated the described narrative that the **separation of powers with effective checks and balances is an integral part of a state under the rule of law**. They also argued that the PiS's legislative reforms undermined the separation of powers. In their critique, they emphasised the need to restore the balance of power between the branches of government, particularly to restore the independence of the judiciary from the ruling majority. As mentioned, we classified such statements under the code 'Effective institutions' and describe the arguments used in more detail in Sect. 6.3.

What you are proposing is a profound interference in Article 10 of the constitution, in the principle of the separation of powers – an old principle, developed as far back as Aristotle, Montesquieu, a principle that is the canon of European civilisation, a principle that is supposed to protect citizens from the power of the authorities. (Krzysztof Brejza, PO, opposition, 19.11.2015, LP 8, Session 1)

In response to this opposition narrative, government MPs emphasised the importance of maintaining the efficiency and accountability of the judiciary, which should not be compromised by an extensive separation of powers, but there was no clear counter-narrative to what the opposition argued.

5.2.4 Romania: Separation of Powers and Legality

In our selected documents, speakers in the Romanian parliament most often referred to the separation of powers when discussing elements of the rule of law. Legality and (equal) rights were mentioned less frequently. MPs' statements covered many aspects related to these issues, but we found established narratives for each of these elements or pillars of the rule of law. Parliamentarians also stressed the need for (more) effective rule of law institutions, but no narrative was found for this perspective. As to the temporal dimension, a key narrative of the transition period referred to legality. While this was an overlapping narrative, a more controversial narrative on the separation of powers emerged in the second wave of rule of law legislation, more precisely under the presidency of Traian Băsescu and even more intensively in periods of cohabitation. During the third wave, (equal) rights were highlighted as elements of the rule of law. In their speech acts the parliamentarians from different parties agreed on this issue (Table 5.21).

³² Particularly the left emphasised the need to limit the scope of action of the court, for example by arguing that "a situation where a single body, even if it is called the lustration court, investigates, prosecutes and adjudicates at the same time, is unacceptable from the point of view of a democratic state under the rule of law" (Jerzy Jaskiernia, SdRP, government, 6.3.1997, LP 2, Session 102); also Ryszard Kalisz, SLD, opposition, 9.3.2006, LP 5, Session 12.

Table 5.21 Narratives on elements of the rule of law in Romania

	1990–2004	2004–2014	2014–2021
Separation of powers		Separation of powers is in danger due to the president engaging in overreach of his constitutional rights, esp. concerning the judiciary. (one-sided, PSD/ALDE)	
Legality	Legal certainty (including predictable and stable frameworks) is necessary in the new political system. (overlapping)		
(Equal) rights	The constitutional rights of citizens belonging to ethnic minorities to preserve their language, traditions and cultural identity must be respected. (one-sided, UDMR)		Safeguarding the constitutional principle of equality of rights is a duty for all political and judicial actors. (overlapping)
Effective institutions			

Separation of powers. The principle of separation of powers was not prominent in the early 1990s and only rarely explicitly mentioned in the constitutional debates (see Sect. 6.2.4), although the new constitution provided for distinct powers. The president was expected to act as a mediator between them. The importance of the separation of powers was emphasised by members of the opposition when they criticised that politicians, particularly those in government, believed that the results of presidential and parliamentary elections provided them with sufficient political legitimacy to ignore legal provisions. When the constitution was amended in 2003, the principle of separation of powers was introduced explicitly and unanimously.

After the first period of cohabitation under the presidency of Traian Băsescu in 2007, the separation of powers gained much attention as an element of the rule of law or ‘the constitutional system’. Especially in that time, but earlier as well, MPs from all parties expressed concerns about his purportedly incorrect understanding of the president’s role within a system under the rule of law (see Sects. 5.1.4 and 6.3.4) where the executive cannot bypass the parliament, for example by governing through decrees.

Stop the permanent attacks on the foundations of the rule of law, return to normality and apply the provisions of Article 114 (4) of the constitution with responsibility and good faith, according to which only in exceptional cases can the government adopt emergency ordinances. (Mihai Ungheanu, PRM, opposition, 9.6.2003, S, LP 4)

The rule of law exists when the separation of powers exists. Democracy exists when parliament is the supreme lawmaking institution. Indeed, the government has the possibility to table bills, but these bills go through the committee filter and then come to the plenary of the House to be voted on. This is natural for any democracy. That is what happened with this bill. (Máté András-Levente, UDMR, government, 23.10.2006, CD LP 5)

(I)n a state governed by the rule of law where the separation of powers functions in the state, parliament, the supreme representative body of the people, should have the right to set up committees of inquiry in which everyone is obliged to be present, not façade committees of inquiry in which only MPs and senators, possibly employees or a few people from ministries attend. (Marton Árpád, UDMR, tolerating government, 9.5.2017, CD, LP 8)

Speakers also expressed concern about the potential threat to the independence of the judiciary if the president or government overreach their constitutional rights.

President Traian Băsescu has repeatedly violated Article 133 para. (1) of the constitution, which enshrines the role of guarantor of the independence of justice for the Superior Council of Magistrates (CSM). Since the beginning of his term of office, Mr Traian Băsescu has tried to intimidate the members of the CSM and discredit this institution, which is fundamental to the constitutional order and to the system of separation and balance of powers in the state. (Titus Corlăţean, PDSR/PSD, opposition, 28.2.2007, CD+S, LP 5)

Legality. The principle of legality was cited on many occasions and by MPs from various parties as an element of a state governed by the rule of law. Especially during the transition period, it was invoked with the ideals of the revolutionary departure from communism in 1989 and the constitution of 1991 as legitimating events and sources. MPs used the narrative that **legal certainty (including predictable and stable frameworks) is necessary in the new political system.** The principle of legality was understood as protecting against the arbitrary use of power. Concerns were raised regarding its effective implementation, particularly in relation to the perceived non-application or violation of various rules of the political system, such as electoral regulations, as well as perceived instability due to frequently changing or unclear legal situations.

We must not forget one essential thing: that the Romanian Revolution of December 1989 not only brought down a regime, but also destroyed a principle applied in all sectors of Romanian society until 1989: the principle of the law of power which led to the exclusion of the principle of equality before the law. After 1989 we tried to establish the rule of law and the principles of government by the power of law. Have we succeeded or are we deluding ourselves? Many citizens of this country say no. The law of power continues to wreak havoc in Romanian society. Until when? (Valeriu Tabără, PUNR, opposition, 20.12.1996, CD+S, LP 3)

Legality was mentioned when discussing the constitutional and legal rules and regulations of the new political system. This includes who is eligible for running in elections and whether it is legal to combine elections for several levels. MPs from all parties demanded legal stability, coherence and adherence to established rules and laws.

I will not end before reminding the government of an essential principle of legality and the rule of law, as a warning sign: as the bearer of authority, it must itself obey the rules created, because it will then be subject to the sanctions generated by its failure to comply with them. In other words: “*Patere laegem quam ipse faecisti*”, i.e. you will bear the law that you yourself demanded or created. (Cristian Diaconescu, PDSR/PSD, opposition, 22.6.2005, CD, LP 5)

Although since 1990 there has been a constant concern to remove regulations incompatible with the requirements of the rule of law, the changes made have not been and could not be able to bring about a structural change in Romanian criminal law. There are currently 250 special criminal or extra-criminal laws containing penal provisions. So, I stress, today we have 250 laws, other than the provisions set out in the criminal code, and which complement the current regulations existing in the code. (Emil Boc, PD/PDL, government, Prime Minister, 22.5.2009, CD, LP 6)

It is important, indeed, for those who listen to us, because so often the phrase ‘rule of law’ is mentioned, to understand what the rule of law is. The rule of law is based on law. Law written in capital letters. Law that has only one ultimate purpose – to protect the legitimate rights and interests of each and every one of us. Of all citizens. (Ioan Cuișă, PNL, opposition, 24.4.2019, CD, LP 8)

A common rhetorical figure employed by parliamentarians while in opposition was the criticism of “dead letters” of the law that are not respected in practice, implying that the law must be respected in a state under the rule of law.

The thesis in the constitution that “No one is above the law” is the starting point that underpins the rule of law. (...) The political class often deludes itself, offering the people a circus, in the hope that it will succeed in covering up its own shortcomings or, worse still, distracting attention from its own crimes, when (from time to time!) it is caught red-handed! But the most serious attack on the rule of law is the deliberate disregard of the law by people in decision-making positions in power structures. There have been many cases where, in pursuit of illegitimate interests, people in positions of power have lashed out and (...) not giving a damn about the law, the rule of law etc., decided to do exactly as they please, not as the law requires. (Mircea V. Pușcaș, PNL, opposition, 28.2.2006, CD, LP 5)

Of course, it is difficult to talk in Romania about respect for the rule of law criteria when the Ministry of Administration and Interior decides how to change the organic laws in order to make the elections better for its party, or when the Ministry of Foreign Affairs also initiates a project of postal voting, which is managed by the minister appointed by the party in order to collect the votes of the diaspora, or when the presidency communicates what is allowed and what is not allowed in changing the constitution, in administrative reorganisation, as well as in various other areas that are subject to the management of the executive or to the legislation of the parliament. We know, as do most of our fellow citizens, that, if the interests of the government and the PDL so require, black can become white and vice versa (...). (Ion Călin, PDSR/PSD, opposition, 22.12.2011, CD, LP 6)

Other statements related to legality referred to ambiguities in the context of the post-1989 legal transformation and changes in government. Although speakers supported legal certainty and stability as elements of the rule of law which are, for example, relevant for the business sector, they argued that upholding poorly made or even

illegal legal provisions might be problematic. In this way, elements of the rule of law were described as less clear than it seems at first glance for the particular context.

This law achieves continuity in terms of the rule of law because it does not repeal any other law made before 1996, and I am referring in particular to Law No. 112, which, the irony is that it tries and will succeed in saving. The scope of Law No. 112 was limited to residential buildings taken over by the state by title. In reality, however, after the adoption of this law, properties taken over by the state without title were sold without due process. They sold what the state did not own and what Law No. 112 did not deal with. In all fairness, out of respect for the rule of law, out of the certainty that some people coming to power after others should not repeal what their predecessors in government did, we have an article on good faith which states that: properties taken over by the state without title and which have nevertheless been sold remain with the buyers, if they [bought] in good faith. This shows the honesty and fairness with which this bill was made. (Mihai Grigoriu, PNȚCD, government, 23.8.1999, CD, LP 3)

However, it is important to note that legal instability, a fundamental concern in our monitoring by the European Union, is not solely due to pending court decisions, which are often politically charged. It also stems from the presence of legal uncertainty. And legal uncertainty – and this is what someone who was first vice-chairman of the European Parliament’s Committee on Legal Affairs is telling you – is fundamental for business, for investors, for civil society and for the proper development of society. (Cristian Dumitrescu, PDSR/PSD, opposition, 11.10.2011, CD, LP 6)

(Equal) rights. When discussing rights and the principle of equality as part of the concept of the rule of law in the Romanian parliament, politicians often emphasised that these are enshrined in the constitution of 1991. They also mixed references to the rule of law and democracy. In their statements, parliamentarians from all parties agreed that Romanian citizens have equal rights and freedoms. However, speakers often criticised the ineffective legislative foundation of rights and deficiencies in their practical application. They emphasised that the state is constitutionally obliged to protect rights and ensure equality before the law. While speakers generally referred to rights and freedoms in a general sense, they specifically mentioned property rights, freedom of expression and minority rights.

(T)he law must be respected and applied without privileges and without discrimination, because this is the only way to ensure respect for human rights and human dignity in Romania. As legislators, we have full responsibility to draw up just laws, designed to lead to the real protection of Romanian citizens, but which we respect *ad litteram* out of respect for the letter and spirit of the law. Also, those elected to enforce the law in Romania, whether they are magistrates, police officers, gendarmes or in structures of the public security and order system, must be aware that there is no alternative in confronting the law but to respect and enforce it. (Marius C. Dugulescu, PD/PDL, government, 28.9.2010, CD, LP 6)

So, has the Romanian people a democratic society? What about the much-desired rule of law, which generates personal and social security? If I were a naive person, subject to a superficial way of thinking, I might be tempted to give a positive answer to these questions. Since Romania’s constitution itself guarantees freedom of speech, freedom of movement and freedom of association, it can be said that we have a profoundly democratic society. It is equally true that, as long as the same fundamental law guarantees the separation of powers in

the state, we also have, of course, the much-desired rule of law, capable of imposing the force of law over the law of force! (Cristian Dumitrescu, PDSR/PSD, opposition, 25.10.2011, CD, LP 6)

Similar to references to legality, speakers mentioned cases where individual rights and freedoms cannot be applied without ambiguities because different actors' rights and freedoms must be respected. An example was the dismissal of the then Interior Minister Dan Nica in the context of rising crime rates and alleged irregularities in the 2009 presidential elections.

The rule of law implies harmonising and balancing the relations between the two components, in the sense of the rule of law, i.e. its absolute supremacy in order to preserve individual rights and freedoms. This is a constitutional principle that Prime Minister Emil Boc also respected with regard to the dismissal of Dan Nica. (Ioan Oltean, PD/PDL, government, 6.10.2009, CD, LP 6)

Since the phase before accession to the EU, actors linked rights—particularly liberal rights such as “sacred individual freedom” and property rights—with the EU, the Council of Europe and a “European way of thinking”.

Private property is the guarantee of personal dignity and independence and it is the basis of the democratic rule of law. Private property is specific to European peoples, the tradition of private property in Romanic countries being an argument for our desire to integrate into the European Community, to integrate into the western, civilised world. (Mihai Grigoriu, PNȚCD, government, 23.8.1999, CD, LP 3)

I believe that parliament's responsibility is precisely to push for a change in our way of thinking, or the formation of a European way of thinking, by drafting and adopting laws that respect fundamental human rights and freedoms. This means the rule of law – when the legal framework allows all individuals equal opportunities to develop their identity for the benefit of all [citizens]. (Iulia Pataki, UDMR, tolerating government, 15.3.2004, CD, LP 4)

The discourse stubbornly promoted by PSD leaders in public life since the 1990s has nothing to do with the values on which modern Romania is built these days and on the basis of which we can join the European Union, namely individual freedom is sacred and inalienable. The right to property is guaranteed. Justice is independent and strong. These values are complementary values. The draft law for which we have taken responsibility is the key to strengthening the rule of law in Romania. (Călin-Popescu Țăriceanu. PNL, government, Prime Minister, 22.6.2005, CD, LP 5)

Statements emphasised that the rights apply to all citizens, including ethnic minorities (represented by the UDMR) and “those at various stages of criminal proceedings” (Holban).

In a state under the rule of law, all citizens are equal. In a democracy, citizens have the right to free expression of opinion, free use of community symbols and free use of their mother tongue. The Hungarian community in Romania does not demand more than what is due to all European nations. (Jozsef-György Kulcsar-Terza, UDMR, government, 9.5.2017, CD, LP 8)

Under the Romanian constitution, the EU Directive on the presumption of innocence and the recommendations of the Venice Commission, any opinion on potential guilt must respect the fundamental principle that 'No one is above the law' and, obviously, the presumption of innocence! This would be conclusive proof that in Romania the rule of law is real and functional, based on respect for the rights and freedoms of citizens, including those at various stages of criminal proceedings. (Georgeta-C. Holban, PDSR/PSD, government, 19.9.2018, CD, LP 8)

Mainly the Hungarian minority party UDMR used the narrative that **the constitutional rights of citizens belonging to ethnic minorities to preserve their language, traditions and cultural identity must be respected.**³³ This was linked with criticism that the minority protection was not put into practice at all times.

It is not by chance that the protection of national minorities is one of the necessary conditions for integration into these structures, and Romania has already fulfilled a positive role in this respect. This is the clearest proof that the possibilities for the free and full manifestation of all minorities, of respect for human rights, are ensured by the current Romanian constitution. (Negiat Sali, UDMR, opposition, 7.12.2001, CD+S, LP 4)

Effective institutions. As previously stated with regard to the principle of legality and rights, there were occasional statements suggesting that the state must establish robust and effective institutions that work for the benefit of both the state and its citizens, in order to secure and enhance institutional legitimacy and the trust of citizens. During debates on criminal action, such as the plenary discussion on the annual report of the Romanian Security Service (SRI) in 1997, and the 1999 march of miners from the Jiu Valley to Bucharest, parliamentarians argued for a strong state under the rule of law that is capable of defending and facilitating the existence of the state itself, even if the measures are met with resistance by others.

The S.R.I. is the institution which, together with other national security bodies, belongs to and gives strength to the rule of law and, above all, gives it that element of identity which characterises a democratic, sovereign and independent state. (...) The fact that the S.R.I. has settled into its roots, the results obtained and the professionalism of its members create suspicion, envy and adversity towards this institution. (Costică Ciurtin, PUNR, opposition, 30.4.1997, CD+S, LP 3)

We support the necessary legal measures that are required at this time to stop the escalation of political action against the rule of law, including the declaration of a state of emergency if necessary. Some state institutions and services have shown weakness or incompetence and, of course, we must not tolerate this. (Markó Béla, UDMR, government, 22.1.1999, CD+S, LP 3)

MPs have also pointed out that poorly managed, underfunded and overburdened institutions are unable to serve citizens as they should. This means that citizens'

³³See, for example, Attila Varga (UDMR, government, 18.11.1997, CD LP 3) in a debate on proposed administrative measures which were expected to change the traditional ethnic composition of two counties.

rights and freedoms may ultimately be illusory.³⁴ Such statements often referred specifically to the judiciary. They included references to the European Union and a “European state governed by the rule of law” (Potor). However, there was no particular established narrative found on that point in our analysed debates.

One of the issues that has been constantly on the agenda of public opinion in the country and on the attention of the European Commission, in an unpleasant way and manner, is the situation in the justice system. The institutional conflicts in this area are a demonstration of the superficial nature in which the authorities have managed to reconcile legal practices and institutional relations in this area with the minimum requirements of a European state governed by the rule of law. Unfortunately, it does not take much applied knowledge to see the failure of the authorities in the management of judicial institutions, and this failure calls into question the very manner in which we have managed to implement the practices and norms of the rule of law. (Calin Potor, PNL, opposition, 24.5.2011, CD, LP 6)

Achieving an independent, impartial, credible and efficient judiciary must be a prerequisite for the supremacy of the law and the principles of the rule of law. (Corneliu-M. Cozmanciuc, PNL, opposition, 12.5.2015, CD, LP 7)

5.2.5 Slovakia: Legal Certainty and Effective Institutions

In our empirical material from the parliament of Slovakia, the most frequently mentioned elements of the rule of law were issues around legality or constitutionality. Effective institutions were mentioned less frequently. Additionally, (equal) rights and the separation of powers were also addressed as elements of the rule of law. Overlapping narratives on elements of the rule of law emerged slowly over time. During the third wave of rule of law legislation, we identified five narratives that were used across party lines. They emphasised, for example, that legal certainty and the binding of state power by the constitution and the law are the cornerstones of the rule of law (Table 5.22). The overlapping narratives were often accompanied by diverging policy positions or criticism of the government by the opposition. The prohibition of retroactivity was a controversial issue among parties, particularly in relation to measures aimed at correcting alleged past injustices. The competing statements revealed ambiguities in theoretical arguments regarding the rule of law in a specific context.

Legality. Legality was mentioned across parties and throughout the legislative periods as an element of the rule of law, often understood as people and authorities “behaving according to the law”, as Vladimír Mečiar put it in 1992.³⁵ In debates on

³⁴ Vasile Puscas (PDSR/PSD, opposition, 13.12.2005, CD LP 5), argued, for example: “Instead of defying the principles of the rule of law, we should strengthen the authority of state institutions, enable them to function in the spirit of legislation already harmonised with the *acquis communautaire*, the Romanian constitution and European best practice.”

³⁵ “The constitution reflects a deep commitment to democracy, affirming the state’s adherence to the rule of law, which means everyone is obligated to behave according to the law, and state authorities are required to abide by the laws of the state.” (Vladimír Mečiar, HZDS, government, Prime Minister, 1.9.1995, LP X, Session 5)

Table 5.22 Narratives on elements of the rule of law in Slovakia

	1992–1998	1998–2006	2006–2021
Legality			Legal certainty as a crucial element of the RoL. (overlapping) The binding of state power by the law is a cornerstone of the RoL. (overlapping)
		Unconditional respect for the principle of non-retroactivity is crucial in the RoL. (one-sided, HZDS and Smer)	
Effective institutions		Respect for law and its enforcement are fundamentals of the RoL. (overlapping)	Independent and impartial judiciary is a pillar of the RoL. (overlapping)
(Equal) rights		Equality before the law is fundamental for the RoL. (overlapping)	
Separation of powers			Separation of powers with effective checks and balances as an integral part of the RoL. (overlapping)

particular political measures, this general view was complemented by more nuanced and diverse statements. Although legality issues were invoked frequently, they did not form coherent narratives. However, in the third wave of rule of law legislation (2006–2021), a narrative that **legal certainty is a crucial element of the rule of law** was used intensively. MPs also frequently referred to clarity and stability of the law as essential.

We are saying that Slovakia is a state governed by the rule of law, and the fundamental prerequisite of the rule of law is the stability of the legal order and legal certainty. (Jana Laššáková, Smer, opposition, 11.7.2011, LP 5, Session 20)

Although MPs from all parties employed the narrative, such statements were mainly made by opposition parliamentarians in connection with criticism of the government and lawmaking practice. References to legal certainty as an element of the rule of law also involved demands for proper lawmaking by the parliament, with relatively few legislative changes.

How can we expect citizens to respect the law, to know their rights and obligations, to be able to defend their rights when, in some cases, not speaking universally, we create laws that are difficult to understand? The law must be readable for everyone, equally accessible to everyone. (...) For the functioning of the rule of law, it is necessary for citizens to know, to be able to navigate in the laws. Otherwise, the legal principle that ignorance of the law does not excuse cannot be applied. (Tomáš Galbavý, SDKÚ-DS, opposition, 23.4.2009, LP 4, Session 35)

(W)e have a significant problem with frequently amending laws that impact the business environment, and this doesn't happen at specific times, like amendments on January 1 and July 1, so that the entrepreneur knows that they need to monitor this. (...) So, I see this missing sensitivity (...) for the business environment, but also for the rule of law. (Eduard Heger, OĽaNO, opposition, 26.3.2019, LP 7, Session 43)

A second overlapping narrative in that period was that **the binding of state power by the law was a cornerstone of the rule of law**, as established by the constitution. Based on this line of argument, constitutionality and legality were often used as synonyms. Such statements had already been made before, but since 2006, they formed an established narrative.

Essentially, I stated that in a rule of law, there is no higher principle than respecting the constitution and the law. If society does not agree on this minimum – respecting the law – then we are reverting to a state of chaos and the jungle. (Jozef Moravčík, DÚ, opposition, 5.2.1997, LP 1, Session 24)³⁶

MPs attributed the requirement of legality to the action of state authorities (as the following quote by Figeľ shows), of the parliament (Mezenská) or, more precisely, the parliamentary majority (Žitňanská).

According to Article 1, from which our actions in parliament derive, of the Constitution of the Slovak Republic, Slovakia is a sovereign, democratic and rule of law state. The characteristic of such a state is the unequivocal rule of law that binds the state and all state authorities, ensuring the legality of the exercise of state power. (Ján Figeľ, KDH, opposition, 17.3.2015, LP 6, Session 48)

(If we are committed to the rule of law, we must adhere to the law. And if you want to address an economic or any other problem, you must be able to find a path that is in accordance with the legal order of this state. (Lucia Žitňanská, SDKÚ-DS, opposition, 4.11.2008, LP 4, Session 28)

The obligation of the legislative body in a state governed by the rule of law is to adopt only those laws that are in accordance with the constitution. If the parliament adopts a law that violates the Constitution of the Slovak Republic, it acts in contradiction to the principle of constitutionality and does not adhere to the rules of lawmaking in the rule of law. (Helena Mezenská, OĽaNO, opposition, 19.3.2014, LP 6, Session 33)

As another characteristic of the parliamentary discourse in Slovakia, we found statements in the second wave of rule of law legislation dealing particularly with the prohibition of retroactivity of legal norms as an element of legality and the rule of law. Unlike the aspects above, this issue remained a matter of dispute between parties due to the political and legal struggles surrounding the amnesties granted by Prime Minister Vladimír Mečiar (see Sect. 5.1.5). Convinced about the illegality of Mečiar's actions, liberal-conservative parties strived to abolish them in order to redress perceived past injustices. In sharp opposition to this, the HZDS pointed out that in a system under the rule of law, it is not possible to restore the extinguished criminality of the act after an amnesty has been granted (see the following quote of Gašparovič) and that retroactivity, in general, contradicts the rule of law (Mečiar). A Smer MP pointed to the judgments of the constitutional court that the prohibition of

³⁶Peter Tatár (SDK, government, 13.2.2002, LP 2, Session 54) put it similarly: "However, we are equally convinced that every law that interferes with the exercise of self-government must be in accordance with the content of the constitution. Therefore, it must meet the basic democratic criteria and requirements contained in the principle of the rule of law."

retroactivity is a defining feature of the rule of law (Číž). In sum, the narrative was that **unconditional respect for the principle of non-retroactivity is crucial in the rule of law.**

In the current legal system of the Slovak Republic, as well as in the legal systems of other democratic states, there is no institution by which, after the granting of amnesty, it would be possible to restore extinguished criminality. Therefore, in the history of Slovak law, as well as in the history of other democratic states governed by the rule of law, there is no case where a granted amnesty has been revoked in response to restored criminality. (Ivan Gašparovič, HZDS, opposition, 18.2.1999, LP 2, Session 10)

(A)ny attempt at direct or indirect retroactivity destroys the concept of the rule of law. By accepting this retroactivity, we are in contradiction with whether we are still a rule of law. (Vladimír Mečiar, HZDS, government, 4.3.2010, LP 4, Session 49)

The Constitutional Court of the Slovak Republic has already expressed in several decisions that the principle of *lex retro non agit* applies in our constitutional order. This means that the law does not have retroactive effect when it stated that a defining feature of the rule of law is also the prohibition of retroactivity of legal norms, which is a significant part of the guarantees for the protection of citizens' rights and equally a guarantee of legal certainty. (Miroslav Číž, Smer, opposition, 7.9.2010, LP 5, Session 5)

Representatives of liberal-conservative parties, in turn, argued that amnesties do not correspond with the principle of legal certainty as an integral part of the rule of law, which makes it reasonable to review them.

These amnesties, especially those concerning the abduction of Michal Kováč Jr. abroad and the thwarted referendum scheduled for May 23rd and 24th, are confusing and, as such, do not adhere to the principle of legal certainty, which is an integral part of the principles of the rule of law. (Pavol Minárik, KDH, government, 18.5.2005, LP 3, Session 42)³⁷

Alternatively, it was stressed that the prohibition of retroactivity is not absolute and should be considered in the context of the overriding demand for justice, the appropriateness of measures taken, and the protection of individual rights.

One of the principles of a substantive rule of law state is the prohibition of the retroactivity of legal norms, a significant guarantee for protecting citizens' rights and legal certainty. (...) According to the Constitutional Court of the Slovak Republic, whether true or false retroactivity of legal norms is constitutionally acceptable depends on the protection of acquired rights, which subsequent legal regulations should not annul or worsen but improve *pro futuro*. In each case, it is necessary to answer whether the new legal regulation can be considered retroactive, whether it involves true or false retroactivity, and whether such retroactivity is constitutionally acceptable regarding the protection of rights acquired in good faith. (Ján Pataky, SDKÚ-DS, opposition, 12.12.2006, LP 4, Session 6)

³⁷ Similarly: "Ladies and gentlemen, with this proposal for a constitutional law, we aim to abolish the non-standard, diplomatically put, amnesties granted by the former Prime Minister Vladimír Mečiar, who exercised certain presidential powers for a period. This is because these decisions do not correspond to the principles of legal certainty, which is an integral part of the rule of law." (Ján Figel, KDH, opposition, 17.3.2015, LP 6, Session 48)

Effective institutions. Regarding the fundamental institutions of the rule of law and their effectiveness, MPs used a narrative in the second wave of rule of law legislation (since 1998) that **respect for law and its enforcement are fundamentals of the rule of law**. Representatives from all relevant parties agreed that the law must be implemented in practice and positioned themselves against the perceived lack of respect for laws and the constitution.

The legality of the state does not depend on the will of politicians and their proclamations. It is the result of the application of the law by state authorities. After the application of the constitution, a law, or any other generally binding legal regulation, there must be a clear and unequivocal legal effect, which is the correction of the situation or the removal of the violation of the law. (Miklós Fehér, SMK, government, 15.6.2000, LP 2, Session 32)

I agree very much that the legal system is in place, a rule of law is achieved not when laws are enacted, but when they are applied. (Ivan Mikloš, SDKÚ-DS, government, Deputy Prime Minister and Minister of Finance, 6.12.2005, LP 3, Session 52)

The rule of law is not just some special authority; the rule of law is not just justice, even though it is a fundamental condition for the functioning of the rule of law. The rule of law is primarily (...) the sovereignty of the law and the enforceability of the law, but there are many other conditions and prerequisites developed over thousands of years. (Mojmír Mamojka, Smer, government, 3.8.2006, LP 4, Session 2)

Speakers suggested that the actual implementation of law, including its interpretation by case law, was not always ensured in Slovakia.

After all, the decision of the highest instance, against which there is no appeal, must be respected and taken into account by anyone who wants to respect the rule of law. (Katarína Tóthová, HZDS, opposition, 18.2.1999, LP 2, Session 10)

I believe it is permissible to criticise court decisions, whether general or constitutional, and to criticise them very harshly. I do it myself, and sometimes I use the legal remedies provided to me by law. But always, I have always respected the court's decision. And we should agree that it is necessary to respect the decision of the constitutional court, whether preliminary or substantive. I believe this is crucial for the rule of law. (Daniel Lipšic, KDH, government, Deputy Prime Minister and Minister of Justice, 27.2.2003, LP 3, Session 8)

If anyone who reaches a position at the district office decides that a judgment is unjust and begins to act according to their own judgment, in that case, there can be no talk of the rule of law or the implementation of law. (Miroslav Číž, Smer, opposition, 18.9.2003, LP 3, Session 17)

In the third wave of rule of law legislation, Slovak parliamentarians most frequently expressed their views on the judiciary and its independence. In the pre-accession phase, the EU requested ensuring its autonomy from politics; consequently, the government pushed through institutional reforms in this direction. Although we identified statements regarding the institutional independence of the judiciary from

the executive and legislative in that period,³⁸ an established narrative that an **independent and impartial judiciary is a pillar of the rule of law** was most significantly used in the subsequent period. In their speeches, politicians from parties across the political spectrum agreed on that point; however, they differed in positions regarding specific policies. Parties opposing post-accession judicial reforms of the liberal-conservative government (see Sects. 3.2 and 3.3), such as HZDS and Smer, placed strong emphasis on the institutional independence of the judiciary. Representatives of liberal-conservative parties also embraced the principle of judicial independence. However, they highlighted the need for mechanisms to hold judges accountable for their performance.

The purpose of this draft law is to create legislative conditions for improving the actual institutional functioning of independent judiciary in the Slovak Republic because an independent judiciary is one of the fundamental pillars of the rule of law. (Lucia Žitňanská, SDKÚ-DS, government, Minister of Justice, 8.12.2010, LP 5, Session 9)

(T)he laws in the field of judiciary and justice from this government coalition strictly and exclusively violate the principles of the rule of law, judicial independence, interfere with the independence of judges, all for the purpose of politicising the judicial system, and all of this with the aim of gaining control of the judiciary by the government coalition. (Róbert Madej, Smer, opposition, 22.3.2011, LP 5, Session 16)

[The judiciary] is the only area where we have incorporated a strong opponent who doesn't want any change, who wants things to continue as they are today. (. . .) If we're talking about the fact that all public officials should be held accountable for their actions, why shouldn't judges do the same? After all, they identify themselves as a state power. (Alojz Baránik, SaS, government, 29.4.2020, LP 8, Session 6)

In that period, more statements dealt in detail with questions around judicial independence, including recruiting procedures, immunity and the impartiality of judges, as elements of the rule of law and its practical implementation.

The Constitution of the Slovak Republic in Article 141 clearly states: "In the Slovak Republic, the judiciary is carried out by independent and impartial courts." I repeat the word "impartial". Impartial means unbiased, not taking sides, not only the concept of independence but also respecting both the law and ethical standards and not violating norms that might create an impression of bias or partiality on either side. (Vladimír Mečiar, HZDS, government, 15.10.2009, LP 4, Session 41)

³⁸ For example: "In a rule of law, independent judiciary has a special and exceptional position, being the highest authority when it comes to deciding on the rights and obligations of citizens." (Tibor Cabaj, HZDS, opposition, 19.1.2000, LP 2, Session 26), or "The significant separation of the judiciary from politics is one of the fundamental priorities, especially concerning the accession process to the European Union. However, I believe that the domestic aspect in this regard is equally important. Simply put, a modern democratic rule of law requires a fundamental separation of the judiciary from politics." (Ivan Šimko, SDK, government, 15.6.2000, LP 2, Session 32)

(T)he immunity of a judge is a special privilege considered one of the basic guarantees of judicial independence. This, in turn, is related to the separation of powers, where the executive branch should not interfere with the judicial branch. It is fundamentally a violation of the personal guarantees of the judge's independence and the independence of the court as a whole, and ultimately, it impacts the citizen's right to an independent judicial process. We also have the case law of the European Court of Human Rights in this regard. (Boris Susko, Smer, opposition, 21.10.2020, LP 8, Session 16)

(Equal) rights. The principle of equality before the law and the notion that no one is above the law were frequently invoked in Slovak parliamentary debates as critical elements of the rule of law. Representatives from all relevant political parties, often in the opposition role, proclaimed their commitment to these principles when criticising the government's alleged non-compliance with them. In this context, reference was often made to the elementary respect for fundamental rights in general, with particular emphasis on the protection of acquired rights. We observed an overlap of party positions in this regard. During the second wave of rule of law legislation, a narrative was established that **equality before the law is fundamental to the rule of law**.

We should create a state governed by the rule of law that fully respects the right of all citizens to equality before the law, a state with laws that do not allow the humiliation and persecution of citizens and protect their property, security and lives. (Dagmar Bollová, KSS, opposition, 18.9.2003, LP 3, Session 17)

(S)ince the time of the Great French Revolution, the principle has been that we should all have the same legal judge. This means the principle of general equality. (...) Here, the government is programmatically trying to build structures that simply do not fit into a democratic state governed by the rule of law. (Ján Cupér, HZDS, opposition, 8.12.2004, LP 3, Session 33)

As the following quotations show, MPs also used this narrative in the third wave of rule of law legislation.

If we were to agree on what is probably the most important principle of the rule of law (...), it is the principle of equality before the law. (Daniel Lipšic, KDH, opposition, 3.7.2008, LP 4, Session 24)

Whether a state is a rule of law state or a dictatorship does not depend on its name, symbols or the text of its legal regulations. It depends solely on how these legal regulations are implemented and how their observance is enforced for everyone without distinction. (Andrej Hrnčiar, Most-Híd, opposition, 26.9.2012, LP 6, Session 7)

The parties and movements forming the current governing coalition gained trust based on the promise to transform Slovakia into a true rule of law, where we will all be equal before the law and capable of assisting those who need our help, those who will live in Slovakia, where we will be happy to work, do business and live. (Anna Zemanová, SaS, government, 3.2.2021, LP 8, Session 23)

Again, opposition parties linked the narrative with criticism of the government for ignoring the principle of equality before the law.

I must say that it seems we live in a distorted rule of law, where justice does not apply equally to everyone, where we are not equal before the law, where the chosen (...) have more rights and more power than those who work honestly and hard. (Miroslav Kadúć, OĽaNO, opposition, 21.4.2015, LP 6, Session 49)

(E)ven under better governments, the rule of law wasn't genuinely established in Slovakia, where the principle 'let fall whomsoever' applied. (Miroslav Beblavý, Spolu, opposition, 17.10.2018, LP 7, Session 35)

Concerning equal rights, the 'Mečiar amnesties' were also frequently referred to as contradicting the principle of equality before law.

The proposers of the approved law probably forgot the fundamentals of the theory of state and law, as well as the basic principles arising from the principles of the rule of law, such as the prohibition of retroactivity and the prohibition of deprivation of legally acquired rights. (Róbert Madej, Smer, opposition, 1.2.2011, LP 5, Session 12)

I am convinced that even if this legal norm is approved, and we repeal Mečiar's amnesties in parliament, there will be a basis for it before the constitutional court. Because those amnesties undoubtedly, because they violated these individual human rights, (...) are inconsistent with the principles of a democratic state governed by the rule of law. (Lucia Žitňanská, Most-Híd, government, Deputy Prime Minister and Minister of Justice, 28.3.2017, LP 7, Session 14)

At the very least, the fact that Michal Kováč Jr.'s amnesty was revoked, while Marián Kočner's was not, establishes discrimination from a legal perspective. Let's call it in Slovak 'inequality' and it denies the principle of equality as a characteristic of a democratic state governed by the rule of law. (Jozef Rajtár, SaS, opposition, 5.12.2018, LP 7, Session 38)

As a specific case, the presumption of innocence was invoked frequently in the Slovak parliament. Especially representatives of HZDS and Smer declared it to be an elementary (and, at the same time, in practice often violated) feature of the rule of law. This happened mainly when they were in opposition and their prominent members became targets of investigation or prosecution.

The foundation of every rule of law and every criminal code in democratic countries is the presumption of innocence, and no one, I repeat, no one has the right to label anyone as a person or individual who has violated the law without a valid court judgment. (Ivan Lexa, HZDS, opposition, 11.11.1998, LP 2, Session 3)

(T)he rule of law must also respect the formal characteristics of the law, formal elements, that we have protection of personality, that we have the principle that unless we prove something against someone, we consider them innocent. (Miroslav Číž, Smer, government, 10.11.2014, LP 6, Session 42)

Separation of powers. The separation of powers has been repeatedly referred to as a vital element of the rule of law in Slovak parliamentary debates from the early 1990s.

Representatives of practically all parties invoked it, mostly while in opposition. In the first half of the 1990s, references to the separation of powers were often unspecific, without deeper explanations and examples, as exemplified by the following quotation.

In this case, the principles of the rule of law were violated because they do not respect the separation of powers, which is the foundation of our constitution. (Jozef Moravčík, DÚ, opposition, 21.12.1994, LP 1, Session 3)

Later, speakers frequently emphasised the importance of mutual checks and balances of state powers to prevent their abuse and uphold the rule of law.

I would like to add that in a democratic state governed by the rule of law, the principle of the separation of powers is valid, but this principle is never understood as the isolation of powers. The principle of the separation of powers is always connected with the principle of control, mutual control, mutual checks and balances of individual powers. (Ladislav Orosz, SĎL, government, 5.10.2000, LP 2, Session 36)³⁹

During the third wave of rule of law legislation, an overlapping narrative that a **separation of powers with effective checks and balances is an integral part of the rule of law** was utilised with significant intensity.

In the Slovak Republic, as in any other democratic state governed by the rule of law, the principle of the separation of powers into legislative, executive and judicial powers applies. These powers are supposed to mutually control, complement each other within the system of checks and balances, but at the same time, they should be independent from each other and have a distinct position. (Róbert Madej, Smer, opposition, 22.3.2011, LP 5, Session 16)

For the functioning of the rule of law, it is crucial that even the highest authorities of public power in the state act in accordance with the constitution. If this does not happen, there must be an effective legal remedy to rectify this situation. (Andrej Hrnčiar, Most-Híd, opposition, 26.9.2012, LP 6, Session 7)

5.3 Sources of Legitimacy of the Rule of Law

In democratic societies, the people directly or indirectly legitimise the constitution, the legislation, policies and the appointment of various officials. How did parliamentarians speak about the sources of legitimacy of the rule of law? Although in parliamentary practice, politicians do not usually discuss such questions at a purely theoretical level, we extracted the main lines of argument from their contributions to debates on specific bills or policies. Most narratives we found in our empirical material referred to ideas as a source of legitimacy for the rule of law,

³⁹Or a similar statement made by Vojtech Tkáč (HZDS, opposition, 20.5.2003, LP 3, Session 12): “The theory of the separation of powers speaks of the division of power and the checks on power. Here, the checks are being removed (. . .) and that is unpleasant and unacceptable in a rule of law.”

with a wide range of country-specific narratives. We also identified narratives relating to procedures, which also varied across countries, reflecting different domestic discourses. The temporal pattern of the narratives differed from those on the purpose and elements of the rule of law.

When coding, we assigned the code 'Legitimation' to all statements in our documents that dealt with support, acceptance or trust in the rule of law and its elements (for elements, see Sect. 5.2) and in the (constitutional) state. Support, acceptance and trust could be related to people in the sense of citizens, the demos or the nation, e.g. 'the rule of law must be supported by the citizens' or 'it is good to anchor the rule of law in the minds of the nation'. Speakers did not have to talk explicitly about the 'legitimation' of the rule of law, we also coded more implicit references to it. For a more detailed analysis, we derived three subcodes from theory, each standing for a typical source of legitimacy, namely ideas, procedures and the constitution or legal text.

The subcode 'Ideas' was assigned to references to the idea of human rights, the ideas behind a revolution, the constitutional spirit and basic principles such as legality, or mentions of the rule of law in conjunction with other values (e.g. democracy). The subcode 'Procedures' was used for statements on rule-bound behaviour (regardless of the content of the rule), different types of procedures (e.g. for elections, appointments, legislation, constitution-making, jurisdiction) and characteristics of procedures, including transparency or (non-)compliance with legally prescribed norms. The subcode 'Constitution/legal text' was used for statements that refer to the constitution or other written norms. It was used, for example, when a speaker referred to fundamental rights not as an idea but as enshrined in the constitution or other codified law.

It was often difficult to distinguish between these three categories of the rule of law legitimation in individual speeches. Statements were often enumerative, referring to different sources of legitimacy at the same time. Wherever possible, paragraphs were assigned to subcodes according to their core message. Purely enumerative statements were not coded.

Table 5.23 shows the periods in which MPs used certain narratives on the three different sources of legitimacy of the rule of law with particular intensity. Obviously, MPs paid much attention to questions of the legitimation of the rule of law, with narratives spread throughout the studied three decades. Most of the narratives related to the different ideational underpinnings of the rule of law; however, morality and justice played a minor role compared to the discussions of the purpose of the rule of law (Sect. 5.1). Many narratives also referred to codified laws and procedures. The general ranking has not changed much over time.

When MPs referred to ideas as a source of legitimacy for the rule of law, they did not refer to narrower partisan ideologies but to overarching general ideas such as democracy or freedom or to the ideas underlying a revolution or the constitution. Most of these narratives were used with highest intensity in the first wave of rule of law legislation. While the general themes of the most intensively used narratives overlapped between the five countries, the specific narratives and combinations of the mentioned ideas were country-specific (see Table 5.24). More overlapping

Table 5.23 Narratives on sources of legitimacy of the rule of law, 1990/92–2021

	1st wave						2nd wave						3rd wave					
	CZ	HU	PL	RO	SK		CZ	HU	PL	RO	SK		CZ	HU	PL	RO	SK	
Ideas		✓	✓	✓	✓			✓	✓	✓			✓	✓	✓		✓	
Codified law		✓		✓	✓					✓	✓		✓	✓	✓		✓	
Procedures	✓	✓	✓						✓	✓			✓		✓	✓	✓	

1st wave: CZ 1992–1998, HU 1990–1998, PL 1990–1997, RO 1990–2004, SK 1992–1998

2nd wave: CZ 1998–2006, HU 1998–2010, PL 1997–2015, RO 2004–2014, SK 1998–2006

3rd wave: CZ 2006–2021, HU 2010–2021, PL 2015–2021, RO 2014–2021, SK 2006–2021

Table 5.24 Narratives on ideas as a source of legitimacy of the rule of law

	CZ	HU	PL	RO	SK
<i>Overlapping narratives</i>					
RoL is guided by the will to also establish democracy, a free market and to protect rights.		✓ (1)	✓ (1)		
Legal principles (esp. separation of powers, legality, non-retroactivity) as the basis of the new system (under the RoL).			✓ (1)		
The legitimization of the RoL rests on European values (esp. freedom) that were achieved by the Romanian revolution.				✓ (1)	
RoL is guided by the will to also establish democracy, a free market and to protect rights, which is of great importance due to EU accession.		✓ (2)			
Separation of powers through an independent judiciary is an important source of legitimacy.				✓ (2)	
Legitimation of the RoL stems from the idea of fairness and equality.	✓ (3)				
Legal principles (incl. constitutionality, human dignity) are the basis of legitimacy of the RoL and should be protected by the constitution.		✓ (3)			
<i>One-sided or diverging narratives</i>					
A state is perceived and accepted as truly governed by RoL if it guarantees (democratic) rights and freedoms to its citizens.					✓ (1, 3)
Morality, justice and common good as the basis for a functioning and just state (referring to lustration etc.) vs fundamental rights and individual freedoms guarantee a stable state (under the RoL).			✓ (2)		
Legal principles and European standards serve as anchor points for the state and must be respected.			✓ (3)		
A fundamental aspect of the legitimacy of the state under the RoL is its ability to establish and ensure justice.					✓ (3)

Waves of rule of law legislation where a particular narrative was used most intensively are indicated in brackets

narratives were identified in Hungary, Poland and Romania than in Czechia and Slovakia. The parliamentary discourse in Slovakia was characterised by one-sided key narratives on ideas as a source of legitimacy. As in Poland, one-sided or diverging narratives on this issue were a more recent phenomenon. Like the overlapping narratives, the one-sided and diverging narratives were country-specific.

Compared to the references to ideas, the number of narratives invoking codified law as a source of legitimacy for the rule of law was lower (Table 5.25). Most commonly, MPs referred to the national constitution or the Charter of Fundamental Rights, which corresponds with their particular character as legal documents establishing the whole regime and adopted by a qualified parliamentary majority and sometimes by referendum. Again, more of these narratives originate from the first and third waves of rule of law legislation. It is noticeable that in Poland, where narratives were used with great intensity throughout the different waves of rule of

Table 5.25 Narratives on codified law as a source of legitimacy of the rule of law

	CZ	HU	PL	RO	SK
<i>Overlapping narratives</i>					
Constitutionality is an obligation for the state governed by the RoL/legal state.		✓ (1, 3)			
To be legitimate under the RoL, political goals must be transformed into legal documents and measures compatible with the constitution.					✓ (1–3) ^a
The constitution of 1991 as the institutionalised emanation of the Romanian revolution is the most important source of legitimation.				✓ (1)	
RoL derives its legitimacy from codified legal regulations.	✓ (3)				
<i>One-sided or diverging narratives</i>					
Constitutionality is an obligation for the state governed by the RoL.			✓ (3)	✓ (2)	

Waves of rule of law legislation where a particular narrative was used most intensively are indicated in brackets

^a The narrative was present in all waves, without any difference in intensity

law legislation, codified law was referred to less as a source of legitimacy for the rule of law, which may be related to the late and in some respects controversial adoption of the post-socialist constitution in 1997.

Concerning procedures as a source of legitimacy for the rule of law, one narrative was used by MPs in three parliaments (Table 5.26). It focused on building trust in the state under the rule of law through effective state institutions and was used in Czechia, Poland and Slovakia (in Poland even unchanged over the three decades). In Romania, a narrative referring to the importance of complying with the law for generating support to the rule of law was used in more than one legislative period. Procedural narratives were generally used by representatives across party lines.

In general, most of the narratives on the sources of legitimacy of the rule of law were used across party lines. In contrast to narratives on the purpose or elements of the rule of law, their number was not significantly higher in the third period of rule of law legislation. The relatively few one-sided or divergent narratives related more to ideas and codified law than to procedures (Table 5.27).

5.3.1 Czechia: Codified Law and Procedures

In the Czech parliament, both the letter of the law and its proper application were narrated as principal sources of the legitimacy of the rule of law. MPs mainly referred to the constitution or legal text when speaking about its sources of legitimacy. Procedures were also frequently addressed as a source of legitimacy, and different narratives related to this category. Ideas followed at some distance (Table 5.28). However, in many cases, speakers did not clearly separate their arguments in favour of a certain source of legitimation. Their arguments on their

Table 5.26 Narratives on procedures as a source of legitimacy of the rule of law

	CZ	HU	PL	RO	SK
<i>Overlapping narratives</i>					
Effective state institutions (esp. judiciary and prosecution) are relevant to ensure trust in the state under the RoL.	✓ (3)		✓ (1–3)		✓ (3)
Legal procedures must be respected to avoid them being ‘dead letters in the law books’, which would mean squandering this important source of legitimacy.				✓ (2, 3)	
The parliament must create via its legislation procedures of the RoL (including at the local level) which guarantee that the citizens’ will is respected.		✓ (1)			
Politicisation of the RoL processes undermines its legitimacy.	✓ (3)				
The inadmissibility and potential punishment of arbitrary or unlawful activities of public officials are fundamental elements of the legitimacy of the RoL.					✓ (3)
<i>One-sided or diverging narratives</i>					
Legitimation of the RoL requires a broader social basis.	✓ (1)				

Waves of rule of law legislation where a particular narrative was used most intensively are indicated in brackets

relevance were intertwined—the constitution as a document mirroring the idea of the rule of law, which is to be correctly implemented in practice through the application of the law, in this way achieving the desired legitimacy of the entire rule of law system. Narratives were used by representatives of different parties, with the highest intensity in the third wave of rule of law legislation.

Codified law. When MPs referred to codified norms as the legitimation of the rule of law, this was often done in connection with criticism of their alleged violation. Speakers argued—in our sources with a higher intensity after the beginning of the new millennium—that **the legitimacy of the rule of law derives from codified law, whether in the constitution**, the Charter of Fundamental Rights and Freedoms **or ordinary laws**. This argumentation became an established narrative during the third wave of rule of law legislation. Its users included representatives from all relevant parties, both the opposition and the government. References to the constitution and the Charter of Fundamental Rights and Freedoms⁴⁰ held a prominent position when demanding that the law be respected.

I really have to say that there is (...) a much older and unequivocally functional analogy to what is happening here today. It is a basic rule of law established by the ancient Latins in ancient Rome, and it answers the question even for those who oppose the lustration law. And that rule says: ‘lex dura, sed lex’ – a bad law, but the law. Because the law, whether we think it’s okay or you think it’s not okay, is the law of this country. (Martin Novotný, ODS, opposition, 22.1.2014, LP 7, Session 5)

⁴⁰Even though the Charter is not directly part of the constitution, it was recognised as a source of constitutional law by the constitutional court.

Table 5.27 One-sided or diverging narratives on sources of legitimacy of the rule of law

	1st wave					2nd wave					3rd wave				
	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK	CZ	HU	PL	RO	SK
Ideas					✓			✓					✓		✓
Codified law				✓					✓				✓		
Procedures	✓														

See Table 5.23 for temporal specification of the waves

Table 5.28 Narratives on the sources of legitimacy of the rule of law in Czechia

	1992–1998	1998–2006	2006–2021
Codified law			RoL derives its legitimacy from codified legal regulations. (overlapping)
Procedures	Legitimation of the RoL requires a broader social basis. (one-sided)		Effective state institutions are relevant to ensure trust in the state under the RoL. (overlapping) Politicisation of the RoL processes undermines its legitimacy. (overlapping)
Ideas			Legitimation of the RoL stems from the idea of fairness and equality. (overlapping)

I am convinced that the whole question should not be political or religious but purely legal. The law should be a kind of sacred system through which a person seeks justice. Instead, we witness constant attacks on legal and, consequently, constitutional principles. If we get used to this elasticity of the legal environment, we will soon find ourselves completely unable to appeal to justice and protect our own dignity, and therefore, the framework of democracy and the rule of law. (Pavel Bělobrádek, KDU-ČSL, opposition, 23.4.2019, LP 8, Session 28)

Some speakers focused on the relationship between legality and legitimacy in a democratic rule of law, addressing potential tension between formal and substantive law or the interpretation of legal texts.

I believe it is worth having a thorough discussion here in the Chamber of Deputies about the extent to which the government has the right to intervene in hypothetical protection of public interest. I believe that this right of the government is not unlimited, that the government should respect the legitimate expectations of citizens and respect the trust of citizens in the valid laws of our country and in the constitution of our country. (. . .) Among the fundamental principles of the rule of law are also the legitimate expectations of each citizen – if I behave based on valid laws, I will encounter rights and duties guaranteed by these legitimate laws. (Bohuslav Sobotka, ČSSD, opposition, 26.10.2010, LP 6, Session 7)

While (. . .) a formal rule of law is usually understood as the binding of state power by law, meaning the entire legal system, a substantive rule of law emphasises the values underlying positive law and human rights. And I think that is very important because each norm should undergo not only a test of constitutionality in the broader sense of the word, so that it withstands if we measure its value or quality in terms of observing the basic principles of the formal rule of law, but also in terms of the core of the rule of law, which is made up of values embodied in the constitution, in the Charter of Fundamental Rights and Freedoms, simply in what constitutes the value foundation of a particular legal system. (Helena Válková, ANO, government, 11.1.2017, LP 7, Session 54)

Procedures. In general, narratives about the sources of legitimacy of the rule of law were often expressed indirectly, typically in the context of criticising the erosion of trust in the rule of law and its institutions. This erosion may have been caused by

alleged political interference or other reasons attributed to the actions of certain actors.

In the first wave of rule of law legislation, representatives of left-wing parties (ČSSD and KSČM), then in opposition, emphasised on different occasions (however, not frequently in quantitative terms) that **legitimation of the rule of law requires a broader social basis**. They called for broader societal consent for specific rules for the functioning of the rule of law. Specifically, ČSSD strived for the involvement of parliamentary opposition in the lawmaking, particularly in laws relevant to the functioning of the whole political system. Representatives of the politically ostracised KSČM (from 1992–1996 as part of the so-called Left Bloc) demanded the strengthening of non-parliamentary mechanisms engaging the wider public in the legislative process, either through the office of the ombudsperson or via referenda.⁴¹

The building of institutions for a democratic rule of law and their effective functioning is not a matter of political parties, not even of the government coalition. The opposition must also participate in it because these institutions must exist and operate even if the party-political composition of the government changes after elections. (Zdeněk Jičínský, ČSSD, opposition, 24.7.1996, LP 2, Session 3)⁴²

The Public Defender of Rights cannot be replaced by anyone else. (...) Therefore, I want to say on behalf of the parliamentary group of the Left Bloc that we (...) consider the vote on this bill as a vote on whether civil society should be strengthened, whether legal certainty for citizens should be increased, and whether the rule of law, which our constitution declares the Czech Republic to be, is truly endowed with an institution that will only strengthen this rule of law. (Jaroslav Ortman, LB, opposition, 13.2.1996, LP 1, Session 39)

While this was a one-sided narrative used mainly in the 1990s, representatives of all relevant parties stressed throughout the three decades under review that the credible and effective functioning of the rule of law institutions (without an explicit connection to potential political influences) is relevant for the acceptance of the rule of law. Typically, they made such statements in the context of parliamentary debates on specific issues related to the functioning of the rule of law in the country. In the third wave of rule of law legislation, such statements formed an established narrative that **effective state institutions are relevant to ensure trust in the state under the rule**

⁴¹ Vojtěch Filip (KSČM, opposition, 14.4.1998, LP 2, Session 24) stressed that “(i)f the source of all power is the people, as stated in Article 5 of the Charter of Fundamental Rights and Freedoms, the citizens of the Czech Republic have the right to participate directly in public affairs (...) or by the free choice of their representatives. Direct participation of citizens in public affairs is guaranteed both by the constitution and the charter as primary. Therefore, an attribute in a state governed by the rule of law is the constitutional directive that political decisions arise from the will of the majority expressed by free voting.”

⁴² Earlier, Jozef Wagner (ČSSD, opposition, 16.12.1992, LP 1, Session X) argued that electoral laws are highly relevant to guarantee a fair basis for political competition. Therefore, he found, “we should create such a mechanism on which both the coalition, the government majority and the opposition can agree” and “respect for the law is determined by the extent to which the law respects the will of the citizen, even the one who currently disagrees with the existing government coalition.”

of law. Its users included MPs from the opposition (usually when criticising the government) or from the government (usually when supporting measures proposed by the government).

The narrative was employed in debates on various subjects, including the functioning of the courts (speed and quality of judicial proceedings), the public prosecutor's office or the police, as well as, on a more general level, the efficiency of legal regulation (e.g. conflict of interest law and other anti-corruption measures) or, conversely, particular issues such as problems with the seizure of debtors' property. MPs reiterated the need to increase trust in the police and the judiciary, e.g. by streamlining disciplinary proceedings and making them more transparent,⁴³ or in the economic sector.⁴⁴

(I)t is necessary to restore confidence in the rule of law and the Police of the Czech Republic. Full confidence of voters and coalition partners in this government can only be restored by the expedited adoption of anti-corruption measures, which the Ministry of the Interior has already prepared and submitted to the government. (Radek John, VV, government, Deputy Prime Minister and Minister of Interior, 21.12.2010, LP 6, Session 12)

I am very sorry that, as a result of the police's actions, whatever the order was, it led to a breach of trust in the impartiality and good work of the police forces. (...) (T)rust in the police is one of the key elements of a democratic rule of law, and all of us across the political spectrum must work to ensure that this trust in the police exists in the public sphere. (Petr Fiala, ODS, opposition, 21.4.2016, LP 7, Session 45)

Therefore, I would like to ask you to consider, in light of the two hundred thousand cases in the Czech Republic where executions are enforced, debts are collected illegally and unlawfully, to think about the rule of law and the trust in the rule of law, which, from my perspective, is significantly endangered. Because if the state is unable to stop illegal executions, if it is unable to regulate itself, then it is already a collapse of the entire legal system. (Jan Farský, STAN, opposition, 30.6.2020, LP 8, Session 53)

After 2006, a narrative emphasising the harmfulness of attempts to politically influence rule-of-law-related institutions became more prevalent. After the media reported on the government's attempts to influence the public prosecutor's office in order to divert the prosecution of certain members of the government, MPs criticised the interference in the rule of law institutions. The narrative emerged that **politicisation of the rule of law processes undermines its legitimacy**. This narrative was overlapping; however, its usage reflected an intense government–opposition conflict dynamic. It was employed on various occasions in different periods, but not very frequently.

⁴³For the judiciary see Marek Benda, ODS, government, 14.8.2008, LP 5, Session 28.

⁴⁴Jan Čižinský (KDU-ČSL, opposition, 22.1.2019, LP 8, Session 26) stressed, for example, "The situation of creditors and debtors in our country is very serious, and the Senate proposal addresses it better. The more successful insolvencies there are, the greater the hope that trust in the rule of law and democracy will be restored in our country, both among creditors and debtors and among people who are now watching these processes."

(T)he Czech justice system is unable to extricate itself from the swamp it gets into when someone tries to influence it from politics (. . .). (A) large part of the people in this country will not believe that the law truly operates here according to the principles of blind justice. (Lubomír Zaorálek, ČSSD, opposition, 13.6.2008, LP 5, Session 33)

The narrative was reactivated in the eighth legislative period (2017–2021) when Prime Minister Andrej Babiš was criminally prosecuted.

When the prime minister behaves like this, and when perhaps, in the end, he won't be charged, how many people in our country will believe that his role as prime minister did not contribute to resolving his personal problem? That he didn't influence anyone? How many people will believe that? Colleague MPs, is the erosion of faith in the rule of law worth it to you? Will you be explaining this to hundreds of thousands of people in the streets in a few months? (Petr Fiala, ODS, opposition, 26.6.2019, LP 8, Session 32)

Besides this type of criticism from the opposition, there were also cross-party calls for general political restraint regarding the rule of law institutions. It included refraining from bringing party-political battles into them by rhetorically undermining their impartiality, for example when politicians questioned the merits of a request by law enforcement authorities to waive the immunity of certain MPs, especially shortly before elections (Chovanec), or politically motivated relativisation of fundamental principles of the rule of law, such as legal certainty or predictability of the law (e.g. when Pekarová Adamová was commenting on the government's attempt to tax compensations to churches, which had been contractually fixed as non-taxable by the previous government).

What greater value in this country, in our constitutionality, is greater than free elections? If someone is obstructing it and you have evidence, which you often mention, present it, or turn to these authorities precisely according to the law within the framework of the rule of law. Coming from the minister of justice, this has a devastating effect on the trust of the Czech public in the state and in the justice that the minister of justice is supposed to defend. (Milan Chovanec, ČSSD, government, Minister of Interior, 6.9.2017, LP 7, Session 60)

At this moment, it really is not just about whether something is possible from a moral point of view, whether it is right – I do not think it is – but it also concerns respect for legal principles. In this regard, the principle that contracts are valid is violated. Compensation is not paid only according to the law; it is primarily paid according to contracts. And now the state says that contracts are not valid. This significantly undermines citizens' trust in the functioning of the rule of law in our country. (Markéta Pekarová Adamová, TOP09, opposition, 13.12.2018, LP 8, Session 25)

(T)he Czech Republic is a state governed by the rule of law. If we do not trust the public prosecutor's office, our courts, to assess whether the request [to extradite a Hong Kong citizen to China] is politically motivated, then we are expressing distrust in the institutions of the rule of law of the Czech Republic. (Tomáš Petříček, ČSSD, government, Minister of Foreign Affairs, 1.10.2020, LP 8, Session 58)

Ideas. Deriving the legitimacy of the rule of law from the ideological foundations was relatively rare in the analysed material. Although references to abstract ideas

appeared in the speeches of MPs, as legitimising factors of the rule of law they were mostly invoked through their enshrinement in the codified law (see, for example, the discussion on the idea of legality in the previous section). Nevertheless, one narrative was identified based on a particular idea. It appeared in the third wave of rule of law legislation when MPs of all relevant parties stressed that **the legitimisation of the rule of law stems from the idea of fairness and equality before the law which mobilises public trust**. This narrative was used most frequently in the analysed material from 2013 onwards.

Politicians used it on various occasions, from political debates criticising the current government's actions to discussions about proposed legislation. They argued that these ideas as principles of the rule of law create a foundation for its acceptance, as they provide everyone with a sense of trust in the impartiality and unbiased conduct of the relevant institutions. It could be said that it is the inherent value of the rule of law, its very essence, which makes it appealing and therefore legitimised by public support.⁴⁵ In this view, norm addressees will accept them when they believe that they are treated fairly and equally.

(W)e MPs, even though equipped with a certain immunity, are not superhumans who should avoid criminal prosecution. When justice is served, it is, of course, a chance for purification, relevant purification, purification that has a high level of credibility in a rule of law. So, the public should not have the impression that as someone's influence grows, so does his impunity. (Jiří Dolejš, KSČM, opposition, 6.9.2017, LP 7, Session 60)

I believe that's what this debate is about. That means, was it fair that ordinary people received less than the churches? Was that fair? Was it within the law that we all uphold here? So, if we want to have the rule of law here, let's treat everyone the same, whether it's a dignitary, a church, a business or an ordinary mortal. That's all that matters. (Jiří Bláha, ANO, government, 23.1.2019, LP 8, Session 26)

(O)ne of the fundamental prerequisites for a functioning rule of law and democracy is trust in justice. Trust that when you, as the weaker party in a conflict, encounter problems, you will receive justice. It may take longer, it may take a shorter time, but you will achieve justice. (Jan Farský, STAN, opposition, 27.9.2019, LP 8, Session 34)

5.3.2 Hungary: Codified Law and (Partly Contested) Ideas

In the debates analysed, members of the Hungarian parliament most often mentioned the constitution as a source of legitimacy for the rule of law. This was followed by procedures and ideas. Although MPs mentioned law and procedures frequently, they did not discuss in detail their relevance for legitimising the rule of law. Therefore, in our selected debates, we identified only one narrative regarding procedures as a source of legitimisation of the rule of law, which was used in the first wave of post-1989 legislation. In contrast, statements referring to ideas as a source of legitimisation

⁴⁵In addition to the following citations, see also the quote by Bohuslav Sobotka (ČSSD, opposition) in Sect. 5.2.1, paragraphs on (equal) rights.

Table 5.29 Narratives on the sources of legitimacy of the rule of law in Hungary

	1990–1998	1998–2010	2010–2021
Codified law	Constitutionality is an obligation for the state governed by the RoL. (overlapping)		Constitutionality as an obligation for the state governed by the RoL. (overlapping)
Ideas	RoL is guided by the will to also establish democracy, a free market and to protect rights. (overlapping)	RoL is guided by the will to also establish democracy, a free market and to protect rights, which is of great importance due to EU accession. (overlapping)	Legal principles (incl. constitutionality, human dignity) are the basis of legitimacy of the RoL and should be protected by the constitution. (overlapping)
Procedures	The parliament must create via its legislation procedures of the rule of law (including at the local level) which guarantee that the citizens' will is respected. (overlapping)		

were condensed into certain intensively used narratives which changed slightly over the course of the three waves of rule of law legislation (Table 5.29). First, the rule of law was described as being embedded in the broader project of establishing democracy and a free market and protecting rights, then this was increasingly linked to Europe, and later the centrality of certain legal principles was emphasised more. While there was a general overlap of key narratives used by MPs belonging to the government and the opposition, opposition MPs used them after 2010 when they criticised government policy.

Codified law. MPs frequently mentioned the constitution, using terms such as ‘constitutional order’, ‘constitution of a state based on the rule of law’ or ‘constitutional rule of law’. Implicit in the speeches is the view that **constitutionality is an obligation for a state governed by the rule of law because the constitution is its foundation**. This view was supported by all parties in opposition and in government throughout the periods under study. MPs emphasised that other laws were also part of the constitutional framework, reflecting the legal framework in Hungary. It went without saying that all provisions of the composite constitutional order should also be respected by citizens. This rhetoric was used most frequently during the first and third waves of rule of law legislation.

In addition to the Fundamental Law, the constitution, there are about a dozen other laws that form the basis of the Hungarian constitutional system. The Constitutional Act and related laws have created the normative foundations and guarantees of the democratic rule of law, parliamentary democracy, a competitive multi-party system and the enforcement of human rights. As a result of the amendment of the constitution and the fundamental laws, Hungary's system and rules of property and ownership, the system and rules of economic management have been completely transformed. (Mihály Bihari, MSZP, opposition, 14.7.1994, LP 35, Session 4)

When arguing in this way, the politicians assumed that the constitution itself is in line with the principles of the rule of law, giving it the power to guide how the rule of law is practised. At the same time, the constitution was perceived as a separate factor because it regulated much more than only issues related directly to the rule of law. This made it an original source of legitimation of many issues related to the system.

It is now a constitution based on the rule of law, and it is therefore now fit to fulfil its function. It is not suitable to provide a framework for the content of the new laws on legislation, the rules of international treaties and the constitutional court, which will be discussed after the constitutional amendment, and that is why the government is obliged to submit the constitutional amendment. You are well aware that all or almost all of the proposed amendments to the constitution create the constitutional basis for the laws that will be debated afterwards. (Miklós Hankó Faragó, SZDSZ, government, 14.10.2003, LP 37, Session 95)

This is exactly how Fidesz-KDNP argued about the new constitution, the so-called Fundamental Law, which was passed in 2011 with its two-thirds majority in parliament. According to their rhetoric, the constitutional order had to be improved in order to ensure “the functioning of a safe and viable Hungary”.⁴⁶

The Fundamental Law, while seeking to preserve the most important achievements of the constitutional development of the last twenty years since the fall of communism, its well-functioning democratic legal institutions and solutions, has of course also brought significant changes in a number of areas. The reasons for these stem precisely from the experience of the rule of law over the last two decades. Since the rules on the most important legal institutions for the democratic rule of law are contained in the cardinal laws, we, the legislators, have a major task this year to draft all these cardinal laws, which are essential for the functioning of a safe and viable Hungary, with content and provisions that are most in line with the previous, well-established solutions and the necessary changes. (Márta Mátrai, Fidesz, government, 14.11.2011, LP 39, Session 133)

Following the adoption of the new constitution, references to the preservation of certain fundamental rights were a recurring theme articulated by almost all parties. Fidesz-KDNP argued that its legislation was in line with the constitution,⁴⁷ even in controversial cases such as the rights of Hungarians living abroad.

⁴⁶ Similarly, Péter Kozma (Fidesz, government 14.11.2011, LP 39, Session 133) argued: “I consider the inclusion of Article 38 to be an extremely important rule. (...) This is important from the point of view of the lessons learned from the past 20 years, precisely because the constitutional court can interpret the Fundamental Law in response to the requests referred to in paragraph (1) and in other cases where legal certainty is threatened, because the most important aspect of the Hungarian state and the operation of state bodies in accordance with the law, and the observance and enforcement of the principle of constitutionality, is that legal certainty is threatened in certain cases by the non-interpretation or inadequate interpretation of the Fundamental Law.”

⁴⁷ For a more general view, see the quote by László Trócsányi in Sect. 5.1.2.

Hungary is an independent and democratic state governed by the rule of law, whose form of government is a republic. The source of power is the people, who exercise it directly through their representatives, exceptionally by referendum. The state operates on the principle of the separation of powers. The proposal lays down the prohibition of the exclusive exercise of power and the state monopoly on the use of force. It enshrines the inalienable responsibility of the governments of Hungary to strengthen and preserve the unity of the nation across its borders. (László Kövér, Fidesz, government, 23.3.2011, LP 39, Session 77)

The opposition also referred to the need for constitutionality, arguing, for example, that the independence of the judiciary, although enshrined in the Fundamental Law, was not effectively implemented (see also Sect. 6.3.3).

The absurdity that the explanatory memorandum essentially becomes part of the law or other legislation for which the technical basis is now being created is in quite obvious contradiction to the principles of the rule of law. It is also contrary to your own constitution, Article 26 of which states that judges are independent and subject only to the law. Henceforth, judges are not only subject to the law, but are also subject to the justification of proposed laws. In essence, they are not subordinate to the law, but to the legislative will, and that is a very serious difference. (Gergely Arató, DK, opposition, 30.10.2018, LP 41, Session 35)

Ideas. Regarding ideas as a source of legitimacy for the rule of law, we found more nuanced discourses across parties and over time. In the early and mid-1990s, all parties used the narrative that **the rule of law is guided by the will to also establish democracy and a free market and to protect rights**. According to the ruling parties, these overarching goals were enshrined in the constitution through the amendments to the 1949 document adopted in 1989/90. As the following quotations show, the overarching goals were seen as crucial for Hungary's development (Kuncze), as "European norms" (Szabó) and as a prerequisite for "the country's full integration with the West in the broad sense, directly and indirectly supporting its domestic modernisation efforts" (Lezsák).

In 1989, the country's leading political forces agreed that there was no other way for Hungary to rise, to catch up with developed countries and to join the community of free nations than to build a market economy based on private property, with welfare guarantees; a constitutional state based on the rule of law and power-sharing, and a multi-party democracy strengthened by broad self-government. (Gábor Kuncze, SZDSZ, opposition, 14.7.1994, LP 35, Session 4)

The enforcement of these European norms is not only manifested in the establishment of pluralist parliamentary democracy and the rule of law – which has already taken place – and not only in the market economy – the institutions of which are in the process of being established – but it must also be enforced in our foreign policy and in our external relations. (Zoltán Szabó, MSZP, government, 22.2.1995, LP 35, Session 58)

Hungary wants to become a member of NATO because it shares the same values that form the basis of the alliance and that it was created to defend: the rule of law, the market economy, democracy and security. Hungary's membership of NATO provides favourable conditions for the country's full integration with the West in a broad sense, directly and indirectly supporting its domestic modernisation efforts. (Sándor Lezsák, MDF, opposition, 16.9.1997, LP 35, Session 298)

While the ruling MSZP argued that the amendments to the 1949 constitution represented “a transition to public law of truly revolutionary significance” because the revised document enshrined the aforementioned goals and rights, a new comprehensive constitutional revision to “improve” the constitutional order was discussed in 1995/96 in order to increase legitimacy.⁴⁸

During the second wave of legislation, MPs used a slightly adapted narrative that **the rule of law is guided by the will to establish democracy, the rule of law and a free market and to protect rights, which is of great importance due to EU accession**. After the accession to NATO in 1999, the preparations for EU accession received much attention, and the number of MP statements about ideas as a source of legitimization of the rule of law in the context of the EU increased in 2004 (as for NATO in 1999). MSZP in particular adopted a strongly pro-European stance during its government (since 2002), which led to Hungary’s accession to the EU. Its representatives advocated the implementation and respect of democratic values, the rule of law, rights, free elections and the free market. Other relevant parties aligned themselves with this pro-European perspective. While a link to the people was established, the following quotations show that the relevance of the EU (Kurucsai) and of the need to protect “the spirit and culture of Western Europe” (Fodor) played a key role.

The Independent Smallholders’ Party welcomes the European Commission’s Country Report 2000. We are pleased because it confirms the sacrificial work of the past ten years, the sacrifices of our people, the fulfilment of the principles laid down in the 1993 Copenhagen criteria, and thus the stable democratic institutions guaranteeing the rule of law and the effective exercise of human rights, and which increasingly clearly guarantee the protection of minorities and respect for their rights. Furthermore: we see a functioning market economy, because it is increasingly able to cope with the competition of market forces in the European Union. And finally, citizens see and perceive successful efforts to fulfil the obligations of EU membership, to adopt and apply the *acquis communautaire*. (Csaba Kurucsai, MDF, government, 30.11.2000, LP 36, Session 177)

The constitution of this country is fully in line with the rule of law and is in every respect in line with a modern constitution that reflects the spirit and culture of Western Europe and is based on fundamental human rights and freedoms. (. . .) Every time the need to adopt a new constitution arises in general, it results in a strange situation in public opinion, creating the feeling that there is something wrong with the Hungarian constitution. I think we should make it clear to the lay public that there is basically nothing wrong with the Hungarian constitution. I would like to emphasise once again that, of course, it can be amended on a few points, but in terms of its essence and spirit, this constitution is a good constitution, and it is in every respect suitable to serve the Republic of Hungary in the years to come. (Gábor Fodor, SZDSZ, government, 23.9.2003, LP 37, Session 89)

During the third wave of legislation, since Fidesz-KDNP formed the government in 2010, MPs from all parties used with great intensity the narrative that **certain legal principles (including legality/constitutionality and respect for human dignity)**

⁴⁸ Mihály Bihari, MSZP, government, 22.5.1996, LP 35, Session 178.

are highly relevant and should be protected by the constitution (Fundamental Law). In doing so, they indirectly acknowledged the relevance of guiding ideas or principles as a source of legitimacy for the rule of law. Fidesz-KDNP, with its two-thirds majority, implemented legal reforms and—as shown by the following quotations—placed itself in a historical line with those who had contributed to the break with the communist regime in 1956 and 1989/90 (Fazekas). They argued that these people had been betrayed by the supporters of the previous regime, who promised to build the rule of law and a fair compromise, but “only spoke the language of power” (Kövér).⁴⁹ In general, it was criticised that in the 1990s many people who had been part of the previous regime before 1989/1990 and who did not respect the basic principles of the rule of law and fundamental human rights were appointed to various important positions, and that this had prevented a real change of regime. The new Fundamental Law was declared to “finally clear away the ruins of the communist dictatorship after twenty years, thus bringing to an end the post-communist period of our country”, to represent national Christian and traditional European values, and to reaffirm the commitment to the rule of law and democracy (Vejkey).⁵⁰

The patriotism of our compatriots, who fought against the National Socialist and Communist dictatorship and the foreign occupation, and who were martyred, and the desire for freedom of the heroes of 1956 remind us that only a nation that regards itself as a value and cherishes its traditions can express its free will and preserve its sovereignty. And we must pass on this heritage to future generations. (Sándor Fazekas, Fidesz, government, 17.4.2020, LP 41, Session 122)

The fundamental underlying lie of the so-called regime change, on which twenty years of our lives and almost all of our relative achievements have been based, for which the country has bitterly fought and suffered during these twenty years, was the fiction that it is possible to build democracy, the rule of law, a homeland, a nation, a future with people who had previously based their entire lives, their careers and their wealth on the maintenance of a totalitarian dictatorship; that they trampled on the human dignity and the most basic human rights of others; that they handed over and sold the country to foreigners; that they denied their own people under the banner of internationalism, and even took up arms against them when it seemed necessary.⁵¹ (...) The system of so-called regime change was built on the lie

⁴⁹ Fidesz and KDNP did not accuse all parties of betrayal. Tibor Navracsics (Fidesz, opposition, 25.1.2010, LP 39, Session 6), for example, mentioned “other democratic parties which seriously thought that the one-party rule of the Hungarian Socialist Workers’ Party had to be dismantled, which seriously thought that Hungary had to become a democracy, had to become a state governed by the rule of law, had to become a social market economy.” The political debates of the last 20 years, he continued, “have already given a fairly good outline of what the future Hungary should be”.

⁵⁰ Imre Vejkey, KDNP, government, 27.4.2020, LP 41, Session 122. The constitution should also, as Endre Gyimesi (Fidesz, government, 22.2.2011, LP 39, Session 69) put it, “express the far-reaching values of today’s generations, including national unity, the protection of our mother tongue, our health, our families, our community values and our vitality”.

⁵¹ Kövér referred to the anti-government protests in the autumn of 2006 and the police violence against demonstrators in several cases.

that it is possible to make a fair compromise, a compromise that can be considered a real reconciliation, with people who have always spoken to others only in the language of power (...) on the lie that a real democracy could be established by tweaking and tinkering with the so-called constitution, which both legally framed and at the same time dismantled the communist reign of terror; that the 1949 constitution of the Communist Party of Hungary was a “constitution”. (László Kövér, Fidesz, government, 23.3.2011, LP 39, Session 77)

Fidesz-KDNP representatives stated that since 2010, fundamental values such as the rule of law, democracy and a free market economy had been strengthened.

The rule of law, Hungary, guarantees its citizens, our compatriots, everyone, order and the promise that there will never again be dictatorship, and that human dignity will be guaranteed. (János Horváth, Fidesz, government, 21.2.2012, LP 39, Session 165)

Reforms were described as serving overarching ideas, e.g. the introduction of the Curia as the highest judicial authority in Hungary was argued to improve the uniform application of the law by the courts and the predictability of jurisprudence, thereby protecting the rule of law, democracy and human rights.⁵² When emphasising rights, Fidesz and KDNP focused on securing rights for the many Hungarians living abroad and on “giving minorities more opportunities to survive and prosper”.⁵³

LMP agreed on the need to “renew Hungarian democracy” and “repair and renew a neglected structure that has been damaged in many ways in recent years”, but within the existing constitutional framework.⁵⁴ Other parties agreed with the general view that democracy was a guiding principle in the establishment of the post-1989 system. All parties also argued that certain issues should be enshrined in the constitution to protect them.⁵⁵

At the outset, I would like to make it clear to the Hungarian Socialist Party as the party of regime change: democratic regime change is a value. We are proud that the regime change of 30 years ago enabled Hungary to establish a democratic institutional system, the rule of law, a free republic and a social market economy. We have embarked on the path of catching up and integration with Western Europe, and in time our country became a member of NATO and the European Union. (Bertalan Tóth, MSZP, opposition, 27.4.2020, LP 41, Session 122)

While opposition parties generally supported the relevance of the mentioned principles as guiding norms, they often criticised the government for ignoring the principles of legality/constitutionality, respect for human dignity and other values

⁵²Zoltán Kovács, Fidesz, government, 16.2.2021, LP 41, Session 180.

⁵³Péter Harrach, KDNP, opposition, 31.3.2004, LP 37, Session 138.

⁵⁴András Schiffer, LMP, opposition, 17.5.2010, LP 39, Session 2.

⁵⁵In our selected material, parties argued for enshrining, for example, Christian values and efficient judiciary (Fidesz, KDNP), the balance of power (Jobbik), the existence of and compliance with procedural rights (MSZP), the individual right to social security and right to housing (LMP), to name but a few.

(see Sect. 6.3.3 for more details).⁵⁶ The governing parties, in contrast, argued that they conformed with the EU fundamental values.⁵⁷

Procedures. Across the parties and throughout the periods under study, MPs emphasised the **need for the Hungarian parliament, through its legislation, to create rule of law procedures that ensure that the will of the citizens is respected**.⁵⁸ However, this narrative was most intensively used during the first wave of legislation. In this context, legislative procedures, the appointment and election of various political actors at national and local level were discussed, as well as instruments of accountability and legal certainty (see Sect. 5.2.3). Speakers argued that such mechanisms established by parliament help to gain acceptance from citizens, indirectly assuming that this is a way of generating legitimacy for the rule of law. More strongly than in the later periods, MPs stressed that the will of the people was the driving force behind the creation of the rule of law, e.g. the wish to prosecute criminals of the previous regime (Gáspár) and to establish democratic electoral procedures at all levels (Homoki).

I confess that I am guided by more prosaic principles than the above, such as: the organisation to be created should work, be cheaper than its predecessor, easy to learn and democratic. I also argue that law does not create free citizens, but free citizens create their own rule of law. (István Illésy, MDF, government, 23.7.1990, LP 34, Session 27)

A young state governed by the rule of law must therefore make use of the legitimate possibility of prosecuting the war criminals of a previous illegitimate regime if it wants its citizens to accept it. (Miklós Gáspár, KDNP, government, 26.1.1993, LP 34, Session 265)

Please, there must be a clear separation of legislative and executive powers at local level too. In local elections, the electorate chooses the people who, as representatives, are entrusted with the task of making local laws in the municipal council. They will be the local legislators. (János Homoki, FKgP, opposition, 6.9.1994, LP 35, Session 9)

With the 1949 constitution still in force (albeit in a completely revised form, stripped of its socialist elements), MPs also discussed an appropriate process for drafting a new constitution. Parliament was seen as the legitimate place for this task.⁵⁹ A very inclusive process of negotiating a new constitution was established.

⁵⁶For example, Bertalan Tóth, MSZP, opposition, 27.4.2020, LP 41, Session 122.

⁵⁷To quote Richárd Hörcsik (Fidesz, government, 19.2.2018, LP 40, Session 269): “It is worth recalling the ominous EU fundamental values, as set out in Article 2 of the EU Treaty: respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights. These fundamental values are also common to the Fundamental Law, and no one in Europe or in Hungary challenges them in their original, undistorted form. I am convinced that the proceedings under Article 7 were conducted for political reasons in the European Union, which is unacceptable to us and to the Poles.”

⁵⁸See also the quote by Zoltán Hajdú (SZDSZ, opposition) in Sect. 5.1.3.

⁵⁹Zoltán Gál (MSZP, government, 22.5.1996, LP 35, Session 178), gave the usual view: “It is well known that at the end of the 1980s, work began on codifying a new constitution to create a modern, democratic constitutional state. The laws enabling the political system to be changed were adopted,

One of the general questions – constantly and repeatedly asked – is who should write the constitution. (...) It is extremely rare for the body that adopts the constitution to do so in the form of a separate and uniquely constituted constituent assembly. (...) Constitutionalisation is therefore the task of the parliament (...). But it is also the task of parliament to create the widest possible range of professional, social and political consensus, which is why it has ensured, in the form of a special House of Commons rule, equal participation – regardless of their parliamentary representation – for all parties and the continued participation of experts. I therefore believe that history has, in fact, judged and answered this question in such a way that there is no need or justification for convening an extraordinary Constituent Assembly or for transforming this National Assembly into a Constituent Assembly. In the normal parliamentary decision-making process, it is the parliament that has to constitutionalise, with certain special rules, such as the broad consensus vote. (Mihály Bihari, MSZP, government, 20.11.1996, LP 35, Session 228)

Ultimately, however, the process failed to achieve its goal of adopting a new constitution.

In the years that followed, these and other issues continued to be discussed and the issue of procedures continued to receive attention. One of the controversial aspects was how to deal with the files of former state security agents. MPs discussed that society's right to be informed about the contents of the files conflicted with the right to data protection. As Mécs (SZDSZ, government) put it, "we are running up against the walls of the rule of law that we ourselves have built by our collective will."⁶⁰ This contradiction was to be resolved by amending the constitution.

In the wake of Fidesz-KDNP's election victory in 2010, all parties continued to argue in favour of proper procedures as a source of legitimacy of the rule of law, while the main narratives revolved around other issues mentioned above. Fidesz-KDNP promised to build an effective state, based on the trust of society,⁶¹ and emphasised the importance of elections so that the people can legitimately give a mandate to govern.⁶² The opposition parties warned the new parliamentary majority that the norms of the rule of law and procedures must be followed in the public

many of them with the content that emerged from the national round table negotiations. (...) An agreement was reached which, by amending the previous constitution, created the legal conditions for parliamentary democracy, for a peaceful political transition to a state based on the rule of law and a social market economy, and for the new constitution to be drafted by the parliament that would meet after the 1990 elections."

⁶⁰Imre Mécs, SZDSZ, government, 9.5.2005, LP 37, Session 222.

⁶¹Bence Rétvári (KDNP, government, 25.5.2010, LP 39, Session 6) argued, for example, "We need to rebuild the state, and a key part of this is to assert expertise and vocation, and to restore the stature of public administration. Only in this way can a strong and effective state be created, able to reassert the basic institutions of democracy and the values of the rule of law, based on the trust of society." Róbert Répássy (Fidesz, government, 30.3.2016, LP 40, Session 138) stressed that "(i)n addition to the efficiency of the judiciary, public confidence in the judiciary is the essence of the rule of law, a key issue. If citizens cannot have confidence in the judiciary, their faith in the institutions of the rule of law is shaken." He used this to justify a bill on judicial experts.

⁶²See Gergely Gulyás (Fidesz, government, 21.2.2012, LP 39, Session 165), similarly, Péter Harrach (KDNP, government, 27.4.2020, LP 41, Session 122).

interest⁶³ or proposed establishing a super-majority (four fifths) vote for nominating judges for the constitutional court to give small opposition parties in a state governed by a two-thirds majority a say.⁶⁴ Later they criticised the centralisation of power and a lack of respect for constitutional norms⁶⁵ (see also Sect. 6.3.2).

5.3.3 Poland: Procedures and (Increasingly Contested) Ideas

In the Polish Sejm, when MPs talked about the legitimacy of the rule of law, they most often referred to procedures as a source of legitimacy or, when referring to different sources, put the emphasis on procedures. Accordingly, the most frequent narrative used regarding legitimisation of the rule of law was that about procedures. It dated back to the first and second waves of rule of law legislation. Ideas followed at a considerable distance. (However, in comparison to the other parliaments studied, Polish MPs talked about even the less-addressed issues more than their colleagues.) Narratives regarding ideas were used in each wave of legislation, but mostly in a one-sided way (Table 5.30). The constitution or the law in general was relatively

Table 5.30 Narratives on the sources of legitimacy of the rule of law in Poland

	1990–1997	1997–2015	2015–2021
Procedures	Effective state institutions (esp. judiciary and prosecution) are relevant to ensure trust in the state under the RoL. (overlapping)		
Ideas	Legal principles (esp. separation of powers, legality, non-retroactivity) as the basis of the new system (under the RoL). (overlapping) RoL is guided by the will to also establish democracy, a free market and to protect rights. (overlapping)	Morality, justice and common good as the basis for a functioning and just state (referring to lustration etc.) vs fundamental rights and individual freedoms guarantee a stable state under the RoL. (diverging)	Legal principles and European standards serve as anchor points for the state and must be respected. (one-sided, opposition)
Codified law			Constitutionality is an obligation for the state governed by the RoL. (one-sided, opposition)

⁶³“The Hungarian nation, the will of the electorate obliges the new parliament and the new government to lead and organise the work that will help to create a modern, European, developing, just and solidary Hungary of the twenty-first century, without compromise, respecting the norms of the rule of law and in the public interest.” (Attila Mesterházy, MSZP, government, 17.5.2010, LP 39, Session 2)

⁶⁴ András Schiffer, LMP, opposition, 5.7.2010, LP 39, Session 2.

⁶⁵ András Schiffer, independent, opposition, 11.3.2013, LP 39, Session 259.

rarely mentioned as a source of legitimacy for the rule of law, even after the adoption of the new constitution in 1997. Although the intensity of such mentions increased, the respective narratives were one-sided. Overall, the overlap of narratives observed in the early and mid-1990s collapsed after the adoption of the constitution. It had already been fragile, with different associations depending on party affiliation on relevant issues and criticism of alleged infringements of the law, procedures or principles by others.

Procedures. Procedures were frequently mentioned by MPs as a basis of the rule of law throughout the analysed material. From the early 1990s until 2021, the narrative was used across parties that **effective state institutions (especially the judiciary and prosecution) are relevant to ensure trust in the state under the rule of law**. When doing so, MPs pointed to the functioning of different institutions (judiciary, prosecution service, police, legislative institutions, the ombudsperson), but also the behaviour of officials or position holders, to legal procedures to re-establish justice (lustration, restitution), to elections, referenda and constitution-making, or to the practical implementation/realisation of rights.

In the transition period, the discussions revolved around (re)gaining trust of the citizens in the state institutions of the new democratic system. MPs emphasised the need to establish well-working procedures and ensure respect for the laws.

The intention of the committee, which considered all these voices, somehow taking into account this general fact of social awareness, which is after all a significant political fact, was to create, by means of the proposed laws, a depoliticised police force and to abolish the Security Service. We think that this is (...) only a first step towards solving this difficult problem. (...) However, (...) this public attitude to the police service will continue for a long time yet. Let us have no illusions here in this regard. (...) The public will continue to distrust, to suspect the police authorities of trying to conspire against the authorities, of trying to preserve the old order. (Jerzy Zimowski, elected via Komitet Obywatelski 'Solidarność', parliamentary group Unia Demokratyczna, Contract Sejm/government, 6.4.1990, LP X, Session 25)

To sum up, pathologies in economic and social life should be fought with legal measures such as re-privatisation and privatisation, stable and reasonable laws, decentralisation of power. I believe that people want to live under the law. They remember the time of communism, when you had to cheat and when everyone was treated like a cheat, as a bad dream. They long for morality, the rule of law and honourable behaviour. And that is why opportunities must be created through wise laws. (Władysław Reichelt, KLD, opposition, 13.2.1992, LP 1, Session 8)

Our society expects not only an efficient, well-organised market economy – it also expects a well-managed state, capable of meeting the most important needs of its citizens. It is well known that the strength and effectiveness of the state is largely determined by an efficient, apolitical, law-abiding administration. (Leszek Zieliński, BBWR, opposition, 26.4.1995, LP 2, Session 48)

In that time MPs also stressed the background of citizens' mistrust in the state and procedures and argued that the citizens' trust in a state under the rule of law depends on good-working and law-abiding state officials.

The issue of the protection of civil rights, the rule of law and the state in fact concerns the entire socio-political system. (...) There was no shortage of emotions and extremes in the discussion about the historical changes taking place in the country. Some saw the very existence of the Ministry of Internal Affairs and the Security Service as the source of all evil, often reducing their functions in the past to mere repressive and distorted practices. Others, driven by their personal unpleasant life experiences, were inclined to make these services a symbol of Stalinism and proof of the domination of the state apparatus over citizens. (...) Today, the increased crime, its poor detection rate, the paucity of its preventive functions and the lack of public trust have led to the identification of the militia and the Security Service with evil, associated with the system of so-called real socialism. (Józef Oleksy, SdRP, Contract Sejm, 6.4.1990, LP X, Session 25)

The ignorance and inertia of the institutions set up to combat economic scandals, financial crime and corruption is astonishing. The lengthy investigation of detected cases, the frequent discontinuation of scandals for lack of evidence or even of the features of a crime, the many criminal fiscal cases dragging on indefinitely rather indicate a sham to appease public opinion and unbelievable formal and legal loopholes scrupulously exploited by people acting to the detriment of the state treasury. (Władysław Staniuk, ChD, government, 13.2.1992, LP 1, Session 8)

Our members state that too often the state under the rule of law is spoken of without defining its concept, when the consequences of understanding this concept often benefit those who should face the law. People feel that there is ideological confusion and that too often there are experiments, both economic and ideological, which do not have sufficient public support; and this support is not always sought. (Marek Markiewicz, S, opposition, 21.1.1993, LP 1, Session 35)

While the parties rhetorically agreed on the need for functioning state institutions to ensure citizens' trust in the state under the rule of law, their concrete positions on procedural aspects varied. The opposition regularly criticised alleged incorrect legislation by ruling majorities, and governments criticised previous governments in this respect. The left and liberal parties highlighted the independence of the judiciary and the prosecution service, while conservative/right-wing parties focused more on accountability and the functioning of the prosecution regarding crime. Conservative/right-wing MPs also argued for lustration and restitution as a means to rectify the past, while left and liberal MPs emphasised the need to strictly follow the law and defined procedural frameworks, especially in the case of lustration, to uphold a democratic system under the rule of law.⁶⁶

After the mid-2000s, MPs from across the party spectrum—whether in opposition or government—continued to emphasise the relevance of procedures as the source of legitimacy of the rule of law. As the following quotations show, they mentioned the link to citizens' trust in the rule of law when discussing diverse aspects of the practical functioning and effectiveness of the procedures in parliament (Jankiewicz),

⁶⁶See Jan Mizikowski (KPN, opposition, 6.3.1992, LP 1, Session 10), Jerzy Jaskiernia (SdRP, government, 6.3.1997, LP 2, Session 102) or Jan Lityński (UW, opposition, 6.3.1997, LP 2, Session 102), Adam Słomka (KPN-Ojczyzna, opposition, 3.3.2000, LP 3, Session 72) or Marek Suski (PiS, government, 9.3.2006, LP 5, Session 12).

the constitutional court (Łyżwińska), the judiciary (Ślusarczyk) and other institutions (see also Sect. 5.2.3).

All too often, the laws that are created grant rights to certain benefits, assistance or security, knowing full well that they will not be able to be realised due to a lack of financial resources in the first place. Such rights are nevertheless established. This accusation mainly concerns us, members of parliament and senators (. . .) In so doing, we are destroying confidence in the law and, consequently, in the state. (Paweł Jankiewicz, SLD, opposition, 14.7.2000, LP 3, Session 82)

In general, the assessment of the constitutional court's activity must be positive. It has a significant impact on the functioning of the law and the building of citizens' trust in the created law. The positive activity of the Tribunal manifests itself particularly in the area of defending the principle of the rule of law contained in Article 2 of the constitution. (Wanda Łyżwińska, SRP, opposition, 5.7.2002, LP 4, Session 25)

Experts on the subject have long pointed out that the unnecessary increase in the number of lay judges is one factor in the low public confidence experienced by the courts. In times of crisis of authority, the judiciary should and must uphold the rule of law and give citizens a sense of security. Public trust in common courts is the basis for the functioning of Poland as a state under the rule of law and everything should be done to raise the level of the judiciary, which in the opinion of our citizens is not too high. This particularly applies to civil district courts. (Piotr Ślusarczyk, LPR, government, 13.7.2006, LP 5, Session 21)

In that period, MPs also voiced the realisation of rights and freedoms, often linked with "European standards", as a relevant procedural aspect of legitimising the rule of law (see also Sect. 6.1.3). Several MPs, mostly from left and liberal factions, mentioned the constitutional complaint as an important right for citizens, enabling their participation and thereby guaranteeing confidence in the judiciary or state (Chmielewski).⁶⁷ Also the ombudsperson was mentioned (Wierchowicz).⁶⁸

The extent of the ombudsman's activity during the third term of office is impressive. The conviction among citizens that they can count on the ombudsman's competent and decisive assistance in protecting them in the event of violations of their freedoms and rights continues unabated. (. . .) To uphold the freedoms and rights of human beings and citizens means upholding the state under the rule of law, and therefore also European standards, the upholding of which is Poland's ticket to a united Europe. (Jerzy Wierchowicz, UW, opposition, 14.7.2000, LP 3, Session 82)

⁶⁷ See, for example, Jerzy Ciemniewski (UW, opposition, 6.6.1997, LP 2, Session 108), cited in Sect. 5.1.3.

⁶⁸ "Do not be afraid of PiS, do not be afraid of the president, do not be afraid of the bishops. On this issue, if PiS does not support the Reform Treaty along with the entire Charter of Fundamental Rights, we will do a referendum together. And let the Poles once again vote against PiS. (Applause) Let them vote against PiS once again, and for their own rights. (. . .) You are not going to sign, you are not likely to vote for the Charter of Fundamental Rights in the Sejm – we will appeal to the sovereign, to the people." (Wojciech Olejniczak, LiD, opposition, 23.11.2007, LP 6, Session 2).

We certainly see an increase in the impact and we see the problem of the constitutional complaint, but in the committee's view – the president and the court also share this – the constitutional complaint is, as I understand it, one of the essential guarantees of a democratic state under the rule of law. (Stanisław Chmielewski, PO, government, 30.5.2008, LP 6, Session 16)

During the third wave of rule of law legislation, from 2015 on, MPs still made regular references to effective procedures as a source of legitimacy. The ruling majority used them to justify their own legislative initiatives while the opposition linked them with criticism of alleged infringements of constitutional rules and principles (again with reference to public opinion or to international and European standards) (see Sect. 6.3.3).

Ideas □. Throughout the analysed period, MPs from across the party spectrum also referred to ideas to legitimise their statements with respect to the rule of law or law in general. However, the content of the narratives was somewhat more varied. In the 1990s, when some key legal principles and their roots were discussed, MPs emphasised that **certain legal ideas or principles (such as the separation of powers, legality or non-retroactivity) are the basis of the new system under the rule of law**. Such references overlap with quotes on the purpose and elements of the rule of law in Sects. 5.1.3 and 5.2.3. As the following quotation demonstrates, MPs brought in the need to implement these legal values in the constitution or constitution-making process as “a fundamental guarantee for citizens”, often with reference to the opposition movement of the 1980s or in contrast to the communist system. In this view, the parliament elevated these principles to the rank of fundamental principles of the political system, making it possible to establish a democratic system under the rule of law.⁶⁹

The concept of a ‘democratic state under the rule of law’ is a construction that found its way into our Fundamental Law in 1989 and is undoubtedly becoming a permanent foundation of constitutional thinking, and it is developed in detail in our draft. It consists in the fact that we point out that the observance of the constitution and the laws of the Republic of Poland is a fundamental duty of every organ of the state and local self-government; we say that all public authorities act on the basis of the law, which is a fundamental guarantee for citizens. We point out that legal acts of public authorities, from which the rights or obligations of citizens arise, have binding force only if they are issued by virtue of a law and with reference to it. (Jerzy Jaskiernia, SdRP, government, 23.9.1994, LP 2, National Assembly Session 1)

Szymański pointed out that the principles could be realised in different ways proposed in draft constitutions.

Most of the draft constitutions of the High Chamber incorporate the principle of the separation of powers, which is widely believed to be a basic condition for the democratic functioning of state power and a counterpoint to the principle of unity or unity of power on which the constitutional system of the People's Republic of Poland was built. The principle of the separation of powers is expressed in the drafts in various ways; primarily, although not

⁶⁹ See, for example, Jerzy Ciemniewski (UD) in Sect. 5.3.3.

exclusively, by indicating the separate existence of the legislative, executive and judiciary powers (...) allowing for the interaction of powers and the mechanisms of balancing and inhibiting each other (as opposed to the strict doctrine of the separation of powers of the US type). (Janusz Szymański, UP, opposition, 23.9.1994, LP 2, National Assembly Session 1)

Another narrative on ideas as a source of legitimacy for the rule of law mainly used in the 1990s was that **the rule of law is guided by the will to also establish democracy, a free market and to protect rights**. Often such statements were underpinned by references to the historical struggle for human and citizens' rights, also with regard to Polish history and opposition movement. As these quotations show, the new liberal approach was described as "personalism, expressed in placing the rights of the individual above those of the group" (Suchocka). The approach was often associated with accession to the Council of Europe and "building civic attitudes" (Stefaniuk).

Since 1989 there has been a consistent amendment of the legislation in such a way that there are no barriers to our admission to the Council of Europe and also to facilitate the process of ratification of the Convention. It can be said that our legislation in these past three years was based on different values than those recognised in the past 40 years. It was guided primarily by the idea of personalism, expressed in placing the rights of the individual above those of the group, treating the human being first and foremost as a person and only then as a member of a group. This changed the way legal regulations were viewed. (Hanna Suchocka, UD, opposition, 22.5.1992, LP 1, Session 15)

Nothing builds civic attitudes more than the dissemination of accepted rights and duties of citizens towards each other and the state and the state towards citizens. We should keep this in mind and not devalue accepted values by enacting laws that are contradictory, retroactive, disruptive of a certain consensus on a certain range of mutual constraints between people and their state. (Franciszek Jerzy Stefaniuk, PSL, government, 22.5.1992, LP 1, Session 15)

Whether we want it or not, delaying the adoption of these principles will not solve anything, distancing us from Europe in this respect as well. Adoption of the Charter in the majesty of a constitutional act will confirm that the Polish parliament has the will to respect the fundamental freedoms of citizens, understood inter alia as the right to work, education, culture and social security. In a state under the rule of law, no one should be in any doubt that it is a state that is guided by the good of the majority of citizens and not by the will of political elites or pressure groups. (Ewa Spychalska, elected via SLD-list, opposition, 21.1.1993, LP 1, Session 35)

Legal values and principles were also mentioned by various MPs in the period after the adoption of the constitution (1997), during the second wave of rule of law legislation, especially when debating judicial laws and reports of the ombudsperson and the president of the constitutional court. However, in that period, two diverging narratives on rights and freedoms emerged. In the context of planned EU accession and their criticism of the (previous) conservative government, representatives of mainly left and liberal parties adapted a previously used narrative and argued that **fundamental rights and individual freedoms guarantee a democratic state under the rule of law within the EU**.

In my opinion, the fear is correct, and has often been expressed recently, that a model of a totally repressive state is being created before our eyes. Is this justified? You, as ombudsman, in a way monitor the safety of citizens, monitor the functioning of the state, monitor democracy. Does this model of criminal policy fit into the standard, and I use the expression, model of a state under the rule of law, into that which the twenty-first century deserves, and into that which the developed European states offer? (Marek Lewandowski, SLD, opposition, 24.7.2001, LP 3, Session 114)

The draft Act on the Implementation of Certain Provisions of the European Union on Equal Treatment is intended to supplement existing regulations on the principles of equal treatment, particularly those contained in the Fundamental Law, as well as in a number of other acts in Polish legislation. (...) We believe that the provisions contained in this draft are appropriate due to the need to implement European directives into the Polish legal order. This is the fulfilment of our international legal obligation and, at the same time, the strengthening of the principles of equal treatment in particular aspects of social life. (Teresa Piotrowska, PO, government, 28.10.2010, LP 6, Session 77)

Conservative MPs used a competing narrative with a different focus, emphasising that **morality, justice and the common good form the basis for a functioning and just state**. Such statements were identified throughout the selected sources, but they were made with higher intensity during the second wave of rule of law legislation. Speakers used this narrative with regard to abortion/right to life and lustration, highlighting the value of the “common good of the nation”. In their view, individual rights must be linked with the common good (Wawak).

In his briefing, the ombudsman writes that two fundamental values of the constitutional order have guided his work: human dignity and the common good. We accept this with great appreciation. (...) However, I think that, reaching back to Article 18 of the constitution, which states that the family, motherhood and parenthood are under the protection of the Republic of Poland, it is worth adding (...) the good and rights of the family as an element of this common good, because the common good consists, after all, also of the rights of the family and the good of all families. Such thinking is legitimate. The good of the family is an element of the common good. (Zbigniew Wawak, elected via AWS, government, 24.7.2001, LP 3, Session 114)

If the content of a state under the rule of law is a set of fundamental directives introduced by the essence of democratically constituted law and guaranteeing a minimum of its justice, then the first such directive must be respect in a state under the rule of law for the value without which all legal subjectivity is excluded, namely human life from its beginnings, from its inception. It is worth recalling this fundamental ruling for the existence of the rule of just law in Poland. (Kazimierz Michał Ujazdowski, PiS, opposition, 5.7.2002, LP 4, Session 25)

Conservative MPs often referred to justice as a value to legitimise their call for vetting/lustration procedures, which would ultimately enable a just state under the rule of law. “Internal guarantees” of the rule of law, including a sense of responsibility of judges, were further voiced by MPs when they talked about legitimatising the work of state institutions.

We have talked about external guarantees of independence. But internal guarantees are also necessary, which are the integrity of the judge, his righteous character, his civil courage. And also, in my opinion, high professional qualifications. One of the judges said it beautifully in this way, I think: “The independence is in me.” The majority of judges are aware of this, but relatively little is said about it by themselves and relatively little is said about it in general. Just as you rarely hear from the judges themselves that independence is not only their right, but above all an elementary duty. Directly related to this obvious statement is the question of responsibility for the breach of the duty to be independent. (Teresa Liszcz, PPChD, elected via AWS, government, 3.3.2000, LP 6, Session 77)

More than the supporters of the above-mentioned narrative on rights, they also linked their statements to the “will of the people”.

(T)his is not the Poland we fought for. This is what people say. Today they have a sense of injustice. They feel that the state is not on their side, that it has turned against them, that the laws created are not perfect and do not safeguard their interests, and that the institutions of the state do not care about citizens’ problems and do not take them seriously. I am convinced that the confirmation of this state of affairs – and what I have said certainly comes from our citizens and is often articulated during meetings with voters – and the reflection of this state of affairs is this rate of various speeches that are addressed to the ombudsman. (Krzysztof Lipiec, PiS, opposition, 25.6.2014, LP 7, Session 70)

Since PiS came to power in 2015, opposition parties have argued that **legal principles and European standards serve as anchors for the state and must be respected**. While in the 1990s, MPs had (mainly) referred to the ideas guiding the democratisation process that had started in the 1980s, the left and liberal opposition parties now referred primarily to the European Union. Human and civil rights were mentioned in a more abstract way. This narrative was used when criticising the ruling majority’s agenda (see Sect. 6.3.3).

If serious people who know about the rule of law write in the first paragraph about the decommunisation of the judiciary when the average age of Polish judges is 39, this is an insult to the intelligence of those people who are our partners. (Applause) I expect the Polish government and the Polish parliament to return to the path of the rule of law. As a citizen of Poland, a citizen of the European Union, I expect the European institution to uphold principles consistently. (Adam Szłapka, N, opposition, 21.3.2018, LP 8, Session 60)

You have rejected any form of constructive cooperation, because in the background, of course, there is the conflict with the European Commission over the rule of law. And yet you yourself spoke of a Europe of values, of 1989, of values, of democracy, of freedom. This is the symbol of Poland that we should be proud of. (...) You have ruined this system of values. (Andrzej Halicki, PO, opposition, 14.3.2019, LP 8, Session 78)

Codified law. The constitution, its provisions or legal texts were invoked as legitimation for the rule of law throughout the considered sources, with a higher intensity in the years after the adoption of the constitution, i.e. in the second and third wave of rule of law legislation. However, for a long time, there was no clear pattern of the related statements, which is why we could not identify a narrative. Mainly liberal and left-wing politicians involved in the constitutionalisation process outlined in the

early and mid-1990s the importance of a fundamental law for the stability and functioning of a democratic state under the rule of law.⁷⁰ Later they stressed that the constitution is the main legal act and the basis for assessing legislation, behaviour etc., which was also said by national conservative or more right-wing MPs.

The situation changed from 2015 onwards. Now, the opposition frequently mentioned the constitution and its provisions in their criticism of the governmental agenda, particularly in relation to a proposed amendment or debates on fundamental judicial laws. The narrative was used with high intensity that **constitutionality is an obligation for the state governed by the rule of law**. MPs frequently voiced it against the backdrop of supposed violations of the need to protect constitutional norms (Wilk) or of constitutional rights (Grabarczyk) due to a government draft, reform, formerly adopted regulation or action. MPs also demanded that the constitution be respected (Dolniak).

You want to restrict the citizens' right to a court, and this is something that the citizens will not forgive you for, because citizens, according to Article 45 of the constitution, have the right to have their cases swiftly decided by the judiciary. (Cezary Grabarczyk, PO, opposition, 17.12.2015, LP 8, Session 5)

Indeed, ladies and gentlemen, the constitution cannot be amended on the spur of the moment. Its amendment cannot be a response to the ruling majority's failure to respect the decisions of the constitutional court. It cannot be amended in an atmosphere of political haggling around one of the most important institutions in our country – the Constitutional Tribunal – because it is the Tribunal that is being amended. (Wojciech Wilk, PO, opposition, 10.2.2016, LP 8, Session 11)

In a democratic state under the rule of law, the constitutional value defining the identity of the system is the independence of the judiciary and the independence of judges, and thus the independence of the National Council of the Judiciary which is of particular importance in guaranteeing the principle of the division and balance of powers and the right to a court. Article 173 of the constitution unambiguously separates the judiciary from other authorities, assuming that it constitutes an independent whole. Thus, the principle of the division and balance of powers expressed in Article 10 of the constitution should be understood in relation to the judicial power in such a way that its separation and independence is duly respected. (Barbara Dolniak, N, opposition, 5.4.2017, LP 8, Session 39)

5.3.4 Romania: Ideas and Procedures

Romanian parliamentarians, when speaking about the legitimization of the rule of law, most frequently referred to the constitution. Ideas and procedures followed at some distance. However, statements mentioning the constitution covered a wide array of issues. Established narratives referred mainly to ideas, followed by procedures.

⁷⁰See, for example, the quote by Aleksander Łuczak (PSL, Contract Sejm) in Sect. 5.1.3. Or Hanna Suchocka (UD, opposition, 2.4.1992, LP 1, Session 12), argued: "(T)he new, complete constitution should be the crowning achievement of the systemic transformation, and nothing more than its beginning."

Table 5.31 Narratives on the sources of legitimacy of the rule of law in Romania

	1990–2004	2004–2014	2014–2021
Ideas	The legitimization of the RoL rests on European values (esp. freedom) that were won by the Romanian revolution. (overlapping)	Separation of powers through an independent judiciary is an important source of legitimacy. (overlapping)	
Procedures		Legal procedures must be respected to avoid them being “dead letters in the law books”, which would mean squandering this important source of legitimacy. (overlapping)	
Codified law	The constitution of 1991 as the institutionalised emanation of the Romanian revolution is the most important source of legitimization. (overlapping)	Constitutionality is an obligation for the state governed by the RoL. (one-sided)	

Especially in the 1990s, speakers across parties constructed an overarching narrative that emphasised ideas. According to this narrative, the Romanians succeeded in overthrowing the communist regime in a revolutionary way, enshrined their liberty in the constitution and in this way realised a return to Romania’s pre-communist and profoundly European traditions. After the turn of the millennium, MPs emphasised that problems arise when constitutionally enshrined procedures are not being followed. All narratives found in the analysed documents were overlapping, while MPs often linked them with criticism of other politicians. During the third wave of rule of law legislation, only one narrative was actively used (Table 5.31).

Ideas. With particularly high intensity during the first wave of rule of law legislation, MPs of all relevant parties used the narrative that **the legitimization of the rule of law rests on European values (especially freedom) that were won by the Romanian revolution**. This narrative was enshrined in the very first article of the constitution, cited by MPs.

Moreover, this is also confirmed by the Romanian constitution, which, in Article 1(3), proclaims Romania as a democratic and social state governed by the rule of law, in which human dignity, citizens’ rights and freedoms, justice and pluralism are supreme values in the spirit of the democratic traditions of the Romanian people and the ideals of the December Revolution and are guaranteed. (Verginia Vedinaş, PRM, opposition, 20.12.2006, CD+S, LP 5)

The ideational part of this narrative was shared by MPs across the political spectrum—from the nationalist PRM to the “historic” parties of PNȚCD and PNL and to the post-communist, social-democratic PDSR/PSD.

In Romania, as a result of the December Revolution, a fundamental transformation of society has taken place, in particular the political objectives of the Revolution: the overthrow of the old totalitarian system and its power structures, the building of democracy, of a pluralist

system, the freedom of expression, demonstration and organisation of the people, the building of the rule of law through free elections, the adoption of the new democratic constitution have been achieved, including the alternation of government as a specific mechanism of democracy. (Ion Iliescu, PSDR/PSD, opposition, 22.12.1998, CD+S, LP 3)

The Revolution of December 1989 brought a priceless gift into the lives of all Romanians – freedom – and, with it, the hope that we will build a democratic Romania, a state governed by the rule of law in which the rights and freedoms of citizens, enshrined in the constitution, will be respected with sanctity. (Pavel Cherescu, independent, opposition, 24.2.2004, CD, LP 4)

Such fundamental ideas about the legitimacy of the rule of law were most often expressed by MPs on special occasions, which in the Romanian context were provided by gatherings of both chambers of parliament, including the president and other dignitaries, celebrating the anniversaries of the revolution, the constitution and later the accession to NATO and the EU. This festive character of the speech occasions may have contributed to the fact that in most cases the sources of legitimacy of the rule of law were not discussed in detail, but rather enumerated together with democracy, civil and human rights and other desired goals, as in the case of Sorin Frunzăverde in a debate about NATO accession.

NATO membership also confirms our belonging to Euro-Atlantic values, based on the principles of democracy, individual freedoms and the rule of law, as expressed in the preamble of the Washington Treaty. (Sorin Frunzăverde PD, opposition, 26.2.2004, CD+S, LP 4)

Some MPs noted the shallowness of evoking the ideas of the revolution at festive occasions.

In 1989 we believed that our ideals could be realised quickly and that democracy with its attributes – the rule of law, the market economy – would soon take hold. It was not to be. Some of the goals of the Timișoara Revolution and of the whole country have been achieved, but much remains in the stage of intentions. Unfortunately, however, I believe that oblivion is beginning to creep in, quietly, and the commemoration of the Revolution, instead of being a moment of pious remembrance for those who fell, but also of lucid analysis of what was achieved, most often becomes an opportunity for quarrels, mutual disputes, claims of paternity of the various moments, in a show that offends either through a hollow festivism or through hypocrisy. (Viorel-Gheorghe Coifan, PNL, opposition, 19.12.2002, CD+S, LP 4)

On occasions other than festive ones, opposition MPs often referred to the ideals enshrined in the constitution when criticising the government and the president. Such a linkage was typical for a narrative used during the second wave of rule of law legislation. According to this narrative, the **separation of powers through an independent judiciary is an important source of legitimacy**. It evolved when politicians associated with President Traian Băsescu and especially Băsescu himself were criticised for a total disrespect of the judiciary within the system of separation of powers:

Minister Macovei probably criticised and challenged the way of appointing the judges of the Supreme Court of Justice, either out of a nihilistic spirit or out of a motivation consisting in exercising political control over the future judges of the High Court, her request having no legal basis and no logical reasoning. Minister Macovei's attitude shows total contempt for the principles of the rule of law and the spirit and letter of the law. (Vasile Puşcaş, PSD, opposition, 27.9.2005, CD, LP 5)

At another meeting of the CSM,⁷¹ the president decrees, in his own style, that "I will not agree to an independence of justice in inefficiency and corruption. We must create the conditions for the body of magistrates to cleanse itself. I would be happy if some would resign, so that we would not be in the situation of issuing a law to administratively cleanse justice." How can such a president who wants to issue laws, who wants to "clean up" the judiciary, in contempt of the laws, of democracy, of the principles of the rule of law, remain in office? (Titus Corlăţean, PDSR/PSD, opposition, 28.2.2007, CD+S, LP 5)

Values such as freedom, which "all Romanians" had fought for in 1989 and which were linked to the rule of law, were said to have been corrupted.

Although the current constitution clearly states in Article 1 that "The state is organised according to the principle of the separation and balance of powers – legislative, executive and judicial – within the framework of constitutional democracy", (f)or five years we have been witnessing a permanent assault by the executive power (government plus president) on the independence and separation of the other two, in fact a fight for more power to be used to defeat the word 'freedom', which was on the lips of the revolutionaries and all Romanians in 1989. (Marian-F. Săniuţă, PDSR/PSD, opposition, 6.10.2009, CD, LP 6)

Procedures. The role of legal procedures as generating and stabilising the legitimacy of the rule of law was rarely mentioned by the MPs in an abstract way, like the following.

It is true that all so-called 'democratic' regimes also use undemocratic methods. Using the argument, famous in politics, 'the end justifies means', decisions are taken by technocrats without consulting the citizens and sometimes even against them. But in no state governed by the rule of law is it acceptable to undermine the principle that the decisions of power have their legitimacy in the will of the people. At least the illusion is maintained that their, the citizens', opinion counts. This includes careful monitoring of speech, of what politicians are allowed or not allowed to speak out aloud. (Gabriela Creţu, PDSR/PSD, opposition, 19.4.2005, CD, LP 5)

Modern constitutional democracies operate on the basis of both electoral legitimacy and procedural legitimacy, which is rooted in respect for the law. (Vlad Alexandrescu, USR, opposition, 8.3.2017, CD+S, LP 8)

Typically, MPs argued indirectly in the way that they tackled concrete plans or problems and mentioned the rule of law in such a debate. This was the case with a narrative that was actively used since around 2004 that **legal procedures must be respected to avoid them being 'dead letters in the law books', which would**

⁷¹ Superior Council of Magistracy.

mean squandering this important source of legitimacy. Basically, this is an *ex negativo* statement. In that time, MPs often criticised that legal procedures are ignored and rendered into ‘dead letters in the law books’. The narrative was constructed around the Romanian trope of ‘*forme fără fond*’, that is, all laws and regulations are in place, but different actors regularly ignore the legal procedures. MPs of all relevant parties used this narrative, like Vasile Pușcaș, one of PSD’s most important legal experts, in a political declaration over the need for reforms of the judiciary, and PNL’s Norica Nicolai in a debate over stripping parliamentary immunity from two senators.

And finally, the procedural aspect of the intensely debated problem of judicial independence is on the MPs’ minds as well, when the relation between the judicial bodies and the minister of justice is in question (. . .). (T)he minister of justice has no legal right to intervene in this procedure, all the more so as she was appointed to the executive with the support of a political party, her attitude amounts to a blatant attack on the independence of the judiciary by politicians. (Vasile Pușcaș, PDSR/PSD, opposition, 27.9.2005, CD, LP 5)

(A)s responsible politicians, at least we should believe in the rule of law, try to give justice a chance. It is also up to us, because these cases, beyond the anecdotal evidence of the telephone conversations which, personally, embarrassed me, many of them give us a lesson in life, in reality. This is Romania, ladies and gentlemen, the land of telephone conversations, the land of backroom deals, the land of the lack of reference points, the land where values are not respected. (Norica Nicolai, PNL, opposition, 26.8.2008, S, LP 5)

From the political actors that most frequently were accused by MPs of transgressing legal procedures, the government and the president ranked first. The governments were often criticised for ignoring judicial decisions and of not applying existing laws, as in the following statement, in which opposition MP George Ionuț Dumitrică (PNL) castigated Prime Minister Emil Boc in the field of education:

Where is the rule of law now, Prime Minister Boc, when the decisions of the judiciary are totally disregarded by the government you lead or when laws have been frozen for more than two years and legal rights are cancelled, just because you feel like it? (George Ionuț Dumitrică, PNL, opposition, 12.4.2011, CD, LP 6)

Furthermore, governments were criticised for legislative activism, for creating legal instability due to frequent changes in the rules and regulations for the citizens and the markets. Here PD’s Marian-Andreea Paul was voicing this criticism, which was shared across parties:

Because the law brings stability, transparency and good governance. Changing the rules too often kills businesses and jobs. Romania is shaken daily by lies, broken promises, bickering, divisiveness, repeated changes to laws at will. More recently, important laws are changed at night, under the moonlight, as happened with the attempts to amend the criminal code. You cannot speak of stability when you cut off Rompetrol’s debts to the Romanian state, uncollected for 10 years, of almost half a billion dollars. Instead, they compensate the public budget with new taxes. (Marian-Andreea Paul, PD/PD-L, opposition, 11.2.2014, CD, LP 7)

The most heavily criticised tool of legal activism was the emergency ordinance, the overuse of which by governments featured frequently in the MPs' criticism across parties. Here, however, the president was accused of wrongly assuming the right to emit ordinances.

With regard to the declaration, the abuse of rights referred to in this declaration, made by the president of Romania, is real. He has declared that he will do everything possible to prevent a certain legislative act, even though he has done so without having powers in the field of emergency ordinances. His power came into force when there was a law approving or rejecting the ordinance. (Eugen Nicolicea, PDSR/PSD, government, 8.3.2017, CD+S, LP 8)

MPs from the opposition frequently accused the parliament itself of not living up to its role, for not respecting the legal procedures in the legislative process and for disrespecting its mission of representing the 'popular will':

The USL (Social Liberal Union) has managed to destroy the last shred of credibility of the parliament, by amending the criminal code, which does nothing but protect its corrupt from deserved punishment. The USL has proposed several legislative proposals for adoption without a transparent debate, in violation of procedural rules, in total secrecy. After the overwhelming reactions of foreign chancelleries and institutions called to fight corruption, I had hoped that the USL would drop the Amnesty Law and the sneaky amendments to the criminal code. (Marian Andreea Paul, PD/PD-L, opposition, 17.12.2013, CD, LP 7)

So once again I say: it is sent immediately to the Permanent Bureau and follows the normal procedure. That is the rule of law. Otherwise, indeed, this parliament is increasingly deserving of its fate of being disrespected. So, if parliament is not being respected either, and neither one side nor the other can see that there is anyone who respects the legal provisions, including our rules of procedure, obviously this opinion of ordinary citizens is justified. (Márton Árpád, UDMR, opposition, 18.4.2012, CD, LP 6)

And if you were prepared to make this gift to the corrupt, why did you not make this text available to us in parliament, at least a few days before the vote in the special committee, but sent us the text exactly on the morning when the meeting was scheduled for the vote in committee, so that we would receive your proposal after the start of the meeting? (...) You have succeeded in demonstrating by this behaviour a lack of respect for justice, for the rule of law, for the citizens we represent, for the institution of parliament, to which you are accountable. (Stelian-Cristian Ion, USR, opposition, 30.10.2018, CD, LP 8)

And finally, MPs from different parties criticised state organisations on different levels—such as the inspectorate for state buildings or the police—for disrespecting laws and legal procedures, thus indicating indirectly that these procedures are a relevant source of legitimacy of the rule of law.

No local government body has lifted a finger as the law required them to do, even though the State Building Inspectorate, as early as 10 May 2006, in an extensive report, highlighted serious illegalities in the approval and authorisation process for this construction. Those more powerful than the law control individual ministries, as evidenced by (...) Minister Iorgulescu of the Ministry of Culture and Religious Affairs (...). (Vasile I. G. Dănuț, PDSR/PSD, 19.2.2007, S, LP 5)

Codified law. As mentioned above, MPs across parties frequently evoked the constitution as a major source of the legitimacy of the rule of law. A narrative used with high intensity during the first wave of rule of law legislation was that **the constitution of 1991 as the institutionalised emanation of the Romanian revolution, as the result of the Constituent Assembly, and as the basis for the Romanian post-communist state and society is the most important source of legitimisation.** Having been confirmed by a referendum, the constitution enjoyed very high popular legitimisation and was therefore referred to as the “civic bible” (Boc).

In a welcome retrospective, let us recall, distinguished assembly, that ten years ago, on 8 December 1991, the Romanian people were called to the polls and voted by referendum the new fundamental law of the country. For the first time in the last 150 years, on 21 November 1991, the representatives of the Romanian people voted on a constitution which was then submitted to popular suffrage, as a result of which the act drawn up by the Constituent Assembly became a legitimate, democratic constitution, born of the imperative to create a new law establishing and promoting new principles specific to the rule of law. (Valer Dorneanu, PDSR/PSD, government, 7.12.2001, CD+S, LP 4)

In the democratic rule of law, the constitution is the supreme law. In the rule of law, the constitution helps us to prevent those who temporarily hold power from becoming masters of power. It is the constitution that gives us the means to hold rulers accountable and to prevent them from turning from servants of power into its owners. The constitution is the guarantor of securing the rights and freedoms of citizens. In other words, the constitution is the citizen's ‘civic Bible’ or, as has been said, it is the technical charter of the social mechanism or the twin sister of freedom. (Emil Boc, PD/PD-L, opposition, 7.12.2001, CD+S, LP 4)

As with the revolution, the constitution was also evoked most often in festive speech acts when its anniversaries were celebrated in parliament. In such moments, their relevance was highlighted by all speakers.

Of particular importance are: the inclusion in the constitution of the principle of political pluralism as a condition and guarantee of constitutional democracy in Romania; the declaration of Romania as a state governed by the rule of law, in which both the citizen and any public authority are equally obliged to respect the law as an emanation of the sovereign will of the citizens; the introduction of the national referendum as a means of direct participation in the conduct of public affairs; the enshrinement, as in other previous constitutions, of equal rights for citizens, but with the emphasis on the rights of citizens belonging to national minorities to preserve their language, traditions and cultural identity, like the majority population. (Valer Dorneanu, PDSR/PSD, government, 7.12.2001, CD+S, LP 4)

When in the pre-accession period Romania had to incorporate the *acquis communautaire* and to change the constitution, MPs from across the political spectrum agreed on the towering importance of the constitution, including the rule of law.

The development of constitutional democracy has led to the express proclamation of the principle of the separation of powers in the state and the supremacy of the constitution as a fundamental principle of organisation and functioning of the state, not only in the form of duties of citizens, as in the drafting of the current wording, to the enshrinement of the

principle of solidarity, which is defining in the evolution of society, especially within the framework of the European model, as well as the rule governing the constitution of representative bodies through free, regular and fair elections. (Valer Dorneanu, PSDR/PSD, government, 25.8.2003, S, LP 4)

The National Liberal Party believes in and upholds the values of constitutional democracy, the principles that the Romanian state based on the rule of law and the unity of the people, a common asset of all parties that share these values, which must be reflected and enshrined in the provisions of constitution, formulated as precisely and clearly as possible. (Mircea Ionescu-Quintus, PNL, opposition, 25.8.2003, S, LP 4)

The constitution was cited on various occasions for justifying criticism of other actors, e.g. in the debate on the deposition of Traian Băsescu from his office as president, when he was accused of deliberately violating constitutional norms and procedures, and of thereby undermining the constitution's legitimacy-creating function (see Sect. 6.3.4).

The rhetoric of the constitution as an important source of legitimacy was slightly adjusted and mainly used by some of the politicians in the second wave of the rule of law legislation from 2004, when parties such as PSD and ALDE argued frequently that **constitutionality is an obligation of the legal system and the state**. This narrative was mainly used in debates of great political importance, such as the one surrounding the impeachment of Traian Băsescu in 2007. In the debate, the president was accused of deliberately violating constitutional norms and procedures, thereby undermining the legitimacy-creating function of the constitution (see Sect. 6.3.4). Senator Titus Corlăţean (PSD) put this in general terms before presenting a long list of Băsescu's allegedly anti-constitutional actions.

The supremacy of the constitution and the obligation to respect it become empty words if the guardian of the rule is undermined and prevented from fulfilling its mission. (...) Chapter I. Violation of the principles of the rule of law, democracy and political pluralism, disregard of the parliament as the supreme representative body of the Romanian people and violation of the provisions of the constitution governing the relations of the president of Romania with the parliament. (...) Chapter IV. Violation of Article 1(5), Article 16(2) and other constitutional provisions relating to the general obligation to respect the law and to protect the fundamental rights of citizens. (Titus Corlăţean, PDSR/PSD, opposition, 28.2.2007, CD+S, LP 5)

MPs from PSD and ALDE brought the need for constitutionality for all actors as an argument to allay suspicions that they were trying to remove the president from office for narrow political reasons. The narrative was used in connection with regular allegations of governing coalitions, "ably assisted by" the president.

As for the functioning of the institutions of the rule of law and respect for them, it is enough to recall the repeated violations of the constitution and so many other laws by the main exponents of the current governing coalition, ably assisted by the president of Romania himself. There are so many examples in this area that I feel it is pointless to list them. Therefore, I am content to mention only the recent violation of the legal provisions that stipulate the obligation for the Romanian government to submit to parliament, by 15 October, the draft State Budget Law. (Cristian-S. Dumitrescu, PSD, opposition, 25.10.2011, CD, LP 6)

5.3.5 Slovakia: (Contested) Ideas and Procedures

The discourse on the legitimization of the rule of law in the Slovak parliament presents a mixed pattern for the three decades under study. MPs most frequently referred to ideas and procedures as sources of legitimacy for the rule of law, thus attributing them high relevance. References to the constitution and the codified law followed at some distance. However, statements on ideas went in diverging directions, with MPs of relevant parties holding different positions on it, which is why they did not form overlapping narratives. There was more agreement regarding procedures and the rule of law (Table 5.32); two narratives were used with higher intensity during the third wave of rule of law legislation. MPs from across party lines and throughout legislative periods emphasised that the constitution and codified legal norms are the basis for legitimization under the rule of law.

Ideas. Statements referring to abstract ideas as crucial attributes of the legitimacy of the rule of law were made by representatives from all relevant political parties in all periods, albeit with different positions on the topic. Therefore, all narratives formed by such statements remained one-sided.

For the first wave of rule of law legislation, we identified the narrative that **a state is perceived and accepted as truly governed by the rule of law if it guarantees (democratic) rights and freedoms to its citizens**. It was only used by opposition parties to the HZDS-led governments. We did not find many statements with this particular content, but they were made on various occasions and by different party representatives; thus, they can be considered as established narratives. MPs emphasised the ability of the rule of law to ensure the protection of rights, freedoms

Table 5.32 Narratives on the sources of legitimacy of the rule of law in Slovakia

	1992–1998	1998–2006	2006–2021
Ideas	A state is perceived and accepted as truly governed by RoL if it guarantees (democratic) rights and freedoms to its citizens. (one-sided)		A fundamental aspect of the legitimacy of the state under the RoL is its ability to establish and ensure justice. (one-sided) A state is perceived and accepted as being truly governed by RoL if it guarantees (democratic) rights and freedoms to its citizens. (one-sided)
Procedures			Effective state institutions (esp. judiciary and prosecution) are relevant to ensure trust in the state under the RoL. (overlapping) The inadmissibility and potential punishment of arbitrary or unlawful activities of public officials are fundamental elements of the legitimacy of the RoL. (overlapping)
Codified law	To be legitimate under the RoL, political goals must be transformed into legal documents and measures compatible with the constitution. (overlapping) ^a		

^a The narrative was present throughout all periods, but without any significant intensity

and democratic participation of citizens as a fundamental condition for its acceptance and public support. In the context of the respective parliamentary debate, this involved criticism of perceived shortcomings or rights violations and a call for the government to remedy them.

From history, we know, and the older generation has vivid experiences, that every state, even the cruellest dictatorship, tried to declare itself a rule of law; every societal formation invoked the people and, in the name of the people, established laws, enforced them and judged. According to the principles of Roman law, the (...) fundamental requirements of the rule of law are to live nobly, not to insult or limit others, to give everyone what belongs to them. These basic requirements should be applied and protected by every right. Amendments and regulations that contradict these principles may be, at first glance, laws adopted democratically, but they are never true laws. (Ernő Rózsa, *Spolužitie-Együttélés*, opposition, 1.9.1992, LP X, Session 5)

As the primary assumption for rectifying matters in the field of human rights, law and constitutionality, in the area of public administration and authorities responsible for protecting rights, citizen safety, crime and the fight against organised crime, SDL considers the restoration of all functions of a democratic state governed by the rule of law. The aim is for the state and its authorities to serve the citizen in a spirit that all power comes from the citizen and should be accountable to them. (Pavol Kanis, SDL, opposition, 14.7.1998, LP 1, Session 49)

This narrative returned in the third wave of rule of law legislation. It was used by KDH and OĽaNO as opposition parties to Smer-led governments—although not very frequently in our analysed material, but on various occasions by different speakers.

The fundamental purpose of the prohibition of retroactivity is to protect citizens' trust in the law. Retroactivity is in contradiction with the principle of justified trust in the law, according to which someone who acts in accordance with the law in force at a given time can rely on not being retrospectively punished for the unlawfulness of their actions. (Daniel Lipšic, KDH, opposition, 19.10.2006, LP 4, Session 5)

If we deny the right to a fair trial, we betray the values and principles of our society that we should protect. Democratic societies are more vulnerable to terrorism because they are open societies with freedom of movement and without borders. (...) But in a firmly anchored democratic system, there is also immense internal strength. Society, by voluntary agreement, upholds the law and protects democracy from foolish tyrants who seek to replace the rule of law with the rule of the stronger with a weapon in hand. (Erika Jurinová, OĽaNO, opposition, 2.12.2015, LP 6, Session 58)⁷²

⁷² Another example: "They are not only ethical and moral principles, but their observance and effectiveness are fundamental features of every democratic state governed by the rule of law. This means that in a democratic state under the rule of law, human rights are taken very seriously, just like the office of the public defender of rights." (Viera Dubačová, OĽaNO, opposition, 9.2.2017, LP 7, Session 12)

We observed another narrative for the third wave of rule of law legislation. It was used more frequently but only by a limited number of parties. Speakers argued that a **fundamental aspect of the legitimacy of the state under the rule of law is its ability to establish and ensure justice**. Proponents of this narrative belonged to different parties advocating for the annulment of the so-called Mečiar amnesties, with repeated debates on this issue serving as opportunities for the assertion of this narrative. This narrative emphasised the material component of the rule of law in contrast to the formalistic understanding, designating the achievement of justice as the primary goal and, at the same time, the source of legitimacy for the rule of law. Justice was of high relevance in theorising the legitimacy of the rule of law in Slovakia.

Although not everyone perceived the same value under the term ‘freedom’, I am still convinced that the equally strong desire for the fall of totalitarianism was the establishment of justice in everyday life. Experiences from the 1950s and the so-called normalisation period after 1968 could not leave any decent person indifferent. The gradual transition to democratic principles internally connected with the sincerest desire to establish justice based on law, the observance of human rights, the protection of human dignity, and, above all, the freedom of those who decide on law and justice. In human terms, it means that we will no longer allow the third pillar of democracy to be unfree, and we will not allow it to depend on anything other than law and justice. (Milan Hort, SDKÚ-DS, opposition, 15.10.2009, LP 4, Session 41)

As noted, this narrative was often used when speakers discussed the admissibility of the retroactive effect of laws to remedy past wrongdoings. This issue underlines the utmost relevance of the ‘Mečiar amnesties’ for the parliamentary discourse on the rule of law in Slovakia. As Ján Budaj put it, their shadow loomed over Slovak politics, and over the rule of law in Slovakia.

The public interest in the rule of law justifies each state organ’s ability to reconsider its previous decision, whether its own or those of individuals exercising this power in the previous period, including the potential modification or annulment thereof. The opposite stance can only lead to the abuse of constitutional law, resulting in the weakening of the legality of the state. Therefore, it is in the public interest to have the right to amend or revoke a decision on amnesty if it is intended to establish a truly constitutional state governed by the rule of law. The institution of amnesty, like any other norm in the legal order, cannot be designed to serve injustice. The legal order should serve justice and not the establishment of injustice. Law means seeking justice. The legal order serves justice and not injustice. Justice means measuring everyone by the same yardstick. (Pavol Hrušovský, KDH, government, 3.2.2012, LP 5, Session 28)

So, in our story, a state crime was committed. (...) Vladimir Mečiar’s amnesties, and so his shadow still looms over this hall, over Slovak politics, and over the rule of law in Slovakia. It’s a long shadow, but no matter how long it is, all of you know (...) without the repeal of these amnesties, it is not possible to talk about the rule of law because in a state where the law does not apply equally to everyone, there is no law for anyone. If there is no law for the mother of the murdered Róbert Remiáš, who can be sure if there was no law for the first man of the state, the former president of the Slovak Republic, who can be sure? (Ján Budaj, OĽaNO, opposition, 6.12.2016, LP 7, Session 11)

I am convinced that it is possible and even necessary to annul these amnesties. (...) (T)he loud and fundamental essence of law is the attainment of justice and that when the law exceeds justice and crosses those tolerable limits, it is legal and legitimate not to respect such law, to do something about it. (...) (W)e are still struggling with this problem because on the one hand, voices are heard about the immutability of these amnesties, on the other hand, several lawyers are convinced that it can be done, and moreover, that it is the duty of the National Council to act in this way. (Peter Kresák, Most-Híd, government, 6.12.2016, LP 7, Session 11)

Other MPs, in our documents from OĽaNO and SaS, associated the rule of law more directly with the citizens.

I'm asking, what are Slovak judges paid for? Is it to pursue the poor and damaged citizens with unjust verdicts? Ms Bystrianska is either disoriented or biased in her favour and in favour of the judges, or completely incompetent. Her theories about the independence of judges ignore the fact that the independence of judges is dependent on the satisfaction of citizens. (Mária Ritomská, OĽaNO, opposition, 25.3.2014, LP 6, Session 34)

Taking the highest competencies, which the constitutional majority in parliament has in a state governed by the rule of law, and giving them to the constitutional court, where, let's say, political nominees are present, is playing with fire. If the constitutional court permanently blocks the decision of the constitutional majority of parliament in this way, people will not forget it. Because the rule of law is a state where justice must prevail, and the state must be able to create a way in which justice can be enforced in the state. If we can't do that, the sense of resistance to our democracy will only grow in people, and extremist forces will strengthen in Slovakia. (Marek Krajčír, OĽaNO, opposition, 30.3.2017, LP 7, Session 14)

The argumentation during the previous annulment emphasised public interest and the reinforcement of citizens' trust in the justice of the state. I am convinced that such actions indeed strengthen citizens' trust in the justice of the state, which is a sorely missing element in our society and must be built over time and with effort. This is truly one of those steps where we can build it, where we can build a better society, and through which we can, in the future, say that we have, that we will be able to say, yes, we have the rule of law, and people have basic trust in state institutions. (Jozef Rajtár, SaS, opposition, 5.12.2018, LP 7, Session 38)

On different occasions during the third wave of rule of law legislation, politicians stressed that the moral integrity of public office holders, including judges, who are responsible for implementing the rule of law, is a critical element of its legitimacy through public trust. This statement was made when speakers aimed to support removing a specific person from office instead of addressing systematic measures for promoting integrity in the rule of law institutions. Because of the few examples of such an argument⁷³ and its ad-hoc use, we would not classify it as another narrative.

⁷³ Vladimír Mečiar (HZDS, government) and Štefan Harabin (HZDS, government, Deputy Prime Minister and Minister of Justice) on 26.3.2008, LP 4, Session 20; Daniel Lipšic (OĽaNO, opposition, 7.9.2016, LP 7, Session 9) or Miroslav Beblavý (Spolu, opposition, 26.3.2018, LP 7, Session 30).

Procedures. Two narratives were identified that emphasise the procedural aspect of the rule of law to ensure its legitimacy. Representatives of all relevant political parties used both. Temporally, such statements appeared across all legislative periods; however, they were used with higher intensity in the third wave of rule of law legislation.

The first narrative stressed that **effective state institutions (especially the judiciary and prosecution) are relevant to ensure trust in the state under the rule of law**. MPs highlighted that impartial court proceedings, for example, are crucial for gaining and maintaining public trust in the entire rule of law system. Judicial independence was presented as a necessary condition for a fair trial, which was essential for maintaining public trust in the rule of law and its effectiveness. Conversely, MPs argued that deficiencies in this area ultimately undermine the legitimacy of the entire rule of law.

The landfill in Pezinok, or the Pezinok landfill case, is today a synonym for how a state governed by the rule of law should not function. It is one of those cases that evoke distrust in citizens towards the rule of law, distrust in the system of state authorities, justice and the belief that justice can be sought in this state. (...) A systematic examination is needed to prevent such cases from multiplying in the future and to restore people's trust in the state apparatus and justice. (Lucia Žitňanská, SDKÚ-DS, opposition, 6.2.2009, LP 4, Session 32)

(D)o we want to have a credible, efficient judiciary, where a judge who decides, perhaps to my disadvantage because that's just how it goes in legal disputes, is an authority? – everyone will answer yes. Therefore, I did not understand some nonsensical attacks that were directed towards (...) a proposal for changes in the judicial system formulated in such a way that the result would be what I mentioned: a satisfied citizen who has confidence in the authority of the judiciary or the authority of a judge. (Pavol Paška, Smer, government, 25.3.2014, Session 33)

We want judges to be respected in our society, we want to restore their credit, which is important for them to have. When we come to court, we want people to believe that a fair court is deciding in their case, and that it is impartial and independent. (Mária Kolíková, Za ľudí, government, Minister of Justice, 21.10.2020, LP 8, Session 16)⁷⁴

The second narrative underlined that **the inadmissibility and potential punishment of arbitrary or unlawful activities of public officials are fundamental elements of the legitimacy of the rule of law**. MPs referred to the abuse of public power and its potential impunity as a critical factor undermining public trust in the rule of law. Some emphasised the everyday experiences of people, whether direct or mediated through the media. More generally, the narrative relates to the limitation of power by law and considers the respect for this limitation as essential. If rules are violated, effective legal procedures for remedy have to be applied.

⁷⁴ Similarly put by Petra Hajšelová (Sme Rodina, government, 28.4.2020, LP 8, Session 6): “I am aware that the ideal country does not exist. But our priority, all of us, should be to strive so that every citizen, regardless of their status, earnings and property, can assert their rights without unnecessary delays, so that the independence and impartiality of the judiciary exist in practice and are guaranteed by law, and so that public trust in the judiciary, where it has been lost, is restored and maintained.”

Justice and the judiciary are the first-line encounter of a citizen with the state and modify the foundations of their trust or distrust in the state and the legal order. But please, the rule of law and the practical side of it are not just about justice. It includes thousands of legal regulations, the entire state administration, trade offices, construction offices, tax offices, professional chambers of lawyers, attorneys, notaries, bailiffs and so on. Let's not cheaply and populistically focus permanently only on justice. (Mojmír Mamojka, Smer, opposition, 6.8.2010, LP 5, Session 3)

I was very concerned about the behaviour of the Committee for Culture and Media. We cannot decide to use the majority in parliament and forget that in our legal system, such things, such as the dismissal of such an important person, must be properly justified. In a state governed by the rule of law, the resolution of the committee must be properly justified. (Magdalena Vašáryová, SDKÚ-DS, government, 20.6.2012, LP 6, Session 3)

(P)arliament simply cannot annul everything it considers amoral. Despite how good it sounds, it would be contrary to the principles of the rule of law. (Miroslav Beblavý, non-affiliated, elected for Siet, opposition, 28.3.2017, LP 7, Session 14)

Codified law. References to codified legal norms (such as the constitution or other legal texts) as a source of legitimacy for the rule of law appeared in parliamentary debates fairly routinely and in a general way. In a more specific way, only one narrative emphasised codified law, when MPs stressed that **to be legitimate under the rule of law, political goals must be transformed into legal documents and measures compatible with the constitution**. It is not possible to unequivocally determine a higher intensity of this narrative's use over time.

This narrative includes both general mentions of the necessity of adhering to the constitution and valid laws, and the opposing argument that justice has to be established even at the cost of, for example, violating the prohibition of retroactivity (see above). Emphasis was placed on valid law and formal legal principles.

Essentially, I stated that in a rule of law, there is no higher principle than respecting the constitution and the law. If society does not agree on the minimum principle of respecting the law, we are returning to a state of chaos and the jungle. Yes, we must respect the law. (Jozef Moravčík, DÚ, opposition, 5.2.1997, LP 1, Session 24)

After all, we are and want to be a state governed by laws. And the highest of these laws is the fundamental law – the constitution of the Slovak Republic. It is impossible to change, develop or improve the political system without it being reflected at some decisive moment in this fundamental law of the country. (Mikuláš Dzurinda, SDK, government, Prime Minister, 7.2.2001, LP 2, Session 45)

MPs used this argumentation regardless of their party affiliation, thus forming an overlapping narrative. As with many of the narratives presented in this book, opposition parliamentarians used it more frequently, typically to criticise the supposed incompatibility of a proposed bill with the constitution. What makes this narrative special is that it was also often used by government representatives. They pointed out that their actions had to be in line with the constitution, which they perceived as an uncontroversial basis for the rule of law.

Even the best project, the best idea, with a high moral solution, can be as good as it gets, if it is not in line with the constitution, it is not a solution that is beneficial for the rule of law. (Katarína Tóthová, HZDS, government, 18.6.2009, LP 4, Session 39)

We have in our constitution that we are a constitutional state. This has, of course, some consequences, one of which is that society is governed by law. (...) You know, the fundamental fiction in law is that, yes, the legal order should contain a moral system, one that is majority-based in society. It is entirely logical, given that we recognise that there are multiple moral systems in society, there will be collisions with that order, but it is elementary, elementary starting point is that we must respect the law and the constitution in full. (Miroslav Číž, Smer, government, 5.4.2017, LP 7, Session 14)

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