

## HUNGARY FACT SHEET 1

SEPTEMBER 2014

### UNDERMINING CONSTITUTIONALITY

#### 1. Adopting a new constitution; instrumental attitude towards the constitution<sup>1</sup>

- a) The Fundamental Law (the new constitution of Hungary, in force since 1 January 2012) is to be considered the product of one political party and **has been adopted** by the governing majority **without the support of any other political force** – provisions from the old Constitution that would have forced the governing majority to seek consensus with the opposition in this regard had been removed by them earlier on. Furthermore, the need for a new constitution was not supported by adequate reasons, and the new constitution was prepared in secret, without any adequate open public debate or the proper involvement of experts.<sup>2</sup>
- b) After the elections in 2010, the old Constitution was amended 12 times by the governing two-thirds majority, while the Fundamental Law has been amended five times since it came into force. In its opinion on the Fourth Amendment to the Fundamental Law, the Venice Commission warned in this regard that **frequent constitutional amendments** “are a worrying sign of an **instrumental attitude towards the constitution** as is the resort to the exceptional two-thirds majority in constitution-making without a genuine effort to form a wide political consensus and without proper public debates”; and that the Fourth Amendment is “the result of an instrumental view of the Constitution as a political means of the governmental majority”.
- c) As concluded also by the Venice Commission, it became the governing majority’s “**systematic approach**” – applied already with regard to the former constitution – that **provisions** of ordinary laws which had been previously **found unconstitutional** and were annulled by the Constitutional Court **were reintroduced on the constitutional level**, overruling the Constitutional Court.<sup>3</sup> (By inserting the respective provisions into the constitution, the Parliament excluded the possibility of review by the Constitutional Court.) Thus, the Fundamental Law has ceased to be an effective instrument in limiting the legislator’s powers. Furthermore, as stated by the Venice Commission, “constitutionalising” provisions declared unconstitutional “threatens to deprive the Constitutional Court of its main function as the guardian of constitutionality and as a control organ in the democratic system of checks and balances”.

#### 2. Weakening the control exercised by the Constitutional Court over the Parliament;<sup>4</sup> “court-packing”

- a) The Constitutional Court’s (CC) **competence has been restricted by the Fundamental Law in relation to laws on central budget and taxes**, shielding potentially unconstitutional laws from constitutional review even when budgetary problems have subsided, which was also criticized by the Venice Commission. The Fourth Amendment to the Fundamental Law prohibited the CC from examining the substantive

<sup>1</sup> For the related criticism of the Venice Commission, see: *Opinion on the Fourth Amendment to the Fundamental Law of Hungary*, CDL-AD(2013)012, Strasbourg, Council of Europe, 17 June 2013, [www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282013%29012-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282013%29012-e).

<sup>2</sup> For an analysis in English on the framing process of the Fundamental Law, see: [http://helsinki.hu/wp-content/uploads/Comments\\_on\\_the\\_Process\\_of\\_Framing\\_the\\_New\\_Constitution\\_of\\_Hungary\\_EKI\\_HCLU\\_HHC.pdf](http://helsinki.hu/wp-content/uploads/Comments_on_the_Process_of_Framing_the_New_Constitution_of_Hungary_EKI_HCLU_HHC.pdf).

<sup>3</sup> For examples in English of how e.g. the Fourth Amendment to the Fundamental Law overruled decisions of the Constitutional Court, see: <http://helsinki.hu/wp-content/uploads/Constitutional-Court-vs-Fourth-Amendment.pdf>.

<sup>4</sup> For the related criticism of the Venice Commission, see: *Opinion on the Fourth Amendment to the Fundamental Law of Hungary*, CDL-AD(2013)012, Strasbourg, Council of Europe, 17 June 2013, [www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282013%29012-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282013%29012-e). For further information in English, see e.g.: [http://helsinki.hu/wp-content/uploads/Main\\_concerns\\_regarding\\_the\\_4th\\_Amendment\\_to\\_the\\_Fundamental\\_Law\\_of\\_Hungary\\_13032013.pdf](http://helsinki.hu/wp-content/uploads/Main_concerns_regarding_the_4th_Amendment_to_the_Fundamental_Law_of_Hungary_13032013.pdf), pp 1-5.

constitutionality of proposed amendments to the Fundamental Law, the latter being not only in contradiction with a recent decision of the CC, but also allowing the Fundamental Law to be amended according to the political agenda of the governing majority.

- b) The Fourth Amendment to the Fundamental Law **declared void the CC decisions adopted prior to the Fundamental Law**. This purely arbitrary restriction undermines the CC's independence, contradicts the CC's former case law, and, as put by the Venice Commission, "unnecessarily interrupts the continuity of the Court's case-law". Accordingly, it may also result in decreasing the level of the protection of fundamental rights (giving CC judges the possibility to deter from important principles established by the CC over the last two decades without any explanation).
- c) As a result of amending the rules pertaining to the composition of the parliamentary committee nominating CC judges, the **parliamentary majority may nominate and elect judges of the Constitutional Court** on its own, **without the support of any opposition party**. Furthermore, the number of CC members has been increased from 11 to 15. These amendments lead to a situation in which the **majority of current CC judges** (8 out of 15) were **nominated and elected solely by the governing majority**. (Since the mandate of some of the judges – elected before the change in the rules – will expire soon, the election of three further judges is underway.)
- d) A law adopted in December 2013 set out that the mandate of CC judges, including the mandate of the current ones, shall not terminate when they turn 70 years old, but they shall remain in their seats until the end of their 12-year term. As a result, **the length of the mandate of some of the CC judges nominated and elected with the sole support of the current governing majority got extended considerably**.<sup>5</sup>

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<sup>5</sup> For further details in English, see: <http://helsinki.hu/en/abolishing-the-age-limit-regarding-constitutional-court-judges>.

HUNGARY FACT SHEET 2

SEPTEMBER 2014

**DISRUPTING THE SYSTEM OF CHECKS AND BALANCES;  
WEAKENING INDEPENDENT INSTITUTIONS**

1. Threatening the independence of the judiciary<sup>6</sup>

- a) As a result of a thorough re-regulation in 2011, the **administration of courts became centralised**: the former judicial body in charge of administrating courts was replaced by a one-person decision-making mechanism, the President of the newly established National Judicial Office (NJO). The reform model chosen and the **extensive powers** of the NJO's President were **criticized by the Venice Commission** in both of its opinions on judicial laws in Hungary, and it was stated that since the President of the NJO (who is elected by the Parliament) is “an external actor from the viewpoint of the judiciary, it cannot be regarded as an organ of judicial self-government”. Despite the criticism, the Fourth Amendment to the Fundamental Law raised the position of the President of the NJO to a constitutional level. Later on – following the Venice Commission's subsequent criticism – the status of the NJO president was re-regulated and her powers were restricted, but the basic concern that significant decisions may be made by an “external actor” is still in place.
- b) The **mandate of the former President of the Supreme Court was terminated three and a half years before the end of the regular term**, as of 1 January 2012 by the Transitional Provisions of the Fundamental Law. The government argued that the dismissal was necessary because of the reorganization of the court system, affecting the Supreme Court. On the other hand, several critics stated that the transformation of the Supreme Court had not resulted in such significant changes in the court's duties that would have justified the dismissal of its President, and stressed that apparently the President's mandate had been terminated and new rules to exclude him from being re-elected had been adopted in late 2011 because he publicly criticized several legislative actions of the new government. These concerns were eventually confirmed by the opinion of the **Venice Commission** and by the opinion of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe.<sup>7</sup> Furthermore, in its respective decision issued in May 2014 (see case *Baka v. Hungary*) **the European Court of Human Rights** held that the premature termination of the President's mandate had **violated the right of access to a tribunal**, because he could not challenge the termination of his mandate. The ECtHR also found that the **dismissal** “was not the result of a justified restructuring of the supreme judicial authority in Hungary, but in fact **was set up on account of the views and criticisms that he had publicly expressed** in his professional capacity on the legislative reforms concerned”. Therefore, the President's right to freedom of expression was also violated.
- c) The Fundamental Law **lowered the mandatory retirement age of judges** to the general retirement age, i.e. from 70 to 62 years as of 1 January 2012. The rule affected approximately 270 judges, including a **significant number of judges serving at higher courts and leaders of higher courts, resulting in their dismissal**. The Court of Justice of the European Union delivered a judgment on the matter on 6 November 2012 (*Commission v Hungary, C-286/12*), concluding that **Hungary has failed to fulfil its obligations under Council Directive 2000/78/EC**. Respective lower level legal provisions were also found unconstitutional by the Constitutional Court in Hungary in July 2012, but this decision did not

<sup>6</sup> For further information, see the respective opinions of the Venice Commission:

*Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary*, Strasbourg, 19 March 2012, [www.venice.coe.int/docs/2012/CDL-AD%282012%29001-e.pdf](http://www.venice.coe.int/docs/2012/CDL-AD%282012%29001-e.pdf);

*Opinion on the cardinal acts on the judiciary that were amended following the adoption of Opinion CDL-AD(2012)001 on Hungary*, CDL-AD(2012)020, Strasbourg, 15 October 2012, [www.venice.coe.int/docs/2012/CDL-AD%282012%29020-e.pdf](http://www.venice.coe.int/docs/2012/CDL-AD%282012%29020-e.pdf)

<sup>7</sup> *Request for the opening of a monitoring procedure in respect of Hungary – Opinion*, 25 April 2013, [www.assembly.coe.int/Communication/amondoc08\\_2013.pdf](http://www.assembly.coe.int/Communication/amondoc08_2013.pdf), paras 11.4.1 and 133

reinstate the legal relationship of the already dismissed judges. In order to remedy the effect of the unlawful dismissals, new legal provisions were adopted offering judges compensation or reinstatement into their judicial status, but reinstatement into leading administrative positions was not guaranteed. Thus, by decreasing the mandatory retirement age of judges the governing majority could **replace practically the entire leadership of the judiciary**.

- d) The President of the NJO was vested with the right **to appoint another court to proceed in a given case (i.e. transfer/reassign hand-picked cases to a hand-picked court)** by referring to the caseload of the original court, which resulted in the controversial **transfer of also politically high-profile cases**. The system of transferring cases was strongly criticized both by the Venice Commission and the Monitoring Committee of the Parliamentary Assembly of the Council of Europe for violating the right to fair trial, and respective legal provisions were found unconstitutional by the Constitutional Court of Hungary. The possibility of transferring cases was finally abolished in its previous form in 2013, however, no solution or remedy was offered for the violation of the principle of the lawful judge in cases which were already transferred by the President of the NJO earlier on.

## 2. Changes in the Ombudsperson system; premature dismissal of the Data Protection Commissioner

- a) As a result of the Fundamental Law, the former four Ombudspersons (Parliamentary Commissioners) have been replaced by the sole Commissioner for Fundamental Rights, which decreases the level of protection in relation to certain rights. The mandate of three of the Ombudspersons was terminated before the end of their fixed term of office, as of 1 January 2012.
- b) The tasks of the Data Protection Commissioner were undertaken by the newly established **National Authority for Data Protection and Freedom of Information**, which is an administrative body and **does not comply with the requirement of independence**.
- c) The issue of abolishing the institution of the Data Protection Commissioner and prematurely terminating the current commissioner's mandate was brought before the **Court of Justice of the European Union**, which concluded in April 2014 that "by prematurely bringing to an end the term served by the supervisory authority for the protection of personal data, **Hungary has failed to fulfil its obligations under Directive 95/46/EC**" (see: *Commission v. Hungary, Case C-288/12*).
3. Amendments adopted in 2010 allowed for the **dismissal of civil servants without justification, as a result of which thousands of civil servants were fired from the public administration**. The rules were held to be unconstitutional by the Constitutional Court in February 2011, but were quashed by it only *pro futuro*, as of 30 May 2011, and dismissals continued even after the announcement of the Constitutional Court's decision. Some civil servants turned to the **European Court of Human Rights**, claiming that the amendments effectively deprived them of an effective access to a court in Hungary, because although in theory the employers' decision could have been challenged before a court, in the absence of reasoning it would have been close to impossible to prove that a dismissal was ill-founded. The Court confirmed these concerns when concluding in its decision brought in the *K.M.C. v. Hungary* case that Hungary had **violated Article 6 of the European Convention on Human Rights**.
4. In the parliamentary term of the current governing majority between 2010 and 2014, members of the National Election Committee, Vice-Presidents of the Hungarian Competition Authority and the Vice-President of the former Supreme Court were all removed before the end of the fixed term of their office by law. Former members of the Fidesz parliamentary group have been elected as the President of Republic and the Head of the State Audit Office.

## HUNGARY FACT SHEET 3

SEPTEMBER 2014

### THE VIOLATION OF PARTICULAR HUMAN RIGHTS

#### 1. Right to liberty<sup>8</sup>

- a) The Fundamental Law and the Criminal Code provides for the possibility of actual life-long imprisonment, i.e. **life imprisonment without the possibility of parole**, violating Article 3 of the European Convention on Human Rights (see e.g. the case *László Magyar v. Hungary*) and contradicting the respective recommendation of the CPT<sup>9</sup>.
- b) In November 2013, the length of **pre-trial detention became unlimited** in case the procedure against the defendant is conducted because of a crime punishable by a prison term of up to 15 years or life-long imprisonment, which raises serious concerns in light of the case-law of the European Court of Human Rights.<sup>10</sup>
- c) Since 2010, **juveniles may also be taken into confinement for petty offences** up to 45 days and their detention is not applied only as a measure of last resort, which is in breach of the Convention on the Rights of the Child.
- d) Overruling related Decision 38/2012. (XI. 14.) of the Constitutional Court of Hungary, which stated that criminalizing the status of homelessness is unconstitutional, since it violates human dignity, and despite criticism expressed by the UN Special Rapporteur on extreme poverty and human rights and the UN Special Rapporteur on adequate housing,<sup>11</sup> the **Fourth Amendment to the Fundamental Law enabled the Parliament or local governments to criminalize homelessness**. Accordingly, in September 2013 the Hungarian Parliament adopted a law which introduced petty offences criminalizing homelessness. Rough sleeping became punishable by community work or fine, and, if “committed” for the third time within six months, shall be punished by confinement.<sup>12</sup> At the same time, the right to housing is not guaranteed by the Fundamental Law.

#### 2. Freedom of thought, conscience and religion – the situation of Hungarian churches

Due to a new Church Act adopted in late 2011, many lawfully existing and operating churches in Hungary were forced to go through a re-regulation process, during which the government and **the Parliament could decide which churches will be given status as such and receive state subsidies**. Many churches that were out of favour with the government failed to regain their status as churches. The law was discriminatory and violated the right to freedom of religion.

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<sup>8</sup> For further information in English see: *Briefing paper of the Hungarian Helsinki Committee for the Working Group on Arbitrary Detention – UN Commission of Human Rights*, 8 October 2013, [http://helsinki.hu/wp-content/uploads/HHC\\_briefing-paper\\_UNWGAD\\_8\\_Oct\\_2013.pdf](http://helsinki.hu/wp-content/uploads/HHC_briefing-paper_UNWGAD_8_Oct_2013.pdf).

<sup>9</sup> Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 January to 1 February 2007, CPT/Inf (2007) 24, § 33.

<sup>10</sup> For further information in English, see: *Update to the briefing paper of the Hungarian Helsinki Committee for the Working Group on Arbitrary Detention – UN Commission of Human Rights*, 25 November 2013, [http://helsinki.hu/wp-content/uploads/UNWGAD\\_HUN\\_HHC\\_Addendum\\_25November2013.pdf](http://helsinki.hu/wp-content/uploads/UNWGAD_HUN_HHC_Addendum_25November2013.pdf).

<sup>11</sup> See: *Hungary's homeless need roofs, not handcuffs – UN experts on poverty and housing*, 15 February 2012, <http://www.europe.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9994&LangID=E>.

<sup>12</sup> For further information in English, see: <http://helsinki.hu/en/criminalization-of-homelessness-in-hungary>.

The Hungarian Constitutional Court established the unconstitutionality of the Church Act in its Decision 6/2013 (III. 1.) in March 2013, but instead of initiating legislation that would restore freedom of religion and religious equality, the government pushed ahead with the law by amending the Fundamental Law of Hungary.

The **European Court of Human Rights** rendered a judgment in the case *Magyar Keresztény Mennonita Egyház and Others v. Hungary* on 8 April 2014, **determining that the Hungarian Church Act violated the applicant churches' rights to freedom of thought, conscience and religion and freedom of association**. According to the Court, “in removing the applicants’ church status altogether rather than applying less stringent measures, in establishing a politically tainted re-registration procedure, whose justification is open to doubt as such, and finally, in treating the applicants differently from the incorporated churches not only in the possibilities of cooperation but also in securing benefits for the purposes of faith-related activities, the Hungarian authorities neglected their duty of neutrality.” The Court claimed there was no pressing social need in a democratic society to justify these legislative steps. The decision is final, as the five-judge panel of the Grand Chamber found no reason to reassess the original verdict. The Hungarian government must now reach an agreement with the applicant churches on the restoration of their status and on just compensation for any damages. If an agreement has not been reached within six months, the Court will determine these issues for the parties.

### 3. Freedom of expression; freedom of information

- a) The Fundamental Law sets out that the right to freedom of speech may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community. Thus, the latter **groups have dignity just like individuals** and hence they enjoy special protection against criticism, which is in contradiction with the European Convention on Human Rights.
- b) In June 2013, the Law on Freedom of Information was amended in a way which **allows state institutions managing data broad leeway in rejecting requests for public information**, restricting full access to data to specific governmental institutions (such as the State Audit Office and the Government Control Office). The amended Law on Freedom of Information says that “overarching, invoice-based” or “itemized” audit of the “management of a public authority” shall not be governed by the Law on Freedom of Information.

### 4. The notion of family and marriage

- a) In order to overrule a Constitutional Court decision abolishing a law providing for a restrictive interpretation of the notion of family, the Fourth Amendment to the Fundamental Law severely **narrowed the notion of family, restricting it to marriage and parent-child relationships**. Thus, the Fundamental Law itself discriminates against all other family configurations, in contradiction to the case law of the European Court of Human Rights.
- b) Marriage is defined by the Fundamental Law as the union of a man and a woman, excluding even the future consideration of allowing same sex marriages.

### 5. Right to social security

The **right to social security is degraded to the level of an abstract state objective**: according to the Fundamental Law, the state only “strives to provide social security”. Furthermore, by stating that the nature and extent of social measures may be made determined “in accordance with the usefulness to the community of the beneficiary’s activity”, the Fundamental Law denies the principle of equal dignity.

## HUNGARY FACT SHEET 4

SEPTEMBER 2014

### FREE BUT NOT FAIR ELECTIONS

The legal framework of the national elections was amended substantially in recent years, and, as confirmed by the report of the OSCE/ODIHR Limited Election Observation Mission on the parliamentary elections in April 2014, “a **number of key amendments negatively affected the electoral process**, including the removal of important checks and balances”.<sup>13</sup> At the same time, **highly questionable decisions** were delivered by authorities, jeopardizing the fairness of the elections.<sup>14</sup>

#### 1. **Gerrymandering**<sup>15</sup>

Concurrent to the enactment of a new Hungarian electoral law in 2011, a new constituency map also came into effect. For constitutional reasons, the revision of electoral boundaries could no longer be postponed, however, concerns may be raised both with regard to the content of the map and its method of adoption: (i) The design of the new constituency map went ahead without professional and political consultations. Furthermore, amending the map will require a two-third majority in the Parliament. (ii) According to the map, populations in districts with leftist tendencies are typically 5 to 6 thousand larger than those in rightist districts. According to several calculations, with equal support at the national level Fidesz would be allocated 10 more single-member mandates than its rival, and the new constituency map may also convert a slight governing-party handicap into an advantage.

2. New election rules provide for a so-called “**winner compensation**”: not only are votes for candidates that loose in individual constituencies be added to the votes for the national lists, but also the votes for the winner that are not “used up” in gaining the individual seat in Parliament. In other words, if the winner receives 20,000 and the runner-up 15,000 votes, the party fielding the winning candidate will be allocated 4,999 further fractional votes. This method brought **six extra mandates** for Fidesz-KDNP in the 2014 national elections.<sup>16</sup>

3. As also confirmed by the OSCE/ODIHR, “the main **governing party enjoyed an undue advantage because of restrictive campaign regulations**” during the campaign for the national elections.

a) The Fourth and Fifth Amendment to the Fundamental Law created a situation where **campaign for political parties is practically restricted to the public media**:<sup>17</sup> the elimination of profit, i.e. that commercial media outlets may only broadcast political ads for free, resulted that none of the commercial media outlets with a national coverage chose to undertake to broadcast political advertisements up to the respective deadline. This, taken together with the fact that the public (state) media is government-leaning, resulted in an uneven media representation that unduly favoured the governing Fidesz party and its candidates.

b) At the same time, **government advertisements were aired** on one of the commercial television channels, the campaign spot in question being composed of the same types of slogan and visual elements as an

<sup>13</sup> For the final report of the OSCE/ODIHR Limited Election Observation Mission on the parliamentary elections in 2014, see: <http://www.osce.org/odihr/elections/hungary/121098?download=true>.

<sup>14</sup> For further information in English, see: [http://helsinki.hu/wp-content/uploads/HHC-HCLU-EKINT\\_Collapse\\_of\\_Independent\\_Institutions\\_23032014.pdf](http://helsinki.hu/wp-content/uploads/HHC-HCLU-EKINT_Collapse_of_Independent_Institutions_23032014.pdf).

<sup>15</sup> Source: Political Capital Institute. For further details in English, see:

[http://www.valasztasirendszer.hu/wp-content/uploads/PC-FES\\_ConferencePaper\\_HalfwayIntoTheHungarianElectoralReform\\_120417.pdf](http://www.valasztasirendszer.hu/wp-content/uploads/PC-FES_ConferencePaper_HalfwayIntoTheHungarianElectoralReform_120417.pdf)

<sup>16</sup> Source: Political Capital Institute. For further details in English, see:

[http://www.valasztasirendszer.hu/wp-content/uploads/pc\\_flash\\_report\\_20140218\\_TheWinnerTakesItAll.pdf](http://www.valasztasirendszer.hu/wp-content/uploads/pc_flash_report_20140218_TheWinnerTakesItAll.pdf).

<sup>17</sup> For further information in English, see: [http://helsinki.hu/wp-content/uploads/NGO\\_comments\\_on\\_the\\_5th\\_Amendment\\_to\\_the\\_Fundamental\\_Law\\_October2013.pdf](http://helsinki.hu/wp-content/uploads/NGO_comments_on_the_5th_Amendment_to_the_Fundamental_Law_October2013.pdf), pp 2-3.

advertisement of the governing coalition, but the National Election Committee ruled that the advertisement broadcast did not qualify as a political campaign spot. However, in the view of the OSCE/ODIHR the use of government advertisements that were almost identical to those of the Fidesz “contributed to an **uneven playing field** and **did not fully respect the separation of party and state**”. The Curia also concluded that due to the practical identity the government’s information campaign was a covert political campaign of the governing party, so it banned the TV channel from broadcasting the material.

- c) A new governmental decree, adopted only in January 2014, imposed **restrictions on the placement of electoral posters**. Restrictions **did not apply to posters of the government**, “advertising” government aims and results (of course corresponding with that of the governing majority), which were installed in a high number in the period preceding the elections, and did not apply to civil society posters either. (The latter is relevant because an NGO called “Civil Unity Forum”, undeniably having very close ties with governing parties, installed posters heavily criticizing opposition leaders.) At the same time, the Constitutional Court rejected a complaint concerning the regulation of election posters without deciding on the merits of the complaint.
  - d) As pointed out also by OSCE/ODIHR, the majority of campaign billboard spaces were rented by the Fidesz in the course of the campaign, and **opposition parties and candidates had limited access to broadcast media and public advertising space**, including billboards and public buses, most of the latter ones owned by individuals affiliated with the government.
4. The election rules discriminate between those Hungarian citizens staying abroad but having a permanent residence in Hungary and those living abroad without permanent residence in Hungary: the latter may also vote via **mail ballot**, while those in the first group have to vote in person at diplomatic commissions (which in some cases requires them to travel large distances). In the view of the OSCE/ODIHR the different voting procedures for the two types of voters abroad “was **at odds with the principle of equal suffrage**”. However, the Constitutional Court refused to deal with this issue in merit, dismissing a related constitutional complaint.
  5. Media sources claimed before the elections that there was a **serious suspicion that in many cases personal data and signatures of voters were copied by political parties from one recommendation sheet to another**. (Under the law, recommendations from voters are required to stand as a candidate in the election, and voters may recommend more candidates.) However, concerned state **authorities were reluctant to investigate the matter and/or provide remedy**, the National Authority for Data Protection and Freedom of Information even concluding that checking upon individual request whether personal data was misused would pose such an extreme workload on the election authorities that it could not be managed without endangering the procedure of the elections.
  6. The new Parliamentary **Campaign Finance** Act, adopted in 2013, makes some steps forward to combat corruption, but e.g. it omits to compel parties to give real time and ongoing account of their expenditures, and fall short of issues such as outsourcing political campaigns to GONGOs and PONGOs, and the source and origin of non-state secured campaign funds. On top of this, it requires parties to only submit their reports on campaign expenditures to the State Audit Office, which has so far never addressed questionable transaction in these statements and failed to compare parties’ declarations to reality. Parallel NGO assessment of the 2014 national elections’ campaign spending showed that funding coming from undisclosed resources was extensively used to promote the campaigns of the governing parties, and their expenses exceeded four times the amount foreseen by the law.
  7. In June 2014, only a few months before the municipal elections, the municipal representation system of the Hungarian capital was modified unilaterally by the governing party, in a way clearly adjusted to the outcome of the latest elections, and in violation of the equality of the right to vote.<sup>18</sup>

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<sup>18</sup> For further information in English, see: [http://helsinki.hu/wp-content/uploads/illegitimate\\_changes\\_municipal\\_representation\\_HCLU\\_HHC\\_EKINT\\_20140611\\_eng.pdf](http://helsinki.hu/wp-content/uploads/illegitimate_changes_municipal_representation_HCLU_HHC_EKINT_20140611_eng.pdf).



## HUNGARY FACT SHEET 5

SEPTEMBER 2014

### **MEDIA REGULATION; DISTORTING THE MARKET**

1. **Two new media laws were adopted in 2010.** Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules on Media Content (FPR Act) regulates media content and the rights and obligations of the media. Act CLXXXV of 2010 on Media Services and Mass Media (MS Act) deals with regulatory bodies and their procedures, tenders, fines, etc. Both cardinal Acts (Media Laws) were submitted by individual Members of the Parliament instead of the Government **to avoid** procedural rules binding the Government, such as **compulsory public deliberation and impact assessment**.
2. The new media laws have two main features: (i) they set **strict content requirements** concerning linear, on-demand services, public services, online and print press; (ii) a **single regulatory regime** applies to all for profit media, allowing for only minor differentiation between different media products.
3. The MS Act established the National Media and Infocommunications Authority. The Head of the Authority is appointed by the President of the Republic, after the nomination made by the Prime Minister, for 9 years. The duties of Head of the Authority and the Chair of the **Media Council** are vested in the same person. The four members of the Media Council are elected by a two-thirds majority of MPs. **All the members of the Media Council recently elected were nominated solely by Fidesz-KDNP Members of Parliament.**
4. The competences of the Media Council and the Authority cover all kinds of media and the **amounts of fines set** in the MS Act **are heavy**. Media Service Providers with Significant Powers of Influence can be fined as much as 200 million forints (around € 700,000). Other maximum fines go up to 25 million forints (€ 85,000) for daily national newspapers and news websites and 10 million forints (€ 35,000) for weeklies. Private persons can be fined up to one and a half million forints (€ 5,200) in cases of non-compliance during an administrative investigation. Although these fines are rarely imposed, the sole possibility of being fined can cause **a chilling effect** among media outlets.
5. International intergovernmental organizations have criticized the media laws from the start. In response to these criticisms, in February 2011 the Hungarian Government agreed to revise some provisions, and the Parliament adopted the following changes in March. The requirement for on-demand media content providers to give “comprehensive, factual, up-to-date, objective and balanced information” was removed, as well as the prohibition against offending individuals. The amendment exempted linear services and on-demand audio-visual media services provided by foreign media from the regime of sanctions for content issues. Registration rules were changed, replacing the “permissive” regime of operation of the media that requires prior registration with a “notifying” one that reduces the power of the Authority.
6. In December 2011 a decision of the Constitutional Court annulled some important provisions of the media laws. As a result
  - a) the Constitutional Court declared unconstitutional the fact that protection of journalistic sources had been conditioned upon the “public interest” value of the journalism,
  - b) the post of Media Commissioner was eliminated on 31 May 2012,
  - c) the Media Council is not entitled to oblige media service providers to reveal data outside of an official procedure.

7. After the Constitutional Court's decision the Parliament again amended the media laws in May 2012. Beside the consequences of the CC's decision, and without regard for the Opinion of the Council of Europe issued in March, the following amendments were adopted:
- the protection of sources covers only those formally employed as journalists,
  - the post of Media Commissioner was re-established with significantly restricted powers,
  - the powers of the Chair of the Media Council in the field of frequency tenders remain unrestricted.
8. Based on the three years track record of the Authority, no serious sanctions have been imposed against journalists or media services. However all complaints filed against public service radio or television were dismissed.

## 9. Distorting the media market

By 2014, the governing Fidesz party, based on its repeated two-thirds majority in Parliament, firmly controls large segments of the national media.

- The Fidesz led government **fully controls the public-service media** and transformed it into government mouthpiece. Public TV and radio stations echo the government standpoints without any relevant critics. Legal framework regulating the state media enables the **unilateral political nomination of the media authority's leadership**.
- The government influences the content of non-state media through the distribution of state advertisements and, in several cases, by getting on to the ownership of several outlets or administratively distorting the market by imposing sectorial surtaxes (2014: a special surtax on media advertisements). To the part of media not controlled by the government, "soft censorship" also seems to apply.

→ The special surtax referred to above is mostly detrimental for the market leader of commercial TVs, the Germany's Bertelsmann owned RTL Klub, which is supposed to pay 40% of marginal tax rate after its advertisement revenues. The intention of market distortion, i.e. to channel the revenues towards second largest commercial TV station TV2, seems to be obvious in this case. According to media sources, TV2 was sold to businessmen who might be labeled as Fidesz cronies last year.

→ The case of news portal Origo.hu displays the government's readiness to violate the autonomy of free press by putting a pro forma independent media outlet under strong political pressure if it writes pieces against government politicians' interests. Origo.hu, the largest Hungarian news portal in terms of unique users owned by Hungarian Telekom (being a 100% affiliate of Deutsche Telekom) revealed a fact that János Lázár (then State Secretary of Prime Minister's Office, now Minister of Prime Minister's Office) had spent approximately € 6,600 for three short travels abroad, significantly acceding the market price of such accommodation and travel costs. As the Prime Minister's Office returned the journalist's request for details of these travels without giving a proper answer, the journalist of Origo.hu took legal steps to reveal the relevant public data of these trips. (Just after the national elections the journalist won the juridical proceeding in the first instance.) As the date of the national elections of April 2014 was approaching, the portal and the journalist faced strong pressure from the government not to publish the details of the lawsuits. As the portal resisted this pressure, the editor-in-chief of Origo.hu was sacked, followed by a huge efflux of journalists from this portal at the beginning of June 2014.<sup>19</sup>

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<sup>19</sup> A concise overview of the story by an independent news portal called 444.hu is available in English here: <http://444.hu/2014/06/05/deutsche-telekom-hungarian-government-collude-to-silence-independent-media/>

## HUNGARY FACT SHEET 6

SEPTEMBER 2014

### **BUILDING CRONY CAPITALISM; OPENING THE DOOR TO RENT SEEKING**

Crony capitalism, though nominally free-market, allows for preferential regulations and other state interventions based on favouritism, personal relationships and attendance of rent seeking behaviour. If rent seeking behaviour prevails money-making becomes possible based not on market performance but on political connections. Economic actors are prone to seek the grace of the government instead of competing on a regulated market. Cronyism may be linked to state capture, a phenomenon where powerful oligarchs either outclass the government or are in symbiosis with influential public decision-makers. If a state is captured the public decision-making process reflects primarily private interests instead of the endeavours of resounding the public good. The combination of state capture and crony capitalism leads to a situation where rent seeking, a corrupt behaviour per se, that implies the abuse of public trust for private gains, is stimulated not only by the government but also by influential business groups and oligarchs.

The following two examples demonstrate the current governmental majority's and government's readiness to employ its legislative power to discretionarily adopt tailor-made regulations that disproportionately favour new players with tight links to the government and hurt market incumbents.

#### 1. The tobacco retail scandal

The Parliament, through passing the Tobacco Retailing Act, established a state monopoly on the retail sale of tobacco products from 1 July 2013. The government nationalized tobacco kiosks, claiming that a centralized means of selling tobacco products would limit its use by underage members of society. The new regulation provides a state-owned company the exclusive right to award long-term tobacco kiosk licenses. As a result of the redistribution, the number of tobacco selling points in the country decreased from approximately 40,000 to 5,000. Reportedly, many of the licenses went to retailers politically loyal to the governing Fidesz party.<sup>20</sup> The details of the tender<sup>21</sup> have remained closed to the public, which gave rise to corruption concerns. In addition, following the reallocation of tobacco kiosk licenses, the government significantly increased the rate of return on tobacco products, turning tobacco retailing into a lucrative business, but perceived by many as a clear proof of legalized rent seeking.

In April 2013, journalists uncovered that a previous version of the Tobacco Retailing Act, submitted on 16 February 2013 to the European Commission, had been drafted on a computer belonging to the chief executive officer of Hungarian tobacco company Continental and chair of the Federation of Hungarian Tobacco Investors, or the "tobacco lobby", who admitted his involvement in continuous consultations leading to the adoption of the legislation. Investigative journalists also found that some 500 tobacco kiosk licenses out of a total number of 5,061 went to companies belonging to the interest group of Continental tobacco. In his comment, Mr. János Lázár, then the governing Fidesz party's politician in charge of the redistribution of the tobacco retail market, at present Minister of the Prime Minister's Office, said that the Tobacco Retailing Act admittedly aimed at improving the business environment of Hungarian tobacco companies.

<sup>20</sup> For further information in English, see: <http://www.politics.hu/20140512/court-orders-release-of-tobacco-retail-tender-documents/>.

<sup>21</sup> For further information in English, see: <http://advocacy.globalvoicesonline.org/2013/05/08/hungary-government-limits-foia-transparency-law/>.

## 2. The savings cooperatives scandal

Savings cooperatives are private owned financial (credit) institutions with a nationwide network of customer service points. The government, relying on its supermajority in Parliament, adopted a law in 2013 that forced savings cooperatives to join a non-voluntary integration framework entitled to substantially influence the members' business policy and even to veto any amendment to their deed of foundation. This newly designed integration mechanism is dominated by Takarékbank [Savings Bank] Ltd., a commercial bank originally under the principal ownership of savings cooperatives, which, through state owned enterprises, has been nationalized. As a second step, the government re-privatized the quorum of this bank's shares to an interest group closely knit to the governing Fidesz party. The newly appointed CEO of the Takarékbank Ltd., who acts in the meantime as the government's commissioner to reshuffle the savings cooperatives sector was a co-owner of the single bidder, who, unsurprisingly, won the formally open tender. The government, due to clandestine "strategic" considerations, gave green light to the corporatization of the Takarékbank Ltd., and exempted the process from the oversight of the Economic Competition Office.

In sum, the government allocated public money to augment the subscribed capital of a private savings bank which controls the savings cooperatives to later concede the newly acquired ownership rights to its cronies.