

## **Analysis: The Hungarian democracy in danger -**

**by Zsanett Kocsó (24.05. 2013)**

**The FIDESZ party won the elections in 2010 and got the 2/3 of the seats in the parliament, which allows them to modify the constitution and make decisions requiring a 2/3 majority. The expectations were high, but the government seems choosing the wrong way, away from a stable, liberal democracy. Let us check the way chosen by the Hungarian president Viktor Orbán to destroy or restrict the democratic elements of the country like the freedom of press, the rights of homosexuals and lesbians, the right to free movement, the scope of the Constitutional Court and the Ombudsman.**

The voter turnover was 47%, the lowest since the free democratic elections in 1990. FIDESZ won together with the Christian Democratic People's Party (KDNP), and together they got 68% of the places in the parliament. The Hungarian Socialist Party (MSZP) as the second strongest party got 15%, Jobbik (Movement for a better Hungary, right-extremist party) got 12% , and LMP (Politics can be different, a rather green, alternative party) got 4%. <sup>1</sup>

The first working day of the parliament was on 20.05.2010. Since that day until 14.May 2013 998 decisions have been accepted (243 new laws, 409 law modifications /from this 114 international/, 344 parliamentary decrees, two political declarations). The most productive year was 2012 with 320 decisions in total. Just in contrary: the first democratically elected parliament of Hungary in 1990 accepted 796 decisions in total, while the last government (2006-2010) managed 1013. <sup>2</sup>  
(Personal comments and explanations see below the laws in *italic*).

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<sup>1</sup>[http://www.valasztas.hu/hu/onkval2010/455/455\\_0.html](http://www.valasztas.hu/hu/onkval2010/455/455_0.html)

<sup>2</sup>[http://www.parlament.hu/ogystat/eredekim/tvelf\\_akt.htm](http://www.parlament.hu/ogystat/eredekim/tvelf_akt.htm)

## **The national pride and the control of foreign powers**

### **31.05.2010- Law about the testimony of National Unity**

The first law which caused a stir nationwide as well as internationally was the law of the testimony to national unity. It describes the peace treaty after World War I as a national tragedy and asks the Hungarians to never forget this.<sup>3</sup> The Parliament promises to help the Hungarians outside of the national borders on their natural demands for various forms of communal autonomy based on accepted European norms and practices. The fourth of June becomes the Day of National Unity.<sup>4</sup>

*This testimony is most probably created to make FIDESZ also attractive for voters from the right-extremist, nationalist side, which was getting stronger in the last years. It also emphasizes the still represented view of the government, that the foreign countries do not understand Hungary, but they still want to control it, like they did in the history several times.*

## **Restriction of the press freedom**

### **20.12.2010- Law about the media services and mass communications**

The aim of the law is to restrict the content of media broadcasts.

A Reporter cannot deliver evaluative opinion, only explanatory comments if necessary. If he wants to deliver his opinion, it has to be broadcasted in a different time, marked by the name of the owner of the opinion and the fact that it is an evaluative opinion only.

The media company has to broadcast in more than 50% of its annual broadcasting time European programs, more than 33% Hungarian ones. More than 10% of the annual broadcasting time has to be spent on European programs made by independent producer or has been bought from one and is not older than five years. At least 8% of the annual broadcasting time has to be spent on Hungarian programs which meet the same criteria as above. In case of radio broadcast: at least 35% of the music time has to be spent on Hungarian music, and of which at least the 25% must not be older than five years.

New institutions have been introduced, the The National Media and News Release Authority which is a sovereign authority, controlled by the laws. Its task is the

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<sup>3</sup> The Peace Treaty after the World War I., called the Treaty of Trianon (the palace in Versailles where the Hungarians signed the Treaty) tore apart the country. Hungary lost more than 2/3 of its territory and more than half of its population.

Not all of them were Hungarians, but for example on the areas which went to Romania, the 32% were Hungarians, that of the Slovak Republic and Ukraine 30%The most important universities, and industrial territories were also gone. The country lost 61,4% of the fertile land, 88% of the woods, 62,2% of the railway network, 64,5% of the built roads, 83,1% of iron, and 55,7% of the industrial areas.

<sup>4</sup><http://www.complex.hu/kzldat/t1000045.htm/t1000045.htm> in English:

[http://lapa.princeton.edu/hosteddocs/hungary/2082\\_Trianon\\_Law\\_060410\\_EN1.pdf](http://lapa.princeton.edu/hosteddocs/hungary/2082_Trianon_Law_060410_EN1.pdf)

supervision of tasks and behaviour of the media services in accordance with the laws. It reports yearly to the parliament. And The Media Council of National Media and News Release Authority, which is a part of the Authority but has sovereign scope under the supervision of the parliament and the laws. The members are elected by the parliament with qualified majority for nine years. Its tasks: supervision and protection of the freedom of media, controlling tasks defined by laws, advisory tasks for the parliament in questions regarding media. All the media companies are obliged to provide any data the Authority may need to its tasks, also in cases where the law classifies the data as secret.<sup>5</sup>

*Why is it problematic? An authority is controlling the media content, which is elected by the 2/3 majority of the parliament for nine years. This means, the current Authority elected by FIDESZ will work in the next legislative period. It checks whether a media content is politically balanced, and during its investigations the media companies have to provide all the data required, this can harm the editorial secret. If the authority finds any mistakes, the media service provider can be fined, and the fines are very high.*

### ***Restriction of the scope of The Constitutional Court***

The parliament already started to modify the constitution in 2010. The most important changes are restricting the scope of the Constitutional Court, and also declares the method of election of the members:

All laws regarding taxes, budget, fees, contributions, customs and the conditions of local taxes can only be supervised by the Constitutional Court if the Court finds these laws against the constitution because it hurts the right to life, human dignity, protection of personal data, freedom of thoughts, conscious and religion or rights regarding Hungarian nationality. The process of the Constitutional Court can be requested by anyone. The eleven members of the Court are elected by the Parliament with qualified majority.<sup>6</sup>

The eleven members of the constitutional court will be elected by the parliament. A Nomination Committee will be created from all parties represented in the parliament, and this Committee will suggest the members of The Constitutional Court. To elect the members 2/3 majority is needed.<sup>7</sup>

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<sup>5</sup><http://www.complex.hu/kzldat/t1000185.htm/t1000185.htm#kagy1>

<sup>6</sup><http://www.complex.hu/kzldat/t1000119.htm/t1000119.htm>

<sup>7</sup><http://www.complex.hu/kzldat/t1000705.htm/t1000705.htm>

## **The new constitution- called the Fundamental Law**

Published officially: 25.04.2011

It starts with a National Avowal of Faith, which describes the history of Hungary and declares the country as a Christian country. New fundamental law has been created instead of the old constitution because they do not recognise the legal continuity of the 1949 Communist "Constitution", which laid the foundations for tyranny, and hence they declare it to be invalid.

*Fundamentals:*

"The name of OUR COUNTRY shall be Hungary."

*(Before: Hungarian Republic)- Although it is also mentioned here, that the form of government is republic.*

### **The most problematic points:**

*Article L*

- (1) "Hungary shall protect the institution of marriage, understood to be the conjugal union of a man and a woman based on their independent consent; Hungary shall also protect the institution of the family, which it recognises as the basis for survival of the nation."

*With this strict definition of marriage, Hungary decides to restrict the rights of homosexuals and lesbians.*

*Article S*

- (2) "The Fundamental Law or an amendment thereof shall be signed and sent to the President of the Republic by the Speaker of Parliament. The President of the Republic shall sign the Fundamental Law or the amendment thereof within five days of receipt and shall order its publication in the Official Gazette."

*Not mentioned whether the President of the Republic has any rights to send it back to the Parliament if any mistake is detected.*

*Article II.*

"Human dignity shall be inviolable. Every human being shall have the right to life and human dignity; embryonic and foetal life shall be subject to protection from the

moment of conception.”

*This means a restriction of the women rights to abortion.*

### *Public Finances- Article 37*

- (4) “As long as state debt exceeds half of the Gross Domestic Product, the Constitutional Court may, within its competence set out in Article 24(2)b-e), only review the Acts on the State Budget and its implementation, the central tax type, duties, pension and healthcare contributions, customs and the central conditions for local taxes for conformity with the Fundamental Law or annul the preceding Acts due to violation of the right to life and human dignity, the right to the protection of personal data, freedom of thought, conscience and religion, and with the rights related to Hungarian citizenship”.<sup>8</sup>

*Clear restriction of the scope of the Constitutional Court, as the national budget and laws regarding the budget may be checked only in the aspect of violation of the basic human rights.*

*Since the new Fundamental Law has been accepted, it has been already modified four times. Three times in 2012 and once in 2013. The first three amendments were some procedural changes or clarifications. The fourth modification caused strong international critics.*

### **Further restriction of The Constitutional Court**

#### ***14.11.2011- Law about The Constitutional Court***

It raises the members of the Court to 15 elected by the parliament. The Court can check the new laws only if it is asked for it. After the law is published, only the Ombudsman has the right to ask for review by the Court. If the Court has already decided about a law, there is no possibility to have it checked again.<sup>9</sup>

### **Chances of small parties to get into the parliament**

#### ***23.12.2011- Law about election of members of parliament***

It reduces the number of members of parliament to 199. (*Before it was 386*). It introduces a nationality list in order to have nationalities represented in the parliament. If nobody gets enough votes to get into the parliament from the nationality list, they still can have a representative in the parliament, who has only advisory and observer role. The election has only one round, and the one candidate

<sup>8</sup><http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/mk11043.pdf> in English:

<http://www.kormany.hu/download/4/c3/30000/THE%20FUNDAMENTAL%20LAW%20OF%20HUNGARY.pdf>

<sup>9</sup><http://www.complex.hu/kzldat/t1100151.htm/t1100151.htm#kagy1>

or party which got the most votes, gets into the parliament. If two parties have a party list together, they will need 10% to get a seat in the National Assembly and if three or more parties decide to try together, they need 15%. (*One party needs only 5%*) Only those parties can have a party list which have individual candidate at least in nine counties and in the capital, in at least 27 election districts.<sup>10</sup>

*This is a big problem for small parties: either they try alone to have individual candidates in the nine counties and 27 election districts<sup>11</sup>, or they try with another party together, but then the limit is higher. So the law helps again the big parties with voters from all over the country, like FIDESZ or maybe MSZP, although the latter one is not very popular at the moment, or Jobbik, which is again a right-extremist party.*

### **Restriction of criteria to become a church**

#### ***30.12.2011- Law about the right to freedom of conscience and religion and about the legal status of churches, religious denominations and religious communities***

The law defines what is a church: The church is an independent organization accepted by the parliament and consisting of natural persons believing in same doctrines, has an own government, and is created and working mainly for the common performance of religious acts.

#### *The rules for recognition and registration as a church*

To become a church, the representative of the religious community needs to start the procedure with at least 1000 signatures. (*It has been raised to 10 000*). This community will be a church if

- It performs mainly religious activities,
- Has own rituals and doctrines containing the essence of the teachings,
- Has been working internationally for 100 years, or in an organizational form, like an association for 20 years in Hungary (the period of working as a church according to the law 1990. IV. Counts as well to these 20 years).
- Accepted its charter, and internal ecclesiastical rules
- Has its own administrative and representative organizations

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<sup>10</sup> <http://www.complex.hu/kzldat/t1100203.htm/t1100203.htm>

<sup>11</sup> Hungary has 19 counties in total and the capital. This means 50% of the counties have to be covered, which is almost impossible for a small party

- Its representatives confirms, that the activity of their organization is not against the constitution or any law, does not harm others' rights and freedom
- No national security risk came up against the association during its operation
- Its teachings and activities do not harm the human rights of physical and mental health, the protection of life and the human dignity

The parliamentary committee of religious issues suggests the Parliament to accept the association as a church according to an initiative coming from the religious community. If the parliament decides not to recognize the association as a church, it will be published, and the association cannot start the process again within one year. The minister registers the church 30 days after the law comes into force. The church can receive financial support from the state, European sources, or other internationally financed projects, after application or without application, decided individually, but it has to be financed mainly by donations and other contributions of natural persons, legal person or economic organizations without legal personality.<sup>12</sup>

*These strict criteria made many churches lose their church status, and with this also the financial support from the state and from the taxes,<sup>13</sup> although they maintain hospitals, schools, helping organizations for homeless, disabled or sick, in other words tasks, which normally belong to the state's scope. The fact, that they are accepted by the parliament and not by an independent authority is also problematic.*

According to this law 14 churches are accepted.

## **Education and schools**

### **26.11.2012- Law about taking the institutions with public educational tasks into state maintenance from the city councils**

The aim of this law is to provide equal chances for all children and to raise the level of public education and to have a more efficient and cost efficient operation of these institutions. The state takes over the schools from city councils, and they will operate now with a central ruling. The employees will have an institution created and owned by the state, the Klebersberg Institution Maintainer Central, as employer. It has been granted that the teachers do not have to change their place of work until the end of the school year 2012/2013. <sup>14</sup>

*What will happen after that? Nobody knows. Some people are afraid, that the state*

<sup>12</sup><http://www.complex.hu/kzldat/t1100206.htm/t1100206.htm#kagy1>

<sup>13</sup> Hungarians have the possibility to offer their 1% of their yearly tax for churches, and this 1% only for churches.

<sup>14</sup>[http://www.complex.hu/kzldat/t1200188.htm/t1200188\\_0.htm](http://www.complex.hu/kzldat/t1200188.htm/t1200188_0.htm)

*will start to rationalize the schools. This means, children may have to travel long distances to get to a good school or even to any school. It can be a bigger problem in the eastern, poorer part of Hungary, where the number of children is decreasing more than in the western part, and most of them live in villages. Another problem can be, that teachers will be sent to different locations, if there is a vacancy, which can cause again long ways to work, or even moving to a different location with or without family.*

## **The negative decisions of The Constitutional Court becomes part of the Fundamental Law**

### ***02.2013- Fourth amendment of the Fundamental Law***

Many of the negative decisions of Constitutional Court have become simply part of the Fundamental Law, and parallel to this, the scope of the Court has been restricted.

#### ***Family***

*Article L), paragraph 1) will be supplemented with the following sentence:  
Marriage and the parent-child relationships are the basis of the family.*

*This means, partnerships do not have the same rights as marriages, although this was the case before.*

#### ***Scope of Constitutional Court and the President regarding the adoption of Fundamental Law and its amendments***

*The following has been added to Article S), paragraph (3):*

If in the judgement of the President of the Republic the procedural requirements concerning the adoption of the Fundamental Law or its amendment defined in the Fundamental Law have been violated, the President of the Republic asks the Constitutional Court for a review. If the Constitutional Court does not declare any violation of the procedural requirements, the President of the Republic immediately signs the Fundamental Law or its amendment and orders its promulgation in the Official Gazette.

*Before there was no possibility to send it back to the Parliament for reconsideration. But it can also be read here, that the Constitutional Court and the President can check only the procedural requirements, nothing else.*

#### ***Responsibility of communistic organisations***

An Article U) has been added to the Fundamentals about the crimes committed during the communist dictatorship, which defines the responsibility of all

organization, which supported the communistic regime, and declares that the statute of limitation for crimes committed during this period but not punished, are not expired.

### ***Restriction of broadcasting election campaigns***

Political advertisements have to be provided free of charge for all parties to guarantee equal opportunities. This campaign messages will be published exclusively via public media outlets under equal conditions.

### ***Restriction of the right to free expression***

*Article IX of the Fundamental Law shall be supplemented with the following Paragraphs(4)-(6)*

- (5) The exercise of one's right to free expression cannot be aimed at violating the dignity of the Hungarian nation or the dignity of any national, ethnic, racial or religious group. Members of such groups are entitled to turn to court.

*There are no criteria which define what is exactly the dignity of the Hungarian nation.*

### ***Restriction of the right to free movement***

Students cannot leave the country after finishing the university until they have paid back the costs of their education with work. If they do not fulfil this condition, and they leave the country, they have to pay back the costs in one amount.

*This is against the free movement of people within the European Union.*

### ***Criminalizing the homeless***

*Article XXII. Will be supplemented with 2 more paragraphs:*

- (3) An Act of Parliament or local government decree may outlaw the use of certain public space for habitation in order to preserve the public order, public safety, public health and cultural values.

*This means living on the street is illegal, and these people can be punished for this. First they have to pay and if this behaviour is repeated they come into jail.*

### ***Further restriction of the scope of The Constitutional Court***

The Constitutional Court may only review a legal provision which is not asked to be checked, if by checking another provision it is inevitable to check this one as well. The Fundamental Law and its amendments can be checked only regarding the procedural requirements. This check may be initiated by

a) the President of the Republic if the Fundamental Law or its amendment has been

already accepted by the parliament but not yet published

b) the government, one fourth of all members of parliament, the President of the Curia, the Prosecutor General or the Ombudsman for Fundamental Rights within 30 day after publication.

Decisions of the Constitutional Court delivered prior to the entering into force of the Fundamental Law become void. This provision does not concern the legal effects achieved by the preceding decisions.

### ***Transfer cases between courts***

The President of the National Judicial Office may designate a court, other than the court of general competence but with the same jurisdiction to adjudicate any case. The aim is a balanced distribution of caseload between the courts.

*This is problematic as well, because the decision may be politically influenced.*

## CLOSING PROVISIONS

*The Transitional Acts will become part of the Fundamental Law. The most important ones of them:*

There will be only one Ombudsman, the Ombudsman for Fundamental Rights. He will have two deputies, the Ombudsman for National and Ethnic Minority Rights and the Ombudsman for Future Generations. The mandate of the Ombudsman for Data Protection will be terminated.

All the processes by The Constitutional Court will be terminated, which are started based on a petition submitted by someone who does not have the right any more for handing in petitions according to the Fundamental Law. If the petition belongs to the competence of another organ, then it has to be transferred. Otherwise petitioners have to re-submit their issues according to the requirements in the Fundamental Law.<sup>15</sup>

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<sup>15</sup><http://www.parlament.hu/irom39/09929/09929.pdf> in English:  
[http://tasz.hu/files/tasz/imce/fourth\\_amendment\\_to\\_the\\_fundamental\\_law\\_unofficial\\_translation\\_13032013.pdf](http://tasz.hu/files/tasz/imce/fourth_amendment_to_the_fundamental_law_unofficial_translation_13032013.pdf)

## **Final remarks**

*Hungary already received many critics from different organizations within the country, like TASZ (Hungarian Civil Liberties Union), the Venice Commission, Hungarian Helsinki Committee, student organizations and other civil movements like Egymillióan a sajtószabadságért (One million for freedom press), or Negyedik Köztársaságot! (Fourth Republic). Also the European Union, the United States, Human Rights Watch expressed their worries about the recent developments, and the country is in the media almost every day. The European Union is considering to cut the support Hungary is receiving, or to withdraw the voting rights within the European institutions. Some small changes happened in the laws due to the pressure, but the main course of the way has not changed yet. What else could be done? This is the question of the future if the sanctions of the European Union will not help either.*

**Zsanett Kocsó - from Budapest, Hungary - currently works as a volunteer with Democracy International. We thank her for her contribution.**