



Democracy in Hungary

Neither saved, nor safe

A Norwegian Helsinki Committee **Policy Paper**

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Hungary is gearing up for its first Parliamentary elections within the framework of its new Constitution and new electoral law, which both went into force in January 2012. On 6 April 2014 the population will cast their ballots and chose their representatives in the Parliament. Serious issues remain, however, about the state of Hungarian democracy. There is little fear of fraud during elections, but in the media the governing Fidesz party is more visible than opposition parties and the independence of the judiciary is weakened.

In a report published in 2013, [*Democracy and human rights at stake in Hungary: The Victor Orbán Government's drive for centralization of power*](#), the Norwegian Helsinki Committee (NHC) concluded that the new constitution and a range of hastily introduced legislative changes raised concerns about whether Hungary would remain a fully-fledged democracy.¹ Albeit some concessions were made and some heavily criticised laws were later reversed or changed, NHC conclusions remain the same: democracy in Hungary is not saved, nor safe. No matter what the outcome of the elections will be, restoring the checks and balances that safeguard a well-functioning and healthy democracy should be a main priority for any new government.

The system of governance in Hungary has been subject to a process of a complete overhaul with over 500 new laws and a new Constitution passed in as little as four years by the governing Fidesz party and its coalition partner the Christian Democratic Party. Together they have a 2/3 majority in the Parliament. Many of these laws, including the Constitution, had to be changed or amended (the Constitution as many as five times), partly due to criticism from the Venice Commission and other international bodies working to safeguard democratic principles.

It remains to be seen if these changes suffice to ensure full respect of fundamental freedoms, independence of the judiciary, and other rule of law requirements or if they will allow for a selective and arbitrary application in contradiction with the country's international human rights obligations. So far, the signs have not been reassuring. There are still serious concerns related to:

- The electoral law and the constituency boundaries that were adopted without consultations and in a way that many experts qualify as favouring the ruling party;
- Strengthening of the executive power at the cost of the judiciary branch;
- Media restrictions resulting in an increased level of self-censorship;
- No clear and firm public positions against intolerance and racism in an environment with increased anti-Semitism, anti-Roma, nationalism and extreme-right tendencies.

Criticism by international organisations, non-governmental organisations and journalists is often dismissed by the government and government-friendly think-tanks for alleged factual errors rather than by engaging in constructive discussions on the real issues: the current erosion of checks and balances and how to ensure a fully-fledged democracy.

Recommendations

The NHC recommends the Government of Hungary to:

- Comply with the recommendations of the European Union institutions, the Council of Europe, the Venice Commission and OSCE bodies in order to safeguard the independence of institutions which are necessary to uphold fully-fledged democracy, including institutions responsible for media regulation, appointment of judges, and the Constitutional Court, and ensure full compliance with international standards of democracy and human rights;
- Strive to build a political culture where the decision-making process is based on cooperation, consultations and public hearings. Even in case of a strong majority in the Parliament, the ruling parties have to ensure constructive dialogue and build a culture of consultations with the opposition and civil society;
- Establish a forum composed of a wide spectre of participants from civil society and important institutions as well as from political parties on all sides for regular consultations in order to discuss ways to safeguard and strengthen democracy in the country, raise the level of accountability and fight political corruption. The forum should be composed in a way that it gains trust from all stakeholders and recognition by the Parliament. The forum should also be mandated to consult with European and international institutions;
- Apply a human rights approach to solving minority issues, including taking a strong stand against hate speech and discrimination of minorities, especially the Roma.

Major points of concern

In what follows main concerns regarding current developments in Hungary are outlined. These points are by no means meant to be exhaustive. Additional human rights issues include inter alia the marginalisation of lesbian, gay, bi- and transsexual (LGBT) groups, overcrowding of prisons, the length of pre-trial detention, the treatment of asylum seekers, high levels of corruption, criminalisation of the homeless, selective recognition of churches as legal entities, and school segregation of Roma children.

1. Elections and the electoral law – “Elections will be free, but they won’t be fair”²

The new electoral law contains comprehensive changes related to the rounds system (from two to one election round), elimination of the minimum voter turnout rule, reduced number of seats in Parliament, introduction of minority representation, new constituency borders, voting procedures and result aggregation. Provisions on prior voter registration for those with Hungarian residency were declared unconstitutional by the Constitutional Court because it represented an undue restriction on voting rights.

Since it entered into force in January 2012, the electoral law has been amended four times. In addition, new regulations for campaigning have also been introduced.

According to the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (ODIHR),³ even if many of the amendments were in principle positive, the process of adopting them had serious deficiencies. The drafts were not broadly discussed among relevant stakeholders, and in particular the political parties. As with many other laws, Fidesz chose to follow a procedure of personal proposals for amendments resulting in little transparency of the process, thereby weakening the confidence in the system as well.

The major points of concern with the electoral law can be summarised as follows.

- *Redrawing of the constituencies*

The necessity to redraw the constituencies was underlined by the Hungarian Constitutional Court as early as 2005 and again in 2010 and also by the OSCE/ODIHR Election Assessment Mission Report from 2010. In addition, the reduction of the number of seats in the Parliament from 386 to 199 also required, without doubt, the redrawing of the constituencies.

However, what is problematic in this process is the fact that the constituencies have been redrawn through a unilateral process where no other stakeholders have been involved, without a broad and inclusive discussion including various political points of view. This goes against democratic principles of decision making and raises questions about the ability of the system to cater for the needs of all those involved. The Venice Commission and the OSCE/ODHIR recommended in their joint opinion that only the procedures and the formula for drawing the borders and not the constituency borders itself should be included as a cardinal law. They also advice to establish a commission in charge of the constituency boundaries composed by experts

in subjects like geography and sociology as well as by representatives of parties and national minorities.⁴

The OSCE's Limited Election Observation Mission's interim report issued a few weeks before the election stated that: "The constituency delimitation process was criticized by several OSCE/ODIHR LEOM interlocutors for lacking transparency, independence and consultation and for catering to the political interests of the governing parties."⁵

The NHC is aware of the conflicting versions of the government parties and the opposition on the lack of cross-party consultations. However, in the end the governing parties decided to adopt the new legislation despite a drafting process marked by lack of consultations. In the view of the NHC, more should have been done to facilitate a more inclusive process. Without this, the suspicion that the new boundaries of constituencies serve the interest of one party in particular continues.

- *The electoral system*

There is a large variety of electoral systems in use throughout the world, and there are no international standards recommending one system over the other. Choosing electoral system is ultimately a political decision.

Up to 2010 the Hungarian system was a mixed system with three tiers and combined two choices (one for the majoritarian and one for the proportional part). The new law aimed to simplify the system by maintaining the mixed system, but reducing it to two tiers and maintaining the two choices (one majoritarian and one proportional). The system remains however, complex, especially considering the distribution of seats and the compensatory system. More seats are now allocated through the majoritarian part (53,3 per cent) compared to the seats allocated through the proportional part (46,7 per cent) while the second tier adds votes for the national lists to the unused votes from the single-member constituencies.⁶

The Venice Commission's conclusion is that "the new electoral system does not lead to a high degree of proportionality in the results, despite the compensatory seats (and is less proportional than the old one)".⁷ The system may give a random and unusual result where one party, even if it wins the majority of the single-member constituencies and receives most of the votes in the proportional part, still does not get the largest share of seats in the parliament. A party could, in another scenario, get a 2/3 majority if it wins by large margins in the single-member constituencies against a fragmented opposition, but less than half the votes in the proportional part.⁸ Again, the fear is that the system would favour the majority party in particular and contribute to lowering the confidence in the electoral process.

- *New citizenship law and voting rights of Hungarians living abroad*

Since 2011, ethnic Hungarians living beyond the borders of Hungary can apply for Hungarian citizenship if they are descendants of a person who was a Hungarian citizen before 1920 and have some proficiency in the Hungarian language. The estimated number of potential new Hungarian citizens is 5 million, while the number of awarded citizenships so far is of 550 000.

Through the Act of the Electoral Procedure from 2013, Hungarian citizens abroad have been given the right to vote in the elections. Consequently, all Hungarian citizens living abroad (newly naturalised or not) can vote. They belong, however, to two different categories. Voters without residence in Hungary can vote by mail and only for the proportional part of the elections. Voters with residence in Hungary can vote for both parts, but only in person, at diplomatic missions. According to the OSCE/ODIHR's interim report, some 176 000 are registered to vote by mail and about 16 000 are registered to vote at missions.

The regulations for voting abroad open up numerous logistical gaps that could easily be taken advantage of. For example, voting by mail can be done based on prior internet registration, without having to show any form of identification or see any election official. Concerns have been voiced about the fact that the voters' list of these citizens is not public, the amount of control over the envelopes and ballots and over the limited possibilities for diplomatic missions to have proper election committees to supervise the voting process abroad.

In comparison, Hungarian citizens who can vote only by meeting up in person at the country's embassy or consulate often have to travel long distances in order to cast their votes.

Those defending the different methods of voting, including a government-friendly think tank, *Centre for Fundamental Rights*, have argued that the differential treatment of voters is in line with rulings of the Constitutional Court. Allowing all citizens with legal residence in Hungary to vote by mail would have caused incoherencies. Better then to require that everybody with legal residence should vote in person.⁹

- *Campaigning regulations*

There has generally been quite broad agreement among all parties about the necessity to amend the laws regulating political campaigning in order to ensure, among other things, the transparency of campaign financing. Critics argue, however, that the measures introduced undermine the fairness and the principle of equality of the campaign. Concerns have been raised by a number of civil society organisations and opposition politicians concerning the consequences of the new election law and some of the provisions in the new Constitution on the election campaign. Campaign activity is noticeably lower in the current election compared to earlier elections.

The Fifth Amendment gave the right to air political advertisements also in commercial media, but only free of charge. Commercial media is by definition for-profit and as a consequence, campaign messages are only aired in public media.

This has led to a highly unequal campaigning. The government party has a considerably higher outreach through the public broadcast media than the opposition. The opposition has also been criticising Fidesz for using the government apparatus for campaign activities.¹⁰

Transparency International Hungary assessed that the upcoming elections will be free, but not fair. Hungary's new campaign finance law is described as "completely inadequate for bringing accountability to government corruption. [...] Parliament has successfully enacted legislation

allowing political parties to finance their campaigns with zero oversight in a manner that doesn't even require the parties to break the rules."¹¹

All in all, there exists a broad expectation that there will be no fraud on Election Day. However, issues related to media coverage and lack of transparency on party financing undermines the overall fairness of the elections.

2. The balance between the executive and the judicial branch

Democratic institutions are in place in Hungary, but over the last few years, their independence has gradually been reduced and power centralised. More than 500 new laws have been passed by the Fidesz and the Christian Democratic Party supermajority in the Parliament. The 2011 Constitution has already been amended five times. Legislation has often been introduced as individual member's bills, which does not require prior consultation.

A widespread system of cardinal laws has been adopted, meaning that any government in the future will need a backing of a 2/3 majority in the Parliament to change them. According to the Venice Commission, the wide-spread use of cardinal laws "to cement the economic, social, fiscal, family, educational etc. policies of the current two-thirds majority, is a serious threat to democracy."¹²

In a statement, a group of human rights organisations even go as far as to say that "Institutions, which ought to be independent and have the duty to guard constitutionalism have failed. They serve the interest of the government, instead of limiting its power."¹³

A few examples serve to illustrate how the power and independence of the judiciary has been weakened and/or politicised.

- The powers of the Constitutional Court have been curbed. For instance, laws that were earlier deemed unconstitutional by the Constitutional Court were later on included in the Fundamental Law, meaning that the Constitutional Court can no longer strike out these laws. The Fourth Amendment of the Fundamental Law stated that all previous constitutional rulings were void, and should have no bearing on future decisions by the court. By constitutionalising issues deemed unconstitutional by the Constitutional Court, the fundamental law, according to the Venice Commission, "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."¹⁴
- The number of judges of the Constitutional Court has been increased from 11 to 15. Judges are elected by the Parliament, and with their 2/3 majority, Fidesz and the Christian Democrats could appoint new judges without seeking support of any opposition parties.¹⁵ Critics have said that Fidesz has placed party loyalists in the Constitutional Court. They also abolished the provision that the mandate of judges in the Constitutional Court shall end when they turn 70.¹⁶

- The introduction of the possibility of transferring of cases to other courts by the President of the National Judicial Office was also highly controversial.¹⁷ The Venice Commission criticised the provision for not including any criteria for the selection of which cases and to which courts they should be transferred. The 5th Amendment abolished the transfer possibility, yet it did not settle the situation for the cases that had already been transferred.

While the first two-three years of the Fidesz government were characterised by legal reform frenzy, it seems now that a phase of consolidation has been unfolding. The government has made efforts to amend legislation based on recommendations from the EU and the Venice Commission, but often these changes have not been satisfactory. This is true for the changes that have undermined the independence of the judiciary. They have not been fully corrected.¹⁸

3. Media restrictions and freedom of expression

When introduced in January 2011, the package of media laws was heavily criticised for significantly altering the media landscape. The laws left considerable space for political influence and obstruction, as well as created barriers against investigative and critical journalism. Many journalists have reported that the new media laws have a chilling effect and result in self-censorship. According to a Mérték Media Monitor report from 2014, up to a third of journalists practice self-censorship.¹⁹

Media enterprises supporting the government are growing stronger, while critics are being weakened through legal and informal instruments such as tenders and access to revenues from advertisements. Much private media ownership is centralised around people close to the government party.²⁰ Many NGO representatives reported that the government is spreading their own messages through these media, and that it is difficult for alternative political voices to get heard. That being said, alternative sources of information can easily be found if you search online, although most people watch only the main public or private broadcasters.

The media in Hungary may always have been partisan and biased, but under the current government the situation has only deteriorated. Public media is government-friendly and lacking real political content.

For an election to be fair, the electorate's right to objective information needs to be fulfilled in order for them to be able to make an informed decision on the Election Day. This is not the case in this election, and this might reduce the legitimacy of the next government.

4. Minority representation

As welcomed by the Venice Commission, the election law provides special provisions aimed at including national minorities in the Parliament. The law gives the possibility to national minorities to participate in the elections on the basis of a system of positive discrimination that requires only one-quarter as many votes for a mandate. Should they not reach the required number of

votes for a mandate, the minority group would still be entitled to have a *parliamentary spokesperson*, which is a member without voting rights.

However, there are some challenges that lie at the level of implementation of the regulations. The choice for voting for those registered as *nationality voters* is for a candidate in an individual constituency and their nationality list, in case there is one. In absence of a nationality list, the second choice is for a party list. Registration as nationality voter is not obligatory, but not many national minorities are aware of this. In addition, registration as nationality voter can take place up to two days prior to the elections. This means that the choice of ballot is done not on the actual election-day, but when registering as a nationality voter, without alteration possibilities.²¹ Registration as nationality voter means in practice that one's ballot is locked on the minority party representative. This representative in the upcoming elections is a member of the group *Lungo Dram*, which is in alliance with Fidesz.²²

Concern has also been voiced about the fact that, of all ethnic minorities, it is most likely only the Roma that can mobilise enough voters to elect a minority representative.²³ Counter critics would have it that as many as four national minorities could have a "mathematical chance" of obtaining a mandate.²⁴

5. Nationalism and the far-right

In the 2010 Parliamentary election, Jobbik, an anti-globalisation, anti-liberalism, anti-Zionist and anti-Roma party, received 16 per cent of the votes. The party combines a radical right and a modern populist agenda and its main campaign ticket is "employment, public security and accountability".

Much attention was devoted in international press to the strong support for the party, primarily because of its radical and overtly nationalist, anti-Zionist and anti-Roma messages. Ahead of the 2014 elections, however, there are expectations that Jobbik will lose support.

Jobbik has also worked on its image. The contents of its policies continues to be as radical as before, but it has changed style, as one Jobbik representative admitted himself in talks with the NHC.²⁵ In regions of Hungary where the Roma minorities are high in numbers, support for Jobbik is still substantial.

Government critics have argued that Viktor Orbán has not done enough to confront far-right extremism, and some claim that Fidesz may be trying to attract votes from Jobbik by, for instance, not condemning Horthy commemorations by Jobbik.²⁶ Miklós Horthy was the authoritarian regent of Hungary from 1920 to the end of World War II. He was a fervent anti-communist and longed for a restoration of Greater Hungary. For this reason, he is being admired and praised by current nationalists. Yet, he was also the one in charge when more than 400 000 Jews were deported to Auschwitz.

Recently, the Federation of Hungarian Jewish Communities refused to attend the official commemorations of the Holocaust because Hungary's role in the Holocaust is increasingly being downplayed so much that one writer called it "selective amnesia".²⁷ One of the leading historians on the Hungarian Holocaust returned an award given to him by a former president.²⁸

Whether Fidesz "historic revisionism" is part of a strategy to attract voters from Jobbik or part of a nationalistic agenda of Fidesz itself, the party should take a clearer stance against nationalism, violent extremism and anti-Semitism.

This Policy Paper is based on a 3-6 March 2014 mission by the Norwegian Helsinki Committee to Budapest. The mission consisted of Secretary General Bjørn Engesland, Project Manager Csilla Czibalmos and Project Manager Lillian Solheim. Meetings were held with representatives of political parties, civil society organisations, intellectuals, diplomats, the National Office for the Judiciary and the National Judicial Council.

The Norwegian Helsinki Committee was established in 1977 and is an independent human rights organisation working to promote respect for human rights in Norway and internationally. We have a particular focus on the OSCE participating States. We work through monitoring and reporting, project cooperation and human rights education.

¹ The Norwegian Helsinki Committee "Democracy and human rights at stake in Hungary".

http://nhc.no/en/news/An+open+question+if+Hungary+will+remain+a+fully-fledged+democracy.b7C_wlfK2h.ips

² Assessment given by Transparency International Hungary.

³ Venice Commission and OSCE/ODIHR, Opinion No. 662/2012

<http://www.osce.org/odihr/91534?download=true>.

⁴ Ibid.

⁵ OSCE Office for Democratic Institution and Human Rights Limited Election Observation Mission Hungary. Parliamentary Elections, 6 April 2014. Interim Report 5-18 March. 24 March.

<http://www.osce.org/odihr/elections/116757?download=true>

⁶ Venice Commission and OSCE/ODIHR, Opinion No. 662/2012.

⁷ Ibid.

⁸ Kim Lane Scheppele, Hungary: An Election in Question, blog in 5 parts; accessed on www.NYTimes.com.

⁹ Center for Fundamental Rights, *Voting by mail: either everybody or nobody*,

<http://alapjogokert.hu/voting-by-mail-either-everybody-or-nobody/>

¹⁰ OSCE Office for Democratic Institution and Human Rights Limited Election Observation Mission Hungary. Parliamentary Elections, 6 April 2014. Interim Report 5-18 March. 24 March.

<http://www.osce.org/odihr/elections/116757?download=true>, page 6.

¹¹ Miklós Ligeti, director of Legal Affairs at Transparency International Hungary, quoted in Budapest Beacon <http://budapestbeacon.com/public-policy/transparency-international-hungary-may-free-election-definitely-fair/>.

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- ¹⁵ Parliament elects five Constitutional Court judges, opposition LMP stays away from vote.
<http://www.politics.hu/20110628/parliament-elects-five-constitutional-court-judges-opposition-lmp-stays-away-from-vote/>
- ¹⁶ Abolishing the age limit regarding Constitutional Court judges. <http://helsinki.hu/en/abolishing-the-age-limit-regarding-constitutional-court-judges>
- ¹⁷ <http://www.politics.hu/20131203/law-enabling-transfer-of-cases-between-courts-unconstitutional-says-top-court/>
- ¹⁸ See for instance Human Rights Watch, Hungary: Constitutional Change Falls Short , <http://www.hrw.org/news/2013/09/18/hungary-constitutional-change-falls-short> and the Hungarian Helsinki Committee, Inadequate response to the Venice Commission's criticism <http://helsinki.hu/en/inadequate-response-to-the-venice-commission%E2%80%99s-criticism>
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- ²⁰ See the report Capturing Them Softly Soft Censorship and State Capture in Hungarian Media by Mérték http://mertek.eu/sites/default/files/reports/soft_censorship_angol.pdf
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<http://www.osce.org/odihr/91534?download=true>.
- ²² See for instance <http://hungarianspectrum.wordpress.com/2013/08/22/register-as-roma-vote-by-default-for-fidesz/> and <http://budapestbeacon.com/politics/roma-mayor-quits-fidesz-party-over-hungary-election-law/>.
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