



## HUNGARY FACT SHEETS

# **FACT SHEETS ON SOME CARDINAL CHANGES RELATED TO THE RULE OF LAW IN HUNGARY**

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## HUNGARY FACT SHEET 1

### OVERVIEW – DISRUPTING THE SYSTEM OF CHECKS AND BALANCES

1. The **Fundamental Law** is the sole product of the governing political party and **has been adopted** by the governing majority **without the support of any other political force**. The governing majority has earlier removed the provisions from the old Constitution that would have forced them to seek consensus with the opposition in this regard.
2. In the future, the **Constitutional Court (CC)** will only be able to ensure respect for constitutional provisions to a limited extent. **Its jurisdiction** related to laws on the central budget and taxes **has been limited**, and fundamental rights protection has weakened. Under the new rules, the **parliamentary majority may nominate and elect CC judges on its own**, and the number of members has also been increased, leading to a situation in which seven judges (out of a body of 15) have been nominated and elected by the Fidesz during the past one year. The **Parliament inserted in the Constitution and/or the Fundamental Law provisions which had been previously found unconstitutional by the CC**, as in this way the CC is not any more in the position to declare these norms unconstitutional. Thus, the Constitution has ceased to be an effective instrument in limiting the legislator's powers.
3. **The administration of courts became fully centralised**; the President of the new National Judicial Office – currently being the wife of a founding member and MEP of the Fidesz – administers courts in a non-transparent way, without any control. The **mandate of the President of the Supreme Court was terminated before the end of the regular term**. By decreasing the mandatory retirement age of judges the governing majority may **replace practically the entire leadership of the judiciary**. The **Chief Public Prosecutor may press charges before a court other than the legally designated court** if he deems it necessary for the sake of the speed of the proceedings. (The newly elected Chief Public Prosecutor was a member and MP candidate of the Fidesz in the 1990s.)
4. The **former four Ombudspersons (Parliamentary Commissioners) have been replaced by one**, which decreases the level of protection in relation to certain rights, especially since the newly established **authority for data protection does not comply with the requirement of independence**. The Ombudspersons' mandate was also terminated before the end of the term of office.
5. Rules allowed for the **dismissal of certain 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 CC and were quashed *pro futuro*. Dismissals continued even after the announcement of the CC's decision.
6. Members of the National Election Committee and the National Radio and Television Body were also removed before the end of the term of their office. To the Media Council, replacing the latter body, only Fidesz-nominees have been elected. Former members of the Fidesz parliamentary group have been elected to the following positions: the President of Republic, the Head of the State Audit Office, and one member of the CC, while another judge of the CC was minister in the last Fidesz-government.



## HUNGARY FACT SHEET 2

### NEW RULES ON THE CONSTITUTIONAL COURT

1. The Constitutional Court Act (CC Act) **was submitted to the Parliament by a parliamentary committee, violating the closing provision of the Fundamental Law** setting out that all cardinal laws shall be submitted to the Parliament by the Government. As a result, the Government was **not obliged to conduct any professional or social debate**, and, accordingly, no such debates took place.
2. The provisions of the CC Act on the nomination and election of judges, conflict of interest and term of office **do not guarantee the independence of Constitutional Court (CC) members**. Due to the composition of the parliamentary committee proposing judges and the majority required to elect them, the Fidesz-KDNP with its two-thirds **majority may nominate and elect members** of the CC without the support of any opposition party. The CC Act allows „**infinite membership**” for judges should a new member of the CC not be elected by the time the term of office of another justice ends. This rule allows political parties to keep judges with a favourable ideological background in their seats.
3. The Fundamental Law has preserved the **limitation of the CC’s competences as far as Acts of Parliament on central state budget and taxes are concerned**.
4. The rules of ex ante constitutional review processes are dysfunctional, since **ex ante reviews** of Acts of Parliament **may be initiated only by those agreeing with the given Act** (the Government, the proponent of the Act, or the Speaker of the House) besides the President of the Republic, who publicly promised not to exercise his right to request constitutional review of legal rules and did not do so since he was elected.
5. **Ex post constitutional reviews may no longer be initiated as *actio popularis***, and NGOs and human rights defenders are also excluded in this regard.
6. The fact that **citizens may turn to the CC only by way of constitutional complaints** decreases the level of objective fundamental rights protection, also because the obstacles petitioners may face: (i) **legal representation is mandatory** in processes before the CC and no legal aid is ensured; (ii) **petitioners that initiate procedures “abusively” are threatened with a high procedural fine** (cc. 1 700 EUR), which may deter people from turning to the CC. Furthermore, the CC is provided with **wide discretion in admitting constitutional complaints**.
7. Exclusion rules in concrete cases **do not ensure the impartiality of CC judges**.
8. The CC Act **terminated almost all of the ongoing CC procedures automatically** (1 600 in all), including those initiated by way of *actio popularis* as of 1 January 2012, **without an in-merit decision**, practically with a retroactive effect. Some of the petitions may be re-submitted as individual constitutional complaints, which will require petitioners to go through a lengthy legal procedure and bear rights violations. However, **a considerable part of the petitions may not be re-submitted at all**, since the fundamental rights of citizens or legal entities filing these petitions are not affected directly or the provisions in question do not result in the violation of a concrete fundamental right.



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## HUNGARY FACT SHEET 3

### ADMINISTRATION OF COURTS AND STANDING OF JUDGES

1. The **administration of courts has become fully centralised**; collective decision-making has been replaced with a one-person decision-making mechanism. The **President of the National Judicial Office** (*Országos Bírósági Hivatal*, NJO) **administers courts in a non-transparent way, without any control**.
2. The President's mandate is automatically prolonged if no new President is elected by the Parliament, thus **may be kept in office for an indefinite period of time**.
3. **Judges**, with the exception of the judges of the Curia, **will be practically appointed by the President of the NJO**, who is not bound by the proposal of the council of judges assessing applications for judicial positions and hearing applicants. This threatens judicial independence.
4. The **President of the NJO may appoint a court other than the legally designated court to proceed in a given case** if the initial court's extraordinary and disproportionate caseload results in a situation by which the case will not be concluded in reasonable time.
5. The **National Council of Judges** (*Országos Bírői Tanács*) **has no substantial power**: it may only comment on the measures of the President and make suggestions (which can be disregarded without any consequence), thus **it may not perform any real control over the President**.
6. The **transparency of the judiciary has been decreased**: decisions of the President of the NJO and minutes of the National Council of Judges' sittings are available only for judges.
7. The **mandate of the President of the Supreme Court was terminated before the end of the regular term**, even though the main tasks of the Curia are the same as that of the former Supreme Court, and all other judicial leaders remain in office.
8. The Fundamental Law **has decreased the mandatory retirement age of judges to 62 years** from 70 years as of 1 January 2012. This affects the **majority of the leaders of the higher courts**, thus the governing majority may replace practically the entire leadership of the judiciary.
9. **Rules of appointing new judges** in order to fill the gap created by the mass retirement **are not satisfactory** (e.g. the judicial council deciding in this regard shall not take into account the results of the suitability examination or the absence thereof). Ongoing criminal procedures will become significantly longer, since proceedings shall be fully restarted if a new judge takes over the case.
10. **Trainee judges without a judicial appointment may impose confinement** for a petty offence, which violates the ECHR, since the independence of trainee judges is not guaranteed sufficiently.

### NULLIFICATION LAW

The so-called "nullification law" (adopted in March 2011 by the Parliament) **nullified the court decisions brought in connection with the riots in autumn 2006 condemning the rioters**, if the court decisions were based solely on the testimonies of police officers or solely on police report. By **overruling individual court decisions**, the Parliament severely violated the rule of law, the separation of powers and the independence of the judiciary.



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## HUNGARY FACT SHEET 4

### NEW RULES ON THE PROSECUTION SERVICE

1. **The Government provided not more than one day to comment** on the 29- and 97-page-long draft Bills on the Prosecution Service and on the standing of the Chief Public Prosecutor and the prosecutors, thus there was no place for a meaningful public debate.
2. The **model implemented by the new rules is still a hybrid one**: some characteristics suggest an independent prosecution service, while other features show a prosecution service subordinated to the Government. The Prosecution Service is **neither responsible to, nor controlled** by any other body.
3. The **centralized and hierarchical** nature of the Prosecution Service is upheld by the new rules; the system is characterized by the **binding nature of instructions** given by higher instances.
4. Prosecutors are subordinated to the Chief Public Prosecutor, and may be instructed by him/her or their superior prosecutor. However, the **Chief Public Prosecutor** qualifies as a superior prosecution for every other prosecution service, thus **may overrule the “ordinary” way of giving instructions**. Furthermore, the Chief Public Prosecutor **may withdraw appointments to leading prosecutorial positions without justification any time**. Thus, the Chief Public Prosecutor **may practically control the whole system**. At the same time, substantive and procedural guarantees are lacking in this regard.
5. The **mandate** of the Chief Public Prosecutor **has been extended to 9 years**, which leads to the institution’s further separation from the parliamentary cycle and strengthens the independence of the Prosecution Service from other branches of power. **The mandatory retirement age for the Chief Public Prosecutor is 70 years, but he/she may remain in office for an indefinite period of time, until the new Chief Public Prosecutor is elected** by a two-thirds majority. The Chief Public Prosecutor is neither responsible to the Government, nor to the Parliament: he/she only has the duty to report to the Parliament annually, and MPs only have the right to pose questions to him/her; the **right to pose interpellations was abolished**.
6. The new laws provide **prosecutors with far more power regarding criminal and civil procedures than necessary**, the exercise of which may easily violate fundamental rights.
7. Prosecutors’ decisions in criminal procedures may be reviewed ex officio, however, the review is only “particularly justified” (i.e. it is not obligatory) even in cases of ill-founded decisions or explicit infringement of legal provisions. The Chief Public Prosecutor’s right to file a lawsuit in civil cases has been extended; significant rights were granted to prosecutors in monitoring associations.
8. Further rules authorized prosecutors to – upon the decision of the Chief Public Prosecutor – **press charges before a court other than the legally designated court** if it is deemed necessary for the sake of the speed of the proceeding in certain special cases. However, these legal provisions **were abolished by the Constitutional Court** on 19 December 2011. As a reaction, the Parliament **inserted this possibility – extended to all criminal cases – into** the transitory provisions of **the Fundamental Law** on 23 December 2011, so the Constitutional Court will no longer be able to decide on the constitutionality of this piece of legislation.



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## HUNGARY FACT SHEET 5

### **TERMINATING THE MANDATE OF THE DATA PROTECTION COMMISSIONER AND THE STATUS OF THE NEW AUTHORITY**

1. The Fundamental Law **abolished the position of the Parliamentary Commissioner for Data Protection, and the current Parliamentary Commissioner's mandate was terminated** by 1 January 2012, **years before the end of the fixed term of office**. This is in contradiction with the requirement of complete independence of national data protection authorities under EU law.
2. The **tasks** of the Parliamentary Commissioner for Data Protection **were undertaken by the newly established Authority for Data Protection and Freedom of Information**.
3. The Authority for Data Protection and Freedom of Information is an **administrative body**, thus a part of the executive. Even though it is formally independent, it does not enjoy the same independent status as the Commissioner, who had the status of an Ombudsperson.
4. As far as the Authority for Data Protection and Freedom of Information is concerned, the fundamental **requirement of independence of the national authority supervising the processing of personal data** under Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data **is not complied with**.



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## HUNGARY FACT SHEET 6

### CRIMINAL POLICY

1. **Life imprisonment without the possibility of parole** exists in Hungary since 1999, despite for instance the view of the CPT that this form of punishment is degrading and poses serious security problems for the penitentiary system. Moreover, the punishment of life imprisonment without the possibility of parole **has been expressly included in the Fundamental Law**.
2. The Penal Code's amendment passed in 2010 has made it **mandatory** for judges to sentence suspects committing violent offences against the person for the third time to **life imprisonment** under certain conditions – this is the Hungarian **“three strikes” rule**. While this infringes the principle that criminal sanctions shall be individualized, the conditions for mandatory life sentence are formulated in a way that perpetrators with offences of very different severity may have to face the same sanction.
3. As a result of the restrictive tendencies in criminal policy, Hungary's penitentiary system faces a severe problem of overcrowding: the **average overcrowding rate is approximately 140%**. The Government responds to the problem of overcrowding by amending the respective law instead of decreasing the number of detainees: according to amendments adopted in 2010, **the minimal living space for detainees** – which is 3 m<sup>2</sup> for men and 3.5 m<sup>2</sup> for women and juveniles – **should be ensured only “if it is possible”**.
4. Amendments have led to a situation in which **juvenile** offenders (aged between 14 and 18 years) **committing petty offences**, e.g. a petty theft in a value less than EUR 70, almost inevitably **end up in confinement** for up to 45 days. (A confinement may also be ordered if the juvenile fails to pay the fine imposed in a petty offence procedure.)

The problem is aggravated by the fact that those who commit a petty offence punishable with confinement, if caught in the act, can be taken into **short-term detention** (up to 72-hours) **by the Police automatically**. This is in contradiction with the relevant provisions of the Convention on the Rights of the Child according to which detention shall be a last resort. Furthermore, the **confinement of juveniles may not be executed** in juvenile correctional facilities, but **only in a penitentiary institution**.

5. The range of petty offences punishable with confinement has been widened in general. Further provisions, entering into force in April 2012, allow for **imposing confinement in case of the third petty offence of the perpetrator within six months also if the given petty offences are not punishable with confinement on their own**, such as over speeding and illegal parking.
6. **Homelessness has been criminalized**. The Act of Parliament on petty offences provides that if the ban of living on public premises and storing related personal property on public premises, set out by a local government, is violated twice within six months, the perpetrator may be detained or fined.



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## HUNGARY FACT SHEET 7

### **DISCRIMINATION AGAINST MEMBERS OF THE PRIVATE PENSION SCHEME**

Legal provisions adopted in 2010 ceased the membership in private pension funds of those who joined these funds earlier, and their **assets in the private pension funds were automatically shifted to the state-run pension system**, unless they expressly and personally declared otherwise. Those, who – regardless of the constraint imposed by the Government – **decided not to return to the state’s pension scheme from their private pension funds, lost their right to state pension** they would have been entitled to under previous rules. This led to the **discrimination read in conjunction with the right to the protection of property** of those who decided to stay in the private pension funds.

Even though certain new provisions were adopted by the Parliament at the end of 2011 in this regard, the regulation as a whole remained discriminatory.

### **RETROACTIVE AND DISCRIMINATIVE CURTAILMENT OF THE PENSION OF FORMER POLICE OFFICERS**

Legal provisions adopted in 2011 made it possible to deprive former police officers, fire fighters, penitentiary workers, members of the military, etc. (altogether 42 thousand persons) of part of their pensions: **their special “early” pension has been degraded to a certain kind of “social aid”**, which is easier to reduce and revoke in the future than pensions. Furthermore, **the amount of their pension was decreased**.

The provisions **violate the rule of law, the ban on retroactive legislation and the right to the protection of property**, and since only those under the special pension scheme applicable in case of former police officers, etc. are affected by the new provisions, the regulation is **in contradiction with the requirement of equal treatment**.



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## HUNGARY FACT SHEET 8

### ACT ON THE PROTECTION OF FAMILIES

1. The Act starts with a long preamble which states the values along which the Act was adopted. However not only this, but the normative part of **the Act contains non-normative, symbolic elements**. For instance, Article 1 paragraph 2 states “the protection of orderly family relations bears special significance in order to secure physical, mental and spiritual health”<sup>1</sup>. Furthermore, the **justification of the Act explicitly states that the Act is not value-neutral, which might result in breaching the right to privacy**.
2. The cardinal laws shall elaborate the principles set by the Fundamental Law, but the Act fails to do so. Similarly to the Constitutional Court Act **the Act was not submitted to the Parliament in compliance with the Fundamental Law**.
3. The Act **repeats and summarizes provisions from other acts**, including the Civil Code, the Act on the Protection of Children and the Act on Labour. **This practice can lead to different interpretations** which erode the principle of the rule of law.
4. The Act almost fully repeats the Fundamental Law’s provision on fetal life: “The life of the fetus deserves protection and respect from the moment of conception, and it deserves subsidy according to a separate act.” The **possible aggravation of rules on abortion as a consequence** of this provision has been subject to debate ever since the constitution-framing process. However, the Prime Minister stated that Fidesz does not want to restrict access to abortion; representatives of the Ministry of National Resources and other relevant politicians of KDNP referred to restriction as a long term goal. In the next paragraph the act states: “The knowledge on the value of human life, healthy lifestyle, preparation for marriage, responsible partnership and family life is part of elementary and secondary education.” Through clearly favoring certain values, this provision **might put fact-based and value-neutral sexuality education at risk**. Despite the fact that similarly to the accessibility of contraception, fact-based sexuality education is also key in preventing unwanted pregnancies.
5. The Act defines family as follows (Article 7 Paragraph 2): “The family is a network of relationships representing the emotional and economical community of natural persons, the basis of which is either marriage between a man and a woman or lineal kinship or guardianship.” This definition **clearly excludes not only same sex couples, but not married couples from the notion of family**. The consequences of this definition are not yet known. The new Civil Code might help to interpret this definition as it will incorporate the regulation of registered partnership.

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<sup>1</sup> The translations are non-official.



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## HUNGARY FACT SHEET 9

### THE NEW CHURCH LAW

1. **The way of adopting the new Act C of 2011 on the Right to Freedom of Conscience and Religion, and on the Legal Status of Churches, Religious Denominations and Religious Communities violated the rule of law and reflects the way of legislation in Hungary.** On 19 December 2011, the Constitutional Court annulled the previous version of the Act (adopted in July) because of failures in the legislative process. The Bill of the present Act was submitted to the Parliament on 21 December, was adopted on 30 December, and entered into force on 1 January 2012, thus there was **neither time for a meaningful public debate nor an appropriate period of time allowed for the subjects of the law before the Act applies.** Both Bills were submitted by MPs instead of the Government.
2. **All churches other than those listed in the annex of the Act are deprived of their acquired and established rights.** Legal status as a church is **transformed into that of a civil association.** In contrast to the status of a church, that of a civil association does not involve rights and privileges concerning taxation, employment, education, performing religious service in public institutions, disclosing information, etc. Since the new status is an inferior one, **the Act discriminates between existing denominations.**
3. **A civil association may be recognized as a church by the Parliament;** a majority of two-thirds of the MPs is needed. Application for recognition shall be filed to a parliamentary committee, which requests the opinion of the Hungarian Academy of Sciences and the reports of the national security services. The application shall then be submitted to the Parliament. Obviously **there is no right of appeal against the decision.**

The recent application of the Act indicates the failure of the new rules. The Hungarian Academy of Sciences declared itself incompetent in this regard; the parliamentary committee did not submit all the applications which fit the requirements of the Act to the Parliament, and for this reason the members of the opposition obstruct the committee's procedure.

4. Requirements of having a legal status as a church are the following: a) **signatures of 1 000 citizens;** b) confession of faith and rites; c) **existing for at least 100 years internationally or 20 years in Hungary as a civil association;** d) and the church shall not constitute a risk to national security. However, these **requirements do not bind the Parliament, its decision on granting the status of a church is an arbitrary one.** The lack of normative criteria of recognition **breaches the principle of the separation of State and Church.**
5. The legal definition of the conception of "religion" includes arbitrary and content-dependent features ("a worldview which is directed towards the transcendental, which has a system of faith-based principles and its teachings are directed toward existence as a whole, and which embraces the entire human personality and has specific codes of conduct that do not offend morality and human dignity"), hence the Act is **not neutral towards citizens' beliefs.** The consequence of this conception is twofold: **it discriminates both between existing religious communities and all citizens.**