

OPINION ON THE DRAFT SEVENTEENTH AMENDMENT TO THE FUNDAMENTAL LAW OF HUNGARY

26 JUNE 2026

On 22 June 2026, the Government published the draft of the 17th Amendment to the Fundamental Law of Hungary (hereinafter: the Draft).¹

Opinions on the Draft may be submitted within five days, by Saturday, 27 June. While it is welcome that — unlike with the 16th Amendment — public consultation is now possible, the five-day deadline is extremely short. Section 5(1) of Act CXXXI of 2010 on Public Participation in the Preparation of Legislation (the “Jet.”) requires that drafts of acts, government decrees and ministerial decrees be submitted for public consultation with a deadline of at least eight days. The rationale for this, as stated in the preamble of the Jet., is to enable “the broadest segments of society to participate in the preparation of legislation within the framework of good governance, thereby promoting the comprehensive substantiation of legal regulation in the public interest, and thus improving the quality and enforceability of legislation, which together are indispensable conditions of a good state.”

Although the Fundamental Law and its amendments are not expressly listed among the legal instruments referred to in the above provision of the Jet., Section 1(3) of Act CXXX of 2010 on Legislation (the “Jat.”) provides that Chapter IV of the Jat. — which governs the preparation of legislation — must also be applied during the preparation of the Fundamental Law and its amendments. Section 19(2) of Chapter IV provides that “the drafter of the legislation shall ensure, in accordance with the Act on Public Participation in the Preparation of Legislation, that the draft legislation and its accompanying explanatory memorandum are accessible and open to comment.” Read together, Sections 1(3) and 19(2) of the Jat. require that the provisions of the Jet. apply to drafts of amendments to the Fundamental Law as well, meaning that they must be submitted for public consultation with a deadline of at least eight days.

The requirement of a reasonably long consultation period would follow — even without any specific statutory provision — from the legal, political and social significance of the constitution itself. The foundational document of a political community cannot be amended within the rule of law without genuine public consultation. This was affirmed by the Venice Commission in its 2011 opinion on the adoption of the Fundamental Law, in which it stated that “a wide and substantive debate involving the various political forces, nongovernment organisations and citizens associations, the academia and the media is an important prerequisite for adopting a sustainable text, acceptable for the whole of the society and in line with democratic standards. Too rigid time constraints should be avoided and the calendar of the adoption of the new Constitution should follow the progress made in its debate.”² This is plainly applicable equally when transitional constitutional provisions are being enacted.

The main political commitment of the new government that took office in May was the restoration of the rule of law, which cannot be achieved without ensuring broad public and expert consultation in

¹ <https://egyezettetes.kormany.hu/egyezettetes/tarsadalmi-parbeszed-az-alaptorveny-17-modositasarol>

² Venice Commission, Opinion on Three Legal Questions Arising in the Process of Drafting the New Constitution of Hungary, CDL-AD(2011)001, 28 March 2011

the process of preparing legislation — and in particular constitutional amendments. The removal of certain high public office holders is such a critically important step in the restoration of the rule of law that it renders full compliance with procedural legislative rules indispensable. This is also a matter of prominent public interest, so that those public office holders bearing responsibility for the dismantling of the rule of law cannot obstruct its restoration through procedural arguments.

- **We recommend that the Government extend the deadline for public consultation on the Draft to at least 3 July 2026.**

General Observations

According to its preamble, the aim of the Draft is to ensure the rule-of-law functioning of constitutional institutions during the transitional period until a new, properly prepared constitution is enacted.

The Hungarian Helsinki Committee welcomes the Draft's intention to implement a transitional constitutional reform, with the longer-term goal of conducting a transparent, democratic, professionally grounded and unhurried constitution-making process.

The short public consultation deadline associated with the Draft is presumably motivated by the intention to restore rule-of-law functioning and public confidence in constitutional institutions as quickly as possible. However, the Draft contains a number of elements that would bring about changes to the constitutional order for which there is no immediate need in terms of restoring the rule of law, and for which, therefore, no compelling argument can be made that they should be adopted without broad professional and public consultation, through a significantly accelerated procedure. Examples include capping the term of office of Members of Parliament at twelve years, or the abolition of independent regulatory bodies, neither of which serves to remedy the systemic violations of rule-of-law requirements. Accordingly, they could be the subject of extensive public and expert consultation during the preparation of the new constitution; their immediate adoption is not justified.

- **We recommend that, in the interest of long-term strengthening of rule-of-law functioning and public confidence in constitutional institutions, those amendments that are not considered immediately necessary for the restoration of the rule of law should be made the subject of broad public and expert consultation during the preparation of the new constitution.**

Related to the above objection is the fact that the general and detailed Explanatory Memorandum accompanying the Draft is extremely brief, formal and overly general. The general part of the Explanatory Memorandum consists of a single complex sentence, and even the detailed section for certain articles contains only a one- or two-sentence explanation. This approach would not be acceptable in any transparent and professionally grounded legislative procedure, but it is particularly problematic in the case of a constitutional amendment. The constitution may only be amended when strictly necessary, and in such a way that the reasons for the amendment are comprehensible to the political community. This is all the more important when the constitutional amendment is adopted following an accelerated consultation process (or perhaps without public consultation), and when the amendment in question contains politically sensitive and exceptional measures. In a situation like the present one — where the amendment is justified by an exceptional circumstance (the need to restore the rule of law) and where certain elements of the amendment seek to conclude months of public and sharply contested political debate — a detailed justification of the intended measures would be of the utmost importance.

- **We recommend that the Explanatory Memorandum set out in detail why the restoration of rule-of-law functioning is necessary in Hungary, and to what extent the proposed measures serve this goal and what rule-of-law deficits they are intended to address.**

The aim of the Draft is to restore rule-of-law functioning; yet, while introducing amendments that would not be immediately necessary for this purpose, it leaves in place provisions that openly undermine rule-of-law principles. In our view, the most serious substantive shortcoming of the Draft is that it fails to repeal numerous provisions whose incorporation into the Fundamental Law is manifestly incompatible with the fundamental requirements of the rule of law and democracy, and which impair the exercise of certain fundamental rights. These include, for example:

- the suspension of citizenship [Article G, para. (3)];
- the restrictive definition of marriage and family, and the absence of legal recognition for transgender and intersex persons [Article L, paragraph (1)];
- the lack of religious neutrality of the state and the recognition of churches through a political procedure [Article VII, para. (4)];
- the regulation of political advertising in media services during election campaigns [Article IX, para. (3)];
- the restriction on the submission of asylum applications [Article XIV, para. (4)];
- the possibility of stripping sexual minorities of rights by invoking children's rights [Article XVI, para. (1)];
- the prohibition on habitual dwelling in public spaces [Article XXII, para. (3)];
- the right of local communities to their own identity as a restriction on the freedom to choose one's place of residence [Article XXVII, para. (1)].

These provisions raise such serious rule-of-law concerns that they cannot remain in force until the adoption of a new constitution, because — as international judicial forums have already established with regard to some of them — they do not comply with the requirements of democratic rule of law based on respect for fundamental rights.

- **We recommend that the legislator repeal the provisions listed above in the course of the 17th Amendment to the Fundamental Law.**

Detailed Observations

1. Capping the term of office of members of Parliament at twelve years

Under **Article 2 of the Draft**, a person who has already served as a Member of Parliament for a total of at least twelve years would not be eligible to stand for election in future parliamentary elections. The provision would not affect the mandates of currently serving MPs.

This provision introduces a new restriction on the passive right to vote — which is also a limitation on the active right to vote in the sense that it narrows voters' freedom of choice in parliamentary elections. The restriction appeared in the Draft without preparation or prior announcement; unlike the

eight-year cap on the Prime Minister's term of office, government representatives had not previously made public any intention to introduce such a significant modification to parliamentary representation. Accordingly, prior electoral legitimation cannot be invoked in this case.

The immediate and urgent introduction of this amendment cannot in any way be linked to the objective of restoring the rule of law. The Draft's Explanatory Memorandum also fails to clarify why this amendment is necessary, especially that no such political intention had previously been made public as part of the announcement of measures needed to restore the rule of law.

Evaluating such an amendment requires consideration of fundamental constitutional principles (popular sovereignty, democracy, free elections) — none of which are weighed in the Explanatory Memorandum. The Memorandum merely states, “[t]he social and constitutional experience of recent decades has shown that, in order to ensure democratic exercise of power, it is appropriate to set a time limit on the term of parliamentary mandate.” It is unclear what experiences the legislator is referring to. What problems would this amendment remedy? The legal, political and social arguments for and against restricting the term of mandate — and by extension the will of voters — are not presented; without them, it is impossible to see what compelling necessity could justify the amendment, and in particular its immediate adoption.

Moreover, this amendment would affect only the current government party's political opponents disproportionately and disadvantageously (since among opposition parties there are numerous MPs whose candidacy in the next elections would be precluded by this provision), while its possible effects on governing party MPs are considerably more remote. This raises the suspicion of a constitutional amendment for purely political motives — yet it is precisely to eliminate such abusive practices that violate the rule of law that the “system change” proclaimed by the governing party is needed. Given that the amendment would only need to be applied at the next parliamentary elections, at this point in time, beyond the obvious symbolic political message, this immediate and unprepared amendment has no practical significance and does not serve the restoration of the rule of law. The constitution is the foundation of the legal order and a symbolic reference point for all members of society; its text cannot therefore serve as a vehicle for direct political communication, and it is inadvisable that the sole purpose of an amendment is the transmission of a political message.

It is also strongly questionable whether such a restriction would meet the test applied by the European Court of Human Rights, which, while permitting restrictions on the passive right to vote, ties this to a serious threat to the democratic order as a legitimate aim and requires that the restriction be proportionate to that aim.³

The arguments for and against this solution could be debated during the preparation of the new constitution. Haste is not justified also because the question of whether term limits are warranted may well be related to electoral system reform: if the goal is to prevent MPs from being entrenched by their parties, this could also be achieved, for example, by introducing preferential voting, which would allow voters to directly influence which candidates on a party list obtain a mandate.

○ We therefore recommend the removal of the planned constitutional amendment concerning passive voting rights.

³ Registry of the European Court of Human Rights, [Guide on Article 3 of Protocol No. 1 to the European Convention on Human Rights. Right to free elections](#) (updated 28 February 2026), pp. 16–17.

2. Removal of certain senior constitutional office holders

Several provisions of the Draft concern the mandates of the current heads of the most important independent constitutional institutions. Even before the elections, during the election campaign, the Prime Minister indicated that the constitutional office holders appointed at the political will of the previous government — who had hollowed out the counterbalancing constitutional function — would be removed, and repeatedly promised that the removal of senior constitutional office holders would be carried out by rule-of-law means if they did not resign voluntarily. Of the office holders concerned, the Draft provides for the removal of the incumbent head of state, restores the retirement age of Constitutional Court justices so as to terminate the mandates of the court's incumbent president and three members, and creates the possibility of removing the presidents of the Kúria and the National Office for the Judiciary (NOJ) on the basis of an initiative by judges.

The government approaches a difficult constitutional problem with these provisions. Under the rule of law, the term of office of independent institutions and their heads — which serve as a check on governmental power — is protected: they may only be removed before the expiry of their term in very compelling circumstances, in cases of unfitness or prolonged incapacity. This is the guarantee that these institutions can genuinely discharge their constitutional functions independently, free from political influence, and without fear of suffering consequences for decisions or actions that displease the government.

However, the principle of irremovability is only meaningful within the context of the rule of law — that is, when the institutions in question and their heads effectively and independently carry out their constitutional tasks. But if the independent functioning of these institutions is persistently called into question and they fail to fulfil their counterbalancing function, governmental intervention may be necessary to restore proper functioning. If public confidence in the heads of independent institutions has been irreparably undermined, and it can be factually demonstrated that those institutions, through their actions or repeated omissions, have contributed to the systematic erosion of rule-of-law values, then the removal of the relevant heads is necessary to restore rule-of-law functioning. The Venice Commission also established, in its opinion on the restoration of the rule of law in Poland, that in the balancing between the individual guarantee of irremovability and the necessity of restoring and maintaining rule-of-law functioning, irremovability is an instrumental and in that sense secondary guarantee: the irremovability of an office holder is not a value in itself but a means of preserving the rule of law, and if it comes into conflict with the rule of law or its restoration, it may be set aside — through a properly designed procedure. Such a measure will be acceptable within the rule of law if its reasons are clear and public, if it is preceded by broad professional and public consultation, if it does not cause disproportionate harm to those concerned, and if the selection of their successors takes place through a procedure guaranteeing independence.⁴

The provisions in the Draft enabling the removal of the office holders in question are therefore necessary in order to restore the independent functioning and counterbalancing role of the institutions concerned. However, the absence of an adequate justification and the very short deadline available for public and professional consultation renders the Draft procedurally vulnerable.

⁴ Venice Commission, [Poland – Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law \(DGI\) of the Council of Europe on the draft law concerning the status of judges appointed or promoted between 2018 and 2025 and other related matters](#), CDL-AD(2026)002, 6-7 March 2026.

- It is absolutely necessary that both the general and the detailed Explanatory Memorandum set out in detail why, in the current situation, it is necessary to replace the office holders concerned, what they did or failed to do to erode or protect the rule of law, why the restoration of the rule of law cannot be envisioned with their continued participation, and why public confidence in them has been irreparably lost.

This official, public, clear and detailed justification cannot be substituted by the Prime Minister's political speeches and press statements. The detailed reasons justifying the content of a constitution-amending norm must be attached to it, because lawful compliance can only be expected from those affected in this way, and the norm can only command broad societal support on this basis. Enabling broad public and professional consultation serves the same purpose — which in the present case would require at a minimum an extension of the five-day consultation deadline.

A sufficiently thorough justification — setting out the facts and circumstances considered in adequate detail — can also be the guarantee that a future constitutional majority will not (or will find it more difficult to) use the fact of the current rule-of-law reconstruction for political purposes. A properly elaborated justification is what can make comprehensible and perceptible the difference between a constitutional majority using its privileged position in law-making to restore the rule of law, as opposed to dismantling rule-of-law institutions and maximising its own power. Without adequate justification, the measures contained in the Draft could far more easily be used as a precedent to underpin steps that undermine the rule of law.

3. Removal of the incumbent President of the Republic

Article 7 of the Draft would add to the “Closing and Miscellaneous Provisions” of the Fundamental Law a new provision under which the mandate of the incumbent President of the Republic would terminate on the day following the entry into force of the provision. This solution would conclude a political dispute that has defined the relationship between the head of state and the government for months, causing constitutional and political uncertainty.

Under normal rule-of-law conditions, several tools are available for removing the head of state. The impeachment procedure set out in Article 13 of the currently applicable Fundamental Law serves to establish the constitutional and criminal liability of the head of state and falls within the jurisdiction of the Constitutional Court. It is understandable that the government majority did not choose this solution, since — given the way in which the composition of the Constitutional Court had been shaped and configured by the previous government majority, and the quality of its decisions in politically sensitive cases — it would not have been possible to rely on an independent and objective procedure before the Constitutional Court. Moreover, there is no time limit for the conclusion of such proceedings, which would have left the legal status of the country's highest constitutional dignitary uncertain for a prolonged period. Another option for removal could have been a transition to the direct election of the President, but this would bring such a significant change to the Hungarian constitutional order that it would not be advisable to introduce it in such a rushed manner, without adequate preparation and broad professional and public debate. The Draft leaves this possibility open by providing that the new President of the Republic shall be elected in accordance with the current rules of the Fundamental Law for a period until the entry into force of the new constitution (but not exceeding five years).

In accordance with the Prime Minister's repeatedly and publicly stated promise, the Draft terminates the mandate of the President of the Republic through an exceptional, one-time constitutional provision

with a narrow deadline. In this regard, the provision can be considered a tailor-made *ad hominem* legislative measure, since it is precisely known in advance what legal effects it will produce and on whom. However, this solution is exceptionally permissible — in view of the goal of restoring the rule of law — if no other, less restrictive means is available. This approach is consistent with the standards applied by the Venice Commission.⁵

In connection with the removal of the head of state, it must nonetheless be emphasised that an adequate justification is necessary. The current text of the Draft's Explanatory Memorandum — which states that “serious loss of public trust in the functioning of the incumbent President of the Republic has occurred” — does not meet this requirement.

○ We recommend that the Explanatory Memorandum record the reasons for the loss of public trust, as well as the specific activities or omissions through which the President violated his constitutional obligations under the Fundamental Law, and why these breaches make it absolutely necessary to depart from the principle of irremovability in his case.

4. Restoring the retirement age of Constitutional Court justices and the internal election of the Court's president

Article 3 of the Draft amends Article 24(8) of the Fundamental Law, which contains the fundamental rules on the organisation of the Constitutional Court. The amendment incorporates two new provisions into the Fundamental Law: first, it requires that the President of the Constitutional Court be elected by the justices from among themselves; second, it establishes that the mandate of a Constitutional Court justice terminates upon reaching the age of seventy. Both provisions are identical in substance to the rules that were in force until 2012 as a result of the political compromise reached during the democratic transition, both with respect to the election of the President and the retirement age of justices. Both rules were originally introduced as guarantees of independence.

The independence of constitutional adjudication is an important safeguard of democratic rule-of-law functioning. Direct internal election of the Constitutional Court president naturally excludes the involvement of political institutions in the selection of a president who has broad powers capable of fundamentally influencing the functioning of the institution. This provision is therefore to be welcomed without reservation, as it strengthens the independence of constitutional adjudication and the autonomy of the court.

The setting of a retirement age, in turn, reduces the likelihood that Constitutional Court justices selected through a political process will be entrenched by the government. The retirement age of seventy is considered standard across Europe for judges and constitutional court justices and is high enough not to raise the possibility that justices might favour the government in order to secure another senior state appointment after their mandate ends. The elimination of these two independence safeguards was part of the political effort to weaken the Constitutional Court's counterbalancing function by filling it with government-loyal members. The restoration of these two independence safeguards is therefore to be welcomed without reservation.

However, the amendment would not introduce the restored retirement age on a prospective basis, but in such a way that its effect is the termination, on the first day of the month following the entry into force of the amendment, of the mandates of four currently serving justices, including the president

⁵ Venice Commission, [Poland – Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law \(DGI\) of the Council of Europe on the draft law concerning the status of judges appointed or promoted between 2018 and 2025 and other related matters](#), CDL-AD(2026)002, 6-7 March 2026.

(new point 35 of the Closing and Miscellaneous Provisions). The mandate of the president of the Constitutional Court would thus also terminate by legislation, not through an individual procedure.

On the basis of what was set out in connection with the removal of the head of state, we consider the removal by legislation to be justifiable in this case as well for the purpose of restoring rule-of-law functioning. However, on the one hand, a detailed justification would also be needed here, and on the other hand, we consider that — in light of the fundamental objective of rule-of-law reconstruction — the legislator should opt for a different solution from the one proposed in the Draft, in the interest of restoring proper Constitutional Court functioning.

Regarding the justification, it must be noted that it is completely absent from the current Draft; the detailed Explanatory Memorandum for Article 3 essentially only restates the normative text.

- **We recommend that the Explanatory Memorandum be supplemented with the detailed justification required for the removal to be defensible, including an explanation of why the restoration of the two former provisions strengthens the independence of the Constitutional Court, and why the Court's functioning to date has not been adequate from a rule-of-law perspective.**

With regard to the substance of the planned amendment, we recall that, according to the Venice Commission, a person whose appointment was unconstitutional cannot claim the protection of constitutional guarantees.⁶ Although the election of Hungarian constitutional court justices formally complied with legal requirements, those requirements were introduced unilaterally by the previous constitutional majority to extend its own political power, without any effort to reach consensus with the opposition, thereby eliminating previously existing safeguard elements (most notably the parity-based nomination of justices) that would have protected against precisely such unilateral political capture. Not only the justices who had meanwhile reached the age of seventy, but all those who became members of the court as a result of a unilateral nomination and election process owe their appointment to these unilaterally modified rules.

While arguments can also be made in favour of the solution proposed in the Draft — for example, that it intervenes relatively modestly in the current composition of the Constitutional Court and maintains the court's uninterrupted operational capacity — in our view, in light of the above, genuine and consistent rule-of-law restoration is best served if the mandates of all justices elected as unilateral political nominees by the previous two-thirds majority are terminated, and only those justices may remain who were elevated to this position by consensus between the government side and the opposition. This solution is consistent with the justification that permits departure from the otherwise applicable requirement of irremovability in order to correct the previous appointments that served to undermine the rule of law, and to restore public trust in the institutions — not in order to achieve a currently desirable court composition.

- **We therefore recommend a one-time, thoroughly and specifically justified amendment to the Fundamental Law, as described above, providing that, in order to restore the rule-of-law functioning of the Constitutional Court, the mandates of those justices who were elected by**

⁶ Venice Commission – Directorate General of Human Rights and Rule of Law of the Council of Europe, [Poland - Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe on the draft law amending the Law on the National Council of the Judiciary of Poland](#), CDLAD(2024)018, 24 June 2024, § 53.

the National Assembly as “single-party nominees”, without the meaningful participation of opposition parties, shall terminate.

It is important to emphasise that the reason for linking removal to election as a “single-party nominee” is that this is the only objective criterion (thus avoiding the necessarily subjective assessment of the individual activities and decisions of each justice) applicable without contestable differentiation to all justices, which is sufficiently closely linked to the restoration of rule-of-law functioning to render the removal justifiable in light of international standards. With this in mind, it must also be expressly stated in the amendment that no obstacles may be placed in the way of re-nominating former justices who otherwise meet the new conditions for election. We note, however, that such an amendment can only be acceptable if, at the same time, new nomination and election rules are adopted that provide the current opposition with the opportunity to meaningfully participate in the election of new justices. In the interest of maintaining the court’s operational capacity, the process of electing new members must be initiated without delay.

It is unequivocally to be welcomed that the Draft repeals Article 37(4) and (5) of the Fundamental Law, which contained restrictions on the constitutional review of legislation concerning public finances. This provision represented a serious rule-of-law problem, as it resulted in the elimination of constitutional court oversight over a certain segment of the legal order.

5. Amendment of the rules on the selection and removal of the presidents of the National Office for the Judiciary and the Kúria

Articles 4 and 5 of the Draft introduce identical new rules with respect to the presidency of the National Office for the Judiciary (NOJ) and the Kúria. On the one hand, they amend the procedure for nomination by the President of the Republic for these positions, so that the President of the Republic may only propose to the National Assembly one of three persons nominated by judges [amendment of Articles 25(6) and 26(3) of the Fundamental Law]. On the other hand, by elevating the relevant provisions of Act CLXI of 2011 on the Organisation and Administration of Courts (Bszí., Sections 70 and 115) into the Fundamental Law, a new procedure is introduced for removal from these two positions: at the initiative of judges, by recall, the mandates of the presidents of the NOJ and the Kúria may also be terminated [Articles 25(7) and new 26(4) of the Fundamental Law]. Although the Draft does not mention it, taking into account the currently applicable provisions of the Bszí., the decision on recall based on a judicial petition would be made by the National Assembly with a two-thirds majority [Act XXXVI of 2012 on the National Assembly, Section 61/A(1)(b) and (c)]. The rule requiring election by a two-thirds majority of the National Assembly also remains unchanged.

In our view, the provisions of the planned amendment concerning the removal of judicial leaders is not suitable for restoring the rule-of-law functioning of the courts; rather, it could deepen the crisis. We therefore recommend its rejection.

First, it must be stated that it is extremely difficult to form a substantive opinion on the proposed amendments without knowledge of further detailed rules; therefore — although this is far from ideal — in forming our position we have taken into account the Prime Minister’s speech in parliament,⁷ in which he outlined certain details of the further planned amendments. According to this, the National Judicial Council (NJC) will also be given the right to initiate a recall of the President of the Kúria. With regard to the President of the NOJ, the Bszí. Section 74 already provides for this. Under this provision, the mandate of the President of the NOJ terminates through removal from office if the President of

⁷ [Prime Minister Péter Magyar’s pre-agenda address in the National Assembly](#), 22 June 2026.

the NOJ, for reasons attributable to him or her, fails to fulfil the tasks arising from the mandate for more than 90 days, or if, by virtue of an act, conduct or omission, he or she has become unworthy of the office. Removal is proposed to the National Assembly by a decision adopted by two-thirds of the members of the NJC, or by the President of the Republic. The currently applicable Section 116 of the Bszi. applies the same rule to the President of the Kúria, with the difference that, in their case, only the President of the Republic is entitled to initiate removal; on the basis of the Prime Minister's speech, it appears that this restriction will be removed and the JC will also be given the opportunity to propose removal.

In addition, the Prime Minister said that the rules would be amended so that a certain (unspecified) number of judges could propose a recall of the presidents of the NOJ and the Kúria, and if this proposal is supported by two-thirds of judges, Parliament could recall these office holders with a two-thirds majority.

It is to be welcomed that the planned amendments intend to strengthen judges' participation in decisions regarding the appointment of leading judicial officials. Strengthening judicial self-governance also meets international expectations, as judicial co-determination is capable of counterbalancing indirect and unilateral political influence.⁸ However, numerous details remain unclear, even though the specific rules will be of key significance in terms of whether the selection procedure will function as a genuine guarantee of independence. It is not clear what the consequence will be if judges also establish a ranking among the candidates and the head of state does not nominate the most widely supported candidate. Would an unconstitutional situation arise if judges nominate only one or two candidates rather than three?

The absence of a detailed justification also poses a problem with regard to the procedure for removing the presidents of the NOJ and the Kúria. It is not clear why a new ground for removal is needed with respect to the presidents of the NOJ and the Kúria, or why the legislator plans to implement it in this particular manner.

In numerous earlier statements, the Prime Minister foreshadowed that the constitutional office holders installed through the unilateral political decision of the previous government would be replaced, including the presidents of the NOJ and the Kúria. The relevant provisions of the Draft, however, suggest that the government has stepped back from this repeatedly and publicly announced commitment, and intends to shift to the judges the responsibility for expressing a vote of no confidence in the heads of the country's courts. In conditions of stable rule-of-law functioning, this solution could be welcome, as it would give judges the opportunity to make an autonomous decision, although even then its introduction would need to be very carefully considered in terms of whether it could cause divisions within the judiciary that might undermine public confidence in the justice system.

Currently, however, the stable framework of rule-of-law functioning has not yet been established in Hungary, not least because of the direct and indirect, internal and external pressure that has been exerted on the courts until recently. In light of all this, in our view, it should be the task of the newly elected governmental majority — not the judges — to remedy this anomalous situation, which is one of the most important elements of restoring the rule of law.

Those judges whose autonomy has until now been curtailed through various administrative tools cannot be expected to take open action against court leaders. If the judicial petition ultimately fails

⁸ This was established by the Constitutional Court in Decision 38/1993 (VI. 11.) AB. The Venice Commission emphasises the same: Venice Commission, [The Updated Rule of Law Checklist](#), CDL-AD(2025)002-e, 12–13 December 2025, section II.F.1.

and the two court presidents cannot be removed, the judges who participated in the petition can legitimately expect to face retaliation. Due to the chilling effect, it could easily come about that the two senior court presidents do not enjoy the confidence of the vast majority of judges, yet the removal initiative fails because numerous judges, driven by fear or interpreting the requirement to refrain from political activity in such a way in the current heavily politicised situation, do not participate. But even if a perceptible majority, yet less than two-thirds, of judges support the recall proposal, the president remains in office despite manifestly not enjoying the support of the majority of judges. This will, inevitably, lead to serious conflicts and divisions within the judiciary while also significantly undermine public confidence in the justice system. The planned amendment could therefore deepen the crisis further.

The solution applied in the Draft is all the harder to understand because, on the basis of applicable international standards, the removal of the current President of the Kúria could be adequately justified by the compelling need to restore the rule of law. Dr. András Varga Zs. was elected President of the Kúria through tailor-made legislation, in disregard of the NJC's express objection — which specifically invoked the requirement of judicial independence — and despite the fact that he had no prior assessable experience as an ordinary judge. His appointment procedure therefore did not comply with rule-of-law requirements, as international forums have also established.⁹ The UN Special Rapporteur on the Independence of Judges and Lawyers went so far as to state that “his appointment may be regarded as an attack to the independence of the judiciary and as an attempt to submit the judiciary to the will of the legislative branch, in violation of the principle of separation of powers.”¹⁰

In accordance with the above, the President of the Kúria could not invoke the constitutional protection of irremovability on account of the serious deficiencies in his election, and therefore there would be no obstacle to his removal through a one-time legislative act similar to that applied in respect of the President of the Republic, but with a far more detailed justification. The institutional reform that the Draft proposes with respect to the selection of the presidents of the NOJ and the Kúria — that is, requiring the involvement of judges in the nomination process — would in itself constitute sufficient grounds for the mandates of the two current court presidents to terminate. The constitutional amendment could be supplemented with a provision to the effect that, upon the election of the presidents under the new procedural rules, the mandates of the current incumbents terminate. In light of all this, it is difficult to understand, and appears to be a fundamentally flawed approach, to introduce a recall system that in practice could easily lead to a deepening and entrenchment of the rule-of-law crisis surrounding the courts.

- **We recommend the removal of the provisions on judicial-petition-based recall contained in the Draft, and the supplementation of the constitutional amendment with a provision under which the election process begins immediately upon the entry into force of the amendment and the mandates of the current incumbents terminate upon the election of presidents under the new procedural rules.**

6. Reduction in the number of cardinal laws

Article 8 of the Draft repeals ten provisions of the Fundamental Law that designate subject matters requiring cardinal laws (i.e., laws requiring a two-thirds majority vote for their adoption or

⁹ Commissioner for Human Rights of the Council of Europe, [The Commissioner urges the Hungarian Parliament to modify a bill affecting the independence of the judiciary](#), 21 November 2019; and the [Hungarian chapter of the European Commission's 2020 Rule of Law Report](#).

¹⁰ UN Special Rapporteur on the independence of judges and lawyers, [Letter to the Hungarian government](#), AL HUN 2/2021, 15 April 2021.

amendment). This amendment is to be welcomed, since the large number of cardinal laws can obstruct effective and efficient governance. The government can thereby entrench certain public policy decisions, narrowing the room for manoeuvre of a future government and ultimately the preferences of voters.

The Venice Commission already established this in its opinion on the original text of the Fundamental Law,¹¹ and recommended a reduction in the number of subject matters:

“Functionality of a democratic system is rooted in its permanent ability to change. The more policy issues are transferred beyond the powers of simple majority, the less significance will future elections have and the more possibilities does a two-third majority have of cementing its political preferences and the country’s legal order. Elections, which, according to Article 3 of the First Protocol to the ECHR, should guarantee the “expression of the opinion of the people in the choice of the legislator”, would become meaningless if the legislator would not be able to change important aspects of the legislation that should have been enacted with a simple majority. When not only the fundamental principles but also very specific and “detailed rules” on certain issues will be enacted in cardinal laws, the principle of democracy itself is at risk. This also increases the risk, for the future adoption of eventually necessary reforms, of long- lasting political conflicts and undue pressure and costs for society. The necessity of a certain quorum may however be fully justified in specific cases, such as issues forming the core of fundamental rights, judicial guarantees or the rules of procedure of the Parliament.”¹²

The removal of the cardinal law requirement is indeed justified, on the basis of the above, in those policy areas where regulation is based on the political decisions of the government of the day. Examples include the definition of the tax system and pension system (Article 40 of the Fundamental Law), the conditions for acquiring ownership rights over agricultural land and forests [Article P(2) of the Fundamental Law], or the management of national assets [Article 38(1) and (2) of the Fundamental Law]. In respect of these subject matters, the removal of the cardinal law requirement represents compliance with international recommendations.

However, it is not clear from the Draft’s Explanatory Memorandum why it is necessary to remove the cardinal law requirement in a broader scope than this, prior to the enactment of the new constitution. The act establishing an independent authority tasked with ensuring the exercise of information rights [Article VI(4) of the Fundamental Law], the act on the investigative activities of parliamentary committees [Article 7(3) of the Fundamental Law], the act governing the detailed rules on the functioning of the Hungarian National Bank and the State Audit Office [Article 41(6) and Article 43(4) of the Fundamental Law], and the act defining the framework for regulation by decree under special legal orders [Article 53(1) of the Fundamental Law] are cases where it is not self-evident that the abolition of the qualified majority requirement is justified. The rationale for and scope of cardinal laws is a further subject matter within the Draft that could — ideally, during the preparation of the new constitution — be settled through broad professional and public debate, in a much longer consultation process. In this regard, it is also problematic that the Draft’s Explanatory Memorandum does not clarify the reasons behind the amendment: why exactly these particular subject matters are affected? Why is it these subject matters where changing the cardinal law requirement can be shown to be necessary for restoring the rule of law?

¹¹ Venice Commission, [Opinion on the New Constitution of Hungary](#), CDL-AD(2011)016, 20 June 2011.

¹² *Ibid.*, § 24.

- **We recommend that a legislative decision on the revision of the list of cardinal laws be taken only on the basis of broad professional and public debate, in a much longer consultation process, ideally during the preparation of the new constitution.**

7. Abolition of independent regulatory bodies

Article 9 of the Draft repeals, with effect from 1 January 2027, the sub-title “Independent Regulatory Bodies” under the chapter “THE STATE.” In connection with this, **Article 1 of the Draft** amends Article T(2) of the Fundamental Law, which lists the types of legal instruments, by removing from the list “the decree of the head of an independent regulatory body.”

The same observations apply to this amendment as to the subject matters discussed above: we fundamentally agree with the objective but consider that such an amendment must be preceded by public and professional debate conducted on the basis of sufficiently detailed grounds.

The Draft’s Explanatory Memorandum, however, contains no genuine justification for why this amendment is necessary in the context of a Fundamental Law amendment intended as transitional and aimed at restoring rule-of-law functioning. The detailed Explanatory Memorandum for Article 9 contains no discussion whatsoever of the abolition of independent regulatory bodies; the detailed Explanatory Memorandum for Article 1 merely states: “Revision of the constitutional provisions relating to independent regulatory bodies is warranted.” In this form, this is manifestly not a substantive, genuine justification. It is absolutely necessary to make clear what negative consequences the status of independent regulatory bodies has for the functioning of the state apparatus, and why it is necessary to correct this. Adequate justification is all the more important because this planned amendment has not previously received any public attention from the government, and therefore no professional or broader public debate has been able to commence regarding it.

Furthermore, an institutional reform of such magnitude could be appropriately debated in a much wider forum during the preparation of the new constitution. The design of the organisational structure of public administration is a technical matter on which decisions must be made with the involvement of public administration specialists. A five-day public consultation is clearly not an appropriate forum for this.

- **We recommend that a legislative decision on the abolition of independent regulatory bodies be taken only on the basis of broad professional and public debate, in a much longer consultation process, ideally during the preparation of the new constitution.**

It is positive that this organisational change would only take effect on 1 January 2027. In principle, this allows time to prepare the necessary legislative amendments and organisational and jurisdictional restructuring. However, it is not clear what advantages this rapid transformation entails, or why all decisions on restructuring the organisation of public administration cannot be left to the procedure aimed at adopting the new constitution.

Budapest, 26 June 2026