



Hungarian Helsinki Committee

## HUNGARIAN HELSINKI COMMITTEE

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# Events of concern in Hungary during the period of the country's EU Presidency

June 2011

## I. Racist paramilitary groups patrolling in towns

### a) Racist paramilitary groups patrolling in towns and the lack of action on behalf of the Police and the Government

In March 2011, members of the Civil Guard Association for a Better Future (Szebb Jövőért Polgárőr Egyesület), a **paramilitary radical right-wing group** closely associated with the radical right-wing parliamentary party Jobbik and the dissolved Hungarian Guard (Magyar Gárda) started "**patrolling**" and **marching in towns** with significant ethnic tensions (including Gyöngyöspata<sup>1</sup> and Hajdúhadház<sup>2</sup>), **claiming that they are providing citizens of Hungarian origin with protection against "Gypsy criminality"**. Unimpeded by local police, the Civil Guard members reportedly threatened residents of Roma origin. In April 2011, another paramilitary right-wing group called **Véderő (Defence Force) set up a training camp in Gyöngyöspata, as a result of which around 250 Roma women and children were transferred from the town by the Red Cross on 22 April 2011.**<sup>3</sup> Even though some of the Véderő members were taken into short-term arrest, some members reappeared in the town on 26 April 2011, after the Roma returned. A mass fight broke out and several people were seriously wounded.

The Police seemed to be unable to handle the problem of paramilitary groups and to find the adequate legal solutions. **The Police failed to initiate criminal or petty offence procedures even in clear-cut cases**, or initiated proceedings under the wrong statutory provisions, leading to the acquittal of the few persons charged. **Reports of individuals or NGOs were rejected and not handled properly either.** Cases include that of an 8-month pregnant Roma woman from Gyöngyöspata, who was followed closely and was spit on by members of a right-wing group, wearing masks and carrying whips. The woman tried to escape, and due to the stress she gave birth to her child right after the events in her own house. The case was reported by the Hungarian Civil Liberties Union (HCLU) to the Police, which rejected the report, denying that a hate crime, or any other criminal offence, had happened.<sup>4</sup> (However, in this case the Prosecutor's Office – based on the complaint of the HCLU – overruled the Police and decided that an investigation should be carried out on the suspicion that a hate crime had occurred.<sup>5</sup>)

Meanwhile, new criminal and petty offence rules were introduced, aimed at preventing paramilitary or other groups from acting like self-appointed police. These rules seem to provide even more possibility to act against racist paramilitary groups "patrolling" in places where Roma communities live, however, there is no news on any criminal or other legal procedures initiated against members of the Civil Guard Association for a Better Future for harassing and intimidating the Roma community in Gyöngyöspata.

<sup>1</sup> See for example: <http://www.origo.hu/itthon/20110316-egyelore-elhagyja-gyongyospatat-a-szebb-jovoert-polgaror-egyesulet.html>.

<sup>2</sup> See for example: [http://index.hu/belfold/2011/04/12/hajduhadhazon\\_masirozik\\_a\\_szebb\\_jovoert\\_polgaror\\_egyesulet/](http://index.hu/belfold/2011/04/12/hajduhadhazon_masirozik_a_szebb_jovoert_polgaror_egyesulet/).

<sup>3</sup> See for example: <http://www.origo.hu/itthon/20110422-haromszaz-roma-koltozott-el-gyongyospatarol.html>.

<sup>4</sup> <http://tasz.hu/romaprogram/rendorseg-szerint-nem-gyulolet-buncselekmeny>

<sup>5</sup> <http://tasz.hu/romaprogram/megis-nyomoznak-maszkosok-altal-megfelemlitett-gyongyospatai-kismama-ugyeben>



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### b) Ad hoc parliamentary committee

The criticism voiced by human rights NGOs in relation to the Government's reluctance to protect the Roma community from the harassment of paramilitary groups, in the form of "patrolling" in the Roma neighbourhoods of certain settlements, has been received quite negatively by the parties of the ruling coalition, and **an ad hoc parliamentary committee was set up in order to identify those responsible for the escalation of the events** (in the village of Gyöngyöspata) **and unduly portraying Hungary in an unfavourable manner.**

In a parliamentary debate on the issue, the head of the ad hoc committee (an MP of the ruling coalition) said the following: "We call on every political actor, party and association to stop generating social and ethnic tensions. It relates to those who blame a whole community with no grounds, and those who protect law breakers; those who try to increase the tension through paramilitary groups and gain votes based on the fears of the people, and those who use these events again to the senselessly and incomprehensibly devastate Hungary's international prestige."<sup>6</sup> Knowing the context, it is clear that this message was also targeted against those NGO activists who were active in presenting an on-the-spot counterbalance to the patrolling paramilitary groups.

The whole series of events received wide international media attention.<sup>7</sup>

## II. LGBTI Pride March banned by the Police

An example of the prevalence of homophobia is the turmoil surrounding the organisation of the Budapest Pride March in 2011. The organiser of the March (the Rainbow Mission Foundation) announced the March in September 2010 to the Police with the route from Heroes' Square to Erzsébet Square. The Police accepted the announcement, but when the organisers announced in February 2011 that they would like to continue the march from Erzsébet Square to the Parliament as a protest against the proposed discriminative rules of the new Constitution, **the Police banned the Budapest Pride March** as a whole. (Marriage between same-sex couples will not be possible under the new Constitution and sexual orientation is not listed in it as a protected characteristic with regard to the ban of discrimination.) The Hungarian Helsinki Committee and the Hungarian Civil Liberties Union helped the organisers of the Budapest Pride March challenge the police ban before the court<sup>8</sup> and the Budapest Pride March took place on 18 June 2011 on the longer route. However, a day before the March **the Police's spokesperson stated that participants of the March should refrain from public indecency or behaving in a manner that violates public morals.**<sup>9</sup> On the day of the March, opposing demonstrators tried to hinder the participants from following the planned route.

## III. Candidate for judge in the Constitutional Court publicly argues against inclusion of the Roma

Five new Constitutional Court judges were nominated by the ruling government party coalition, the Fidesz-KDNP, after they had raised the number of Constitutional Court judges from 11 to 15 (one position had been unoccupied for a while). While serious criticism may be voiced with regard to some of the candidates, the most problematic one is definitely professor **Béla Pokol, who publicly criticizes the strong constitutional control of different branches of state power, rejects the idea of the separation of powers, argues expressly for the abandonment of the principle of equality with regard to the Roma community,** and holds that the prohibition of discrimination among private actors in relation to ethnicity is unjustified. Béla Pokol, for example,

<sup>6</sup> [http://www.parlament.hu/naplo39/085/n085\\_002.htm](http://www.parlament.hu/naplo39/085/n085_002.htm)

<sup>7</sup> <http://www.bbc.co.uk/news/world-europe-13170583>, <http://www.bbc.co.uk/news/world-europe-13206261>, <http://www.bbc.co.uk/news/world-europe-13544903>

<sup>8</sup> <http://helsinki.hu/Egyeb/Hirek/htmls/837>

<sup>9</sup> [http://index.hu/belfold/2011/06/17/nagy\\_erokkel\\_keszul\\_a\\_rendorseg\\_a\\_melegfelvonulasra/](http://index.hu/belfold/2011/06/17/nagy_erokkel_keszul_a_rendorseg_a_melegfelvonulasra/)



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wrote not long ago that *"It is clear from my articles that I find the way followed by human rights defenders for the integration of the Roma community, i.e. the preference of anti-discrimination, a dead end."*<sup>40</sup> Professor Béla Pokol's publications are cited by extreme right-wing and racist websites like [ciganybunozes.blog.hu](http://ciganybunozes.blog.hu) ([gypsycriminalism.blog.hu](http://gypsycriminalism.blog.hu)) and [kuruc.info](http://kuruc.info) (one of the most well-known racist Hungarian websites) as supporting their stance as an academic scholar.

### IV. Adoption of the new Hungarian Constitution

While taking the role of EU Presidency, Hungary has adopted a new Constitution called "Fundamental Law". The process of framing the new Constitution and also the content of the new Constitution were seriously criticized by leading human rights NGOs.<sup>11</sup> Democratic opposition parties did not even take part in the process of framing the Fundamental Law and none of the members of the three opposition parties voted for the adoption of the most important legal source. However, as the ruling party, the Fidesz-KDNP has a two-third majority, which is enough for adopting the new Constitution without needing approval by referendum, the Fundamental Law was adopted and promulgated in April 2011, and will enter into force on 1 January 2012.

Some of the critical statements of the Hungarian Helsinki Committee, the Hungarian Civil Liberties Union, and the Eötvös Károly Public Policy Institute, concerning the process and content of the Fundamental Law, are summarised below. It has to be added that the European Commission for Democracy through Law, better known as **the Venice Commission, seriously criticized the Hungarian Constitution**,<sup>12</sup> reinforcing many of the criticisms detailed below. However, the Hungarian Government publicly stated that Hungary will not accept the critical assessment of the advisory body of the Council of Europe to which Hungary is a member state.<sup>13</sup>

#### 1. The constitution-making process did not meet basic democratic standards.

The constitution-making process **failed to institute any substantial professional or open public debate**. Furthermore, the pace of the constitution-making process was so fast that substantively discussing the Fundamental Law was impossible: the parliamentary debate on the draft began on 14 March 2011 and the Fundamental Law was adopted on 18 April 2011. The one-month timeframe and, within this, the net total of nine days of parliamentary debate left no chance for any kind of in-depth deliberation.

#### 2. The Fundamental Law alters the accepted definition of the political community.

As opposed to the Constitution in force, the Fundamental Law replaces "people" with the "nation" as the subject of the constitution-making process and the right to participate in the elections is granted not only to persons residing in Hungary. Thus, it follows from the provisions **that Hungarians living abroad may also have the possibility to take part in the parliamentary elections**, even though they do not fall under the scope of the acts adopted by the Parliament, therefore they are not subjected to the consequences of the political decisions.

#### 3. The National Avowal of Faith (the Preamble of the Fundamental Law) is more than a solemn declaration, since the Fundamental Law declares that fundamental rights shall be interpreted in accordance with the National Avowal of Faith.

**The National Avowal of Faith does not meet the requirement of ideological neutrality** expected from modern democratic constitutions **and does not follow the idea of a secular state**, thus not all persons falling under its scope may reckon the Fundamental Law as their own. That is to say that the National Avowal of Faith represents a Christian-nationalistic worldview and imposes this concept on everyone. By way of example, the

<sup>10</sup> <http://www.mno.hu/portal/739260>

<sup>11</sup> For comments on the process of framing the new Constitution, see: [http://helsinki.hu/dokumentum/Comments\\_on\\_the\\_Process\\_of\\_Framing\\_the\\_New\\_Constitution\\_of\\_Hungary\\_EKI\\_HCLU\\_HHC.pdf](http://helsinki.hu/dokumentum/Comments_on_the_Process_of_Framing_the_New_Constitution_of_Hungary_EKI_HCLU_HHC.pdf). For the criticism on the content of the new Constitution, see:

[http://helsinki.hu/dokumentum/Hungarian\\_NGOs\\_assessing\\_the\\_draft\\_Constitution\\_of\\_Hungary\\_20110414.pdf](http://helsinki.hu/dokumentum/Hungarian_NGOs_assessing_the_draft_Constitution_of_Hungary_20110414.pdf).

<sup>12</sup> [http://helsinki.hu/Friss\\_anyagok/htmls/849](http://helsinki.hu/Friss_anyagok/htmls/849)

<sup>13</sup> [http://index.hu/belfold/2011/06/18/nem\\_fogadjuk\\_el\\_a\\_velencei\\_bizottsag\\_alkotmanybiralatat/](http://index.hu/belfold/2011/06/18/nem_fogadjuk_el_a_velencei_bizottsag_alkotmanybiralatat/)



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Fundamental Law says: "We acknowledge the role that Christianity has played in preserving our nation" and that "We proclaim that the family and the nation provide the fundamental framework for the community, in which the pre-eminent values are loyalty, faith and love". The National Avowal of Faith does not refer at all to the secular, non-religious cultural tradition, moreover equality or rule of law are not even mentioned in the Preamble.

Secondly, the National Avowal of Faith is not simply a declarative preamble. According to Article Q Paragraph (3) of the Fundamental Law, the National Avowal of Faith contains normative elements, since according to this provision the Fundamental Law shall be interpreted in accordance with National Avowal of Faith. This nevertheless may mean **that the catalogue of fundamental rights, such as the freedom of speech or the right to human dignity shall be interpreted and may be restricted on the basis of such values as faith, loyalty, or the prominent role of Christianity.**

#### 4. The Fundamental Law puts in doubt core human rights' basic status. The citizens shall be entitled to weaker protection.

The Fundamental Law prescribes that "everyone shall [...] contribute to the performance of state and community tasks", and that "everyone shall contribute to the enrichment of the community through work performed according to his or her abilities and possibilities" – thus **subordinating individuals to the political community by not allowing them to lead a life which does not contribute to the "enrichment of the community"**. Furthermore, restriction of fundamental rights is made possible on the basis of values that are not shared by a significant part of the political community.

**Lifelong imprisonment without parole will be expressly allowed** in the Fundamental Law without regard to the fact that this criminal sanction has been criticised by several international organisations. Although the provision that the foetus shall be protected from the moment of conception does not restrict directly the right to abortion, it **creates the basis for restricting women's reproductive rights** in the future. The right to social security is degraded to the level of an abstract state objective.

Marriage is defined by the Fundamental Law as the conjugal union of a man and a woman, which **excludes the possibility of the legalisation of same sex marriages**. Furthermore, **sexual orientation is not explicitly mentioned as a protected ground**, whereas the non-discrimination clause of the Charter of Fundamental Rights of the European Union expressly lists this ground. Through these and other articles, the Fundamental Law expresses a preference for an explicitly defined family model, a certain way of life and conveys the message that it does not wish to become the Constitution of those who wish to pursue a different way of life.

#### 5. The Fundamental Law weakens the balances of the governing majority.

The Fundamental Law seriously weakens the constitutional control over the Parliament and Government. It does not include any provision concerning the nomination of members of the Constitutional Court, which jeopardizes the body's independence. Due to the lack of any provision in the Constitution in this regard, the government – having a two-third majority – can adopt rules that make nomination possible without the government having to seek the consensus of the parliamentary opposition. Consequently, **the government can nominate and appoint the new judges of the Constitutional Court without taking the opinion of the opposition into consideration**. Independence is endangered also by the fact that the Fundamental Law does not exclude the possibility of the re-election of the Constitutional Court judges. Furthermore, the Fundamental Law **maintains the restriction of the jurisdiction of the Constitutional Court** related to laws on the central budget and taxes. In this way, it eliminates the constitutional review over decisions adopted by public authorities on these subject matters.

While the Constitution in force protects the autonomy of the administration of the judiciary, the Fundamental Law does not regulate the issue. Therefore, this **significant aspect of the independence of the judiciary does not enjoy constitutional protection**. Moreover, the lowering of the compulsory retirement age limit of judges



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makes it possible for the governing majority to change practically the entire leadership of the judiciary through replacing the retired judges with persons who are in its confidence.

### *6. The Fundamental Law undermines democratic political competition and political change.*

By setting the condition that the prior approval of the Budgetary Council (composed of members delegated by state leaders) is needed for the adoption of the Act of Parliament on the central budget, the Fundamental Law deprives future Parliaments of their right to adopt the central budget. This precondition **splits the authority to adopt the central budget between the Parliament and the Budgetary Council**. In case the prior approval of the Council is not given, and therefore the central budget is not adopted by March 31 of the respective year, the Head of the State may dissolve the Parliament. This gravely restricts the enforcement of the principle of popular sovereignty which requires that the supreme depository of power shall be the Parliament consisting of representatives elected by the people.

Moreover, the Fundamental Law declares that subject matters, such as family policy, the pension system, or tax acts, which have been within the authority of the government in power, shall be regulated by cardinal acts, i.e. acts adopted by two-thirds of Parliament. In the case of a Parliament where the government does not hold a two-third majority, this rule can lead to a state of ungovernability. At the same time, this rule makes it possible for the recent government to ensure the long-lasting force of its family, pension, and tax policies, expanding their effect even into the period when other political forces will hold governing responsibility.

## **V. Provisions depriving defendants of the right to contact defence counsels and allowing for 120 hours of detention without judicial control**

On 14 June 2011, the parliamentary committee responsible for constitutional matters submitted a proposal to amend the provisions of the Code of Criminal Procedure. The proposal **intends to deprive defendants charged with certain kinds of criminal offences** (by far not the most serious ones – e.g. murder or terrorism are not among crimes concerned, but bribery or abuse of an official are among them) **of the possibility to contact their defence counsels in the first 48 hours of their arrest, even if the defendant is interrogated in the meantime**. This provision is clearly in contradiction with European Convention on Human Rights as interpreted by the European Court of Human Rights (ECtHR), and also with the “Proposal for a Directive of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest”, which will by all probability be adopted by the European Parliament and Council. Other provisions of the planned amendments also contradict international human rights standards: the proposal **allows for 120 hours of detention by the Police without judicial approval** and **allows prosecutors to decide before which criminal courts they want to initiate the criminal procedure** in question. (The latter provision deprives defendants of their right to a lawful criminal court, as not the law but the prosecutors’ discretion will decide on the court proceeding in certain cases.) The amendments also oblige judges ordering or prolonging pre-trial detention not to share evidence substantiating the necessity of the coercive measure with the defendant and his or her lawyer if the Police or the prosecutor so requests, although this is in clear contradiction with the ECtHR’s jurisprudence.