

The State of Play Regarding the Rule of Law in Hungary: an Illiberal State 10 Years in the Making

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*Summary by the Hungarian Helsinki Committee
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Since winning the elections in 2010, the populist, right-wing Fidesz-KDNP Government has been using its parliamentary supermajority to **systematically and consciously undermine the rule of law, and disrupt the system of checks and balances in Hungary**. The Government has sought to do this by weakening, eliminating or occupying institutions and actors that could exercise any form of control over the executive branch of power. Despite the countless warnings and requests by international and regional human rights bodies, numerous infringement procedures, and an Article 7 procedure launched against Hungary, an “illiberal state” has been built in the middle of Europe in the last 10 years. Below, we summarise the most crucial steps of this process.

UNDERMINING CONSTITUTIONALITY AND WEAKENING THE CONSTITUTIONAL COURT

- The governing majority [adopted](#) the Hungarian Fundamental Law (the **new constitution**) in 2011 without the support of any other political force. In practice, the new Fundamental Law was the **product of a single political party**. The governing majority takes an “[instrumental attitude](#)” towards the Fundamental Law, frequently amending it (and its predecessor), and **treating it as a political tool** of the Government;
- The governing majority has systematically reintroduced into the constitution provisions of ordinary laws which had been previously found unconstitutional and annulled by the Constitutional Court, effectively **overruling the Constitutional Court** in the process;
- The Constitutional Court’s **powers** have become severely **limited** in relation to laws on the central budget and taxes, shielding potentially unconstitutional laws from constitutional review; and
- The governing parties amended the previously existing consensual provisions for nominating Constitutional Court judges, and increased their number. In essence, the ruling majority **packed the Constitutional Court** e.g. with former MPs, and has shaped it into a [loyal body](#) supportive of the governing majority’s agenda.

UNDERMINING THE INDEPENDENCE OF THE JUDICIARY

- As a result of a thorough re-regulation in 2011, the **administration of courts became centralised** and was placed in the hands of the President of the newly established National Judicial Office (NJO). The NJO President is elected by Parliament, and was granted [excessive powers](#). In 2018–2019, the **abuse of power by the NJO President in relation to judicial leadership appointments** resulted in a prolonged conflict between the NJO President and the National Judicial Council (NJC), the judicial self-governing body. Although this [constitutional crisis](#) seems to have been averted by replacing the NJO President, all of the **structural issues that led to the crisis still prevail**, and the provisions that allowed the abuse of power are still in force;
- [In violation of EU law](#), the **mandatory retirement age for judges was lowered** in 2012. The move resulted in the **replacement of a significant part of the judiciary leadership**;
- Prompted by criticisms he expressed over legislative steps affecting the judiciary, the **mandate of the President of the Supreme Court was prematurely terminated** in 2012, which [violated](#) his freedom of expression. In recent years, **NJC members** critical of the former President of the NJO **faced [retaliatory measures](#) and were systematically targeted by government-affiliated media**. In addition, the governing majority has been using public statements and the media to [interfere](#) with the independent operation of the judiciary. Coupled with the legal and institutional changes, these have resulted that the **[chilling effect on the freedom of expression of judges is encoded and is palpable in the current court system](#)**; and
- A law adopted in 2019 opens a way for **politically sensitive court cases** to be decided in a way that is favourable for the executive power. The law now makes it possible to **[channel these cases out of the ordinary court system](#)** to the already packed Constitutional Court. In 2020, a one-party appointee [parachuted](#) to the top of the judicial system when he was elected President of the Kúria (Hungary’s highest court, the successor of the Supreme Court) against manifest opposition by the NJC.

WEAKENING OTHER INDEPENDENT INSTITUTIONS OF THE SYSTEM OF CHECKS AND BALANCES

- Restructuring and re-staffing other **independent institutions** besides the courts and Constitutional Court has also **systematically undermined their role as checks and balances to political power**. The ruling majority gained control over state institutions by removing their leaders before their fixed term of office expired. This institutional decapitation was done via legislative steps, and/or by appointing or electing new, loyal leaders. For example, the Presidents of the Republic elected since 2010 were all former Fidesz MEPs/MPs. As a result, state institutions have been **deprived**, by law or in practice, **of their capacity to effectively exercise control over the executive**;
- Premature termination of the Data Protection Commissioner's mandate not only [violated EU law](#), but also transformed the Ombudsperson system. In recent years, the remaining single **Ombudsperson** (the Commissioner for Fundamental Rights) [has not demonstrated](#) adequate efforts in addressing all human rights issues, and has [repeatedly failed to address](#) (or address adequately) **pressing high-profile human rights issues that are politically sensitive**; and
- In [violation](#) of their rights, thousands of **public servants**, whose loyalty to the ruling party was questionable, were **dismissed** on the basis of a law that authorised government agencies to fire their employees without any justification.

DEFICIENT LEGISLATIVE PROCESS; THE EXECUTIVE'S EXCESSIVE REGULATORY POWERS

- **Rules on public consultation** on draft laws have been repeatedly **disregarded or circumvented**. Deadlines for commenting have often been so tight that it has made meaningful consultation impossible;
- **Bills in the Parliament** have often been **adopted within a very short timeframe**. Moreover, the governing majority has adopted the practice of substantially amending bills in the last phase of the legislative process, after a detailed parliamentary debate has already taken place;
- The **Speaker of the Parliament has extensive disciplinary powers**, which the current Speaker tends to overuse in a partisan manner and to the [detriment](#) of opposition MPs; and
- Referring to the COVID-19 pandemic, the Government declared a "state of danger," and was [provided](#) with a *carte blanche* mandate without any sunset clause to override laws. Certain Government decrees issued using this power [raised](#) rule of law and/or human rights concerns, and some were even in breach of EU law. Although the state of danger was terminated, amendments introduced in June 2020 **provided the Government with excessive powers** that can be applied in a pandemic situation and **with significantly weakened constitutional safeguards**.

CREATING AN UNFAIR ELECTION SYSTEM

- OSCE/ODIHR [warned](#) that a number of amendments introduced by the governing majority to the Hungarian election system "*negatively affected the electoral process, including the **removal of important checks and balances***;"
- Election commissions lack independence, and the right to appeal decisions in election matters has been significantly restricted;
- Electoral **rules** were **amended in favour of the governing party**: [gerrymandering](#) and introducing the system of "[winner compensation](#)" (which brought extra mandates for the governing party) resulted in an **extremely disproportionate election system**; and
- The distorted media landscape and deficient campaigning rules undermined the fairness of the elections. In relation to the 2014 general elections, the OSCE/ODIHR Limited Election Observation Mission [concluded](#) that "*the **main governing party enjoyed an undue advantage** because of restrictive campaign regulations, biased media coverage and campaign activities that blurred the separation between political party and the State.*" With regard to the 2018 general elections, the mission [concluded](#) that the "*elections were characterised by a pervasive overlap between state and ruling party resources, **undermining contestants' ability to compete on an equal basis**. Voters had a wide range of political options but intimidating and xenophobic rhetoric, media bias and opaque campaign financing constricted the space for genuine political debate, hindering voters' ability to make a fully-informed choice.*"

DISTORTING THE MEDIA LANDSCAPE

- In 2010, the governing majority **created a single media regulatory system**. The newly established entities [lack sufficient independence](#) but have **excessively broad** regulatory and sanctioning **powers**;
- The **public service media** has been [transformed](#) into a **“government mouthpiece;”**
- Through the **selective channelling of advertising money** by government agencies and state-owned companies, and ventures of government-linked oligarchs into loyal media outlets, the ruling elite starved, strangled, and eventually bought up several independent media outlets. This resulted in an **unprecedented concentration of media ownership** in the hands of actors closely affiliated with the governing parties. The process was topped off with the [creation of a mammoth media holding](#). In 2018, Government-linked owners “donated” **476 media outlets** to a foundation headed by Government loyalists. As a result, as of April 2019, **77.8% of the news outlets** in Hungary are [connected to the governing party](#) in one way or another. This allows the Government to disseminate political messages and political propaganda more effectively than ever before; and
- The few independent outlets that remain [face](#) a host of obstacles: lack of advertising revenue, a restrictive regulatory environment, and public campaigns to discredit independent journalists. Since tender applications are never made public, politically biased decisions in awarding **radio frequencies** are almost impossible to contest in court.

SYSTEMIC CORRUPTION

- Corruption in Hungary has reached [systemic proportions](#), and has **become an integral part of the functioning of the system**. Corruption has been becoming extremely centralised since 2010;
- In the last decade, the governing party has gradually established **crony state capitalism**. Systemic corruption centres around **creating a new political-economic elite, a circle of loyal oligarchs**, and rewarding those loyal to the governing party. The diversion of EU subsidies from their designated purpose, public investments that are used to funnel public funds into private pockets, rigged public procurements, state-forced redistribution of entire market segments and profitable businesses (such as licenses for selling tobacco), and the various channels designed to facilitate rent-seeking through state-provided instruments [serve](#) to boost the financial positions of the ruling elite; and
- State authorities, most notably **the prosecutor’s office, fail to counter corruption** or to effectively launch procedures in such cases.

UNDERMINING ACADEMIC FREEDOM

- In 2019, the governing majority removed 15 academic research institutes from the Hungarian Academy of Sciences and placed them in a newly established state research network supervised by a Ministry of Innovation-dominated board. This puts [research under Government control](#), and effectively means that the executive branch has a decisive say as to what type of research gets funded; and
- Legislative steps **forced** the US branch of **Central European University (CEU) out of Hungary**, prompting an [infringement procedure](#). **University autonomy has been undermined** in general, for example by privatising universities in a way that weakens university autonomy.

ATTACKING CIVIL SOCIETY ORGANISATIONS

- **Independent civil society organisations** (CSOs) have been [vigorously attacked by the Government](#). [Attempts](#) to stifle CSOs included an extensive smear campaign and rhetorical attempts of intimidation, launching ill-founded legal procedures against CSOs, and hindering their work via various means. The series of attacks culminated in a law **stigmatising** certain **CSOs** as “foreign-funded organisations” which is still [applied](#) even though the CJEU ruled that it is [in violation of EU law](#). Another law **criminalised a set of CSO activities** related to assisting asylum-seekers, and prompting another [infringement procedure](#).

USING A SMOKESCREEN OF HATE PROPAGANDA

- The process of taking over the control mechanisms of the executive branch was carried out behind a smokescreen of hate propaganda. The Government depicts itself and Hungary as being at war against different external forces trying to damage the country, ranging from the European Union to NGOs. Most prominently, during the 2015 migration crisis, the Government started an **intensive, still-ongoing campaign vilifying migration, migrants and their helpers**. Hate messages have been conveyed via public statements, media campaigns, billboards and “national consultations.”

HUMAN RIGHTS VIOLATIONS

The governing majority has failed to address already-existing human rights issues in the country, and has continued to cause new human rights breaches. Examples [include](#) the following:

- Hungary has been failing to address systemic deficiencies with regard to preventing, investigating and sanctioning [ill-treatment by the police](#), and to execute respective ECtHR judgments;
- Juveniles may be taken into confinement for petty offences in violation of the Convention on the Rights of the Child. **Homelessness has been criminalised** and is punishable with jail time. Pending a first instance judgment, pre-trial detention can be of unlimited length in certain cases;
- Despite an ECtHR judgment condemning Hungary, [secret surveillance](#) devoid of sufficient and adequate safeguards remains possible;
- **Freedom of information has become limited**. The law allows state actors broad leeway in rejecting requests for public information. In addition, the authorities often do not comply adequately with requests;
- In [violation](#) of the European Convention on Human Rights, hundreds of religious communities have been deprived of their **church** status. Structural [deficiencies](#) in the law, and the practice of authorities undermine the right to **freedom of assembly**;
- **Roma people** face [discrimination](#) and exclusion in all areas of life, including housing, education, employment and health care. Roma are subject to ethnic profiling by the police e.g. with regard to ID checks and petty offence fines. School segregation of Roma children remains widespread despite an EU infringement procedure and an ECtHR judgment. Recently, a law was adopted that [prevents](#) courts from granting pecuniary compensation to victims in school segregation cases. This amounts to indirect discrimination and violates EU law;
- **Persons with disabilities** are subject to [systematic rights violations](#) and structural discrimination;
- The Government is refusing to ratify the Istanbul Convention. The notion of family is restrictively interpreted. Legal gender recognition has been [banned](#). **LGBTQI people** face increasing hostility from high-ranking governing party politicians; and
- Under the current governing majority, Hungary has repeatedly violated the rights of migrants and asylum-seekers. As a latest step, in reaction to a CJEU judgment that condemned the country for **unlawful detention of asylum-seekers** (including children) in transit zones at the border, Hungary adopted rules in 2020 whereby it practically [removed itself from the Common European Asylum System](#).

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