



Hungarian Helsinki Committee

## HUNGARIAN HELSINKI COMMITTEE

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### *Hungarian Helsinki Committee UPR Fact sheet 2*

## REMOVAL OF CHECKS AND BALANCES FROM THE CONSTITUTIONAL FRAMEWORK

At the general elections in April 2010, the new Government coalition gained more than two-thirds of the seats in the Parliament, meaning that the coalition has the possibility to amend the Constitution and other important laws without seeking any consensus from the opposition. Making use of this possibility, the new majority has removed some important elements of the system of checks and balances, and guarantees of the rule of law.<sup>1</sup> The removal of checks and balances was continued by the new Constitution of Hungary, which was signed by the President of Hungary on 25 April 2011, and will enter into force on 1 January 2012.

### 1. Constitutional Court

- The rules on proposing Constitutional Court judges have been amended in a way that **the Government coalition may nominate and elect Constitutional Court judges without having to take into consideration the opinion of the opposition** (while earlier this was not the case). Furthermore, while at present the Constitutional Court judges elect the Court's president from among themselves for a term of three years, in terms of the new Constitution, the Parliament will elect the Court's president for a term of 12 years.
- **The jurisdiction of the Constitutional Court related to laws on the central budget and taxes has been severely curbed.** The Constitutional Court is be entitled to review and annul such rules (e.g. provisions on the expropriation of private property or retroactive taxes) only under exceptional circumstances. **The new Constitution maintains the restriction of the Constitutional Court's jurisdiction.**
- **The new Constitution eliminates the citizens' right to *actio popularis* petitions for the constitutional review of the laws** – a procedure that has become part of the Hungarian legal culture in the past twenty years.

### 2. Judiciary

- The new Constitution of Hungary **decreases – as of 1 January 2012 – the compulsory pension age limit of regular judges from 70 to 62 years which 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.
- The so-called "nullification law" adopted in March 2011, **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.
- While the Constitution in force protects the **autonomy of the administration of the judiciary**, the new Constitution is silent about the issue. Therefore, this significant aspect of the independence of the judiciary will not enjoy constitutional protection.

### ? Questions:

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<sup>1</sup> For a full analysis on the removal of checks and balances see:

[http://helsinki.hu/dokumentum/Hungarian\\_NGOs\\_assessing\\_the%20second\\_wave\\_of\\_legislation\\_December2010.pdf](http://helsinki.hu/dokumentum/Hungarian_NGOs_assessing_the%20second_wave_of_legislation_December2010.pdf)



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- What is the justification for measures decreasing the degree of the Constitutional Court's independence from the legislation?
- What is the justification for restricting the jurisdiction of the Constitutional Court related to laws on the central budget and taxes and maintaining this restriction in the new Constitution?
- What is the justification for eliminating the right to actio popularis petitions for the constitutional review of the laws?
- What is the justification for abruptly decreasing the compulsory pension age limit of judges?
- What is the justification for the legislation's interference into individual court cases through adopting the so-called "nullification law"?
- What is the justification for not including a provision regulating the autonomy of the administration of the judiciary in the new Constitution?

### ***! Recommendations:***

- It should be ensured that Constitutional Court judges are proposed and elected in a way that requires the governing majority to take into consideration the opinion of the opposition.
- The full jurisdiction of the Constitutional Court related to laws on the central budget and taxes should be restored in order to guarantee the full possibility of constitutional review of the acts of legislation.
- The decrease of the compulsory retirement age for judges should be carried out gradually and in a way that does not concern currently serving judges.