# Disrespect for European Values in Hungary

## 2010-2014

## Rule of Law – Democracy – Pluralism – Fundamental Rights













The European Union (EU) is premised on the respect for human dignity, freedom, democracy, equality, the rule of law, and human rights—including the rights of persons belonging to minorities. EU Member States share these values: they are societies committed to pluralism, the prohibition of discrimination, tolerance, justice, solidarity, and gender equality. Lately, these fundamental values have been systematically disrespected in Hungary. This analysis, which has been prepared by four Hungarian NGOs (the Eötvös Károly Policy Institute, the Hungarian Helsinki Committee, the Hungarian Civil Liberties Union and the Mérték Media Monitor) assesses the current deficiencies of the rule of law, democracy, pluralism and respect for human rights in Hungary.

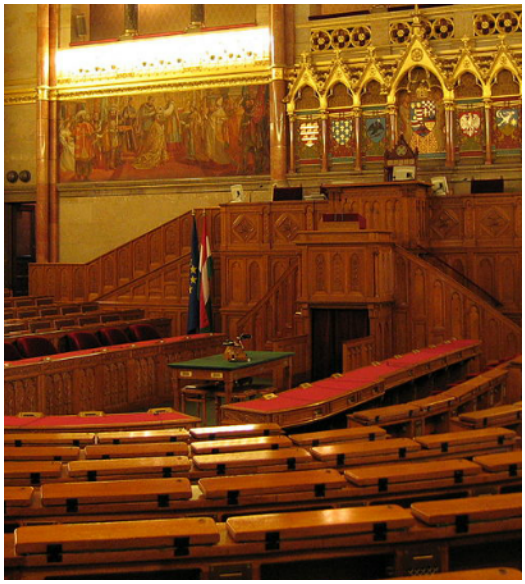


Photo: MichiK CC BY-SA 3.0

# Rule of Law

**The rule of law requires, foremost, that political authority be exercised exclusively within constitutional limits and as prescribed by law.**

The Hungarian government, with the backing of a two-thirds supermajority in Parliament, has disregarded constitutional limits on the exercise of its powers from when it rose to power in Spring 2010. The government's disregard for limits imposed on its rule extended to the 1989-90 Constitution as well as to the Fundamental Law that replaced it in 2011. The governing majority, without the support of any other political forces, repeatedly amended both basic laws. The unending series of constitutional amendments often served the political aims of the government, and in parallel, it undermined the stability of the constitution. Some of these amendments have severely restricted the possibility to subject budget and tax legislation to constitutional review.

The former Constitution was amended 12 times during a period of a mere 18 months, from mid-2010 till the end of 2011. The Fundamental Law, which entered into force on 1 January 2012, has already been amended 5 times. As a result, approximately one-fourth of its text was changed. All the amendments enjoyed – save an occasional one or two votes – the exclusive support of the governing parliamentary faction.

It has become an established practice that the government precludes constitutional review and annulment of laws in violation of constitutional requirements and fundamental rights by amending the Fundamental Law. For instance, the Constitutional Court ruled that it is unconstitutional to condition a given organization's church status on the approval of the Parliament. In reaction, the governing majority amended the Fundamental Law so that it empowers the Parliament to grant or deny church status. In a similar fashion, the Constitutional Court found that it is unconstitutional to criminalise homelessness. In turn, the governing majority authorized the law-maker to criminalize homelessness by accepting the Fourth Amendment of the Fundamental Law. This amendment also explicitly prohibits the Constitutional Court to review the constitutionality of amendments to the Fundamental Law.



Photo: István Fazekas /HVG

**The rule of law requires that the law be foreseeable and accessible to its addressees, and reasonably unambiguous. The law may not impose obligations, abolish or restrict rights with a retroactive effect.**

The exercise of political authority through law has proved to be insufficient, since 2010, to guarantee basic requirements of the rule of law, including the prohibition on retroactive legislation. The Constitutional Court's jurisdiction to review budget and tax laws has been very limited since 2010. As a result, the governing majority can enact any financial legislation that breaches the Fundamental Law and citizens' fundamental rights without legal consequences or control.

In 2010 the governing majority introduced a 98 percent tax on the severance pay of public employees, that became applicable in the very same tax year. Although the law was promulgated in August 2010, it became applicable to any income effective as of 1 January 2010. In order to sidestep the judicial practice of the Constitutional Court regarding retroactive legislation, Parliament amended the Constitution. The amendment made it possible to tax severance payments paid in the same calendar year at a nearly 100 percent rate.

The Government published the first proposed draft of the new Fundamental Law only one month before its enactment. Its parliamentary debate lasted a mere 9 days. The quality of law-making has deteriorated significantly. It has become a routine practice in Parliament to have a final vote on bills only a couple of days after they have been introduced. As laws enacted in a rush often need to be corrected, they are frequently subject to further amendments soon after they have been enacted.

The government has on several occasions proposed legislation, which in turn was dutifully adopted by its parliamentary majority, that only aimed to enact measures that concern—advantage or disadvantage—a specfic person or organization. For example, the progressive sales tax recently imposed on advertisers is a seemingly general measure. However, in fact, its highest tax rate (currently 40 percent, with now a proposal to increase to 50 percent) clearly affects only one of the major commercial TV channels, RTL Klub, causing it a severe disadvantage.

**The rule of law requires the separation of powers. To protect fundamental rights, it is also indispensable that independent institutions—foremost among them, independent courts—function as checks on the exercise of political power.**

The government has systematically undermined the role of independent institutions as checks on and balances to political power by means of restructuring as well as re-staffing these institutions. The governing majority, in order to appoint loyal office-holders, removed the previous incumbents from office before their terms expired.

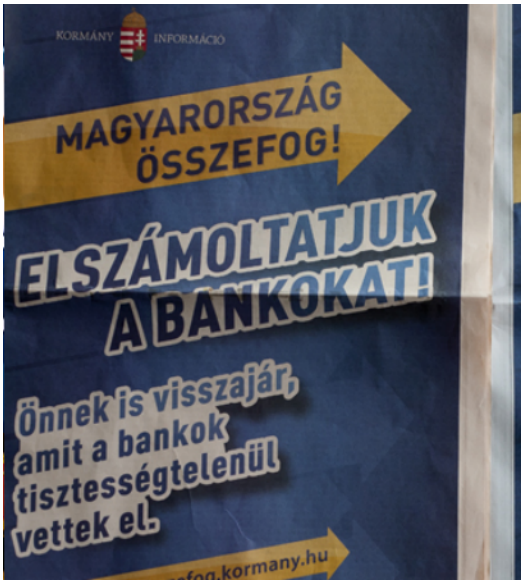
Rules regulating the appointment of judges on the Constitutional Court were changes. As a result, the governing majority can nominate and appoint Constitutional Court justices with complete disregard for the opposition forces' views on the candidates, thereby determining the future course of constitutional court jurisprudence. The Court has also been enlarged: instead of 11, now 15 judges sit on it. As a result, judges who had appointed exclusively by the governing parliamentary faction are now in majority. Their position has also been reinforced by a statutory amendment according to which the term of office of newly elected judges does not expire when they reach the age of 70. Instead, they can remain in office, overarching a number of parliamentary election cycles, for 12 years instead of their previously 9-year long term. Some of them may now stay in office until 2023.

A number of measures also interfered with the independence of statutory adjudication. The term of office of the President of the Supreme Court was discontinued three years before it expired, in violation of the European Convention of Human Rights. In May 2014, the European Court of Human Rights in the case of *Baka* v. *Hungary* found that the premature termination of the President's mandate violated the right of access to a tribunal, and that the President's right to freedom of expression had also been violated.

With the entry into force of the new Fundamental Law on 1 January 2012, the retirement age of judges immediately decreased by several years. As a consequence, several elderly judges—including many high-ranking senior judges—had to retire and leave their offices without delay. In November 2012, the European Court of Justice ruled that the lowering of judges' retirement age violated EU law. Although later Parliament enacted a law that allowed retired judges to return to their positions, most of them did not avail themselves of the opportunity given the undignified treatment they had been subjected to.

The administration of courts became centralised in 2011: the former judicial body in charge of administrating courts was replaced by a one-person decision-making mechanism, the President of the newly-established National Judicial Office (NJO). The President of the NJO was vested with the right to appoint another court to proceed in a given case (i.e. transfer/reassign hand-picked cases to a hand-picked court) on the ground that the original court's case docket is too high. In practice, this meant that a number of politically high-profile cases were transferred, amid much controversy. The system of transferring cases violated the right to fair trial, and the Constitutional Court found the legal basis of the transfers unconstitutional. While the possibility to transfer cases was finally abolished in its previous form in 2013, there was no rectification for breaching the right to one's lawful judge in cases which had already been transferred by the NJO President.

The office of the Ombudsperson for Data Protection was abolished and a new data protection authority was established in its place. Under the pretext of institutional restructuring, Mr. András Jóri, Ombudsperson for Data Protection, was removed from office before his mandate expired. In April 2014, the European Court of Justice found this step to be in violation of EU law. The ECJ pointed out that the independence of the national data protection authority requires that the duration of the Ombudsperson's mandate be respected.




# Democracy

In parallel to the adoption of a new Hungarian electoral law in 2011, a new constituency map came into effect. The new constituency map was designed without any professional or political consultations. In the new map, districts with left-leaning tendencies have typically a 5-6 thousand larger population than those in right-leaning districts. Had the current election rules been in effect in 2002 and 2006,, Fidesz would have also won the 2002 and 2006 national elections when the party had actually lost, moreover, with equal support at the national level, Fidesz would have been allocated 10 more single-member mandates than its main rival in 2010.

**A democratic political system requires free and fair elections and equal opportunities for the competing parties.**

Hungarian elections remained free but became unfair. Political parties in government are in a significantly more favourable position than those in opposition in the context of political competition.

The new election rules also provide for "winner compensation": not only votes cast for candidates who loose in individual constituencies should be added to the votes for the compensational list, but also those votes case in support of the winner that are not "used up" in gaining the individual seat in Parliament. In other words, if the winner receives 20,000 votes while the runner-up gets 15,000 votes, the party having the successful candidate will be allocated 4,999 further fractional votes. This method brought 6 extra mandates for Fidesz-KDNP in the 2014 national elections.

OSCE/ODIHR confirmed that "the main governing party enjoyed an undue advantage because of restrictive campaign regulations" during the national election campaign. Amendments to the Fundamental Law created a situation where the campaign for political parties became practically confined to the public media. As commercial media outlets were only permitted to broadcast political advertisements for free, not one commercial media outlet with a national coverage chose to broadcast political advertisements. This, taken together with the fact that the public (state-owned) media is very pro-government, resulted in uneven media representation that unduly favoured the governing Fidesz party and its candidates.

OSCE/ODIHR expressed concern over the fact that the majority of campaign billboard spaces was rented by Fidesz in the course of the campaign, and opposition parties and candidates had limited access to broadcast media and public advertising spaces, including public buses and billboards, most of which are owned by companied managed by individuals who are affiliated with Fidesz.

Election rules differentiate between Hungarian citizens who are staying abroad but have permanent residence in Hungary and those who are living abroad without permanent residence in Hungary. The latter may also vote via mail ballot, while those in the first group have to vote in person at embassies or consulates (which in some cases requires them to travel large distances). This is at odds with the principle of equal suffrage.

Finally, prior to the elections, media sources alleged that in many cases personal data and voter signatures had been illegally copied by political parties from one recommendation sheet to another. (Under the law, recommendations from voters are needed to run in the election, and one voters may recommend several candidates.) However, concerned state authorities were reluctant to investigate the matter and/or provide a remedy.

**Open and substantial parliamentary debate is an essential condition for democratic decision-making. In order to realize this, the parliamentary legislative process should be transparent, there should be adequate time to discuss legislative proposals of great importance, opposition MP's should have the opportunity to form a critical standpoint and to share it with the public, and opposition MP's should be able to express their critical views without fear and detrimental consequences.**

Despite its regular plenary sessions, there is hardly any space for substantial debate in Parliament. Parliamentary debate is significantly curbed as concerns legislation, controlling the government or discussing public affairs.

Between 2010 and 2014, several legislative proposals that fundamentally altered substantive elements of the constitutional framework, such as the Fundamental Law and many of its amendments, were submitted to Parliament by individual MP's. This way, public debate and the commenting process, in the course of which citizens and the opposition could have had an opportunity to become informed and express their views about such legislative proposals, was completely circumvented. The parliamentary House Rules in force when the constitutional framework was being transformed made it possible to adopt bills in an extraordinarily rapid way, sometimes even within a timeframe of 24 hours.

In the 2010-2014 parliamentary term, not once did the governing majority allow a parliamentary inquiry that was initiated by an opposition faction. Reacting to measures that severely restricted the possibilities for parliamentary debate, opposition MP's increasingly resorted to unusual means to express their opinions (e.g. holding up awareness-raising signs and banners). However, with the approval of the governing majority, the Speaker of Parliament has been granted wide powers to curb such protest actions: if the Speaker considers such protests to be insulting or undermining the prestige of Parliament, MP's can face high fines or even exclusion from parliamentary sessions. The Speaker of Parliament has never used these powers to punish governing party MP's. At the same time, in 2014 the European Court of Human Rights condemned Hungary for violating the freedom of expression because opposition party MP's were sanctioned in this way.

**Free and independent media is a basic precondition for democracy. It allows the free expression of one's views and ideas, and establishes the basis for citizen participation in public affairs and for controlling state power.**

Government actions related to the media have the effect of creating a public sphere that is monochromatic, incapable of dialogue and encourages an indifferent and obtuse attitude towards public affairs.

In 2010, Parliament adopted new media laws that threaten all kinds of media with severe media law sanctions, established conditions for forming a biased media supervision authority and supported the expansion of politically affiliated media undertakings. The law created extremely centralised and monolithic institutions that operate based on unpredictable procedures with inscrutable expectations. Despite some stopgap measures adopted since 2010, the media laws have not been changed significantly.

The media laws established a politically homogenous Media Council. While everyone anticipated vast fines totalling millions of forints and the open harassment of editorial offices in 2010, the Media Council's powers concerning frequency tenders or its authority over public media institutions received considerably less attention. But it was precisely the use of these powers that have enabled the governing party to fully occupy the media market.

Moreover, the media laws created unprecedented centralisation in the public service media. Since 2010, a number of well-documented cases have demonstrated that self-censorship practices became prevalent in public media and that these institutions abuse public funds to create politically biased content to support the current government's political goals. About 80 billion HUF (260 million EUR) in 2015 are being shovelled into the Hungarian public media. This money is spent without any transparency or the independent external control that the European Commission requires in principle.

Nevertheless, the media laws are not the most important instruments of the government's media policies, which are aimed to comprehensively transform the media market structure in order to attain a dominant position in shaping public opinion. Fidesz is using several effective methods to further the realisation of this aim, such as acquisitions extending to all segments of the media market, manipulating the advertising market through state advertisements and special taxes, as well as ad hoc regulatory measures that impede business planning. The 2014 advertising sales tax is adapted to this media policy. Its main goal was to prevent RTL Klub, one of the last autonomous national commercial television channels, to operate successfully by assisting a rival national television channel, which was bought by politically affiliated players in 2013, to achieve a better economic position. The advertisement sales tax is a serious financial and administrative burden on several media enterprises, and it is an openly discriminatory intervention in the media market; this year 80 percent of the budget revenue from this tax is paid by RTL Klub.






Photo: europarl.europa.eu

The government has no need of occupying all segments of the public sphere as it is sufficient to gain control over media outlets with the greatest audience reach. There is no need to jail journalists when vague media law provisions and the financial insecurity wrought by the weak media market are in and of themselves sufficient to arrest any displays of courage that journalists might be prone to. The unpredictable political interventions that paralyse the media market make media companies vulnerable and ready to submit. A clear case of self-censorship was the firing of the editor-in-chief of the second biggest news portal origo.hu in 2013 in response to publishing a revealing article on unjustified travelling costs of a leading Fidesz politician; Deutsche Telekom, the holding company of origo.hu considered that the decision was the editorial team's "internal decision."



Photo: Budapest Pride facebook

# Pluralism

**Democratic societies consist of citizens who have different identities but also mutually tolerate each other. The state's commitment towards one of the competing concepts impedes pluralism.**

## The Hungarian state is not neutral from an ideological point of view.

The Fundamental Law determines fundamental values (family, nation, fidelity, work, faith and love), calling them the principal framework of coexistence and the fundamental cohesive values of the Hungarian political community, and defines them as the basis of each person's dignity. These values are echoed in several laws, such as in the Media Law or in the National Education Scheme. Thus, those who do not accept the ideological values defined as the values of the community, or do not follow the form of life considered ideal by the Fundamental Law, are not deemed as citizens having equal rights. Accordingly, the Fundamental Law deprives individuals from freely defining on their own what makes their life valuable.

Previously ideologically neutral local government schools were taken over by churches in high numbers, and these schools no longer have to strive to be ideologically neutral. The government covers the costs of religious education from the state budget. In many settlements only faith schools are available.

The Fundamental Law and the Civil Code exclude functioning and legally acknowledged relationships from the notion of family the registered partnership of same-sex couples or the cohabitation of partners of different or the same sex outside marriage is not regarded as "a family".

**A pluralistic society cannot function without a freely operating civil society that deals with issues of public policy.**

## In Hungary, the government perceives members of civil society that are critical of the government as its enemies, not as its partners.

The government aims to undermine the credibility of non-governmental organisations that are critical of the government. For a while, between Summer 2013 and Spring 2014, government officials only publicly stated that NGO's are "political activists paid by foreign interest groups", who, being on "foreign payrolls", "wish to influence the Hungarian state life in certain moments and with regard to certain issues", running into one another the politics of the civil society and the actions of party politicians. Later on, the government also started to apply the toolbar of its authorities in this regard.

In May 2014, the Government Control Office began an audit of organisations operating the EEA/Norway Grants NGO Fund and its grantees. The tax numbers of the four NGO's who are operating the Norway Grants were suspended (this decision is not yet final). The Government Control Office's audit report lists the alleged violations of law but fails to provide evidence or references. In parallel, the Norwegian government maintained a firm position that the Government Control Office has no powers to audit the Fund, as that is excluded by an international agreement. In September 2014, two NGO Fund operator organisations' offices were raided in the framework of a spectacular police action. Although procedures have been on-going since Spring, no concrete evidence of breaches of laws have been revealed.

**Exercising one's religion freely and under equal conditions is not only everyone's fundamental right but it is also an essential element of a tolerant, pluralistic and democratic society.**

## Hungary violates the above principles both by its Church Law and how the Church Law is applied: the state openly differentiates between religious denominations and does not allow every religious community to acquire the same legal status under the same criteria.

The Church Law, which entered into force in 2012, deprived hundreds of religious denominations – with the exception of 14 favoured churches – from their former status as churches due to the alleged misuses of state funding. Since 2012, a governmental agency can examine in the course of the re-recognition procedure of these denominations if the denomination in question conducts religious activities as defined by the Church Law. At the end of the procedure, Parliament takes a decision with a two-thirds majority on recognising the denomination as a church. (Currently, there are 32 such "established churches".)

Since 2013, religious communities may also operate as an association, but they do not enjoy the same level of rights as previously (e.g. the possibility of providing religious education in public schools, training clergymen, providing clerical services in hospitals and in penitentiaries, right to collect 1 percent income tax donations which may be offered to churches). The Constitutional Court in 2013 and the European Court of Human Rights in 2014 considered the deprivation from the status as a church and recognition by Parliament as a rights violation, while the existence of two kinds of statuses for religious groups was considered discriminatory.



**Every European state shall ensure fundamental rights at least on the level guaranteed by the European Convention on Human Rights and the EU Charter of Fundamental Rights.**

# Fundamental Rights

The last four years show that the Hungarian state does not consider its citizens free and equal individuals. Measures that severely violate human dignity primarily afflict the most defenceless, indigent members of society.

Several restrictive rules were introduced concerning the right to personal liberty. The Fundamental Law and the Criminal Code provides for the possibility of actual life-long imprisonment, i.e. life imprisonment without the possibility of parole. In November 2013, the duration of pre-trial detention became unlimited in cases when there is a suspicion of a serious crime.

Since 2010, juveniles may also be taken into confinement for petty offences for up to 45 days – there were occasions when juveniles were detained for the theft of goods worth less than 10 EUR.

The Fourth Amendment to the Fundamental Law gave Parliament or local governments the power to criminalize homelessness. Accordingly, a law was adopted which introduced petty offences that effectively criminalise homelessness. Sleeping on the street became punishable by community work or a fine, and, if "committed" for the third time within six months, can be punished by confinement. At the same time, the Fundamental Law does not guarantee the right to housing. Between 15 April 2012 and 15 November 2014, legal procedures were started in 2,202 cases, the total amount of fines imposed reached almost 36 million HUF (120,000 EUR).

Freedom of expression and freedom of information are also in danger. The Fundamental Law sets out that the right to freedom of speech may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community. Although this provision was introduced with the aim of making the punishment of racist speech possible, it also jeopardizes speech that is offending, shocking or disturbing to others, especially public officials or public figures, which are protected forms of expression according to the European Court of Human Rights.

In 2013, the Law on Freedom of Information was amended in a way which allows state institutions that manage data broad leeway in rejecting requests for public information, restricting full access to data to specific governmental institutions. The amended Law on Freedom of Information says that information requests for "overarching, invoice-based" or "itemized" audits of how public authorities are managed are not governed by the Law on Freedom of Information.

The right to property has also suffered serious setbacks. Legal provisions adopted in 2010 terminated membership in private pension funds, and individual citizens' assets in the private pension funds were automatically transferred to the state-run pension system, unless individuals made declarations themselves in person before the pension authorities. The law threatened persons who decided to remain in the private pension funds to lose their right to the state pension that they would have been entitled to under previous rules. As a result, more than 3,000 billion HUF (10 billion EUR) was transferred from private pension funds to the state budget. Later, the rule that deprived private pension fund members of their right to benefit from the state pension scheme was annulled – but only by the time the majority of the funds was practically nationalized.

In June 2010, Parliament introduced a special 98 percent tax on certain revenues as of 1 January 2010, thus creating a tax obligation for the period preceding the law's promulgation, which also was in breach of the ban on retroactive legislation. Although the Constitutional Court later quashed the special tax rules, they could still remain in force in a new version, because the government took action to restrict the right of the Constitutional Court to review tax laws. Later on, the European Court of Human Rights also established the unlawfulness of this tax.

In order to overrule a Constitutional Court decision that abolished a law which contained a restrictive interpretation of the notion of family, the Fourth Amendment of the Fundamental Law severely narrowed down the notion of family, restricting it to marriage and parent-child relationships. Thus, the Fundamental Law itself discriminates against all other family configurations.

The Fundamental Law defines marriage as a union of a man and a woman, excluding even the future consideration of allowing same sex marriages.

In contradiction with an earlier Constitutional Court decision, the government introduced further restrictions to accessing medical sterilization: now only persons over 40 years of age or having at least three biological children may make use of this possibility. While this restriction does not affect many people, it is still a serious and unjustified interference with individuals' decisions about their private life. The population policy aim used to justify the new rule, namely to increase the number of live births, is commonly used with regard to measures restricting choices in this area.

The right to social security has been degraded to the level of an abstract state objective: according to the Fundamental Law, the state only "strives to provide social security". Furthermore, by stating that the nature and extent of social measures may be made determined "in accordance with the usefulness to the community of the beneficiary's activity", the Fundamental Law denies the principle of equal human dignity.



Photo: Ivola Bazánth / 168ora.hu



**The following NGO's agree and support this assessment:**

Association of European Freelance Artists
http://www.eszme.eu/

Autonómia Foundation
http://autonomia.hu/

Belletrist Association
http://www.szepiroktarsasaga.hu/

Birth House Association
http://www.szuleteshaz.hu/

Budapest Pride (Rainbow Mission Foundation)
http://budapestpride.com/

Chance for Children Foundation
http://cfcf.hu/

Civil College Foundation
http://www.civilkollegium.hu/

Energiaklub - Climate Policy Institute & Applied Communications http://www.energiaklub.hu/

Greenpeace Hungary
http://www.greenpeace.org/hungary/

Gyerekesély - Chances for Children Association
http://www.gyere.net/

Háttér Society
http://hatter.hu/

Human Platform
http://humanplatform.hu/

Hungarian Europe Society
http://www.europatarsasag.hu/

Hungarian LGBT Alliance
http://www.lmbtszovetseg.hu/

Legal Defence Bureau for National and Ethnic Minorities - MÁSSÁG Foundation http://neki.hu/

Pangea Cultural and Environmental Association
http://www.pangea.hu/

Protect the Future
http://www.vedegylet.hu/

tranzit.hu -Tranzit Hungary Public Benefit Association http://hu.tranzit.org/

November 21, 2014