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#### **Civil society, democracy and the rule of law**

In this study, we try to interpret the social conditionality of development according to the rule of law and summarize the cultural factors that play a role in the crisis of Hungarian democracy. At the same time, we also pay attention to social and cultural developments that may have a role in restoring constitutional democracy.

After interpretation of the collapse of the democracies, we take into account the specificities of the liquidation of the Hungarian democracy. In relation to the considerable literature on the link between civil society and the political system, we focus on the relationship that authoritarian regimes have with civil society and, in general, with the autonomies. There is also a need to clarify the meaning in which we talk about autonomy. Finally, focusing on the contemporary history of Hungarian society, we interpret the relationship between social autonomies and the rule of law.

#### *The collapse of Hungarian democracy*

The crisis of democracy as well as that of the capitalist economy is not exceptional. The particularity of modern liberal democracies is the high level of crisis management potential. The feeling of the general crisis comes from phenomena of different natures and depends on cultural, social interpretations, traditions and the milieu. The crisis phenomena of a stable democracy, even if similar, are, in terms of their likely outcome and social impacts, considerably different from the crisis of newly constituted or unstable democracies. Declines in electoral activity or trust in institutions can more easily lead to collapse in the absence of solid democratic experiences. A deep economic crisis, social dissatisfaction and even the coming to power of a political leader with authoritarian tendencies do not lead to the complete elimination of the effects of democratic institutions and the suppression of individual and social freedoms when

the social and cultural embeddedness of democratic and rule of law governed institutions, procedures and values is significant. What does the social embeddedness of the rule of law and democracy mean? Reference is often made to the fact that the rule of law is a culture, that the democratic expectations of society and the normative patterns of everyday life are the necessary basis for the stability of constitutional democracy.

The attempt to liquidate Hungarian democracy after the regime change made these general questions direct and topical. If we do not want to fall into the trap of a kind of cultural or historical determinism, it is necessary to define more precisely the social conditions of stability and to underline the connections with the ease of dismantling. We can imagine the mechanisms, causes and hazards leading to the crisis as a complex network of several interdependent factors. One of these factors is the social value system, in connection with which some [World Value Survey](#) data is often quoted, according to which Hungary is permanently situated at the border of the Western European Catholic (with the commonly used terminology: “Western Christian”) and Eastern Orthodox value systems. This study systematically shows that Hungarian society is situated in the middle of the secular-rational/traditional axis, i.e. support for religious values, national pride, subordination to power and other traditional values is much stronger than in Northern Europe, but weaker than that of Polish or Turkish society. However, Hungary's location on the so-called self-expression/survival axis definitely belongs to the group of poor Eastern states. Security takes precedence over freedom, political activity is not supported, mistrust and rejection of others and foreigners are strong, the feeling of happiness is low. The political-ideological [machinery](#) of authoritarian government consciously builds on the two correlations: the monolithic propaganda factory seeks to strengthen nationalist, religious identity, because this is related to the unconditional acceptance of power and subordination. Xenophobia and fear are the permanent driving force behind the government's support, so propaganda [feeds](#) them continuously. While in this respect it builds on existing social trends, the strongly anti-European and anti-Western phraseology and discourse have not affected the substance of the Western orientation, the European partisanship of Hungarian society, which have even [grown](#) considerably over the last decade.

Another factor that can be linked to the easy destruction of democracy is the state of civil society. The passivity and mistrust of citizens evoked in connection with value assessments make the limited civil activity understandable, while there are many signs that there are patterns of solidarity and altruism as well.

As a third factor, we refer to the traditions of the exercise of power, the poverty of democratic traditions.

The dynamics of the collapse of the post-communist rule of law and democracy in Hungary and the technique of authoritarian rule differ in many respects from modern collapses, but some essential features are similar to them. It is certainly true that the political movements were not

like a coup d'état, the transformation of the legal system took place step by step, although the preparation and adoption of the new constitution (Fundamental Law) was like a coup. [We have constantly monitored](#) the process of transformation of public authorities, the liquidation of power-sharing, the elimination of checks and balances on governmental power. The form and procedure were *legalistic*, but the will and the result regularly exceeded the limits of legality and constitutionality. Authoritarian legalism is based on instrumentalism with a strong tradition and the weak culture of the rule of law of legal institutions. The dismantling of the constitutionality of the legal system has not come up against obstacles due, among other things, to the underfunctioning of professional autonomy. The usability of law for all purposes of power is capable of becoming an everyday, natural practice when the legal system, certain elements of it, legal education, legislative and jurisdictional institutions, and organizations of the legal profession have a low level of demand for autonomy. This can happen if the individuals acting in these organizations do not also have a strong commitment to freedom and autonomy. The autonomy of the legal system, the autonomy of legal institutions and that of the individual are closely interlinked.

(examples: court and autonomy)

However, political instrumentalism does not mean an efficient state, as the centralized decision-making structure to the extreme, with the omnipresent and imperative involvement of the prime minister personifying executive power, [is unsuitable](#) for the governance of complex societies. The example of health and public education shows us the serious operational problems caused by the elimination of autonomous levels of decision making in the systems. Incompetence and dysfunction are particularly evident and have serious consequences in crisis situations. [The evacuation of hospitals](#) during the epidemic in the spring or the unworthy treatment of protests against the transformation of the [University of Theatre and Film Arts](#) revealed the powerlessness of the state. In the absence of self-governance, local autonomy, financial independence and powers, part of citizen affairs remains unaddressed or depends on random or political factors.

A general characteristic of the fall of democracies is that the illusion of the strength of the State is accompanied by the incompetence to make public authority function, the authoritarian State being weak, it is not capable of managing a crisis. Some contemporary authoritarian regimes actually destroy the State with a neoliberal logic while ideologizing and forming in its own image the notion of the public interest. These regimes submit to the logic of big business and engage in a fake fight against them, they give concessions and favors to multinational capital by means of tax benefits and infringement of union rights while talking about a national bourgeoisie. The latter means a small group within the Prime Minister's personal circle of trust. The State uses its means of constraint, blackmail, the legislative and regulatory framework and even the [delegation](#) of specific legal powers, based on the emergency situation, to expropriate

property if it needs to. The deprivation of state institutions of their character of rule of law and democratic nature also compromises the functioning of the state. The collapse of democracy is preceded and accompanied by the weakening of the State.

### *Relationship between the State and society*

Usually, the civil society is contrasted as being a private sector with the State which thus plays a role of compensation, protection of freedom or activation. From the beginning of the 1980s, according to the democratic opposition of socialist societies and Western experts, such a normative interpretation of civil society has dominated the discourses of democratic transition. There is no democracy without civil society, the freedom of civil society organizations must be ensured during the democratic transition for stability. The long decades of communist rule have liquidated organizations exercising political control and replaced real ones with pseudo-civilians created and operated by nomenclature. Civilian activity has been pushed out of the world of politics and relegated to the private sector. This transitological (political) interpretation has reduced the notion of civil society and provided a basis for culturalist misinterpretations. It is with the same force that a decade later, as a critique of Western individualism, the literature of the total decline of civil activity appeared (Robert Putnam).

While the connection between civil society and democracy has not lost much of its strength, historical analyses have clearly shown that the intensity of the activity of social organizations does not always have a beneficial effect on the democratic quality of the State (Sheri Berman, Dylan Riley).

Behind our analyses, there is always a more differentiated interpretation of civil society, based on analyses of historical and sociological reality. Our arguments in defense of autonomies, individual liberties and political freedoms take into account the complexity of the public-private relationship, the relativity and the spatial and temporal variability of the separation. When we argue for the freedom of non-governmental organizations, we are aware of the complexity of the relationship and the diverse role these organizations play. Just as we are aware of the pitfalls of self-governance when advocating for greater municipal autonomy. We often perceive the inherited [internal weakness](#), [the moral impossibility](#) of professional self-organization. We use here the notion of the civil society with a strong extension and consider as part of the civil world the autonomous professional organizations which are linked by many strands to the functions of the State, but which are not organizations of public authority or political organizations. Such are the professional chambers or the Hungarian Rectors' Conference. Such hybrid formations are also part of the intermediate organizational world, which could exercise an important mediating function in the space between the individual and the state and could alleviate the inevitable insensitivity of the state to local, professional and individual aspects.



Civil society organizations in the narrow sense of the term, such as the Eötvös Károly Institute of Public Policy, are social spokespersons for various causes, representatives of community interests and agitators for freedom. The [arbitrary state](#) turning against them has attacked society through them. Our starting point is also clear in this case: the representation of the political community is not only ensured by political parties, since a democratic state needs civil representation of complex articulated social interests. Nonsense, but very familiar: the government argues that civilians have nothing to do with politics. This Cold War logic expropriates and colonizes politicization and drives out the people concerned. The functioning of the state not only loses its democratic quality, but also becomes duller. Civil society organizations act for the defense, among others, of natural values, minority groups, help people in need in many causes. They function as a system of knowledge that democratic states, not the dumbfounded ones, take advantage of, because it is these organizations that are close to social conflicts, exclusions, collective expectations. When a civil society organization participates in the continuing education of law enforcement agencies, it offers something that the state agencies themselves cannot offer. When, in alleviating human suffering, a civil society organization reports on people suffering from the most profound deprivation, it simultaneously provides information necessary for democratic governance. When it acts in defense of the human rights of [refugees](#), it also helps the State to prevent international condemnations. There is a specific multidirectional relationship between the State and society. The panoply of state instruments, regulation, violence, the functioning of the bureaucracy, state symbols and way of speaking have a formative effect: they are capable of influencing the normative order, emotions, values, behavioral patterns and identity of society. An exclusionary, inhuman, xenophobic State ideology causes human suffering even to those who actively support these elements, because it destroys the integration of the community. That said, civilians articulate the social interests, opinions of groups that remain invisible because of the blindness of the majority and the [obscurity of power](#).

#### *Authoritarian regimes and social autonomies*

Authoritarian states tend to see themselves as a transcendental entity, which is identical, without open joints and unquestionably, to the homogenous reality of the nation, people or society. They also have a monolithic image of the law used for this purpose as a tool which is the source of good behavior, formed in their image. However, neither the State, nor the society, nor the law is like that, but they are of a plural structure, they are articulated and are in a complex relationship with each other. This complexity can be reduced by the liquidation of autonomy; this leads to the abolition of the separation of powers within the state, with the law, as the server of everyday political interests, losing its autonomy, while social autonomies can be

compromised in various ways from the limitation of individual decisions to the restriction of civil self-organization.

Controlling, oppressing, liquidating, making civil society organizations impossible are the general characteristics of modern dictatorships. As a result, public life and the public spirit of society are destroyed, and an ideological monopoly is established. There are strong historical arguments that this phenomenon is a legacy of the communist dictatorships of Eastern Europe, a Stalinist tradition. Today's version of it has infiltrated Hungary from the caves of Putin's exercise of power. The manipulation and channeling of civil society organizations under unified state umbrella organizations, beside the liquidation of the organizations of political opponents were instruments of the fascist dictatorships. Stalinist logic, such as that of the Orbán regime, considers civil organizations as political enemies. The paranoid protection of state sovereignty against hostile Western influence, as the official reason, also refers to a Stalinist origin. Considerations of national security and financial transparency make the array of oppressive instruments more modern, but they cannot cover the essential source of this policy.

The war against civil society, however, has more serious historical roots that are linked to the regional fate of social autonomies. The stability of the liberal constitutional institutional system born during the regime change, the democratic rule of law to use the terminology of the constitution, was conditioned by the historical features of the genesis of the modern Hungarian state. An essential factor from the autonomy point of view, like in Poland, local power was able to remain an effective protector of the prerogatives of the nobility, of the patrimonial rule because the central power remained powerless in both bureaucratic and political terms. As a result, urban and peasant autonomies were unable to strengthen. A bureaucratic constitutionality that could have provided a framework for the constitutional development of the central government and stabilized local autonomies did not develop in the long term either. The custodians of the noble, oligarchic constitutionality tried to repel the intentions of the enlightened, modernizing central power as an external, hostile attack, most of the time successfully. Because of the total or partial failure of absolutism, the economic and political influence of the oligarchs hardly changed until the cataclysms of the 20th century occurred. From the Golden Bubble to the modern system of representation, autonomies in the face of central power have represented the protection of the prerogatives of the nobility, while the bureaucratic rationality of the state has remained fragmentary and underdeveloped.

The Stalinist dictatorship was not confronted by Western-style bourgeois civil autonomies, but by the self-defense of social groups of weak citizenship, organizations of professional chambers and local authorities that were lobbyists and defenders of interests. These were, however, swept away by total economic and political expropriation and institutional transformation. The absence of a Western-style civil society and the practice of the Stalinist dictatorship suppressing liberties do not mean a total lack of social autonomy and activities. No power is capable of suppressing the relative freedoms of daily life, of daily activities. In the last decade of



communist rule, civil society received a political interpretation and the elite implementing regime change took less account, in the press of the establishment of institutions, of the state of movements in society, of autonomies, of traditions of freedom. The use of the notion of civil society has retained its Cold War character, the interpretation as a monolithic actor against the State which is on standby under the dictatorship, but which now will wake up and begin to function. Neither the democratic transformation of the development of public law, nor that of local authorities, nor that of public services, nor privatization, nor the regulation of the justice dispensed has taken into account the existing processes of social movement and the thick world of informality. Among the many reasons of the rapid disillusionment after the great transformation, the introduction of formal and universal rights instead of substantial allowances, the fact that the informal system of lobbying was shaken up and that new procedures and people required new models of adaptation certainly play a role. However, these procedures and persons have not rearranged the nature of the inherited informality. It is edifying to see, for example, that while in the first half of the 1990s the institutional and symbolic strengthening of judicial independence took place without collective participation, except for a few young active judges; the replacement of local leaders before the regime change caused internal scandals because collective elections systematically supported them. But the new presidents appointed after the regime change continued without interruption the oligarchic practice of supporting the system of lobbying, distribution of benefits and personal vulnerability. Or, for example, mayors occupying the seats of former council chairmen and other local authorities have operated, within the apparatus of corruption and informality, a system similar to pre-regime change practices. The conduct of a general meeting of a local producers' cooperative after the regime change, the manipulation of rules and majority voting are hardly different from similar events in the 1970s and are very similar to the conduct of a panel of judges today. Not only the organizational culture, but also the natural world of informality shows an extreme durability. The effect of the regime change is detectable at most in the reinforcement of references made to legal barriers, the rule of law. So it's as if only the surface, the frameworks had changed, the mechanisms have remained similar, the stakeholders have successfully adapted. This has also led to the fact that any reference to the rule of law not only means protection of an aggrieved party from the party acting unlawfully (blaming), but is also good to be invoked as a hindrance factor (blamed). Everything must be done in compliance with the rules, even taking into account universal principles, bureaucratic complexity being the price of the rule of law.

Post-socialist status was characterized by democratic forms of participation without autonomous self-government, continuity of forms of social behavior. On the ideological level, the old collectivist ideology has been replaced by another imaginary community, the nationalist collective. The practices and reference models of the civil society and the local community have thus remained open to the logic of cultural racism, exclusion. The moral economy of daily life

could not reflect the universal values of the rule of law, such as the equal dignity. A straight line has led from the widespread use of the term gypsy criminality to the irrational fear of immigrants. In this broad sense, civil society has not provided the ground for a new model of integration. Professional NGOs, support and legal protection organizations seemed like a foreign body, especially when they set themselves the goal of developing the universal values of a democratic state governed by the rule of law. The lack of social embeddedness provided a good opportunity for the authoritarian government to equate civil activity with the notion of a demonized enemy. The shameful Soros campaign and the infiltrated enemy paid from abroad were put together and can make political profit to the regime according to the Russian model. Civil society organizations, even if the legislation relating to their registration has proven to be contrary to European law, are forced to carry out their activities on uneven ground due to the effects of the massive propaganda machine. The practice of creating zombie NGOs (GONGOs) also corresponds to the general authoritarian model, mostly embodied in Hungary by CÖF (Civil Unity Forum) or the Alapjogokért Központ (Center for Fundamental Rights) financed by public funds.

#### *Some obstacles to social support of the rule of law*

From the point of view of social support for the values of democracy and the rule of law, the broader notion of civil activity deserves attention. The world of informality of which the flourishing second or grey economy was a part during the communist dictatorship, comradeship (“kalaka”), the system of lobbying based on personal relationships functioned incorporated, intrinsically linked to the official economy, the formal law.

In post-communist societies, this embedded informality is the dominant model of social organization that conditions the daily functioning of formal institutions beneath the surface of their changes and regime changes. Avoidance of standards, loopholes, individual benefits, personalized standards, simulations of implementation can be part of the arsenal of social resistance during dictatorial periods. State regulation, however, takes into consideration and even builds on this massive informal tradition. Even today, the legislator still calculates the circumvention of rules in a manner analogous to that of state regulation in the decades before the regime change. The re-established authoritarian regime can build on this tradition: tailored legislation, favoritism used by the authorities in favor of people close to the elite, a system of exemptions, opaque, non-normative tenders do not provoke public indignation. On the one hand, it has never been different, and on the other hand, the usual path of the excluded is the practice of the riskier detour routes of the inferior, which makes them stakeholders in the system. When public authorities sort out the consequences of violations of standards or the distribution of public goods according to political considerations, they can trust the social



environment they have made mostly participants in this logic. A complaint of exclusion from benefits or more favorable treatment and not an accusation of violation of general standards or the public interest is made at the most.

The precondition for civil society is a kind of normative consensus, a normative integration: an agreement on certain moral principles. The post-communist social status of Central and Eastern Europe is permanently based on a negative consensus: one has to navigate through social situations without being able to trust the implementation of common standards. The State itself is likely to violate the official layer of common standards, created by itself: the law. The problems of submission to laws, the normative uncertainties of society, the mistrust could only have been dealt with coherent example shown by the public authority, a normative discipline, an order built on freedom and autonomy. Civil society organizations would necessarily have a role to play in the process of transforming the social model (forms of cooperation, awareness of the rules). Civil autonomies, self-organization, involvement in the management of public affairs, regulated self-activity exercised in the public interest as well as the example set by the elite are another source of this change of model.

Disorder, normative uncertainty, passivity and hierarchically organized false civility stabilize the oriental forms of relationship with politics, public affairs and community. The control of the nomenclature of power above all cannot allow local, cultural or professional autonomies, moral, ideological and other alternatives to undo the system. Just as the communist power interpreted the values of human rights, human dignity and open society, as well as individuals and their organizations acting on their behalf, as disrupting. The organizations of the civil society are elements of another model of organization, the Western model which are as much foreign to the logic of dictatorships of Eastern type as to the post-communist informalism.

#### *What does autonomy mean?*

The main stream of theoretical literature that has had a great impact on political and state organization practice has interpreted autonomy as self-governance from the 18th century onwards. Everyone, not only the chosen ones, the anointed ones, the members of higher orders is able to recognize and follow common moral rules and to live together. Since we are equally competent moral beings, we know about each other that he or she is also capable of governing himself or herself, of respecting the rules. Autonomy, i.e. the ability to manage individual actions without a higher authority (State, Church, master, etc.) is the organizing principle of modern, Western-style society. Such a moral interpretation of autonomy, theorized mainly by Kant, is closely linked to the birth of liberal democracy. Moral behavior is a behavior that conforms to norms and not directly the pursuit of the common good. The common good means following common rules. Not all traditions are based on these philosophical foundations and

such an interpretation of autonomy is not part of all social cultures. Western modernity developing together with the strengthening of individual autonomy is still under attack in many places. Ideologies that identify individualism as being the destruction of the community do not take into account the community-building force of autonomy, the integrative effects of self-determination, autonomy. The deprivation of the possibility of self-determination of individuals, institutions, different social groups and systems is generally accompanied by the reduction of individual freedoms, the restriction of the autonomy of educational, academic and cultural institutions, the reduction of self-government come from the same stone as the limitation of the autonomy of the law.

As the most important element of the public law system of a state governed by the rule of law, judicial autonomy consists of several interconnected levels of autonomy. The autonomy of the administrative structure of the judiciary in the system of separation of power, which prevents the executive power from interfering in the functioning of the judiciary or the legislation from taking over the role of the jurisdiction. The independence of this branch of power must be protected by budgetary guarantees as well. In addition to the independence of the judicial organization, the personal autonomy of the sentencing judge is part of jurisdictional autonomy and must be guaranteed even vis-à-vis the judicial organization. None of them can be properly guaranteed without the internal autonomy of the legal system. To the extent that legislation becomes the servant of a monolithic political will, that is to say that the foundations of internal regularity, logic, conceptual framework of law are damaged, then the autonomy of justice is also in danger. Similarly, the independence of the judiciary is linked to the state of professional and social autonomy: when the state does not guarantee the freedom of professional organizations, legal education, chambers, representation of interests, it is the autonomy of the judiciary as a whole that is harmed. And finally, when respect for individual autonomy is lacking in a dominant social model or power practice, it becomes more difficult to establish or stabilize a justice system made up of autonomous experts. Similar correlations apply to other areas as well, necessary for the functioning of democracy, with the media or local governments operating with similar complexity.

#### *Societal conditions for the re-establishment of the rule of law, role of autonomies*

The restriction of the autonomy is an integral and necessary part of the destruction of the rule of law, of liberal constitutionality, of democracy. Civil activity, interest expressive and self-active civic organizations and, in general, the free individual and the open society are the enemy of authoritarian power. The perceptible failure of the post-communist regime change, the experience of the dictatorial reversal can convince us that it is not possible to stabilize democracy without activating society in one way or another, without developing participation.

The situation is particularly difficult for societies in which civil activity has traditionally been limited, where the complex system of civil self-awareness, behavioral forms, expectations, norms and values has not been established. The general internal crisis of representative democracy, the undermining of confidence in institutions, the spread of populism and xenophobia, the fear of inequality and loss of status constitute an unfavorable environment for this historical challenge.

The violation of the autonomy of the individual is a violation of human dignity. Restoration of dignity is the struggle of an affected society for the recognition of its dignity. This struggle is the personal affair of all individuals, collectives and organizations seeking autonomy, but is at the same time a public affair. A constitutional state cannot be created without the claim of freedom, autonomy and human dignity.

The re-establishment of the rule of law in Hungary, and wherever it is shattered three decades after the fall of communism, cannot be achieved without the participation of society. However, the participation of the society cannot be generated, is not easy to be encouraged, is not a matter of pure will. Despite all the difficulties, rebuilding democracy and the rule of law requires innovation and new forms of participation. Civil activity and autonomous civic action can become a social force thanks to the functioning of human cooperation organizations, the organizations of the civil society. If the traditional monitoring role of the press is eclipsed, abuses, dirty schemes, immorality and corruption of power can be exposed through civilian activity. Watchdog organizations can in part take over, thanks to modern communication techniques, the old role of journalism played in the control of power. In a state governed by the rule of law, those in power are more afraid of the consequences of breaking the rules and the risk of being caught, because the consequences are inevitable and their activity is the subject of continuous attention, vigilant eyes watching their acts committed in their function as public authorities. Civil organizations can assist in the protection and representation of individual and collective interests in legal proceedings, if necessary through pilot cases, class-action suits and thus have an impact on the functioning of the judicial system. Typical actors in litigation against the State are civil society organizations, these lawsuits being able to force the obtaining of public data, the respect of environmental aspects with respect to State bodies. It is mainly civil society organizations that are able to use state law against state authority, as individual litigation in itself is insufficient and lacks resources and competence. When the representation of socially relevant issues is not assumed by political parties, the activity of non-governmental organizations is necessary for a life worthy of man, equity, the control of power and the implementation of constitutional values.

The crisis of democracy and the rule of law can only be durably alleviated, after the fall of the authoritarian regime, by the activity of the political community. Thus, the protection of autonomies and freedoms is not only a task of the rule of law institutions but constitutes the most important condition for their survival.