



Hungarian Helsinki Committee



EÖTVÖS KÁROLY
POLICY INSTITUTE

HUNGARIAN CIVIL LIBERTIES UNION



Mr Thorbjørn Jagland

Secretary General

of the Council of Europe

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Dear Secretary General Jagland,

We, the heads of the below listed Hungarian non-governmental organizations are writing you to raise your attention to the grave problems arising in relation to the planned Fourth Amendment to the Fundamental Law of Hungary in terms of the prevalence of the rule of law in Hungary, and to respectfully **request that you contribute to ensuring constitutionality and respect for human rights in Hungary by mandating the Venice Commission to perform an analysis of the proposed Fourth Amendment to the Fundamental Law.**

On 8 February 2013, members of the governing coalition, having two thirds of the seats in the Hungarian Parliament, submitted a proposal to amend¹ the Fundamental Law of Hungary in force since 1 January 2012. The proposed amendment is currently being debated in the Parliament. Since the Fundamental Law of Hungary may be amended by two-thirds of the MPs, in the current political situation the Fundamental Law may be amended as presented below by the governing coalition without the consent of the opposition and without any public discourse or deliberation as the proposal was submitted by individual MPs and in such case no public consultation is foreseen by the relevant procedural rules.

The planned amendments would undermine the rule of law in Hungary by

1. continuing the practice of inserting provisions into the Fundamental Law which had been previously found unconstitutional by the Constitutional Court (CC);
2. including provisions in the Fundamental Law which violate international standards; and
3. further weakening the control exercised by the CC over the Parliament.

¹ Available in Hungarian at: <http://www.parlament.hu/irom39/09929/09929.pdf>.

We strongly believe that this manner of constitution-making undermines the stability and enforceability of the Fundamental Law, which may also have a serious affect on the level of protection of human rights. These developments, along with including provisions into the Fundamental Law which do not fit in the text of a constitution with a view to its function, will result that the Fundamental Law will cease to qualify as a constitution complying with fundamental constitutional requirements in this regard.

As to the motives of the proposed amendments elaborated on below, it shall be recalled that it is the governing majority's ongoing practice to restrict the powers of the CC as "retaliation" for the CC decisions unfavourable for the governing majority. Recently, the CC abolished most of the Transitional Provisions of the Fundamental Law, claiming they were not of transitional nature, abolished the rules requiring preliminary mandatory registration of voters and further newly adopted election procedure rules, and also abolished rules criminalizing homelessness and provisions restricting the notion of family. The proposed amendments show that these decisions of the CC have definitely served as a *casus belli* for the governing majority and that they aim to amend the Fundamental Law in order to exclude further constitutional review of certain topics. The official reasoning of the amendment suggests that inserting certain former rules of the Transitional Provisions into the Fundamental Law is merely a technical step. However, it shall be recalled that most of the affected rules of the Transitional Provisions (e.g. the right of the Prosecutor General and the President of the National Judicial Office to transfer cases and the method of recognizing churches) have been seriously criticized e.g. by the Venice Commission. Under these circumstances these amendments are far from being merely technical.

From among the proposed amendments to the Fundamental Law, the following issues are of main concern:

1. The proposed amendment would **ban referring to the decisions of the CC and their reasoning delivered prior to the entering into force of the Fundamental Law** when interpreting the Fundamental Law. This contradicts the recent case law of the CC, denies continuity with the last two decades in terms of constitutionality and may give rise to decreasing the level of constitutional protection and standards.
2. The amendment would **allow the CC to examine the constitutionality of the proposed amendments to the Fundamental Law only in terms of formal, enactment-related procedural aspects defined by the Fundamental Law**, which is not only in contradiction with the recent Decision 45/2012. (XII. 29.) of the CC but would also ensure that the Fundamental Law may be amended according to actual political needs by the (current) governing majority.
3. Despite the related concerns of the Venice Commission, the Fundamental Law would set out that the originally **transitory restriction of the CC's powers in budgetary matters is permanent**.
4. The proposed amendment would **create a constitutional basis for the President of the National Judicial Office to exercise its right to transfer cases**, a power which has been severely criticized by the Venice Commission as violating the right to a lawful judge. The transitional character of the system would be not included in the Fundamental Law.

5. Even though the Venice Commission explicitly set out that **the Prosecutor General's right to transfer cases** as included in the Transitional Provisions shall be abolished and even though the CC found in its Decision 166/2011. (XII. 20.) that such a right would be unconstitutional and would violate the European Convention on Human Rights, the proposed amendment would include it in the Fundamental Law.
6. As a reaction to the CC's Decision 43/2012. (XII. 20.) abolishing a law providing for a restrictive interpretation of the notion of family, the **notion of family as included in the Fundamental Law would be severely narrowed to marriage and parent-child relationships**, and, thus, the Fundamental Law itself would provide for discrimination between different relationships.
7. As a response to the CC's Decision 1/2013. (I. 7.) abolishing provisions **banning political advertisements in commercial media**, the proposed amendment would create the constitutional basis for such a ban, which is not only in contradiction with the standards established by the CC but also violates freedom of speech as guaranteed by the European Convention on Human Rights.
8. The proposed amendment **enables the Parliament or local governments to criminalize homelessness**, even though the CC's Decision 38/2012. (XI. 14.) concluded that punishing homeless persons for living in the streets violates human dignity.
9. Inserting former rules of the Transitional Provisions into the Fundamental Law, the proposed amendment would uphold the violation of the principle of separating State and Church by setting out that **churches may be recognized by the Parliament** and would continue to discriminate between denominations. Consequently, the amendment clearly goes against the suggestions of the Venice Commission.
10. The proposed amendment **abolishes the autonomy of higher education institutions in financial matters**.
11. The proposed amendment creates the **constitutional basis for "student contracts"**, i.e. **contracts requiring students to work in Hungary for a certain period of time after obtaining their degree in exchange for the state contributing to the costs of their studies**, the latter disproportionately violating students' rights to freely choose their occupation and interfering with the European Union principle of free movement of workers.

In Appendix 1, attached to our present letter, we outline the most problematic elements of the proposed amendment in more detail, providing also context and background information which may be of help and relevance when assessing the amendments proposed by the governing coalition.

Please also find attached the unofficial English translation of the proposed Fourth Amendment to the Fundamental Law of Hungary under Appendix 2.

Dear Secretary General Jagland,

We hope that based on the information above and in the attached appendixes you will find justified our request that you contribute to maintaining the rule of law in Hungary by mandating the Venice Commission to perform an analysis of the discrepancies of and the risks flowing from the draft of the Fourth Amendment to the Fundamental Law of Hungary.

In case you would need any further information on the matters raised above, we will be happy to provide you with it in any form of your convenience.

Budapest, 26 February 2013

Yours sincerely, on behalf of the signatories:



András Kádár
co-chair
Hungarian Helsinki Committee

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The **Hungarian Helsinki Committee** (HHC) monitors the enforcement in Hungary of human rights enshrined in international human rights instruments, provides legal defence to victims of human rights abuses by state authorities and informs the public about rights violations. The HHC strives to ensure that domestic legislation guarantees the consistent implementation of human rights norms and the proper functioning of the rule of law.

Gábor Attila Tóth
president
Hungarian Civil Liberties Union

The **Hungarian Civil Liberties Union** (HCLU) is a law reform and legal defence public interest NGO in Hungary, working independently of political parties, the state or any of its institutions. HCLU's aim is to promote the case of fundamental rights and principles. It strives to educate citizens about their basic human rights and freedoms, and takes stand against undue interference and misuse of power by those in positions of authority. Generally HCLU has the goal of building and strengthening the civil society and rule of law in Hungary and the CEE region.

László Majtényi
chair
Eötvös Károly Institute

The **Eötvös Károly Institute** wishes to contribute to raising professional and general public awareness and to shaping the political agenda in issues with an impact on the quality of relations between citizens and public power. The Institute is deeply committed to the liberal interpretation of constitutionality, constitutional democracy, and individual rights.

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