

## AN ILLIBERAL STATE IN THE HEART OF EUROPE

- UNFAIR ELECTIONS
- A MEDIA HELD CAPTIVE
- STATE-RUN HATE CAMPAIGNS
- MARGINALISING AND EXCLUDING DISSENTS AND THOSE WHO HOLD THEM
- THE PRIVATISATION OF THE STATE'S MONOPOLY ON THE USE OF PHYSICAL FORCE
- DISREGARD FOR COMMON EUROPEAN NORMS
- SYSTEMIC CORRUPTION



Between 2010 and 2014, an 'illiberal state' was being built in Hungary. In line with prime minister's announcement on the subject, from 2014 we have been offered a perspective on how an actual, consolidated illiberal democracy operates.

Hungary remains part of the European Union (EU), but its actions contradict the fundamental principles of the EU. Elections, although held at regular intervals, are not free and fair. Even though constitutional institutions do exist, they do not operate in a manner befitting such institutions; that is, they do not act as checks and balances on governmental power but instead facilitate its operation.

# UNFAIR ELECTIONS

Unless parliamentary elections are free and fair in which all parties and their candidates are offered an equal chance at success, and do not receive undue favour or are disadvantaged, the political system cannot be described as democratic.

Although elections are held at regular intervals in Hungary, they do not serve the objective of free and fair political competition but instead aim to ratify the government's hold on power.

After 2010, the governing majority re-designed the electoral system, the electoral procedure, and the rules governing campaigns and campaign financing. It did so alone, without engaging in any substantial consultation with the opposition.

*Proportion of mandates in single-member constituencies in the first parliamentary elections under the new electoral system in 2014. The orange color represents the constituencies won by the Fidesz-KDNP.*



Commercial media providers are only allowed to broadcast political advertisements if they do so for free, but they are not obliged to accept any. None of the commercial media providers with national coverage opted to offer such a free broadcasting opportunity in 2014, and hence such advertisements were not broadcast on those commercial channels that voters actually watch or listen to.

The electoral rules distinguish between citizens who have a registered address in Hungary but reside abroad, and those citizens residing abroad who do not have a registered address within Hungary. The latter are entitled to vote by mail, while the former can only do so in person at Hungarian embassies or consulates. This means that they must devote significantly more time and financial resources to voting. This greater burden is typically imposed on young, more educated, and more mobile voters who are dissatisfied with the Hungarian labour market situation and thus felt compelled to move abroad. Those who have the right to vote by mail tend to be voters who were born outside of Hungary and typically tend to be less informed about the country's domestic issues. Moreover, those who enjoy the benefit of voting by mail tend to favour the governing parties by astonishing margins. In the 2014 parliamentary election, Fidesz-KDNP received 95.5% of all valid postal votes. As a result of the current procedural rules, in the upcoming 2018 election the roll of voters who are entitled to vote by mail will include names of citizens who have been deceased for several years.



*Photo: parlament.hu*

# A MEDIA HELD CAPTIVE

Free and independent media based upon diversity of ownership is a basic precondition for democracy. Freedom of the media cannot exist without the transparency of media owners, who are politically independent and economically autonomous.

In the last few years, the ownership concentration in the Hungarian media has reached unprecedented heights, and with the departure of foreign media investors a growing number of media corporations are now owned by actors who are closely affiliated with the governing parties. By redistributing control over the media market, Fidesz has transformed the entire media system in a way that allows it to disseminate political messages and political propaganda more effectively than ever before, through a small group of media owners, who are completely dependent on the governing parties.. At the same time, the independent and critical media is subject to more control and restriction than ever before.



*Photo: Pál Dániel Rényi*

After the prime minister clashed with Lajos Simicska, his erstwhile friend and the former manager of the governing party's business affairs, in 2015, the government's media background weakened significantly. In order to dominate the sphere of communication, it needed to take control of media outlets with significant audience reach. The main governing party realised this objective primarily by buying up established media outlets, previously owned by foreign investors.

Today, the businessman with the biggest media portfolio is Lőrinc Mészáros, a close friend of the prime minister. Mészáros owns Mediaworks, a publisher with a portfolio that includes 13 regional dailies, national daily newspapers, and national magazines. He also owns a news channel (Echo TV), a news radio station (Karc FM), and has also begun to expand into the regional radio market. Another businessman in the same league is the government commissioner Andy Vajna, who has bought one of the nationally broadcasting commercial television channels (TV2) along with 10 smaller channels that are part of the same company group. Moreover, favourable decisions by the Hungarian media authority are helping Vajna in building a national radio network. In addition, he has also acquired two regional dailies and a national tabloid.

Other actors with close ties to the government have also entered the media market. A free daily newspaper 'Lokal' owned by Árpád Habony, the prime minister's adviser, is being distributed at major public transportation hubs within Budapest. Habony's newspaper was offered this opportunity after a newspaper owned by the media mogul Lajos Simicska was forced out of this market. Habony also operates an online newspaper '888.hu'. The market-leading online newspaper 'Origo', which used to be owned by the Hungarian subsidiary of Deutsche Telekom, is now controlled by Ádám Matolcsy, the son of the president of the Hungarian National Bank. The previously prestigious business weekly: 'Figyelő' was recently taken over by Mária Schmidt, who is the manager of numerous state projects.

As the pro-government media portfolio has expanded, previously well-established media brands that used to play a key role in shaping the public sphere have disappeared. The free daily newspaper 'Metropol' was shut down, and the nationally broadcasting commercial radio 'Class FM' ceased broadcasting on a terrestrial frequency and now operates only as an internet radio broadcast. Both were part



*Photo: András Szeles*

of Lajos Simicska's media empire. One of the most emblematic events of 2016 was the closing of Hungary's highest circulation broadsheet, 'Népszabadság'. The circumstances surrounding the shutdown of the newspaper, as well as the subsequent sudden change in the ownership of the publisher, 'Mediaworks', laid bare the political motivation behind the event.

The expansion of the new media 'oligarchs' is also helped by the distorted allocation of state advertising spending, the credits extended by 'oligarch-owned' banks, and the media authority's practices in deciding radio frequency tenders and in evaluating media market mergers. The media authority is still exclusively made up of Fidesz-delegated members.

# STATE-RUN HATE CAMPAIGNS

In debates concerning public affairs the government must regard citizens as rational persons who are capable of adequately informing themselves and forming reasonable opinions. The government is obliged to promote citizens in their efforts to inform themselves about public affairs, and it may not disseminate false or manipulative information to further its own political interests. Furthermore, the government is obliged to respect and protect the fundamental constitutional principles, the rule of law, democracy, and human rights. It may not adopt political positions that are antithetical to the aforementioned, that is positions which are exclusionary in nature or violate human dignity or equality.

Since 2015, the Hungarian government has launched a series of campaigns that feature irrational content and disseminate false and manipulative information that aims to appeal to citizens' basic fears. By continuously finding and targeting new enemies (i.e. asylum-seekers, the European Union, NGOs, George Soros) and conducting hate campaigns against them, the government seeks to divert the public's attention away from the depressing levels of poverty, the healthcare and education crisis, and systemic corruption. For the third year, the government has been using the migration crisis to incite xenophobia as a means of strengthening its hold on power.

In the first half of 2015, the government held a national consultation on “immigration and terrorism.” This consultation was accompanied by a government campaign. As part of the campaign, billboards across the entire country displayed a message telling refugees that “If you come to Hungary, you cannot take the jobs of Hungarians.” The national consultation (a questionnaire that the government mailed directly to citizens) posited a direct link between terrorism and immigration, whilst it did not mention refugees at all. One of the questions, for example, was the following: “There are some who think that mismanagement of the immigration question by Brussels may have something to do with increased terrorism. Do you agree with this view?”



Photo: HCLU

In October 2016, a national referendum was held at the government's initiative on the following question: "Do you want the European Union to be able to mandate the obligatory resettlement of non-Hungarian citizens into Hungary even without the approval of the National Assembly?" Between 5-13 August, during the campaign laying the groundwork for the referendum, 20% of the total advertising airtime of the state-owned public service sports TV channel was taken up by the government's referendum-related advertisements. In these ads, as well as on the billboards that were part of the government's campaign, the public was told that "Brussels wants to settle a whole city's worth of immigrants in Hungary."; "Since the beginning of the migrant crisis, harassment towards women has steeply risen in Europe."; "Since the beginning of the migrant crisis, more than 300 people have died in Europe in terror attacks."

In the spring of 2017, the government launched another national consultation and a concomitant campaign with the title "Let's stop Brussels!" In the consultation questionnaire delivered to their mailboxes, citizens were asked the following question among others: "In recent times, terror attack after terror attack has taken place in Europe. Despite this fact, Brussels wants to force Hungary to allow illegal immigrants into the country. What do you think Hungary should do?"

During the summer, it was George Soros' turn to appear on posters and billboards across the country, as well as in media spots, along with a new slogan: "Let's not let Soros have the last laugh!" Then, in autumn, the government launched another national consultation and a new campaign about the so-called "Soros Plan." The questionnaire claims that as part of this plan the EU wants "to resettle at least one million immigrants from Africa and the Middle East annually in the territory of the European Union, including Hungary." In the interpretation of the secretary of state in charge of government communication, the objective of the Soros plan is to establish a world government, and in the interest of realising this goal they have already taken over the EU administration in Brussels and have also infiltrated the ranks of MEPs.

# MARGINALISING AND EXCLUDING DISSENTING OPINIONS AND THOSE WHO HOLD THEM

In the debates about public affairs, the government must respect everyone's right to express their opinion. A key precondition of democratic decision-making is that citizens and NGOs, whose views run counter to the government's position, are also given real opportunities to express their views. The right to participate in the debates about public affairs is a fundamental right; it is not contingent on any given level of social support.

Through its actions and rhetoric, the government has claimed that any criticism of the government is an attack against the nation, which is why it reasons such views must be excluded from the debates about public affairs. Campaigns have been launched to personally discredit prominent critics of the government.

Beginning in 2013, the government and the governing parties launched a series of campaigns to discredit NGOs that are critical of the government. Initially, the campaign was conducted only in the form of public statements and pronouncements, but in 2014 the campaign arsenal was expanded to include investigations by official authorities as well as criminal investigations against foundations and associations involved in the operation of the EEA/Norway NGO Fund in Hungary. Over a period of two years, the investigation conducted by the Government Control Office (Kormányzati Ellenőrzési Hivatal, abbreviated as KEHI in Hungarian) targeted 62 NGOs. During the same time, tax audits were launched against several of these organisations. The police investigated over a period of 16 months and the prosecutor's office reviewed seven organisations. One of the investigations also resulted in house searches and the seizure of documents and computers. None of these procedures resulted in a determination that the organisations investigated had done anything unlawful, and none of the accusations levelled against them proved to be well-founded. In one case, a court also determined that the entire procedure had been unfounded and unlawful. Subsequently it was revealed that the Government Control Office had carried out its investigations at the order of Prime Minister Orbán.

In January 2017, a vice-chairman of the governing Fidesz party said the following: “The fake NGOs that make up the Soros Empire are being operated in order to compel national governments to serve the interests of global big capital and to succumb to the values of political correctness. These organisations must be forced to back down at any price, and I believe we need to clean them out. My sense is that international developments provide us with an opportunity to do so.” He then added: “They want to intervene in big politics without any sort of legitimating participation [sic].”

One of the questions sent out to all citizens as part of the 2017 national consultation read as follows: “A growing number of organisations funded from abroad operate in Hungary with the aim of interfering in the internal affairs of our country in a non-transparent manner. The work of these organizations could jeopardize our independence. What do you think Hungary should do?” The options presented to the public were: “(a) Require them to register and to reveal on behalf of which country or organisation they work and what objectives they pursue [or] (b) Allow them to continue their risky activities without any supervision.”

In the summer of 2017, the Hungarian National Assembly adopted a law that was designed to mirror the Russian foreign agent law. This law mandates that any foundation or association that receives any type of foreign funding for any purpose whatsoever in excess of a designated amount must register as a “foreign-funded organisation.” A list of these organisations is then published, and these organisations must display a label saying “foreign-funded organisation” on their website and all of their publications.

Massive and intense campaigns were launched to discredit opposition politicians and activists and it was suggested, with reference to several of these persons, that they pose a national security risk. The campaigns also disseminated information concerning the sexual orientation and the relatives of those persons whom were targeted, and frequently rested on factually false claims. The efforts at discrediting the public figures in question were conducted in a coordinated manner by state-owned public service media, commercial media with ties to the government, and by the convergent activity of the representatives of the government. The campaign continues to this day.

# THE PRIVATISATION OF THE STATE'S MONOPOLY ON THE USE OF PHYSICAL FORCE

The state is the only agent that may legitimately use physical force against citizens. If it cedes the right to use physical force to other agents; if it outsources this monopoly or acquiesces to the fact that private persons or private organisations act as policing bodies, it shirks its responsibility towards respecting fundamental rights and renders its citizens vulnerable to abuse.

The Hungarian government often looks the other way when private persons unlawfully perform policing, border protection, or other state responsibilities, and when they resort to violence against other private citizens in the process. At other times, it deliberately outsources state functions to ensure that the fundamental rights that limit the state's scope of action do not apply in politically sensitive situations.

In 2013, when political activists occupied the Fidesz party headquarters, instead of being confronted by police officers the protesters squared off against private individuals whose imposing physique resembled that typically seen among club bouncers. The background of these persons was unclear, but they were affiliated with Fidesz, and in some cases they resorted to the use of physical force. In 2015, during a commemorative event held during



*Photo: HCLU Facebook*

a national public holiday, people who protested against a mayor belonging to Fidesz found themselves limited in their movement by a similar group of persons who were visibly obeying the mayor's instructions. In 2016, in another situation involving intimidation and minor scuffles, a similar group prevented an opposition politician from filing a referendum question that was deemed to be a potential source of embarrassment for

Fidesz. In the same year, civilians protesting the felling of trees in Budapest's city park, as well as the plans to erect buildings on top of the cleared surfaces, were also subject to such actions by private citizens. In the latter case, however, the actions were not limited to intimidation but resulted in instances of both verbal abuse and physical violence. The private persons carrying out these actions also behaved aggressively towards the police, who in some instances even appeared to follow the instructions of the group in question.

On previous occasions, the private citizens who performed such policing functions had not resorted to physical violence, but recently they have initiated physical fights in which they have left some protesters with broken bones and sprayed protesters with pepper gas. There is no indication whatsoever that they have been held accountable for these actions.

When in 2016 the government commissioned a private security company to secure a state event held to commemorate a public holiday, the company's employees were authorised to decide who would be allowed to enter the event and how participants had to behave. Physical altercations between persons attending the event were not handled by the police but by the private company, which proved incapable of effectively protecting citizens who were assaulted in connection with the expression of their views. At the same time, the representatives of the private security firm barred a politician, who was preparing to express views antithetical to those held by the prime minister, from entering the celebratory event, despite the event being held in a public area. The representatives of the private company also took away whistles from persons who wanted to use the latter to express their opinion, but despite the entreaties of citizens the police failed to take action against this unlawful conduct. Since then, the private company has been entrusted with the responsibility to provide security services at further state-organised events.



*Photo: Ungváry Krisztián*

There have been numerous instances in the past years when the police just stood idly by as paramilitary groups performed police functions. Previously, the goal of such paramilitary groups had been to intimidate the Roma populations of small rural villages; during the migration crisis, they targeted asylum-seekers, organising themselves with the goal of preventing asylum-seekers from entering Hungary and intimidating those who had managed to enter.

# DISREGARD FOR COMMON EUROPEAN NORMS

As long as a country is a member of the Council of Europe and the European Union, it must comply with all the obligations arising from these memberships, regardless of whether these are in-line with the prevailing interests of the government in office. The principle of the rule of law demands that states respect and execute judicial rulings pertaining to these obligations. Such judicial decisions may only be disputed by legal arguments in legal procedures, or in a political debate based on rational reasoning, in respect for common European values and institutional frameworks.

In a growing number of cases, legal bodies have called on the Hungarian government to comply with European norms. The government's reactions in these cases have repeatedly crossed the boundaries of rational political debate. In these situations, the government's representatives tend to question the independence and impartiality of the legal bodies involved, including the European Court of Human Rights and the European Court of Justice. They claim that the courts render political decisions meant to further the ends of an international conspiracy against Hungary.



*Photo: Hungarian Helsinki Committee*

In March 2017, the European Court of Human Rights (ECtHR) ruled against the Hungarian state in connection with the unlawful detainment by the Hungarian authorities of two Bangladeshi asylum-seekers. Asylum-seekers who arrive in Hungary must stay in a so-called 'transit zone' while their petitions are adjudicated, and they must also remain there during the time when a court reviews an appeal against the decision to reject their application. The 'transit zone' is open in the direction of the neighbouring country but closed towards Hungary. The Strasbourg Court ruled that the possibility to leave the 'transit zone' is purely theoretical, and in practice the prevailing arrangement constitutes a detainment of asylum seekers. The Hungarian state failed to review its refugee regulations and did not eliminate the systemic rights violations. At the same time, the governing parties reacted to the ruling by casting doubt on the ECtHR's independence and impartiality. According to their statement, the Strasbourg Court is

made up of “George Soros' people,” including the Hungarian judge delegated by a previous, Socialist-led government, who, “in his capacity as a judge and vice-president of the Strasbourg court, strives to ensure that the Soros organisations can force their will on Hungary and can attack Hungary.” The representative of the governing party further added: “This is how the migrant business is organised: Soros-affiliated organisations sue the Hungarian state in the name of migrants in a court that is also made up of Soros's people.”

In September 2017, the European Court of Justice (ECJ) rejected the actions filed by Slovakia and Hungary against the provisional mechanism for the mandatory relocation of asylum-seekers. Hungary had asked the ECJ to quash a decision by the European Council to relocate, from Italy and Greece to other EU member states, 120,000 persons who are unequivocally entitled to international protection. Based on this decision, Hungary would be required to accept 1,294 asylum-seekers, but the government disputed the legal basis and the necessity of the decision before the ECJ. Following the ruling rejecting the government's action, the Hungarian foreign minister called the court biased and stated that the “ruling was political rather than legal or professional,” and that “politics has raped European law and has raped European values.” A few days later, Viktor Orbán added that “the ruling by the European Court of Justice has opened the door to the implementation of the Soros Plan.”

While the government has turned to the European Court of Justice in protest of the Council's decision, at the national level it initiated a constitutional amendment to constitutionally enshrine limits on the EU institutions' exercise of powers. Parliament rejected the constitutional amendment on 8 November 2016. In the same month, however, the Constitutional Court rendered a decision that essentially made up for the constitutional amendment that the government had failed to push through parliament. Based on an earlier motion by the Ombudsman for a constitutional opinion, the Court ruled that it is competent to review whether an exercise of power by an EU institution is in violation of the limits that the failed constitutional amendment had sought to incorporate into the Fundamental Law.

In addition to the courts mentioned above, the Venice Commission is another body entrusted with guarding European constitutional values. The Commission is an advisory body of the Council of Europe on constitutional issues and it is made up of highly qualified theoretical and applied experts. In recent months, it has issued opinions regarding the constitutionality of legislative acts designed, respectively, to stigmatise NGOs that receive foreign funding and to prevent the Central European University – which was founded by George Soros – from continuing to operate in Hungary. In reacting to these opinions, the Hungarian government questioned both the professionalism and the impartiality of the Venice Commission, and it argued that the Commission's position constitutes a politically-motivated criticism of the government. The parliamentary leader of the governing party argued that the Venice Commission also has members who are George Soros-funded individuals tasked with “carrying out the orders of their master, and to come up with the necessary legal explanations.”

# SYSTEMIC CORRUPTION

Unlike in a democracy, where the public good is determined as a result of interests competing in a rule-of-law framework, in an illiberal regime the state is put in the service of private interests. Systemic corruption is a contributing factor in the destabilisation of democratic institutions, it threatens legal security and human rights, undermines the professional operation of the public administration and the principle of social justice, and distorts competition.

In the wake of the economic crisis many countries introduced institutional reforms to combat corruption, which undermines public trust. In Hungary, this loss of public trust was a contributing factor to the process of building an illiberal state, in which corruption reached systemic proportions. The diversion of EU subsidies from their designated purpose, the public investments that are used to funnel public funds into private pockets, the redistribution of entire market segments, and the various channels designed to facilitate rent-seeking through state-provided instruments – all serve to boost the financial positions of the ruling political-economic elite. To recall the often-cited remark by the director of a Fidesz-affiliated think tank, "what is referred to as corruption is in principle the essence of Fidesz's policies."



*Photo: AZSo via Visualhunt/CC BY-NC*

Public procurement provides the primary channel of redistribution. These procurements are generally characterised by weak competition, a low level of transparency, the favouring of certain bidders, and overpricing. This is especially true of the use of EU funds, where these risks appear in a centralised setting. As recently as 2013, the companies of Lajos Simicska, the former treasurer of the governing Fidesz party and once a close

confidante of the prime minister, were involved as winning parties (either alone or in a consortium) in 10% of all public procurements (measured by the total value of funds allocated to this end). After Simicska clashed with the prime minister leading to an enduring conflict between them, his main company was excluded from public

procurement by the Public Procurement Authority – subsequently it emerged that this exclusion ran counter to the effective regulations. Although the company has since submitted significantly more favourable bids for public procurement commissions than its competitors, it no longer wins tenders. Its place was taken by companies that are led by other entrepreneurs within Viktor Orbán's close circle. Since 2014, Orbán's old friend and the mayor of his home village, Lőrinc Mészáros, has emerged as the fifth wealthiest person in Hungary. In the early stages, his companies owed almost all their revenue to publicly funded tenders, and they continue to draw a significant portion of their earnings from this source. During the same period, the company formerly owned by Orbán's son-in-law increased its total sales revenue by 340-fold after winning a significant proportion of tenders issued in the framework of an EU programme for public lighting. The European Anti-Fraud Office (OLAF) is still investigating this, but the Hungarian police ended their investigation in 2016, citing the lack of a criminal offence. According to OLAF's 2016 report, Hungary ranked third in the number of investigations by the authority, following Romania and Poland. The ratio of fraud in the payments made in the context of EU-funded tenders that the EU institution discovered (4.16% of the total value of EU subsidies) was far higher than that found by the responsible Hungarian authorities (1.22%).

A rent-seeking practice facilitated by legislative support is also readily apparent in the Hungarian residency bond programme, which has yielded a net loss for the state when compared to market-based financing. Nevertheless, the companies selected by the ruling parties' majority in the Economics Committee of the Hungarian National Assembly were provided with a significant profit margin, without a competitive tender. The criteria that were used to determine whether to issue or revoke the licences of these offshore-based agencies were never made public, and the identity of their beneficial owners was also never revealed. As a result of the programme, some 20,000 persons were given residency in Hungary. Multiple threads connect Antal Rogán, who proposed the programme as the chairperson of the National Assembly's Economic Committee at the time, but now serves as the Head of Cabinet of the Prime Minister, as well as Árpád Habony, the prime minister's informal adviser and confidante, to the companies involved in the programme. An attorney working for both was commissioned to perform the legal representation of several companies distributing residency bonds. An old friend of Rogán's from their time at university is involved in the programme as a distributor. The case of the Hungarian National Bank's (MNB) foundations is similar. The central bank paid out around 266 billion forints of exchange rate profits to several foundations it has established. Of this money, 197 billion were used in a controversial manner to buy government bonds, while the remaining sum was spent on real estate and public procurement tenders without competitive bidding. Management and oversight positions in these foundations are often filled with MNB staff, their relatives, and acquaintances. The foundations denied, however, that they rely on public funds for their operation and they used this argument to justify their failure to publicly disseminate and account for their expenditures. Subsequently, the National Assembly tried to limit – with retroactive effect – public

access to information handled by these foundations, but this proved unconstitutional. The prosecutor's office did not take any action in response to the reports filed with the police alleging corruption and misappropriation of public funds.

Despite criticisms, the government's anti-corruption programme only targets the lower levels of public administration, ignoring the issue of political corruption. Last year, Hungary quit the Open Government Partnership (OGP) and has also decided not to participate in the establishment of the European Public Prosecutor's Office.

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Eötvös Károly Policy Institute <http://ekint.org/en>

Mérték Media Monitor <http://mertek.eu/en>

Hungarian Civil Liberties Union <http://hclu.hu>

Hungarian Helsinki Committee <http://www.helsinki.hu/en>

K-Monitor <http://k-monitor.hu/home>