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Hungary's Authoritarian Rule and European Values

It is seldom good news for a state to make it onto the front pages of the leading dailies of the world. Hungary has been making headlines for various reasons since the April 2010 elections and the formation of its new (moderately) conservative government. There are exceptions, however. Nearly quarter of a century ago, in the late 1980s, Hungary had a high profile in the world at large and played a positive role, often also “punching above its weight”. The situation is different nowadays. Its high profile is often not accompanied by positive associations.

This contribution cannot venture to offer a full picture of the first two years of the government of Viktor Orbán that was formed in 2010. It has a more limited objective: to assess whether Hungary continues to share “European values” or whether the challenge it represents has gone beyond what common sense and the European consensus would accept from a European democracy, a member state of the European Union and the Council of Europe, and an OSCE participating State. The rules are broadly defined on the surface but require further elaboration. Democracy, respect for human rights, and the rule of law are certainly among them. These are the foundations upon which the political systems in most European states – and not only those that are members of the European Union – are built. The issues dealt with by OSCE, Council of Europe, and EU documents significantly overlap and also complement each other.

The case of Hungary matters not only for its own sake, but also because it is the first fully integrated state that has presented a comprehensive challenge and tested the limits of what is acceptable or at least tolerable in Europe as far as democracy is concerned. As elements of similar tendencies (domination of the media, challenging the independence of the judiciary, installing an election system that would perpetuate the government in office) are permanently or temporarily present in other European (and not only East-Central European) countries, it is important to see the nature of the challenge presented by the Orbán government in the last two years. Can cases such as Hungary's new constitutional set-up or Romania's constitutional “coup d'état” in the summer of 2012 set examples that erode democratic requirements and provide arguments for states to follow?

Hungary: The Unabated Decline of a Small State

There is hardly any doubt that Hungary was among the leading reform countries at the time of the system change at the end of the 1980s and the begin-

ning of the 1990s. The transition to democracy took place in a negotiated process with the active, hesitant rather than reluctant co-operation of the reform-orientated communists. There are three legacies of the 1970s and 1980s that must be emphasized: 1. The regime of János Kádár (1956-1988), after the dark years of retaliation for the 1956 revolution (1956-63), was making steady efforts to gain the support of the population through gradual economic improvement (the terms “frigidaire socialism” and “goulash communism” spring to mind). That made Hungary “the happiest barracks” in Eastern Europe, as it was called at the time. However, Hungary was not competitive enough to finance the level of welfare it offered to the population to placate it. The result of this was that Hungary became the most indebted country in East-Central Europe, particularly in per capita terms, and carried this baggage beyond the system change. The impression gained by the population, however, was that a state can permanently live beyond its means. 2. Although the Kádár regime was a one-party dictatorship, it operated in its last two decades on the basis of not creating “martyrs”. While Václav Havel was imprisoned in Prague and Lech Wałęsa interned in Poland, the Kádár regime used softer and more differentiated methods. The small group of dissidents lost their jobs, could not travel (except when co-operating with the internal counter-intelligence service) and faced intensive monitoring. Some, like the philosophers who belonged to the György Lukács circle and some sociologists, got passports to leave the country and settle in the West. It was nothing brutal, just highly unpleasant for those affected. 3. Thanks to Kádár’s personality, among other things, Hungary was the least corrupt country in Eastern Europe. No communist leader (in contrast to neighbouring Romania) enriched himself, which meant that they could not be challenged on that basis after the system change.

The democratic system installed in 1990 gave priority to political stability. One result of this was that there has never been any need for early elections, with the parliament completing its four-year term every time. The most important “ground rules”, including the constitution of the country and what are known in Hungary as “cardinal laws” (and as “organic laws” in other legal systems), which regulate certain state institutions (courts, prosecutor’s office) and human rights, could be changed only by a qualified (two-thirds) majority. It was foreseen that no political force would have such a majority on its own. Hence, the system has required constant compromise-seeking and compromise-making from the main political forces. During the last 22 years there were only two governments that enjoyed a majority bigger than two-thirds. These were the government of Gyula Horn between 1994 and 1998 and the government of Viktor Orbán since 2010. However, there were two major differences between the two: 1. Gyula Horn’s government was a real coalition consisting of the Socialist Party and the Alliance of Free Democrats, two parties with very different historical backgrounds, profiles, and priorities. Viktor Orbán’s current government is a virtual coalition be-

tween the Alliance of Young Democrats – Hungarian Civic Union (Fidesz-MPSZ) and the Christian Democratic People's Party. Very few people vote for the latter, which is effectively an appendix of the former. 2. Gyula Horn's government decided not to (ab)use the entitlement inherent in its overwhelming majority and decided to draft a new constitution only if it had been approved by a four-fifths majority, i.e. supported at least by a part of the opposition. Therefore, Hungary ended up as a country which, although with a constitution that had been fundamentally revised in 1989 and with the third Hungarian republic, replacing the Hungarian People's Republic, having been declared on 23 October 1989, had in some superficial and purely formal sense continued to operate with a constitution that dated back to the late 1940s. As Viktor Orbán put it during the election campaign of 2010: "Small majority, little change – big majority, major change". His implication here was that if he cleared the two-thirds hurdle, he would exploit every opportunity inherent in the entitlement thus gained.

There is no space here to present, let alone analyse, the development of Hungarian democracy over the past 23 years. Yet there are two factors from recent history that must be emphasized because they are important for understanding the present. The previous Socialist-Liberal coalition held governmental responsibility between 2002 and 2008 and then gave way to a Socialist minority government, which in turn was replaced by the technocratic government of Gordon Bajnai a year later. It is an undeniable historical achievement that for the first time in Hungarian post-system-change history, a sitting prime minister could lead his party to victory and gain a second consecutive term in office. The Socialist-Liberal coalition that came to power in 2002 built social consensus by excessive spending and only stopped when the budget deficit reached an unmanageable level. In some ways it was reminiscent of the Kádár era, the illusion that the country could permanently live beyond its means. Ferenc Gyurcsány, a charismatic politician who governed the country between 2004 and 2009, tried to address some of Hungary's pertinent problems ranging from the excessively expensive major distributional systems (healthcare, social services, higher education) to greater transparency in party financing. However, five factors did not help him: 1. Following the leaking of his speech to the Socialist parliamentary group in which he admitted to having systematically lied about the state of the country's economy before the 2006 elections, he largely lost legitimacy. This was aggravated by the excessive use of police force against the demonstrators who went onto the streets in the autumn of 2006 to protest against the prime minister's admitted lies. The situation was aggravated by the not totally unfounded impression that the government was not immune to corruption, either being actively involved in it or tolerating it.¹ 2. The ensuing global financial, and subsequently

¹ Hungary's ranking on the corruption perception index of Transparency International moved from 40 (on a scale of 133 states and territories) to 54 (on the scale of 183 states and territories) between 2003 (the first year based on information collected when the So-

economic, crisis had an unfavourable effect on the already vulnerable country. The country was exposed to financial speculation. Hungary had to rely on the assistance of the EU and the IMF. This was understandably accompanied by austerity measures. Even though the Gyurcsány and Bajnai governments managed the situation fairly well, the economic hardship further weakened what little popularity the Socialist Party was left with. 3. The governing coalition faced an entirely non-constructive opposition that used every populist trick known from the history of parliamentary democracy to undermine the government. They did not support any government initiative, even though they have now introduced many of them themselves since taking over the reins of government in 2010. They did not participate in the sessions of parliament, leaving only one party mouthpiece in the chamber to undermine everything the government represented. 4. The Socialist-Liberal coalition, irrespective of the Socialist parliamentary group's far greater size, implemented the agenda of the Liberals, presenting it as though there were no alternatives, far too frequently and more often than not arrogantly. The intellectual arrogance of the Alliance of Free Democrats often skated on thin ice as far as its intellectual foundations were concerned. Its inattentiveness in communicating messages to the less educated social strata also helped to weaken the coalition. 5. Last but not least, the Socialist Party was internally so diverse that the prime minister had to spend an excessive amount of time on finding compromises on the smallest and largest issues alike, which he could start "selling" to the coalition partner and, if any of his initiatives cleared both hurdles, then to society at large. Due to objective and subjective factors, a large part of the population simply grew tired of the faces it had seen for eight years.

Several major changes occurred in the elections of 2010: 1. The Alliance of Young Democrats – Hungarian Civic Union and the Christian Democratic People's Party achieved a landslide victory and has held 263 seats in the unicameral parliament of 386 MPs since then. 2. The Socialist Party, although still the second-largest group, had only 59 seats in the legislature. 3. Two new political forces appeared: a) the radical nationalist (as they call themselves) or extreme right (as many regard them) Jobbik (The Movement for a Better Hungary), which flirts with irredentist ideas, has connections with fascist paramilitary groups and anti-Roma and anti-Semitic forces and has formed the third largest fraction group with 47 seats; b) a new liberal party called "Politics Can Be Different" (*Lehet Más a Politika*, LMP) took many liberal votes and formed a 16-member group. 4. The two parties which had formed the largest group in parliament between 1990 and 1994 and were

cialist-Liberal government was in office) and 2011 (the last year that was partly based on information before Fidesz [*Fiatalkor Demokraták Szövetsége*/Alliance of Young Democrats] took office). See at: http://www.transparency.org/policy_research/surveys_indices/cpi/2003 and <http://www.transparency.org/cpi2011/results>.

in the vanguard of the system change, the Hungarian Democratic Forum and the Alliance of Free Democrats, lost their parliamentary representation.

The political landscape has changed, and not only because of the two-thirds majority of the Alliance of Young Democrats – Hungarian Civic Union and the Christian Democratic People’s Party that has existed since 2010. Another major development is that the structure of parliamentary politics has changed. Between 1990 and 2010, the political spectrum in parliament was divided into two large groups: the left and the liberals on one side and the conservatives on the other. Three governments were formed by the former, two by the latter. The extreme right entered parliament only once (1998-2002) when the Hungarian Justice and Life Party led by István Csurka had 14 seats. In 2002 the extreme right was not re-elected to the legislature and since then has in fact disappeared from the political map. Since 2010, the political spectrum has been divided into three distinct groups that would be most unlikely to be able to form a coalition government. The left (the Socialist Party and the new party established by former Prime Minister Ferenc Gyurcsány, the Democratic Coalition), the “moderate” conservatives of Viktor Orbán’s Young Democrats, and the extreme right Jobbik party will probably constitute three distinct parts of the political spectrum in the long term, also in the legislature.² Consequently, there is every reason to assume that no political force will have a two-thirds majority any time soon. Consequently, the Orbán government that took office in 2010 has a quite unique opportunity to change the constitutional system in a manner that cannot be revised constitutionally in the foreseeable future. This was reflected in the early pronouncements of the prime minister in which he spoke of a power centre overcoming party divisions, with his party apparently constituting it for the next ten to 20 years. Although there have been no further comments of this kind lately, it is certain that the agenda has not changed.

The Alliance of Young Democrats – Hungarian Civic Union and the Christian Democratic People’s Party returned to power after eight long years in opposition. They have successfully hidden most of the concrete elements of their election programme, likewise their future government programme. They could safely count on a population that was disillusioned with the politics of the left (and the liberals). At the same time, however, people were also tired of politics in general. Many just wanted to have a better life. Some of the promises and earlier actions of the conservatives gave an indication of this. Lower, flat-rate income tax, healthcare on a social basis, and no tuition fees in higher education were parts of this vague promise. There was no delivery on some of the promises, while those elements that have been realized, such as the flat-rate income tax, turned out to be detrimental to economic consolidation and the prosperity of the country. The prime minister’s post-

2 Politics Can Be Different (*Lehet más a politika/LMP*) – which entered the legislature in 2010 for the first time (and politics not much earlier) – does not seem to be in a position to form a fourth political platform, in spite of a liberal agenda.

election promise to create one million jobs during the next ten years seems totally unrealistic today, more than two years after the elections.

The Orbán government formed in 2010 had a unique opportunity to gain and retain popularity by delivering on the development of the economy and depoliticizing a society that was sick and tired of constant political haggling. The new government could also have made a difference if it had shown itself to be far less corrupt than its predecessor(s), including the first Orbán government of 1998-2002. The deal that was looming on the horizon was not realized. Economic prosperity has not been achieved (the country is actually the only country in the “Visegrád group” to be in recession), unemployment has soared if those who have to work in order to acquire minimum social benefits are not counted, low incomes are taxed more highly than before the introduction of the flat-rate income tax, and the number of state-sponsored places in higher education has been massively reduced. Quality health care is available to those who use connections, corruption, or pay extra to jump the queue for non-urgent treatment. The general impression is that corruption, although difficult to measure, has not declined, and may even have increased.³ There is an increasing gap between promises and delivery. Consequently, the desired social consensus has not been achieved. It is clear that the Orbán government missed an opportunity.

The limitless possibility of codifying anything in law by a two-thirds majority, including the passing of a new constitution, has been extremely tempting from the very first days of the Orbán government. The realistic assumption that no government will have a similar majority for many years to come increases the temptation further. There is a fair chance that the current government will be able to determine the constitutional order of the country far into the future. Last but not least, the vanishing (or at least significantly declining) support for the government means that they are more likely to make full use of the current opportunity.

The left-liberal opposition is not only divided but also paralysed. This is due to the following factors: 1. It has still not recovered from the shock of its defeat in 2010 (repeated at the local elections in the autumn of 2010). 2. The only visible charismatic politician on the left, former Prime Minister Ferenc Gyurcsány, is one of the most widely rejected politicians in the country. 3. The unimpressive leader of the Socialist Party believes he may become prime minister. 4. The changes introduced by the current government certainly present a dilemma for those considering their chances. Namely, what to do if the left comes to power with a simple majority and does not have any chance of changing the fundamentals established by the current regime on the basis of a qualified (two-thirds) majority. One may easily get the impression that this is

3 In 2012, drawing on interviews conducted in 2011, Transparency International ranked Hungary 46th of 176 countries on the Corruption Perception Index, a significant improvement, at: <http://transparency.org/cpi2012/results>.

why there is a lot of hesitancy in presenting a more assertive challenge at the next elections in 2014.

It is not entirely clear what the opposition hopes for. Does it believe that due to the increasingly desperate economic situation (and certainly not because of the systematic curtailment of democracy), the population will remove the regime in an extra-constitutional process? Or does the opposition hope that the situation will become so desperate that the elections will bring another political force to power on the basis of protest votes? As time elapses the likelihood of a change of government at the next elections is becoming increasingly slim. However, it is necessary to take into account the declining popularity of the government due to a series of incompetent decisions.

The Hungarian Model and European Values

Since Orbán's election victory in the spring of 2010, observers have been speculating about the nature of the regime. Comparisons ranged from populist (Berlusconi) to authoritarian nationalist (Putin),⁴ to populist dictatorial (Chávez),⁵ to outright left-wing dictatorial (Lukashenko)⁶ systems. As is often the case, none of them describe the evolving regime accurately. It is a genuine system, even though the term *sui generis* apparently says little about what it is rather than what it isn't. What are the main characteristic features of the political system built by the Orbán government?

Its most important characteristic feature is that it attempts to maximize sovereignty and reduce external influence on Hungary in both an economic and a political sense. External interference should be limited, and if possible eliminated. The question of whether this could be successful in a country which is deeply integrated both in terms of international institutions and, as far as the economy is concerned, at grassroots level, and which is small, largely free of natural resources and short of capital⁷ does not require too

4 Cf. The Putinization of Hungary, in: *The Washington Post*, 26 December 2010.

5 Cf. Ungarns Premier Viktor Orbán nimmt Kampf mit Europa auf [Hungary's PM Viktor Orbán Takes the Fight to Europe], in: *Welt Online*, 20 January 2011, at: http://www.welt.de/print/die_welt/politik/article12254871/Ungarns-Premier-Viktor-Orban-nimmt-Kampf-mit-Europa-auf.html. The head of the Green group in the European Parliament, Daniel Cohn-Bendit, said in the European Parliament when Prime Minister Orbán appeared there as the President of the European Council: "You are on the way to becoming a European Chávez." European Parliament, Debates, Strasbourg, 19 January 2011, at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20110119+ITEM-005+DOC+XML+V0//EN&query=INTERV&detail=3-053-000>.

6 As mentioned by Nick Cohen, Who will confront the hatred in Hungary? In: *the guardian/The Observer*, 2 January 2011, at: <http://www.guardian.co.uk/commentisfree/2011/jan/02/hungary-repression-wikileaks-assange>.

7 Hungary is far from the only country of East-Central Europe that has been historically short of capital, making it dependent upon the transfer of external financial resources. There were times when this was overshadowed by Hungary's integration into larger entities, as in the Habsburg empire and the Austro-Hungarian Monarchy until 1918, then in the second half of the 1930s in the *Grossraumwirtschaft* of Germany, then again in the

much consideration. In the political sense such ideas are doomed, as Hungary has been part of a value community rather than an island of sovereignty. In the domestic context, the most important issue for the current government is to stop and reverse the erosion of state power. Whether this is due to the genuine disillusionment with liberalism and the reduced role of the state or whether it is just camouflage to retain state power is secondary. Irrespective of the ideology, it is the single most important characteristic feature of the current government of Hungary that it represents a statist approach to the management of public affairs. It is reducing the autonomy of society and interfering massively with economic relations, very often without pursuing a rational line.

The prime minister now speaks openly about the reasons why the government felt obliged to sever relations with the IMF in order to avoid intrusive oversight over its “unorthodox” economic measures: “If the IMF had stayed in the country, the cost of financing state debt could have been reduced by 100 billion forints per year. However, we could not have used 200 billion forints per year – 600 billion over in three years – for crisis management in the banking sector, we would not have been able to raise an extra 160 billion forints – 480 billion over three years – through the crisis tax, and it would have been impossible to re-organize the pension system so that 30 billion forints would not leave the pension reserves every month, but instead would be added to them.”⁸ Space does not permit a thorough analysis of the prime minister’s statement here. Suffice it to say that he referred only to the direct costs of not taking further credit from the IMF and financing the economy at much higher market interest rates. He failed to mention that due to the special tax levied on the banking sector, profitability has declined, resulting in reduced recapitalization of the commercial banks and thus the drying up of credit, which resulted in a low investment rate that has in turn contributed to recession, and that the legality of extraordinary taxes levied on some sectors, such as telecommunications, will be questioned before the European Court of Justice. Last but not least, the prime minister stopped short of saying that the confiscation of resources from private pension funds has certainly undermined respect for private property and resulted in capital flight. The money

“community” of socialist countries (both through the Council for Mutual Economic Assistance/CMEA and bilaterally) between the late 1940s and the late 1980s and nowadays in the EU. These helped to overshadow the dependency on foreign capital for some time. However, the circumstances are fundamentally different nowadays because of the global competition for capital that is weakening the relative position of the European periphery. Historically, the deepest analysis of these phenomena has been carried out by the Hungarian UCLA professor Iván T. Berend. For the political implications, see his What is Central and Eastern Europe? In: *European Journal of Social Theory* 4/2005, pp. 401-416, particularly pp. 410-411, available at: <http://www.uk.sagepub.com/suder/Chapter%203%20-%20Berend.pdf>.

8 Orbán: “vashideg logka, csigavér, higgadtság” [Orbán: “Ice-cold logic, keeping cool, soberness”], in: *Népszava*, 26 July 2012, at: <http://www.nepszava.hu/articles/article.php?id=572195> (author’s translation). One euro equals approximately 280-300 forints, i.e. 100 bn forints equals 333 to 357 million euros.

arriving in the state budget from private pension funds was spent and the individuals who trusted the notion that a complementary social pension from private funds was a good idea lost their savings.⁹ Taking all this into account, it is only economic illiterates who believe that some of these unorthodox methods of state financing resulted in a net positive effect. Hungary has the lowest rate of investment in the Visegrád group, and is the only country from among the four states that is in recession.

When challenged, the government often argues in favour of its hasty changes to many elements of the political and economic system through feverish law-making by asserting that it has received the mandate from the people. This is a traditional argument of many who come to power in democratic elections and then make decisions that curtail democracy. Basically, it carries this message: Don't subject the executive power to democratic control between two elections. The hasty legislation and unpredictability are not only inherent in the two-thirds majority of Fidesz in the parliament; they also result from the elimination of checks and balances and the concentration of power in very few hands in Hungarian politics. If there is anything that alienates foreign investors, it is unpredictability. No new foreign direct investment is coming in, some investors are relocating to other countries and the largest investors are, at best, increasing the capacity they established previously.

It is certain that arguments concerning the de facto subordination of the legislature to the executive, rather than the other way round, are inherent in a structure where one political force wins the elections with an overwhelming majority. It is more a question of how a political force should use such a comfortable majority. It is about whether the overwhelming majority in parliament should be used to curtail human rights and limit the power of other branches of government, such as the judiciary. Does it benefit democracy if a large proportion of new laws is initiated by individual MPs so that, under the parliamentary rules of procedure, they would not be subjected to detailed discussion in the parliamentary committees and hence significantly curtail the democratic control function of the legislature? It is all the more interesting whether the two-thirds majority could be used to prevent successive governments from replacing certain high-ranking state officials such as the Prosecutor General, the President of the State Audit Office, the Head of the National Office for the Judiciary or the Head of the National Media and Communications Authority. Their term of office lasts for nine or, in the case of the President of the State Audit Office, twelve years, and those who hold these functions can be replaced only by a two-thirds majority. Each of the four persons has privileged links with Fidesz party politics and now the government: Two of them are former Fidesz MPs, candidates for parliament on

9 It is seldom asked whether this clear violation of the rule of law had an impact on the flight of private earnings to bank accounts in neighbouring countries, first and foremost to Austria and Slovakia. The fact that banks in both countries advertised to welcome Hungarians to open accounts indicate that there was some interest in it. It is certain, however, that the loss was disproportionate compared to the amount confiscated by the state.

the Fidesz party list or the spouse of an influential Fidesz MEP. If we say that their main role will be to make the life of any successor government extremely difficult if not downright impossible, then we are not far from the truth. They will all have their respective functions: The President of the State Audit Office will guarantee that the appropriation accounts of a government with a different political orientation would not be approved, and if it disapproves of them a constitutional crisis could break out. The Prosecutor General can guarantee, in certain cases, that the judiciary cannot investigate a crime without initiating a formal prosecution. The very same person was already Prosecutor General between 2000 and 2006, when he effectively blocked certain politically sensitive cases from coming to court after the Socialist-Liberal government was formed in 2002. Hence, there is established practice which demonstrates the politicization of this function. The Head of the National Office of the Judiciary is entitled, among other things, to assign cases to different courts in order to guarantee an even workload. It has already taken the initiative in a high-profile political case.¹⁰ Similar changes will occur when the term of office of the President of the Hungarian National Bank expires in the spring of 2013. Thereafter, a Fidesz politician will be appointed to the post, and the Monetary Council will also be dominated by government appointees.¹¹ The introduction of the latter measure had to be postponed after protests by the European Central Bank. This measure would result in significant changes, as the Monetary Council makes decisions concerning the reserves of the National Bank by simple majority. For a government interested only in its own survival, this may provide a convenient playground as the 2014 elections draw closer.

All in all, a situation has developed where the most important objective of the current Hungarian government is to guarantee that practically all executive power becomes concentrated in its hands, and that the election of a new government will result in the new administration coming up against “independent” institutions. Those “independent” institutions, which regularly give a helping hand to the present government or at least thoroughly tone down their criticism, will, to their credit, certainly start acting very “independently” when faced with a government of a different political orientation.

The activity of the government can be considered an all-round attack rather than an all-round defence: interference in a whole array of politico-

10 In a narrowly-defined normative sense, there are certain constraints on taking such a decision (initiative of the court for reassigning the case, right of appeal against the decision). However, due to the extremely strong position of the head of the National Office of the Judiciary, there is reason to be concerned about her power, among other things, as far as the personnel decisions for the judiciary are concerned. There is also cause for concern that through her activity (now also augmented by the attempt to force judges above the age of 62 into retirement) the leading positions at courts and tribunals will gradually be assumed by judges of a certain political leaning.

11 To keep the matter in perspective, a rather similar attempt was made by the Gyurcsány government. Apparently, central bank independence is an irritant for governments, be they of the left or the right, although there is economic evidence that the independence of central banks generally tends to reduce/limit inflation.

economic areas. However, it had two clear focal points as one might have expected long before the elections: 1. the judiciary, including various elements of the system, ranging from the prosecutor's office through the judicial administration, to the Constitutional Court and the Supreme Court (now *Curia* – in accordance with its historical name); 2. In the area of human rights the focus was on media regulation. It is important to notice a certain pattern in law-making.

The Hungarian government faced certain challenges presented by the opposition but nothing compared to what the Socialist-Liberal coalition had faced after 2006 from Fidesz. From the very outset, international criticism complemented domestic unease. Various institutions and bodies have studied the products of the Hungarian legislature and have often drawn critical conclusions. It is important to notice a certain pattern here. When domestic forces were criticizing the government, the government attempted to ignore them or attribute their criticisms to the bitterness they felt about their loss of power. When it was external forces, be they foreign politicians, the foreign press, or NGOs, the regular response has been that they are ill-informed, misled by leftist-liberal circles in Hungary or that they want to punish Hungary for something that the current government did, such as the introduction of a special tax, etc. Last but not least, the government argues that anybody critical of the government or the prime minister is attacking Hungary. And if Hungary is attacked, the country should stick together. For the government, it is essential to achieve the following: 1. Create a smokescreen around the underlying facts and carry a message that does not address them. 2. Attribute the criticism to the opponents of the government or their accomplices. If these methods are not applicable, 3. Argue about details rather than the spirit of the system and the contribution of a given element (legislation, political decisions, interference in economic processes, etc.) to the system as a whole as far as backtracking on democracy is concerned. 4. Prove that similar rules exist in other states which are widely regarded as democracies.¹² 5. Play some “cheap tricks” by providing international institutions with partial or inaccurate translations of the new laws. As these strategies were repeatedly exposed, the Hungarian government seems to have given up on that method. 6. In a similar vein, make promises to foreign politicians, international institutions, and the media and do not include them in the press communiqué issued

12 For example, the prime minister told foreign journalists that on grounds of non-discrimination, a basic value of the European Union, it would be impossible to change the Hungarian media law as there was not a single rule in it that could not be found in similar legislation in other EU member states. Imre Bednárík/Ildikó Csuha, Orbán becsűszó szerelést mutatott be Barroso kivédésére? [Did Orbán make a sliding tackle to impede Barroso?], in: *Népszabadság*, 7 January 2011. It is memorable that the Swedish ambassador to Budapest had to deny in a letter sent by the Ministry of State Administration and Justice to foreign journalists in Hungary that the Hungarian media regulation copies the Swedish one as far as registration of media and the strong dependency of the media authority upon the government are concerned. Cf. A kormány nem a svéd médiaszabályozást másolta [The government did not copy the Swedish media regulation], in: *index.hu*, 14 January 2011, at: http://index.hu/belfold/2011/01/14/a_kormany_nem_a_sved_mediaszabalyozast_masolta.

from the meeting. If none of the above works, change certain parts of the law but keep those rules which are essential for retaining the original democracy-curtailing spirit of the legislative act.

The first act to be widely challenged was the Hungarian legislation on media and telecommunications. This was a logical choice by the government (although the draft legislation was introduced by individual MPs in order to avoid extensive debates in parliamentary committees), as much of the uncritical reception given to its future reforms was dependent upon the limitation of press freedom. It established a highly powerful media authority whose head was appointed by the prime minister, although all its members were elected by the legislature. The OSCE's Representative on Freedom of the Media was of the opinion that "such concentration of power in regulatory authorities is unprecedented in European democracies, and it harms media freedom".¹³ The legislation required the registration of all media providers at the National Media and Info-communications Authority, including internet providers. Penalties in the event of violations involving the provision of "unbalanced" information or material offensive to "human dignity" were set so high that financially less well-endowed media could easily go bankrupt after just a few cases. Although the application of the media law did not enforce the rights of the National Media and Info-communications Authority to the fullest extent possible, perhaps due in part to the massive international attention it attracted, there were cases that demonstrated its readiness to focus on those few cases, even contrary to court decisions, where it wanted to carry the message that it had effective ways of punishing those media providers that act contrary to its expectation.¹⁴ The objective is clear: to achieve self-censorship through soft punishments. It goes without saying that the publicly-funded media are strongly biased, and that when covering the opposition they lace their information with sophisticated, detrimental comments. The Media Authority talks about press freedom in a self-congratulatory manner and most often refers to the print media in this context. However, a study confirms that only four per cent of the population receives information from the printed press. The overwhelming majority of the population uses television, radio, and the internet as primary information sources.

To sum up, it is a multi-channel system that applies an array of means to gain control over the media: direct control of radio and television, including sustained efforts to silence certain programmes, withholding government-dependent resources (advertisements) from non-cooperative media, strength-

13 OSCE, The Representative on Freedom of the Media, *Hungarian media law further endangers media freedom, says OSCE media freedom representative*, press release, Vienna, 22 December 2010, at: <http://www.osce.org/fom/74687>.

14 The best-known case is what has happened to *Klubrádió*, which was deprived of its radio frequency in Budapest and its surroundings, where approximately one-third of the country's population lives and works, and even when the radio station regained its frequency thanks to a court appeal, the Media Authority was only ready to make a temporary contract to grant it. Under such conditions the radio station is understandably fighting for its survival.

ening “editorial responsibility” in the control of content and colleagues, and last but not least subjecting the “printed press and the Internet [...] to a content regulation regime almost without precedent in democratic countries”.¹⁵

It is not only the power of the law that is at the disposal of the government. It is also economic power. State-owned enterprises and those close to the government do not advertise in newspapers closer to the opposition. As most newspapers close to the opposition are owned by large foreign media holdings, the consequences are quite predictable. Such semi-soft measures guarantee that even those media sources which are not pro-government become more “thoughtful” in the articulation of their views.

Although some technical revisions of the media law took place as a result of its apparent, although largely technical, incompatibility with EU legislation and also due to the decision of the Constitutional Court, the most important and politically most objectionable elements have remained largely unchanged. The OSCE Representative on Freedom of the Media recognized that the revised provisions “provide broader protection of sources, annul the ban of certain content from print and online media, and abolish the right of the Media and Communications Commissioner to interfere with editorial decisions in case of complaints [...] Unfortunately, other elements [...] have not improved. [...] These include the ways in which the President and members of the Media Authority and Media Council are nominated and appointed, and their power over content in the broadcast media, as well as the prospect of very high fines that can lead to self-censorship among journalists.”¹⁶

Later, the government redirected its attention and focused on laying the foundations of the new state system in a new constitution. In fact, it was long overdue. However, if we are under the assumption that a constitution is an important founding document of lasting relevance, it is also important to devote adequate time to its drafting and discussion with civil society, in the media, and with different political forces. The Council of Europe’s Venice Commission objected to the process, but during its visit to Budapest was reassured that there would be co-operation “between the majority coalition and the opposition in the preparation of the implementing legislation”.¹⁷ As mentioned earlier, in Hungary it is not only the constitution that has to be adopted by a qualified (two-thirds) majority; this applies to the cardinal laws as well. It is understandable that the Hungarian constitutional system relied

15 OSCE, Office of the Representative on Freedom of the Media, *Analysis and Assessment of a Package of Hungarian Legislation and Draft Legislation on Media and Telecommunications*, Prepared by Dr Karol Jakubowicz. Commissioned by the Office of the OSCE Representative on Freedom of the Media, Warsaw, September 2010, p. 6.

16 OSCE, The Representative on Freedom of the Media, *Revised Hungarian media legislation continues to severely limit media pluralism, says OSCE media freedom representative*, press release, 25 May 2012, at: <http://www.osce.org/fom/90823>.

17 European Commission for Democracy Through Law (Venice Commission), *Opinion on the New Constitution of Hungary*. Adopted by the Venice Commission at its 87th Plenary Session (Venice, 17-18 June 2011), Opinion no. 621/2011, CDL-AD(2011)016, Strasbourg, 20 June 2011, para. 13. Actually, such debates did not take place.

heavily on such cardinal laws when it was reformed around the time of the system change in 1989. The intention was to mandate the main political forces to seek compromise in order to generate the necessary majority on the most important matters of state organization and human rights. However, how broad those subjects should remain today is more open to question – particularly since the new (rightly cardinal) law on elections makes it far more difficult for any political force to achieve a two-thirds majority. Hence, the current government may well achieve a situation where the cardinal laws adopted during its term of office will be largely impossible to revise with due respect to the foundations of the legal system. It is probable that under these conditions the advice of the Venice Commission on “restricting the fields and scope of cardinal laws in the Constitution to areas where there are strong justifications for the requirements of a two-thirds majority”¹⁸ will be also ignored in the future. Due to such “delegation” of power to cardinal laws, the Venice Commission had far less of a problem with the constitution proper than with the restructuring of the entire legal system.

The constitution certainly does not reflect any wide-ranging collective wisdom of society and the different political forces. There is actually a widespread rumour that it was drafted on an iPad by a Hungarian MEP. Some of the most interesting and “innovative” rules include the *ex tunc* (retroactive) nullity of the communist constitution of 1949 “since it was the basis for tyrannical rule; therefore we proclaim it to be invalid”.¹⁹ If somebody had thought about the implications, all the laws adopted under that constitution could be rendered null and void, which would certainly fully undermine legal certainty. The government later reassured the Venice Commission that “the declaration of the invalidity of the 1949 Constitution should only be understood as a political statement”.²⁰

In addition to the legal absurdity, it is a reflection of the determination of the Orbán government to delegitimize the four decades of the communist period. This happens in a country where, at least between 1963 and 1989, the communist regime was certainly more tolerable than in most other East-Central European and Eastern European countries. But it is far more important for Orbán and his entourage to delegitimize the Socialist Party as a “successor” to the communists more than two decades after the start of multi-party democracy. For the current government, demonstrating that the Hungarian political spectrum is divided in two: “us” (the democrats) and “them” (the post-communists) is a source of strength. With the disappearance of the Alliance of Free Democrats from parliament, this could be easier than ever. However, other factors such as the strong showing of the extreme right-wing Jobbik party interfere with this goal. It is important to see that for the Fidesz government, history deprives the Socialist Party of any legitimacy it may

18 Ibid., para. 27.

19 Cited in: *ibid.*, para. 35.

20 Ibid., para. 37.

claim as a result of winning five free elections in succession. This contrasts to Fidesz, whose legitimacy stems from its performance at the polls, irrespective of how it acts between elections and regardless of how its popularity declines in the meantime. A slight incongruence is easy to discern.

The constitution contains a number of other innovative ideas that do not necessarily point in the direction of mainstream European development. Some of them stem directly from the participation of the ideologically convinced but politically insignificant Christian Democrats in the government. They have pushed strongly for significant constraints in the termination of pregnancy, and have insisted that marriage is between a man and a woman. In the area of human rights, the Venice Commission finds it “problematic that freedom of the press is not formulated as an individual’s right, but as an obligation of the state”.²¹

Some cardinal laws have presented far more of a problem, as it is they, rather than the constitution, that contain certain detailed provisions. Laws on the Constitutional Court, the organization and administration of courts, and the prosecutor service in Hungary were scrutinized by the Venice Commission in a manner which elicited a written reaction from the Hungarian government. Each exchange followed the same pattern. The Venice Commission expressed its satisfaction with some provisions in the new laws and dissatisfaction with some others. Following the publication of the Venice Commission’s opinion, the government initially declared that the commission was satisfied with the new legislation and kept silent about the often fundamental reservations of the latter. This was usually followed by an exchange between the two, in the light of which the Hungarian government amended some of the regulations, often recognizing “technical shortcomings”. The Venice Commission faced Hungarian politicians who were well aware of the laws they had drafted and did not hesitate to fight their corner aggressively precisely on the points where the government did not want to relinquish power. The most important provisions guaranteeing the systematic abolition of checks and balances have been retained. In the meantime, the situation on the ground has changed in a way that has gradually created a government-friendly majority in independent institutions (Constitutional Court), centralized the administration of others (judiciary), or created procedural rules that guarantee governmental dominance for the most important decisions (prosecutor service).

In the case of the Constitutional Court, which was not favoured by the government as it passed two or three decisions that the government found objectionable, it reduced its powers and in one case the prime minister openly said that irrespective of what the Constitutional Court decided the legislature’s decision would remain in force.²² The Venice Commission found it ob-

21 Ibid., para. 74.

22 This refers to the case concerning the lowering of the age of retirement for judges in accordance with the general retirement age. This resulted in the forced resignation of hun-

jectionable that the judges of the Constitutional Court are proposed by a parliamentary committee “composed in proportion to the members of the parties represented in Parliament and they are elected by Parliament with a qualified majority of two-thirds”.²³ Here it is clear that the constitutional system of Hungary is in trouble if one political force has more than two-thirds of the parliamentary seats. The fact the President of the Constitutional Court is elected with a two-thirds parliamentary majority is a step backwards compared to the previous regulation, according to which the judges of the Constitutional Court elected their own President. It can be taken for granted that the next President of the Constitutional Court will be a person “sympathetic” to the current government.

The government does not hesitate to use its far-reaching powers. It has already used them to appoint four new judges on the Constitutional Court. One of them was a long-time Fidesz MP. Another, who was head of the prime minister’s cabinet office during the first government of Viktor Orbán, has a diploma in law but has never practised during a thirty-year career. With hindsight, Caligula’s horse might as well have been appointed. The President of the Constitutional Court stated clearly that the chance of unanimous rulings being passed by the Court could be ruled out for the future.

With regard to the judicial system, the Venice Commission criticized the far-reaching administrative powers of the Head of the National Judicial Office. Although some detailed rules were changed, the pivotal rules remained. The powers are concentrated in a single person rather than a collective body and are broader than is usual in other states.²⁴ The not entirely pliable (although certainly not rebellious) President of the Supreme Court was removed simply by changing the name of the Supreme Court to *Curia* and thus opening the gates for such an appointment.

In the case of the prosecution service, the Venice Commission criticized the fact that the Prosecutor General is elected by a two-thirds parliamentary majority for nine years and can be replaced only by an equal majority. This makes it possible for the current Prosecutor General to stay in office for decades. In addition to that, the law is based far too heavily on “cardinal elem-

dreds of judges. The Constitutional Court declared the law to be unconstitutional. Since the decision was made, judges have to present their claims individually. In some cases they cannot get their posts back because they have now been filled by others. The President of the Constitutional Court publicly called the attention of the prime minister to the fact that every Hungarian citizen is obliged to abide by the decisions of the Constitutional Court. When his term expires, he will no longer be able to be so vocal from a position of high authority.

23 European Commission for Democracy Through Law (Venice Commission), *Opinion on Act CLI of 2011 on the Constitutional Court of Hungary*. Adopted by the Venice Commission at its 91st Plenary Session (Venice, 15-16 June 2012), Opinion no. 665/2012, CDL-AD(2012)009, Strasbourg, 19 June 2012, para. 8.

24 Cf. European Commission for Democracy Through Law (Venice Commission), *Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organization and Administration of Courts of Hungary*. Adopted by the Venice Commission at its 90th Plenary Session (Venice, 16-17 March 2012), Opinion no. 663/2012, CDL-AD(2012)001, Strasbourg, 19 March 2012, paras 35-36.

ents” that cannot be revised without a two-thirds majority. The position of prosecutors, including the Prosecutor General, is further strengthened by extensive immunity. This, in combination with the right of prosecutors to remove cases from subordinate prosecutors, means that the Prosecutor General may concentrate every politically sensitive case in his hands and prevent cases from coming before courts and tribunals as he sees fit. The Venice Commission takes the following view: “There should be criteria for taking away cases from subordinate prosecutors.”²⁵ This is a request that will not be realized. In view of the fact that the same Prosecutor General already held the same function in the first six years of the century and stopped cases from reaching the judicial phase following the change of government in 2002, there can be no doubt that his staying in office if a new government were to come to power would severely interfere with criminal justice.

The process of new-born constitutionalism would not have been complete without the passing of a new law on elections. It – as well as other legislation – was long overdue, as Hungary had a disproportionately large unicameral legislature of 386 MPs and the significant reduction of its size to 199 MPs was necessary. In addition to that, the reduction in the size of parliament has been a highly popular initiative, which is not entirely unrelated to the disillusionment of the Hungarian electorate with democratic politics.

The new law introduces several innovations, including a one-round system of elections (replacing the former two-round system) and the extension of the electoral franchise to, *inter alia*, Hungarian citizens living abroad.²⁶ The one-round system awards 106 of 199 parliamentary seats to the winners of a simple majority in the various constituencies. This means that the formation of coalitions between different political forces between the two rounds, which had characterized the Hungarian electoral system since 1990, is no longer possible. Extending the franchise to expatriate Hungarians has always been controversial, particularly since their voting behaviour may well be largely predictable. Just a few days before the elections in 2006, a leading Fidesz politician made the memorable comment that: “If we could win for four years [...] and then let’s say we would give citizenship to five million [ethnic – P.D.] Hungarians and they could vote, everything would be re-

25 European Commission for Democracy Through Law (Venice Commission), *Opinion on Act CLXIII of 2011 on the Prosecution Service and Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and Other Prosecution Employees and the Prosecution Career of Hungary*. Adopted by the Venice Commission at its 91st Plenary Session (Venice, 15-16 June 2012), Opinion no. 668/2012, CDL-AD(2012)008, Strasbourg, 19 June 2012, para. 32; cf. also *ibid.*, paras 14 and 19.

26 European Commission for Democracy Through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Joint Opinion on the Act on the Elections of Members of Parliament of Hungary*. Adopted by the Council for Democratic Elections at its 41st meeting (Venice, 14 June 2012) and the Venice Commission at its 91st Plenary Session (Venice, 15-16 June 2012), Strasbourg, 18 June 2012, Opinion no. 662/2012, para 10.

solved for the next 20 years.”²⁷ The government also changed the constituency boundaries in a way that clearly favours the current government. However, the problem is caused more by their delimitation in cardinal law. This stipulates that no government short of a two-thirds majority can change the constituencies, irrespective of how absurd they may have become over time. Since then the governmental forces have agreed on a further modification of electoral law. Namely that the Fidesz parliamentary group agrees to introduce the preliminary registration of voters for the next elections due in the spring of 2014. This is being debated intensively in Hungarian political circles. In contrast to many analysts who speak of a measure guaranteeing the perpetuation of the government until far beyond the next elections, I take the view that the effect of such a measure is difficult to predict. It would certainly exclude from the ballot box those who tend to decide at the last minute whether to participate in the elections. Successful preparation and mobilization of supporters will be decisive. In this respect, the political forces of the current government are certainly in the lead at present. It would, however, be difficult to predict whether there will be major changes in this area. As of now, there is one clear effect of the new election law: It is going to be almost impossible to win the elections without broad coalitions.²⁸ The assessment according to which “the revision of the election law in Hungary clearly serves the purpose of guaranteeing the power of FIDESZ for the future” is well-founded.²⁹

The Orbán government that has ruled since 2010 has changed the basic elements of the Hungarian legal system and significantly curtailed its rule-of-law-based foundations which existed since the system change. It has created a system that would be largely impossible to change if a new government of a different political orientation were to take office without a two-thirds majority. Furthermore, the conditions have been created for limiting the power of future governments through the domination of institutions including the Media Authority, the State Audit Office, and the Prosecutor Service.

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- 27 This remark, made by István Mikola at the congress of Fidesz-MPSZ on 19 March 2006, is cited in: *Fidesz kongresszus: Orbán a kormányfő-jelölt*. [Fidesz Congress: Orbán is the Candidate for Prime Minister], in: *Népszabadság*, 19 March 2006, at: <http://nol.hu/archivum/archiv-397730>. (author's translation). What Mikola meant was that with the support of the Hungarian voters abroad it could be guaranteed for 20 years that the conservative forces would govern the country. It is a separate matter that with the ethnic Hungarian community shrinking fast, particularly in Romania, Serbia, and Ukraine, it would be more accurate to speak of slightly more than two million Hungarians abroad.
- 28 Cf. Viktor Szigetvári/Balázs Vető, It is impossible to win without a modified voter base and new electoral strategies. Executive Summary of the study of the new electoral system in Hungary, *free Hungary*, 16 August 2012, at: <http://www.freehungary.hu/component/content/article/1-friss-hirek/1291-executive-summary-of-the-study-of-the-new-electoral-system-in-hungary.html>.
- 29 Alan Renwick, Im Interesse der Macht: Ungarns neues Wahlsystem [In the Interest of Power: Hungary's New Electoral System], in: *Osteuropa* 5/2012, p. 16 (author's translation).

Hungary's International Isolation

The Hungarian government formed in 2010 was anticipated without any particular negative feelings from the world at large, first and foremost by its European and North American partners. One could even conclude that the reception was warm. Viktor Orbán had already been prime minister for four years. More importantly, Hungary's partners had nearly four years to get used to the coming of the next Orbán government, as it had been clear since the autumn of 2006 that the Socialist-Liberal coalition would not be in a position to form the next government. It was also important for Hungary's partners to have a partner with a strong mandate from the electorate.

In this situation, not even some of the early steps taken by the government were found to be strongly objectionable. The granting of citizenship to Hungarians beyond the border created a degree of tension with some neighbours, particularly Slovakia, but not with others who have introduced similar laws, such as Romania with regard to Moldova. In other cases, some of the prime minister's initiatives were rejected, like the idea raised with the President of the European Commission as to whether the EU would give the government exceptional permission to increase the budget deficit to seven per cent. Other warnings, like the one from Chancellor Angela Merkel to stop blaming the country's economic malaise on his immediate predecessor Gordon Bajnai, whose government actually started bravely and effectively to address the economic crisis, also worked, at least in the international context.

When Viktor Orbán severed relations with the IMF, took the decision to finance the country from the international markets and began to introduce "unorthodox" economic measures, the positive attitude gave way to concerns and even suspicion. Although in Hungary the financing of the country's financial needs by issuing state bonds is not mentioned among the unorthodox measures, it is actually the most unorthodox one. This is simply because it massively increases the costs of financing Hungarian state debt as a result of interest rates which are 3-5 per cent higher than those available from the IMF. This measure will also complicate the life of successor governments. The objectives of all the government's measures have one thing in common: to prevent any kind of external control over Hungarian sovereignty. Other measures, such as the extra tax on the banking and telecommunications sectors, also harm foreign interests due to the dominant foreign ownership in these sectors. The concerns expressed by foreign leaders and institutions only strengthened the resolve of the government and the prime minister.

In Hungary's sharply divided political spectrum, it is very difficult to remain balanced. On the conservative side, one can hear only praise for the prime minister, while on the left it would be a sin to recognize any achievement of the government. This despite the fact that some of the measures introduced by the government – even if enacted too radically, hastily, and without paying much attention to detail – may serve the long-term interests of

the country. The radical reduction in social benefits and unemployment benefits, and the adjustment of healthcare and higher education to the needs and the load-bearing capacity of Hungary may make the country more competitive in the long run. It can be summarized as reforming the oversized welfare state that Hungary inherited and carried forward for decades beyond the system change.

The prime minister has regularly spoken about the decline of the West and about the easterly wind that was blowing. Although he moves as an alien in the area of political philosophy, the idea of according greater importance to the emerging East after decades of benignly neglecting partners such as China cannot be rejected as unfounded. A greater problem is the fact that the high hopes entertained by Viktor Orbán for attracting capital and investments from the Far East and the Middle East have not been realized, practically for the same reason why Western investors have become extremely cautious in Hungary.

On the surface, disagreements between Hungary and its Western partners reached their peak when the new media law was adopted. Hungarian democrats and the Western media expressed their concerns. Demonstrations were held. However, the prime minister was able to count on his mass following, a fact which indicated that the government is far from exhausting its reserves. That was probably the moment when the Western media campaign came to an end and gave way to different methods. The dissatisfaction of the West was expressed by NGOs worried about the state of democracy in Hungary, by foreign investors who decided to choose other countries as their destination, and in the isolation of the prime minister.

The isolation of Viktor Orbán, demonstrated by the absence of Western invitations (most visibly, and for him painfully, to Washington³⁰ and Berlin)³¹ could not be absolute. Hungary is a member of the EU and NATO and may be a helpful partner in some cases. Furthermore, as the Hungarian electorate and political opposition have shown no sign of changing the government in 2014, the Western partners are increasingly having to reckon with Viktor Orbán in the long run. Further alienating the Hungarian government is certainly not a judicious idea under such conditions, although it would carry a message. The continuing strong antipathy and reservations are showing signs of change. During 2012 there were two moments when it was my personal impression that the West would live with the current Hungarian regime, even if only reluctantly. During the visit of the leader of the Democratic Minority

30 When the Hungarian prime minister attended the NATO Summit in Chicago in May 2012, he was granted no bilateral meeting during his stay there.

31 The prime minister travelled to Germany twice during the first half of 2012, visiting Munich, and then Frankfurt and Wiesbaden. Finally, in October 2012, he was received by Chancellor Angela Merkel. It was a Canossa moment for the former, as he had to face many delicate questions from the German chancellor. See Viktor Orbán meets Angela Merkel: What Really happened? In: *Hungarian Spectrum*, 11 October 2012, at: <http://hungarianspectrum.wordpress.com/2012/10/11/viktor-orban-meets-angela-merkel-what-really-happened>.

of the House of Representatives, Nancy Pelosi, to Budapest upon the 90th anniversary of the establishment of US-Hungarian diplomatic relations, she spoke about promising answers to the points she raised with the prime minister and the speaker of parliament³² concerning a whole range of issues. In March, at a meeting with a high-ranking German diplomat and former colleague, I asked why the Hungarian prime minister is *persona non grata* in Berlin, and was given the Chancellor's personal view on the subject: "This cannot continue forever, Hungary is a NATO and EU member and an important partner."³³

To sum up, Hungary might be able to navigate with the current government without being rejected totally by its natural Western partners. It is extremely difficult to measure accurately how much Hungary has lost due to its vanishing prestige. It has certainly won very little.

Viktor Orbán: A Great(ly Disappointing) Hungarian Politician

When we assess the regime established following the elections of 2010, it is impossible not to address its central figure and orchestrator of the regime, Prime Minister Viktor Orbán. Orbán entered politics after completing his studies and has been a member of parliament since 1990. He was prime minister between 1998 and 2002, and his current term of office began in 2010. In recognition of the fact that voters in Hungary predominantly vote conservative whenever free elections are held, Orbán has successfully turned his Alliance of Free Democrats from a liberal party into a conservative one. However, it would be difficult to regard him a conservative. It is easier to identify him as a plebeian, nationalist, populist politician. He is certainly a charismatic person who has significant political appeal. However, his competence in the complex matters of governance, his populist tendencies, and his flirting with authoritarianism do not make him a natural choice to govern the young Hungarian democracy. Hungary during his rule has been backtracking on democracy and political culture. This has contributed to the tendency that the country has continued to lose the relative advantage it enjoyed in the late 1980s and at the beginning of the 1990s.

Hungarian political scientists often speculate about a continuation of Fidesz rule without Viktor Orbán. Bearing in mind his huge influence on the prevailing system, a system without him would certainly be a different system. Deliberations about such a scenario are therefore mere speculation and not worth pursuing.

32 Cf. US House Minority Leader Pelosi raises Hungary concerns in talks with PM Orban, *MTI*, 15 May 2012, at: <http://www.politics.hu/20120515/us-house-minority-leader-pelosi-raises-hungary-concerns-in-talks-with-pm-orban>.

33 Exchange with a German diplomat in Berlin on 20 March 2012.

The question emerges as to whether Orbán himself is a democrat. He certainly was on 16 June 1989, when he held his radical speech at Heroes' Square in Budapest at the funeral of Prime Minister Imre Nagy, who had been executed in 1958. He continued to act as a democrat throughout the 1990s. According to many, it is often power that weakens the democratic credentials of politicians. For me, Viktor Orbán stopped being a democrat when, between the two rounds of parliamentary elections in 2002, he held a speech at the University of Physical Education in which he already hinted at taking politics to the streets if the election results did not meet his platform's expectations. Later, in the so-called "Christmas interview", in 2011, the prime minister acknowledged that his political ideals had changed at about that time: "I no longer accept the situation that I accepted between 1998 and 2002 before the second round of the elections, namely that politics has traditional intermediary means, the media and state administration, through which it delivers its decisions, explanations, and intentions to the people. I entered last year's elections with the intention of remaining in direct contact with the people not only during the election campaign, but also when in government. I have sent millions of letters to them, I have involved them in several consultations and there will be at least two further opportunities during the next year when I invite the people for consultations. It is particularly important for me personally to have several million people who know that I am on their side, I work for them."³⁴ Prime Minister Orbán's direct democracy, which consists of direct surveys of the people on issues that have already been decided and to which five per cent of the addressees respond, and his "national consultations" where he delivers some messages and some pre-selected members of the audience may ask a few questions, do not constitute democracy. And Prime Minister Orbán steadfastly avoided other forms of direct democracy, such as subjecting the new constitution (or Basic Law, as it is officially called) to a referendum. He did not want to face a referendum that could have become a vote on his (and his regime's) waning popularity. Again in 2012, the prime minister vaguely expressed his hope that no system different from democracy would have to be invented for Hungary.

For Prime Minister Orbán, his performance legitimizes every step he takes, irrespective of whether or not it might endanger the foundations of "traditional" democracy. If a 15-year-old adolescent contemplates such vague ideas, that may well be a part of his/her political maturation. When the almost 50-year-old prime minister of a country, who has been in that position for more than six years in total, plays with such ideas it is either absurd or dangerous.

34 Orbán: Nekem ez adja az erőt – a teljes interjú [Orbán: It gives me strength – the full interview], *Magyar Nemzet*, 24 December 2011, at: mno.hu/belfold/orban-nekem-ez-adja-az-erot-a-teljes-interju-1039535?oldal=2 (author's translation).

Conclusions

The new system established after the elections of 2010 has significantly interfered with the foundations of democracy that existed in Hungary between 1990 and 2010. It does not mean that democracy has been abolished. The democratic institutions are there and have the potential to function properly. The changes that have been introduced modified the country's political system. The Orbán government stretched the entitlement inherent in its two-thirds majority to the limit and concentrated power in the hands of the executive branch. The system of checks and balances has suffered a severe blow. It requires reanimation because of the effects on the constitution of the so-called "cardinal laws", which cannot be challenged at the Constitutional Court. Laws adopted by the parliament guarantee that the leaders of certain institutions could not be replaced by a new government with less than a qualified (two-thirds) majority. Although in some cases this could be the guarantee of institutional autonomy, in many others it will severely complicate the work of restoring democracy while recreating a system of uninhibited power – particularly because loyal and trusted party confidants occupy these posts from the Head of State and the Prosecutor General, to the head of the State Audit Office, and soon the President of the National Bank.

The regime systematically argues that similar rules and regulations also exist in other democratic states. Indeed they do. What is unique in Hungary, however, is the large number of such rules and their integration in a system that amounts to a qualitative difference. The system established by Viktor Orbán cannot be replaced by another one with full respect for the rule of law. If a system cannot be changed constitutionally, and once political power has already undergone a fundamental shift, the change will have to come in an extralegal framework or will at least require extra-judicial elements. Various scenarios are being contemplated, although none of them can serve as a panacea. Re-establishing democracy using its best traditions presents a challenge. That will pose a problem both domestically and internationally. Will a new political system be tolerated supportively in the West if there is historical calamity at its inception?

Nearly a quarter of a century after the revolution of 1989, Hungary has arrived at a dead end. It has furnished evidence that democratization is not a one-way street. It is possible to make a U-turn there and arrive at a stalemate. It is important to emphasize, however, that Hungary is only backtracking on democracy and, compared to some other regimes ranging from Belarus to Venezuela, is a state whose current deviation from the path of democracy requires a measured reaction. It does deserve close attention, however, as it is changing rapidly at every moment while the observers blink. It presents a particular challenge as a state that is fully integrated into Western institutions. It should be prevented from serving as an example for other states and leaders with murky agendas.