



MAGYARORSZÁG  
JOBBAN TELJESÍT



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## WRONG DIRECTION ON RIGHTS

Assessing the Impact of Hungary's New Constitution and Laws



# **Wrong Direction on Rights**

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# Wrong Direction on Rights

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## Summary

Since its election victory in 2010, the ruling Fidesz party has used its supermajority in parliament to make major changes to the country's legal framework, including adopting a new constitution, in ways that weaken legal checks on its authority, interfere with media freedom, and otherwise undermine human rights protection in the country.

The new constitution and related laws entered into force in January 2012 and have been amended several times since their introduction, most recently in March 2013. This report assesses the impact of all these changes to the Hungarian legal framework. It examines their effects on judicial independence and the administration of justice; the limitations they impose on the powers of the Constitutional Court, on political participation, and on religious freedom; and the way they interfere with the rights of women, lesbian, gay, bisexual, and transgender (LGBT) people, and the homeless.

Human Rights Watch's research during 2012 and 2013 indicates that the new constitution and other legal changes have curbed the independence of the judiciary and the administration of justice, forced nearly 300 judges into early retirement, and imposed limitations on the Constitutional Court's ability to review laws and complaints. Together these changes have undermined an important check on the government.

Legislation and policy introduced by the government since 2010 has also had an impact on media freedom. The government has passed a series of media laws that, among other changes, created a new media regulator known as the Media Council headed by a political appointee with close ties to the government.

Independent media outlets have told Human Rights Watch that they now conduct self-censorship as a result of unclear regulations and feel the pressure of declining public and private advertising revenue. The editorial content of public television has been subject to political interference, and editors and journalists who opposed that interference have lost their jobs as part of a larger number of redundancies justified on the grounds of restructuring.

Hundreds of religious groups have been stripped of their status as “churches” under domestic law as a result of the new constitution. The constitution also contains provisions that discriminate against LGBT people and limit women’s rights.

The new constitution also includes a provision that restricts voting rights for people with “limited mental capacity.” A change to the voter registration rules making mandatory registration a prerequisite for voting was struck down by the Constitutional Court as potentially restricting the right to vote and has been abandoned.

The government also introduced a law making homelessness a crime, with repeat offenders liable to imprisonment, large fines, or both. During 2012, over 2,000 homeless people were fined under the previous law regulating criminalization of homelessness.

Despite the limitations imposed on it in 2012, Hungary’s Constitutional Court has been a crucial check on the government, ruling against the law criminalizing homelessness, against making voter registration mandatory, against laws imposing a narrow, exclusionary definition of family, and against a law that had led to many religious organizations being deregistered as churches.

In March 2013 the government introduced further changes to the constitution that not only curbed the power of the Constitutional Court to review substantive provisions of the constitution, but also added provisions that enable the criminalization of homelessness, restrict the definition of family, and uphold the arbitrary registration process for churches. These changes have effectively reversed the court’s rulings and prevent it from looking at them again. In April 2013 the ombudsman requested that the Constitutional Court review the constitutionality of the Fourth Amendment.

The actions of the government in Hungary have been the subject of considerable international criticism. The Council of Europe’s Venice Commission and an ad hoc Council of Europe expert panel issued authoritative opinions in 2012 on the administration of courts, the forced retirement of judges, the deregistration of churches, and the media law package, noting serious concerns about Hungary’s compliance with its obligations under international human rights law and including concrete recommendations to remedy the situation. In April 2013 the Monitoring Committee of the Parliamentary Assembly of the Council Europe recommended that Hungary be put under a monitoring procedure.

European Union Commissioners Viviane Reding and Neelie Kroes have issued strong statements both on the incompatibility of the early forced retirement of judges with EU law and on the restrictions on freedom of expression and the media. The EU Court of Justice has ruled that the forced retirement of judges constitutes age discrimination. International scrutiny of Hungary has intensified since the March 2013 constitutional changes, which attracted criticism from the European Commission, the United States and German governments, and the Council of Europe.

To date, the Hungarian government has not complied with the majority of recommendations made by the Council of Europe and the EU.

The Hungarian government has a responsibility to bring legislation and practices in line with the human rights standards at the core of the EU and the Council of Europe. Without concerted reform by the Hungarian government and sustained pressure from the EU and the Council of Europe, these constitutional and legislative changes will have long-lasting adverse effects on fundamental freedoms and human rights.



# Recommendations

## To the Government of Hungary

### *Independence of the Judiciary*

- Implement the European Union Court of Justice (CJEU) decision and reinstate judges who wish to return to work in their old positions or equivalent positions if filled and ensure that no further judges are retrospectively affected by mandatory early retirement;
- Revise the process for electing the president of the National Judicial Office (NJO), and create an independent body tasked to elect the president;
- Transfer to the National Judicial Council (NJC) the power currently exercised by the president of the NJO to transfer judges against their wishes;
- Remove the power of the president of the NJO to assign cases arbitrarily and ensure that cases are assigned on clear and transparent criteria by the NJC or the president of the court;
- Reinstating the power of the Constitutional Court to consult case law prior to January 1, 2012.

### *Freedom of Religion*

- Transfer responsibility for the registration of religious organizations from parliament to an independent body composed of experts appointed according to a multiparty nomination system or to independent tribunals;
- Guarantee a right of appeal to an independent tribunal when registration is denied;
- Lower the time requirement that a religious organization needs to have existed and the number of members it must have to be recognized as a church in Hungary, in accordance with European Court of Human rights case law and OSCE recommendations.

### *The Rights of Women and Lesbian, Gay, Bisexual, and Transgender (LGBT) People*

- Amend the constitution to ensure that women's access to safe and legal abortion is not restricted and safeguard access to contraception;

- Amend the definition of family in the constitution to include recognition of all family relationships irrespective of marital status, including families based on same-sex relationships.

### *Political Participation Including for People with Disabilities*

- Amend the constitution to ensure that no person is denied the right to vote on the basis of a disability.

### *The Rights of Homeless People*

- Amend the constitution to comply with the November 2012 ruling of the Constitutional Court and remove the constitutional provision granting local governments the right to criminalize homelessness.

### *Media Freedom*

- Restructure the Media Authority and Media Council to ensure independence from the government by establishing a multiparty nomination system;
- Remove provisions imposing content regulation ensuring that media outlets and journalists can report freely without interference;
- Decrease disproportionately high fines for violations against the media laws by journalists and the media and ensure that rules are clear and foreseeable to avoid arbitrariness by the Media Council when ruling on violations and fines;
- Restructure the radio and broadcast licensing regime overseen by the Media Council to ensure transparency and clarity during tender processes by setting out clear criteria and transparent assessment of criteria, and make clear that the Media Council has a legal duty to comply with legal rulings regarding tenders.

## **To the European Union and the Council of Europe**

- Maintain pressure on Hungary to bring the current constitution, legislation, and practice into compliance with Hungary's obligations under international treaties, in particular the European Convention on Human Rights and the EU Treaty; they should set clear timeframes and deadlines for compliance and be prepared to impose concrete policy consequences should Hungarian authorities fail to undertake the necessary legal reforms, including, in the case of the EU, to suspend Hungary's voting rights under article 7 of the EU Treaty.

## I. Background

Since Hungary held its first democratic elections in 1990 its government has been formed by a variety of parties across the political spectrum from the Hungarian Socialist Party (MSZP) to the Alliance of Free Democrats (SZDSZ) and the center-right Hungarian Democratic Forum (MDF). In 2004 Hungary joined the European Union. A coalition government led by the MSZP won elections in 2006.

The current ruling party Fidesz – the Hungarian Civic Party – is a conservative political party that first came to power in 1998, and despite losing elections in 2002 and 2006, gained much popularity in municipal and European Parliament elections. In the 2010 elections, together with its small coalition partner, the Christian Democratic People's Party (KDNP), Fidesz won 52.7 percent of the vote, allowing it to secure 263 (227 for Fidesz and 36 for KDNP) out of 386 seats (68 percent) in the Hungarian parliament. This gave it a super majority of more than two-thirds of the seats. Fidesz is headed by Prime Minister Viktor Orbán. The party is a member of the European People's Party (EPP), a center-right European political party and the largest party in the European Parliament.

The MSZP is the main opposition party with 59 seats in parliament. The third largest party currently in Hungary is Jobbik (Movement for a Better Hungary, 47 seats in parliament). Jobbik is a far-right nationalist party with a political leadership that frequently makes anti-Roma and anti-Semitic statements.

Since its election victory in 2010, the ruling Fidesz party has used its supermajority in Hungary's unicameral parliament to make major changes to the constitution and other laws in ways that weaken legal checks on its authority, interfere with media freedom, and otherwise undermine human rights protection in the country. It has adopted 648 laws, including a new constitution, referred to as the Fundamental Law, and several related cardinal laws. The new constitution and cardinal laws entered into force in January 2012 and have been amended several times since. It has generally done so without adequate consultation with civil society or time for proper parliamentary debate and scrutiny.

In March 2013 the new constitution was again amended by parliament through the adoption of the Fourth Amendment. In addition to the areas addressed by this report, the

constitutional amendments and other legal changes also extend the statute of limitations for communist-era crimes, restrict political advertising, limit the autonomy of universities, and require students who received government grants for university study to work in Hungary for a designated period of time.

The large number of laws adopted by the ruling party with its supermajority in parliament has triggered serious criticism both domestically and internationally, particularly by the EU and Council of Europe. Since the adoption of the Fourth Amendment in March 2013, EU institutions have mounted their pressure on Hungary to comply with EU law and Council of Europe legal standards.

## II. Interference with the Independence of the Judiciary and the Administration of Justice

A series of legal and constitutional changes have limited the independence of the judiciary and interfered with the administration of the courts. The judiciary and administration of courts are regulated by two “cardinal laws.”<sup>1</sup> They entered into force with the constitution on January 1, 2012.

The laws give the president of the National Judicial Office (NJO), the body responsible for the administration of the courts and overseeing judicial appointments, the power to appoint senior judges, to temporarily transfer judges to other courts without their consent, and to transfer cases from one court to another if the first court is deemed overburdened.

Under current rules, the president of the NJO is appointed by parliament for a single term of nine years. A two-thirds majority is required in parliament. Since the current government has a two-thirds majority, it can ensure its chosen candidate is appointed.

At present the appointment can be renewed for a further nine-year term. Under changes announced in March 2013 but not yet adopted into law, the NJO president will be limited to a single term. However, if parliament fails to appoint a successor with the two-thirds majority required before the NJO president’s nine-year term expires, the vice president will step in as interim president, giving a minority party in parliament the ability to block any future appointment. The vice president is appointed by the NJO president.

The current NJO president is Tünde Hando, the wife of József Szájer, a Fidesz member of the European Parliament. The close affiliation between Tünde Hando and the ruling party represents a potential conflict of interest and puts into question the political independence of the NJO.

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<sup>1</sup> Act CLXI of 2011 on the Organisation and Administration of Courts, adopted November 28, 2011; Act CLXII of 2011 on the Legal Status and Remuneration of Judges, adopted November 28, 2011; Act CLXIII of 2011 on the Prosecution Service, adopted November 28, 2011; and Act CLXIV of 2011 on the Legal Status of the Chief Public Prosecutor, Prosecutors and Other Prosecution Service Employees and on Prosecutor’s Career Path, adopted November 28, 2011.

In July 2012 the Hungarian parliament amended the cardinal law and transitional provisions pertaining to the organization and administration of courts. The amendments, which were prompted in part by a critical report from the Council of Europe Venice Commission (see below), failed to comprehensively deal with the restricting effect of the cardinal law on the independence of the judiciary and the administration of courts.

To a limited degree, the July 2012 amendments addressed some of the problematic provisions, such as giving greater parliamentary scrutiny of the president's role, and obliging annual reporting on judicial appointments by the NJO president. Furthermore, the amendments reduced the power of the NJO president to make appointments of non-senior judges and gave a greater role to the National Judicial Council (NJC). The NJC is now responsible for preparing lists of candidates and applicable principles that the NJO president has to apply when deviating from rank in the appointment of candidates.

However, despite the restrictions of the July amendments on the NJO president to appoint non-senior judges, under current regulations the president can still block an appointment of a candidate recommended by the NJC, thereby forcing the process to be restarted.<sup>2</sup> Despite the July amendments, the NJO president will continue to be appointed by parliament. The NJO president similarly remains responsible for appointing senior judges.

The NJO president still has the power to transfer cases from one court to another if the first court is overburdened. This power was struck down by the Constitutional Court in December 2012 on procedural grounds as set out by a provision in the Act on the Transitional Provisions of the Fundamental Law.<sup>3</sup> But under the March 2013 Fourth Amendment, it is now incorporated into the constitution itself.<sup>4</sup>

The system, which concentrates substantial power in the hands of one person, runs contrary to the principle of the “lawful judge.” According to the principle, which is found in many European legal systems, a case should only be decided by the judge (the “lawful

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<sup>2</sup> European Commission for Democracy Through Law (Venice Commission), Opinion on the Cardinal Acts on the Judiciary That Were Amended Following the Adoption of Opinion CDL-AD(2012)001, Opinion no. 683/2012, CDL-AD(2012)020, Strasbourg, 15 October, 2012, p. 10.

<sup>3</sup> Constitutional Court Decision 45/2012, December 28, 2012, <http://public.mkab.hu/dev/dontesek.nsf/o/B139EF59DD213DoBC1257ADA00524ECo?Op> (accessed April 3, 2013).

<sup>4</sup> Article 14 of the Fourth Amendment to Hungary's Fundamental Law, T/9929, article 8, adopted March 11, 2013, to be included as article 27(a) of the constitution.

judge”) who has jurisdiction to hear it based on established criteria provided for in law. The political nature of the NJO president’s appointment and the fact that the transfer of cases lies with that person rather than the presiding judge in a case creates a risk that cases will be transferred for political reasons rather than because doing so is necessary for the administration of justice.

Since February 2012, the NJO president has transferred several politically sensitive cases from the Metropolitan Court of Budapest to first instance courts in rural areas.

One such case involves former Budapest deputy mayor Miklos Hagyó, a member of an opposition party, and 14 others charged with embezzlement from the Budapest Transportation Authority. The NJO president transferred the case in February 2012 to a countryside first instance court in the city of Kecskemét – a known Fidesz stronghold. The official reason for the transfer was that the Budapest Metropolitan Court was overburdened. HVG, a leading investigative journalism magazine, however, reported that the Kecskemét court had only 4 percent fewer cases than the Budapest court, a difference that would not warrant such a transfer.<sup>5</sup> The Constitutional Court is yet to rule on the transfer of the case.

As most major media outlets are located in the capital, the transferring of cases to remote courts in rural areas may limit media reporting on such cases.

In March 2012 the Council of Europe’s Venice Commission, responsible for monitoring compliance of member states with Council of Europe standards, stressed that the excessive powers assigned to the NJO president, together with the nine-year renewable mandate, run contrary to the European Convention.<sup>6</sup> The Venice Commission provided the Hungarian government with a detailed list of recommendations on how to amend the laws to comply with European standards.

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<sup>5</sup> HVG, *Az Ajtok Zarodnak! Indul a BKV-bunper!*, May 6, 2012, [http://hvg.hu/hvgfriss/2012.18/201218\\_indul\\_a\\_bkvbunper\\_az\\_ajtok\\_zarodnak](http://hvg.hu/hvgfriss/2012.18/201218_indul_a_bkvbunper_az_ajtok_zarodnak) (accessed May 2, 2013).

<sup>6</sup> 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 Organisation and Administration of Courts of Hungary*. Adopted by the Venice Commission at its 90<sup>th</sup> Plenary Session (Venice, 16-17 March, 2012), p. 13. [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)001-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)001-e) (accessed February 26, 2013).

In March and October 2012, the Venice Commission criticized Hungary for limiting the independence of the judiciary and interfering with the organization of the courts. Despite the Hungarian government's piecemeal attempts to address concerns in the March opinion by the Venice Commission through the July amendments, the October opinion reiterated many of the initial concerns and recommendations.

The Venice Commission also reiterated its concerns with regard to the system of transferring cases: namely, that the system does not comply with the principle of the lawful judge.<sup>7</sup> The Venice Commission recommended that if cases are to be transferred, the decision should rest with the president of that court based on binding objective criteria established by the NJC. It also stated that transfer decisions should be subject to a right of appeal to a court. The Venice Commission further recommended that the principles on which the NJO president must base its decision during review proceedings should be explicitly set out in law.<sup>8</sup>

The Venice Commission raised concerns about the ability of the NJO president in practice to block an appointment of a candidate recommended by the NJC, forcing the process to be restarted.<sup>9</sup> For that reason, it recommended that the NJC be given the power to appoint an interim president instead.<sup>10</sup>

The Council of Europe Secretary General Thorbjørn Jagland in January welcomed the limited changes to the NJO president's mandate and term proposed by the Hungarian government and subsequently adopted by parliament.<sup>11</sup> However, he did not address the remaining concerns of the Venice Commission and the failure of the Hungarian government to comply with Council of Europe standards.

In response to the March 2013 constitutional amendments, both Jagland and European Commission President José Manuel Barroso stated that the amendments raised concerns

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<sup>7</sup> Ibid, p. 14.

<sup>8</sup> Ibid, p. 13.

<sup>9</sup> European Commission for Democracy Through Law (Venice Commission), Opinion on the Cardinal Acts on the Judiciary That Were Amended Following the Adoption of Opinion CDL-AD(2012)001, Opinion no. 683/2012, CDL-AD(2012)020, Strasbourg, 15 October, 2012, p. 10.

<sup>10</sup> Ibid, p. 11.

<sup>11</sup> Council of Europe Secretary General Thorbjørn Jagland press conference, January 29, 2013, <https://www.youtube.com/watch?v=xpluNdsVPUY> (accessed January, 30, 2013).



with respect to the principle of rule of law.<sup>12</sup> In April 2013 Barroso urged the Hungarian prime minister to address the concerns in an “unambiguous way” or face the possibility of infringement proceedings.<sup>13</sup> On April 25, 2013, the Monitoring Committee of the Parliamentary Assembly of the Council Europe recommended that the assembly open a monitoring procedure in respect of Hungary citing the erosion of democratic checks and balances as a result of the constitutional legal framework.<sup>14</sup> The assembly is set to vote on the monitoring procedure in June 2013.

## Forced Early Retirement of Judges

The Hungarian parliament in November 2011 passed a Transitional Act (a supplement to the constitution with the purpose of explaining how the new constitution is to be implemented but which contains several provisions that are not transitional but permanent in nature) that lowers the retirement age for judges from 70 to 62 years effective January 1, 2012, forcing 274 judges to retire, including appeals court presidents.<sup>15</sup> In July 2012 the Constitutional Court ruled that the provision was unconstitutional.<sup>16</sup> In September 2012 the government submitted legislative proposals regulating the retirement age of judges but withdrew them in October in advance of a November ruling by the EU Court of Justice (CJEU).

On March 11, 2013, the parliament adopted a law permitting the reinstatement of judges who were forced to retire.<sup>17</sup> The law was introduced partly in response to criticism from the Council of Europe Venice Commission and the November ruling by the CJEU (see below).

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<sup>12</sup> Statement from President of the European Commission and Secretary General of the Council of Europe on the vote by the Hungarian Parliament of the Fourth Amendment of the Hungarian Fundamental Law, [http://europa.eu/rapid/press-release\\_MEMO-13-201\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-201_en.htm) (accessed April 8, 2013).

<sup>13</sup> European Commission President Jose Manuel Barroso press statement, “The European Commission reiterates its serious concerns over the Fourth Amendment to the Constitution of Hungary, reference: IP/13/327, April 12, 2013, [http://europa.eu/rapid/press-release\\_IP-13-327\\_en.htm](http://europa.eu/rapid/press-release_IP-13-327_en.htm) (accessed April 15, 2013).

<sup>14</sup> Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Request for the Opening of a Monitoring Procedure in Respect of Hungary, AS/Mon(2013)08, April 25, 2013, [http://www.assembly.coe.int/Communication/amondoco8\\_2013.pdf](http://www.assembly.coe.int/Communication/amondoco8_2013.pdf) (accessed April 26, 2013).

<sup>15</sup> Act CLXII of 2011 on the legal status and remuneration of judges, section 230. The total number of judges is referred to in Decision 33/2012 (VII.17) of the Constitutional Court, July 16, 2013, [http://www.mkab.hu/letoltesek/abk\\_2012\\_03.pdf](http://www.mkab.hu/letoltesek/abk_2012_03.pdf), (accessed April 15, 2013).

<sup>16</sup> Constitutional Court decision on early retirement of judges, case number IV/02096/2012, July 16, 2012. <http://public.mkab.hu/dev/dontesek.nsf/o/oDoC4AoC9BF49CC4C1257ADA00524F96?OpenDocument> (accessed February 26, 2013).

<sup>17</sup> Act on Legal Amendments Concerning the Upper Age Limit in Certain Justice-related Legal Relationships, T/9598, <http://www.parlament.hu/irom39/09598/09598.pdf> (accessed March 27, 2013).

Under the new law, judges who were judicial leaders, such as presidents of courts or presidents of legal branches within a court, should be reinstated to their old positions. If positions have been filled by other candidates, judges are to be reinstated in lower positions. Judges who choose not to be reinstated are granted 12 months' salary as compensation.<sup>18</sup> The new law also sets out the gradual lowering of the retirement age to 65 by December 31, 2022 for judges and prosecutors.<sup>19</sup>

In practice, the changes will not benefit judges who cannot resume their positions as they have been filled with other people. This is the case for many judges who were forced to retire, the majority of whom held senior judgeships.

The retirement of judges enshrined in the cardinal law prompted criticism by the Council of Europe Venice Commission in both its March 2012 opinion on the administration of courts and retirement of judges and the October follow-up opinion on the cardinal acts on the judiciary.<sup>20</sup> In both opinions, the Venice Commission stressed the discriminatory components in the sudden drop in retirement age affecting elder judges, many of them senior, and urged Hungarian authorities to implement the July Constitutional Court decision that ruled the provision unconstitutional. The commission also urged Hungarian authorities to reinstate dismissed judges who so wish in their previous positions without having to go through a reappointment procedure.<sup>21</sup> In November 2012 the EU Court of Justice ruled that the forced retirement of judges amounted to unlawful age discrimination

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<sup>18</sup> Act on Legal Amendments Concerning the Upper Age Limit in Certain Justice-related Legal Relationships, T/9598, <http://www.parlament.hu/irom39/09598/09598.pdf>, (accessed March 27, 2013).

<sup>19</sup> Ibid.

<sup>20</sup> 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 Organisation and Administration of Courts of Hungary, adopted by the Venice Commission at its 90<sup>th</sup> Plenary Sessions (Venice, 19 March 2012), pp. 27-28. [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)001-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)001-e) (accessed April 9, 2013); European Commission for Democracy Through Law (Venice Commission), Opinion on the Cardinal Acts on the Judiciary That Were Amended Following the Adoption of Opinion CDL-AD(2012)001 on Hungary, adopted by the Venice Commission at its 92<sup>nd</sup> Plenary Session (Venice, 12-13 October 2012), pp. 15-16. [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)020-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)020-e) (accessed April 3, 2013).

<sup>21</sup> European Commission for Democracy Through Law (Venice Commission), Opinion on the Cardinal Acts on the Judiciary That Were Amended Following the Adoption of Opinion CDL-AD(2012)001 on Hungary, adopted by the Venice Commission at its 92<sup>nd</sup> Plenary Session (Venice, 12-13 October 2012), pp. 15-16. [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)020-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)020-e) (accessed April 3, 2013).

and stressed Hungary's obligations under EU law to establish a general framework for equal treatment in employment and occupation.<sup>22</sup>

## Efforts to Curb the Constitutional Court

The Constitutional Court has served as an important check on the executive, striking down a series of problematic laws and provisions as unconstitutional. But since 2011 the government has sought to curb its powers in a number of different ways.

First, the government sought to increase its influence over the court by changing its composition. In August 2011 the ruling majority changed the process of nominating Constitutional Court judges. Previously, the nomination process included a two-third parliamentary majority and a special parliamentary committee where each political party had one vote. This is no longer the case. Under the new regulations, the nomination is now made by a committee whose members mirror the political composition of parliament and thereby gives the ruling party a majority on it.

In September 2011 the parliament increased the number of judges sitting on the Constitutional Court from 11 to 15. There was already a vacancy, so the parliamentary committee responsible under the new rules appointed five judges to the court. All changes made in relation to the composition of the Constitutional Court entered into force before the new constitution. At this writing, due to the retirement of several Constitutional Court judges, an 8 to 7 majority of judges have now been appointed to the bench by the ruling party since September 2011. It is notable that in a number of cases where the Constitutional Court held laws unconstitutional, including on homelessness and judicial retirement, the newly appointed judges dissented, finding such provisions in line with the constitution.

Secondly, article 37(5) of the new constitution limits the jurisdiction of the Constitutional Court by narrowing its power to review laws pertaining to the budget. Under the new constitution, the court may only review acts pertaining to the central budget, central and local taxes, duties, pension and health contributions, and customs if the state debt

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<sup>22</sup> Case c-286/12, Commission v Hungary, November 6, 2012, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=129324&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=793068> (accessed February 13, 2013)

exceeds half the GDP which is currently the case.<sup>23</sup> It may only review such cases on the basis of violations of the right to life and human dignity, the right to protection of personal data, freedom of thought, conscience, and religion, and rights related to Hungarian citizenship. This narrows the ability of the court to rule on the compatibility of laws that may have an effect on basic human rights, such as the right to property or protection of privacy and home and family life.

Thirdly, the Act on the Constitutional Court, a cardinal law, limits the way in which ordinary citizens may initiate constitutional reviews by way of *actio popularis* – bearing similarities to so-called “class action” lawsuits.<sup>24</sup> Previously, citizens could initiate constitutional reviews *actio popularis*. This is no longer the case. As a result, NGOs and others who cannot establish that they are directly affected by an alleged violation of their constitutional rights are excluded from public interest litigation.<sup>25</sup> The Venice Commission recommended introducing an indirect access mechanism if *actio popularis* was abolished to ensure that individual questions may reach the Constitutional Court without requiring individual legal standing.<sup>26</sup> Such mechanisms provide an important channel for civil society organizations to challenge the constitutionality of laws, particularly in countries in which they do not have the ability to petition the court directly. In Hungary, the ombudsman may submit individual questions on behalf of individuals to the Constitutional Court, but the existing legislation that sets out the circumstances under which he can do so is vague. In April 2013 the ombudsman did request that the Constitutional Court review the provisions of the Fourth Amendment of the constitution, citing formal and procedural inadequacies.<sup>27</sup> The current ombudsman’s term of office is due to end in September.

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<sup>23</sup> Eurostat Newsrelease Euroindicators, 64/2013 – 22 April 2013, p. 1, [http://epp.eurostat.ec.europa.eu/cache/ITY\\_PUBLIC/2-22042013-AP/EN/2-22042013-AP-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/2-22042013-AP/EN/2-22042013-AP-EN.PDF) (accessed May 8, 2013).

<sup>24</sup> Act CLI of 2011 on the Constitutional Court, <http://www.mkab.hu/download.php?d=64> (accessed April 16, 2013).

<sup>25</sup> Act CLI of 2011 on the Constitutional Court, section 26, <http://www.mkab.hu/rules/act-on-the-cc> (last accessed April 15, 2013).

<sup>26</sup> Venice Commission Draft Opinion on Three Legal Questions Arising in the Process of Drafting the New Constitution of Hungary, paras. 68-70, [http://www.venice.coe.int/webforms/documents/?pdf=CDL\(2011\)016-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL(2011)016-e) (accessed April 17, 2013).

<sup>27</sup> Ombudsman Submission to the Hungarian Constitutional Court, April 23, 2013, [http://www.ajbh.hu/-/az-alapveto-jogok-biztosanak-alkotmanybirosagi-inditvanya-a-negyedik-alapto-veny-modositas-kapcsan?redirect=http%3A%2F%2Fwww.ajbh.hu%2Fkezdolap%3Bjsessionid%3D73DF025F41C285ED1EEB81F387EF1EED%3Fp\\_p\\_id%3D101\\_INSTANCE\\_LDWG9zbBd7So%26p\\_p\\_lifecycle%3Do%26p\\_p\\_state%3Dnormal%26p\\_p\\_mode%3Dview%26p\\_p\\_col\\_id%3Dcolumn-7%26p\\_p\\_col\\_pos%3D1%26p\\_p\\_col\\_count%3D2](http://www.ajbh.hu/-/az-alapveto-jogok-biztosanak-alkotmanybirosagi-inditvanya-a-negyedik-alapto-veny-modositas-kapcsan?redirect=http%3A%2F%2Fwww.ajbh.hu%2Fkezdolap%3Bjsessionid%3D73DF025F41C285ED1EEB81F387EF1EED%3Fp_p_id%3D101_INSTANCE_LDWG9zbBd7So%26p_p_lifecycle%3Do%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-7%26p_p_col_pos%3D1%26p_p_col_count%3D2) (accessed April 24, 2013), in Hungarian.

Fourthly, the March 2013 constitutional amendments incorporate restrictions on the powers of the Constitutional Court, some of which were previously found in cardinal laws and transitional provisions. The Constitutional Court is no longer able to refer its own rulings prior to January 1, 2012, when the new constitution entered into force. This change contradicts case law established by the Constitutional Court after the constitution entered into force on January 1, 2012, in which the court held that it could refer to decisions adopted prior to the entry into force of the constitution if a constitutional question relates to provisions of the same or a similar nature. The change restricts the effective functioning of the court as a guardian of the rule of law. The constitutional changes also restrict the court's power to rule on the substance of the constitution. It can now rule only on the procedural legality of constitutional amendments.

Finally, the March 2013 amendments incorporate into the constitution a series of provisions from laws that had previously been struck down by the Constitutional Court. For example, in November 2012 the Constitutional Court struck down a law criminalizing homelessness, obliging the government to repeal the law.<sup>28</sup> The constitution now includes a provision enabling local governments to criminalize homelessness.<sup>29</sup> As a result of the March 2013 changes, the court cannot challenge the addition of that provision to the constitution since it is barred from reviewing substantive changes to the constitution. It would also now be unable to rule unconstitutional any local authority decrees criminalizing homelessness.

As noted above, the March 2013 constitutional changes have been widely criticized, including by the European Commission, European Parliament, Council of Europe, and the United States and German governments. At this writing, the changes were the subject of review by the Council of Europe Venice Commission and the European Commission.

In an April 2013 interview with Hungarian daily newspaper *Nepszava*, Viviane Reding expressed disappointment that the Hungarian government did not follow European Commission President Barroso's request to postpone the vote on the March 2013 constitutional amendments until the Venice Commission had an opportunity to assess them. Reding said that "[a]s President Barroso mentioned, if necessary we will not hesitate

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<sup>28</sup> Constitution Court decision, case number II/01477/2012, November 13, 2012.  
<http://public.mkab.hu/dev/dontesek.nsf/o/1C19F4DoCFDE32FBC1257ADA00524FF1?OpenDocument> (accessed February 26, 2013).

<sup>29</sup> Fourth Amendment to Hungary's Fundamental Law, T/9929, article 8, adopted March 11, 2013.

to use all means at our disposal – I repeat, all means at our disposal – if Hungary disregards the legal norms of the Union and those of the Council of Europe.”<sup>30</sup> The Hungarian Deputy Prime Minister and Minister of Public Administration and Justice Tibor Navracsics responded by questioning the commissioner’s integrity and neutrality.<sup>31</sup>

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<sup>30</sup> “Viviane Reding: egy alkotmány soha nem lehet jatekszer,” *Nepszava*, April 6, 2013, <http://www.nepszava.hu/articles/article.php?id=635693#null> (accessed April 15, 2013), in Hungarian

<sup>31</sup> Tibor Navracsics, “Hungary’s Questions for the Commission,” *European Voice*, April 11, 2013, <http://www.europeanvoice.com/article/imported/hungary-s-questions-for-the-commission/76922.aspx> (accessed April 15, 2013).

## III. Limitations on Rights

### Limitations on Political Participation

The new constitution restricts persons with “limited mental capacity” from exercising the right to vote. It also restricts persons with intellectual or psychosocial disabilities from voting if they have been deprived of legal capacity on the basis of a disability.<sup>32</sup>

The United Nations Committee on Rights of Persons with Disabilities, the expert body set up to oversee states’ compliance with the Convention on the Rights of Persons with Disabilities, in its September 2012 concluding observations on Hungary, expressed serious concerns about the provisions that exclude those with “limited mental capacity” from exercising the right to vote. It recommended that “all relevant legislation be reviewed to ensure that all persons with disabilities regardless of their impairment, legal status, or place of residence have a right to vote, and that they can participate in political and public life on an equal basis with others.”<sup>33</sup> The committee requested that the Hungarian government submit a second periodic report by August 2014 with information on the implementation of its recommendations. The government had yet to respond publicly at this writing.

In November 2012 the government adopted a law on mandatory voter registration that may restrict the right to vote.<sup>34</sup>

In January 2013 the Constitutional Court deemed the registration requirement an undue restriction on voting rights and struck down the law.<sup>35</sup> The government subsequently stated that it would drop plans to introduce mandatory pre-voting registration in advance of the 2014 elections. Had it been enforced, the mandatory voter registration system would have

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<sup>32</sup> Article 23.6. of the Fundamental Law, <http://www.kormany.hu/download/4/c3/30000/THE%20FUNDAMENTAL%20LAW%20OF%20HUNGARY.pdf> (accessed January 10, 2013).

<sup>33</sup> Convention on the Rights of Persons with Disabilities (CRPD), adopted December 13, 2006 by G.A. Res. 61/106, Annex I, U.N. Doc A/61/49 (2006), entered into force May 3, 2008, ratified by Hungary on July 20, 2007. Committee on the Rights of Persons with Disabilities, Concluding Observations on the Initial Periodic Report of Hungary, adopted by the Committee at Its Eight Sessions (17-28 September 2012), CPRD/C/HUN/1/.

<sup>34</sup> Electoral Law, November 22, 2012, <http://www.parlament.hu/irom39/08405/08405-0065.pdf> (accessed January 9, 2013).

<sup>35</sup> Constitutional Court decision, January 4, 2013, <http://public.mkab.hu/dev/dontesek.nsf/o/9C05BC19C310A316C1257ADA0052476B?OpenDocument> (accessed April 17, 2013), in Hungarian.

risked excluding certain vulnerable groups from voting, e.g. those residing in remote areas with long travel to public notaries as well as the poorest and most vulnerable groups in society, such as homeless and members of the Roma community.

## Limitations on Freedom of Religion

As a result of the constitution and cardinal laws that entered into force on January 1, 2012, 348 of 362 religious organizations previously recognized as “churches” under domestic law were automatically deregistered. The affected religious organizations were required to reapply for registration by the end of February 2012. Not all organizations met the deadline. Under current rules, the registration process, previously carried out by county courts, sits with a parliamentary committee controlled by the ruling party. Only 18 previously recognized churches were permitted by parliament to reregister and a further 66 were denied.<sup>36</sup>

Under the changes, to be recognized as a church, a religious group must meet two requirements. First, it must submit a document signed by a minimum of 1,000 people. Second, the group needs to have existed for at least 100 years internationally or in an organized manner as an association in Hungary for at least 20 years. Among those deregistered under the new requirements were a branch of the Methodist Church and the Dzsaj Bhim Buddhist congregation involved in social work with the homeless and members of the Roma minority. The March 2013 constitutional amendments permit the government to establish additional requirements for religious organizations to be registered as churches. These requirements would have to be introduced through a cardinal law. The proposed requirements are extremely vague: religious groups would have to enjoy societal support and cooperate within the interest of community objectives. In April 2013 the government submitted a proposal to parliament for a legal amendment to increase the minimum number of members for registration from 1,000 to 10,000 people.<sup>37</sup>

If a religious group cannot register as a church, the alternative is to register as a religious association and adhere to stringent criteria governing the internal structures of religious groups.

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<sup>36</sup> Parliament Resolution 8/2012 (II.29), February 27, 2012, [http://www.complex.hu/kzldat/012h0008.htm/012h0008\\_1.htm#lbj1](http://www.complex.hu/kzldat/012h0008.htm/012h0008_1.htm#lbj1) (accessed May 9, 2013).

<sup>37</sup> 2013. Evi ... torvény a vallási közössegek jogállásával és működésével összefüggő törvények az Alaptörvény negyedik módosításával összefüggő módosításáról, article 12 replacing article 14 cb., p. 7, <http://www.parlament.hu/irom39/10750/10750.pdf> (accessed May 8, 2013).



This has particular relevance for religious groups whose loss of registered status involves loss of state funding for social, healthcare, and educational services they provide to vulnerable groups in Hungarian society because religious associations do not benefit from access to state funds in the way religious groups recognized as churches do.

Representatives of two religious groups told Human Rights Watch that they had difficulties in meeting the criteria of a church and were not informed why their applications for registration were rejected. Human Rights Watch documented cases in 2012 where religious groups involved in social work largely financed by state subsidies (such as a branch of the Methodist Church and the Dzsaj Bhim Buddhist congregation) were stripped of their status as denominations, a measure which severely impacted their ability to continue social work including for the homeless and members of the Roma minority.

In October 2012 the Constitutional Court, on procedural grounds, declared unconstitutional a provision in the cardinal law that gave parliament the power to recognize churches and determine criteria for recognition.<sup>38</sup> On February 26, 2013, the Constitutional Court in a separate case brought by 17 religious groups held the same provision unconstitutional on the basis that recognition of churches was conducted by a political body, the parliament, instead of an impartial court. Under international human rights law, such a process must involve a fair hearing before an independent and impartial tribunal, a standard not met by a parliamentary committee. The Constitutional Court declared the decision effective with retroactive effect, meaning that the 17 groups regained their status as churches.<sup>39</sup>

According to the Hungarian Civil Liberties Union (HCLU), a local human rights organization that acted for some of the groups in the February 2013 case, the legal effect of the ruling should apply to all religious groups stripped of their status as churches in February 2012.<sup>40</sup> According to the Hungarian Helsinki Committee, another local human rights organization, the 17 religious groups have yet to be added to the list of registered churches.<sup>41</sup>

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<sup>38</sup> Constitutional Court Decision 45/2012.

<sup>39</sup> Constitutional Court Decision 6/2013.

<sup>40</sup> Human Rights Watch telephone interview with Szabolcs Hegyi, Director of the Hungarian Civil Liberties Union (HCLU), May 9, 2013.

<sup>41</sup> Human Rights Watch email correspondence with the Hungarian Helsinki Committee to Human Rights Watch, May 7, 2013, on file with Human Rights Watch.

The March 2013 constitutional amendments change the way religious organizations are registered in Hungary allegedly to prevent the misuse of state funds granted to registered churches. However, notwithstanding the responsibility the government has to ensure financial accountability for state funds, current regulations, and the manner in which they were introduced, fail to respect basic standards on both religious freedom and due process.

As currently amended, article 7 of the constitution emphasizes that denominations may be recognized by parliament in a cardinal law. It also says that parliament can determine the criteria for such recognitions. The decision to grant status can be appealed as it constitutes a legal change, which can be judicially reviewed by the Constitutional Court. However, the decision to deny status cannot be appealed because it is made by parliamentary order, which cannot be judicially reviewed by the Constitutional Court. This calls into question whether effected groups enjoy due process and have access to an effective remedy if they believe their rights have been violated.

According to the Organization of Security and Co-Operation in Europe's Office of Democratic Institutions and Human Rights Guidelines for Review of Legislation Pertaining to Religion or Belief, "high minimum membership requirements should not be allowed with respect to obtaining legal personality."<sup>42</sup> It further states that "[i]t is not appropriate to require lengthy existence in the State before registration is permitted." After Slovakia, which requires 20,000 founding members for a religious group to be registered, Hungary now has the second highest membership number requirement in Europe.

The requirement that a religious group must have existed for 20 years in Hungary (or 100 years internationally) in order to be eligible for registration may contravene freedom of religion under the European Convention on Human Rights (ECHR). In a case against Austria concerning length of reregistration of Jehovah's Witnesses, the European Court of Human Rights ruled that a 10-year period required for upper-tier registration was a violation of the ECHR.<sup>43</sup> The court stressed that with respect to reregistration procedures the state must

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<sup>42</sup> Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy Through Law (Venice Commission), June 2004, pp. 16-17, <http://www.osce.org/odihr/13993> (accessed February 25, 2013).

<sup>43</sup> Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria, application no. 40825/98, judgment July 31, 2008, paras. 77-79, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-88022#{"itemid":\["001-88022"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-88022#{) (accessed February 25, 2013).

provide weighty reasons for denying registration if the affected church already had obtained legal status and had not otherwise violated law.

In a March 2012 opinion on religious organizations, the Venice Commission raised concerns with respect to undue restrictions on freedom of religion, the denial of an effective remedy, and the discriminatory effects the deregistration had on over 300 religious organizations with no apparent objective and reasonable justification as mandated by international human rights law.<sup>44</sup>

## Discrimination against LGBT People

The preamble and section 7 of the Family Protection Act, a cardinal law, adopted in December 2011, states that marriage is exclusively between a man and a woman.<sup>45</sup> In June 2012 the Hungarian ombudsman Máté Szabó filed a complaint with the Constitutional Court arguing that the Family Protection Act discriminates on grounds of sexual orientation as same-sex partners are not included in the definition of family.<sup>46</sup> In December 2012, the Constitutional Court declared the definition of family in the Family Protection Act unconstitutional.<sup>47</sup> It did so because the Family Protection Act excludes any family not based on marriage, even though those families are recognized as families in other laws, e.g. two cohabiting persons with a child to which only one party is the biological parent. However, the court's judgment did not explicitly address the discrimination against families based on sexual orientation.

The March 2013 changes to the constitution cement the notion of family by defining it in article 50 as that of "marriage and parent-child relationships." The definition excludes cohabitants and same-sex couples. The restriction on the definition of family is

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<sup>44</sup> Council of Europe, Venice Commission, Opinion 664/2012 on Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities.

<http://www.venice.coe.int/webforms/documents/CDL-AD%282012%29004-e.aspx> (accessed on January 10, 2013).

<sup>45</sup> Act CCXI of 2011 on the Protection of Families, adopted December 23, 2011.

[http://www.demographia.ru/UserFiles/File/Hungary\\_-\\_ActCCXI\\_of\\_2011\\_on\\_the\\_Protection\\_of\\_Families.pdf](http://www.demographia.ru/UserFiles/File/Hungary_-_ActCCXI_of_2011_on_the_Protection_of_Families.pdf) (accessed January 14, 2013).

<sup>46</sup> Ombudsman submission to the Hungarian Constitutional Court.

[http://public.mkab.hu/dev/dontesek.nsf/o/065d43d1183d5a48c1257ae8004c12e8/\\$FILE/ATTPUM6C.pdf/2012\\_3012-o.pdf](http://public.mkab.hu/dev/dontesek.nsf/o/065d43d1183d5a48c1257ae8004c12e8/$FILE/ATTPUM6C.pdf/2012_3012-o.pdf) (accessed April 17, 2013), in Hungarian.

<sup>47</sup> Constitutional Court decision of December 17, 2012, "A családok védelméről szóló 2011. évi CXXI. törvény család-fogalmának és öröklési szabályának megsemmisítéséről,"

<http://public.mkab.hu/dev/dontesek.nsf/o/065D43D1183D5A48C1257AE8004C12E8?OpenDocument> (accessed April 17, 2013), in Hungarian.

discriminatory as it differentiates between different types of relationships by granting some constitutional protection while ignoring others. Article 15 of the constitution on equality and nondiscrimination does not include sexual orientation as a ground for discrimination. Under the European Convention on Human Rights, governments have an obligation to protect all forms of family and not exclude families from the protection of the law on grounds such as marital status or sexual orientation.

## Women's Rights

The government's strong focus on family also implicates women's rights. The constitution states that "foetal life shall be subject to protection from the moment of conception."<sup>48</sup> Women's rights organizations in Hungary are concerned that the phrasing of the article opens the door to judicial interpretation, including by the Constitutional Court, in ways that could unduly restrict women's reproductive rights and right to abortion. The government has yet to legislate on abortion since the constitution came into force.

## Criminalizing Homelessness

The government passed a law making homelessness a petty offence, with repeat offenders liable to imprisonment, a fine, or both. More than 2,000 persons were convicted under the law in 2012. The Constitutional Court struck down the law in November 2012. Rather than accepting its ruling, the government instead incorporated into the constitution in March 2013 a provision permitting the criminalization of homelessness, thereby preventing future Constitutional Court review.

The inclusion of a provision making homelessness a crime into the constitution is the culmination of a process that started in November 2010 when the Hungarian parliament adopted an amendment to the "construction" law that defines the functions of public places and enables local governments to pronounce improper use of public spaces as a petty offence.

In November 2011 the law was amended to allow "repeat offenders" to be sentenced to jail for up to 65 days or a maximum 50,000 Hungarian forint (US\$220) fine if arrested repeatedly within six months. According to the HCLU at least two homeless persons in the

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<sup>48</sup> Fundamental Law, article 2, [http://www.kormany.hu/download/2/ab/30000/Alap\\_angol.pdf](http://www.kormany.hu/download/2/ab/30000/Alap_angol.pdf) (accessed January 13, 2013).

capital were prosecuted and fined under the 2010 law. The Budapest local government, despite the existence of a national law, passed legislation in May 2011 enacting the country's first municipal law prohibiting the use of public spaces for habitual residence.

In April 2012 the Act on Petty Offences came into effect making it a criminal offense to reside habitually in public spaces or to store belongings in them. Repeat offenders risked being imprisoned for up to 75 days or fined up to 225,000 Hungarian forint (\$1,000). According to the HCLU, between April and December 2012, while the law was in force, 2,100 persons had charges brought against them under the law and 1,544 persons were fined to a total amount of 40 million Hungarian forints (\$170,000).<sup>49</sup> Eight homeless people in Budapest, who were among those convicted, requested to have their fines transformed to jail sentences, according to HCLU.

In December 2011 the Hungarian ombudsman filed a complaint with the Constitutional Court challenging the legality of the Act on Petty Offences before it came into force. In November 2012 the Constitutional Court ruled that the law was unconstitutional. The court held that for the state to punish those who have no choice but to live in a public area would be incompatible with the constitutional requirement of defense of human dignity. Prime Minister Viktor Orbán in December 2012 objected to the ruling, calling it “at odds with realities on the ground.”

The response of the government to the Constitutional Court ruling was not to abandon its efforts to criminalize homelessness. Instead, the March 2013 constitutional amendments permit parliament or local governments through decrees to “outlaw the use of certain public space for habitation in order to preserve the public order, public safety, public health and cultural values.”<sup>50</sup> Incorporating this provision into the constitution means that the court cannot rule any subsequent law criminalizing homelessness unconstitutional. The same article states that the state and local governments should strive to guarantee housing for homeless people but does not oblige authorities to do so. At this writing, no local governments have enacted decrees criminalizing homelessness.

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<sup>49</sup> Hungarian Civil Liberties Union, “Violations of the prohibition of residing in public spaces between April 15, 2012 and November 15, 2012,” <http://tasz.hu/files/tasz/imce/adatszolgaltatas.pdf> (accessed March 27, 2013).

<sup>50</sup> Fourth Amendment, article 8.

The Act on Petty Offenses was criticized by UN experts on housing and extreme poverty who called on Hungary to repeal legislation criminalizing homelessness.<sup>51</sup> The same UN experts renewed their criticism in April 2013 in response to Hungary making homelessness a criminal offence under the constitution.<sup>52</sup>

## Interference with Media Freedom

The government's legal changes have had a negative impact on media freedom.

After taking office in May 2010, the government adopted a media law package without adequate public consultation. Three new media laws were adopted in 2010: the Act on the Modification of Certain Acts Regulating the Media and Communications (August),<sup>53</sup> the Act on the Freedom of the Press and Fundamental Rules on Media Content (in November,<sup>54</sup> and the Act on Media Services and Mass Media, also known as the Media Act (December).<sup>55</sup> The acts specify new content regulations for all media platforms, outline the authorities of the new media regulatory bodies, and set out sanctions for breaches of the legislation.

Concerns with the media laws include a lack of political independence of the Media Council, which regulates media content and grants broadcast licenses; unjustifiably high fines for journalists; unclear requirements for content regulation; and inadequate protection of journalists' sources.

The Media Council, a body established by the 2010 Mass Media Act under the National Media and Infocommunications Authority (generally known as the Media Authority) to "oversee and guarantee freedom of the press" has wide-ranging powers to regulate the media in Hungary.<sup>56</sup> In August 2011 the prime minister appointed Annamária Szalai as the president of the Media Authority and Media Council for a renewable nine-year term. Szalai

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<sup>51</sup> UN Experts on Poverty and Housing, "Hungary's homeless need roofs, not handcuffs," February 15, 2012, <http://www.europe.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9994&LangID=E> (accessed March 27, 2013).

<sup>52</sup> UN Experts on Poverty and Housing, "Hungary is Entrenching the Criminalization of Homeless," April 3, 2013, <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=13206&LangID=E> (accessed April 4, 2013).

<sup>53</sup> Act on the Modification of Certain Acts Regulating the Media and Communications <http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/mk10129.pdf> (accessed January 9, 2013), in Hungarian.

<sup>54</sup> Act on the Freedom of the Press and Fundamental Rules on Media Content <http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/mk10170.pdf> (accessed January 9, 2013), in Hungarian.

<sup>55</sup> Act on Media Services and Mass Media, <http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/mk10170.pdf> (accessed January 9, 2013), in Hungarian.

<sup>56</sup> *Ibid.*, article 132 (official translation).

died in April 2013. At this writing, her successor had yet to be appointed. The other four members of the council were appointed in August 2011 by the parliament for a renewable nine-year term. As the Council of Europe put it in February 2011, “The provisions regarding appointment, composition and tenure of existing media regulatory bodies demand amendment not least because they lack the appearance of independence and impartiality, quite apart from a *de facto* freedom from political pressure or control.”<sup>57</sup>

As a result of changes to the media laws adopted by parliament in March 2013, the appointment of the current head of the Media Authority will be limited to a nine-year term. The next head of the Media Authority will be appointed by the president of the republic rather than by the prime minister. The candidate will however be nominated by the prime minister and the president of the republic may only refuse the nominated candidate if he or she is not qualified for the position or if the acceptance of a candidate would seriously endanger the democratic functioning of the state. The members of the media council will continue to be appointed by parliament for nine-year terms.

The March 2013 changes fail to address the political nature of appointments of the members of the media council by parliament.

The concerns about the Media Council have been exemplified by the case of Klubrádio, an independent radio station. The station has been in legal dispute with the Media Council since April 2010, after the regulator refused to grant it the community station license which the station won by tender under the previous media regulator. Despite winning that tender and a November 2012 court ruling, the Media Council has continued to refuse to grant it the license. In April 2013 the Budapest Metropolitan Court of Appeal ruled in favor of Klubrádio, but at this writing the Media Council had yet to implement the ruling.

In March 2013 Klubrádio was granted a commercial license by the Media Council after a ruling by another Budapest court. The station now has a permanent license, but the drawn-out legal battle with the Media Council caused Klubrádio severe financial losses as a result of declining advertising revenues because of its uncertain future.

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<sup>57</sup> Council of Europe, “Opinion of the Commissioner for Human Rights on Hungary’s media legislation in light of Council of Europe standards on freedom of the media,” para. 39, February 25, 2011, <https://wcd.coe.int/ViewDoc.jsp?id=1751289> (accessed April 30, 2013), emphasis in original

The high fines, ranging up to €700,000, for violations of the media laws affect both media outlets and individual journalists, reporters, and editors, and have a chilling effect on the way journalist report on news. According to the United States Department of State, by the end of November 2012, the Media Council had fined 66 media outlets a total of 80 million Hungarian forint (\$360,000).<sup>58</sup> Independent media outlets told Human Rights Watch that they had been forced to engage in self-censorship because of unclear regulations and inconsistent enforcement. In radio broadcasting, a requirement states that 60 percent of the program content should be music, which effectively limits political radio shows. The media laws also call for “balanced reporting,” a vague and imprecise requirement that is open to arbitrary interpretation by the Media Council.

Independent media outlets told Human Rights Watch that they have experienced a decline in public and private advertising revenue, which has had serious economic consequences for several media outlets. Senior staff at the daily newspaper *Népszava* and Klubrádio told Human Rights Watch that they attributed a cutting off of government advertising to their critical reporting on the current government. The media outlets attributed the decline in advertising from private sources to a political environment in which businesses are reluctant to appear supportive of media outlets critical of the government. As Peter Nemeth, editor-in-chief of *Népszava*, put it, “This is one way to make opposition voices disappear.”<sup>59</sup>

Several journalists and reporters told Human Rights Watch of instances of political interference in the editorial content of public television, with editors telling reporters what and how to report on certain issues. Since the adoption of the new media law package, in three waves of dismissals the state media broadcaster, MTVA, has made approximately 1,100 employees redundant, including editors and reporters. The most recent round of layoffs occurred in December 2012. Those dismissed include journalists who have been publicly critical of the editorial interference or participated in protests against it, and union organizers. MTVA insists that the redundancies are solely the result of the need for efficiencies following the merger of two state broadcasters in 2010.

The Constitutional Court scrutinized provisions in the media laws in a decision in December 2011. The court’s ruling required the government to adopt changes to the

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<sup>58</sup> US State Department, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices – Hungary, p. 20, <http://www.state.gov/documents/organization/204504.pdf> (accessed April 25, 2013).

<sup>59</sup> Human Rights Watch interview with Peter Nemeth, editor-in-chief, *Nepszava*, January 27, 2012.



provisions pertaining to the regulation of media content, protection of journalists' sources, and the institution of the media ombudsman by March 31, 2012.<sup>60</sup> In response, the government introduced parliamentary amendments to the media laws in May 2012 but the amendments failed to adequately address all the court's demands, e.g. provisions relating to content regulation. The same amendments also failed to incorporate recommendations by the Council of Europe, particularly in relation to the appointment of the media regulator.<sup>61</sup>

In fact, instead of addressing concerns of critics, the May 2012 amendments introduced additional problematic elements into the laws. For example, they introduced a provision that states that the Media Council has no obligation to conclude contracts, a provision that the council could rely on in the future to avoid granting licenses to successful winners of future license tenders, as it sought to do with Klubrádio.

Article 5 of the Fourth Amendment introduces a provision in the constitution that prohibits speech aimed at violating the dignity of the Hungarian nation or the dignity of any national, ethnic, or religious minority group. This broad and potentially vague provision may be used to arbitrarily interfere with freedom of speech and expression, and risks having a chilling effect on journalists, artists, and others.

In February 2012 the EU Commissioner for Digital Agenda Neelie Kroes urged Hungary to seek advice from the Council of Europe on its media laws and implement any resulting recommendations. Kroes warned that, should Hungary fail to do so, she would consider asking the European Commission to invoke article 7 of the EU Treaty which allows the EU to suspend the voting rights of EU states whose actions create a "clear risk of a serious breach" of the EU's values.<sup>62</sup> The Council of Europe in May said that the Hungarian government had failed to adequately address problematic provisions in the media laws.<sup>63</sup>

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<sup>60</sup> Constitutional Court decision of December 19, 2011, [http://public.mkab.hu/dev/dontesek.nsf/o/F4BoEB000CDE6EFBC1257ADA0052B416?OpenDocument\\_\(accessed January 14, 2013\)](http://public.mkab.hu/dev/dontesek.nsf/o/F4BoEB000CDE6EFBC1257ADA0052B416?OpenDocument_(accessed%20January%2014,%202013),%20in%20Hungarian.), in Hungarian.

<sup>61</sup> Expertise by Council of Europe Experts' on Hungarian Media Legislation. [http://www.google.hu/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&cad=rja&sqi=2&ved=0CCoQFjAA&url=http%3A%2F%2Fhub.coe.int%2F%2Fdocument\\_library%2Fget\\_file%3Fuuid%3Dfbc88585-eb71-4545-bc5d-b727e35f59ae%26groupId%3D10227&ei=Y\\_TzUND2OojBswaqkoHQCg&usg=AFQjCNFtF-T4JknwN\\_jbZj2oN8eFR2JeIQ](http://www.google.hu/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&cad=rja&sqi=2&ved=0CCoQFjAA&url=http%3A%2F%2Fhub.coe.int%2F%2Fdocument_library%2Fget_file%3Fuuid%3Dfbc88585-eb71-4545-bc5d-b727e35f59ae%26groupId%3D10227&ei=Y_TzUND2OojBswaqkoHQCg&usg=AFQjCNFtF-T4JknwN_jbZj2oN8eFR2JeIQ) (accessed January 14, 2013).

<sup>62</sup> Statement by Neelie Kroes, Vice President of the European Commission responsible for the Digital Agenda of the Hungarian Media Environment European Parliament Civil Liberties, Justice and Home Affairs Committee, Justice and Home Affairs Brussels, February 9, 2012. Reference SPEECH/12/80. [http://europa.eu/rapid/press-release\\_SPEECH-12-80\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-12-80_en.htm) (accessed January 13, 2013).

<sup>63</sup> Expertise by Council of Europe Experts' on Hungarian Media Legislation. [http://www.google.hu/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&cad=rja&sqi=2&ved=0CCoQFjAA&url=http%3A%2F%2Fhub.coe.int%2F%2Fdocument\\_library%2Fget\\_file%3Fuuid%3Dfbc88585-eb71-4545-bc5d-](http://www.google.hu/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&cad=rja&sqi=2&ved=0CCoQFjAA&url=http%3A%2F%2Fhub.coe.int%2F%2Fdocument_library%2Fget_file%3Fuuid%3Dfbc88585-eb71-4545-bc5d-)

In January 2013 Council of Europe Secretary General Thorbjørn Jagland issued a premature welcome to the Hungarian government's proposed changes to the media laws, which were adopted in March 2013. He made particular reference to a single nine-year term for the president of the Media Authority and Media Council, although in practice the same person, will be appointed by the president of the republic instead of directly by the prime minister.<sup>64</sup> He regrettably did not address the remaining concerns of the Venice Commission and the failure of the Hungarian government to comply with Council of Europe standards.

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b727e35f59ae%26groupId%3D10227&ei=Y\_TzUND2O0jBswaqkoHQCg&usg=AFQjCNFtF-T4JknwN\_jbZj2oN8eFR2JelQ (accessed January 14, 2013). Expertise by Council of Europe Experts on Hungarian Media Legislation: Act CIV 2010 on the Freedom of the Press and the Fundamental Rules on Media Content and Act CLXXXV of 2010 on Media Services and Mass Media, May 11, 2012.

<sup>64</sup> Council of Europe Secretary General Thorbjørn Jagland press conference, January 29, 2013, <https://www.youtube.com/watch?v=xpluNdsVPUY> (accessed January 30, 2013).

# WRONG DIRECTION ON RIGHTS

## Assessing the Impact of Hungary's New Constitution and Laws

Since it won more than two thirds of the seats in the Hungarian parliament in the 2010 election, the ruling Fidesz party has used this supermajority to make major changes to Hungary's legal framework in ways that have undermined human rights protection and the rule of law.

At a rapid pace and without adequate public consultation, the government has adopted and amended a new constitution and introduced over 600 new laws. These changes undermine the independence of the judiciary, restrict the powers of the constitutional court, interfere with the rights of women, people with disabilities and Lesbian, Gay, Bisexual, and Transgender (LGBT) people, jeopardize media freedom, and enable the criminalization of homeless people.

This report analyses the new constitution and laws and their negative effects on human rights and the rule of law. It shows how the government has largely ignored criticism from European institutions and, through further constitutional changes, sought to overturn the rulings of Hungary's constitutional court upholding fundamental rights. The report finds that the changes run counter to Hungary's legal obligations as a member of the European Union and the Council of Europe.

This report contains specific recommendations to the Hungarian government on the reforms needed to bring its laws in line with international legal standards. It urges the European Union and the Council of Europe to maintain pressure on Hungary to carry out these reforms.



*Hungarian Prime Minister Viktor Orbán presents his annual state-of-the-nation speech in Budapest, February 22, 2013. The background reads : Hungary doing better.*

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