



ASSESSING THE FIRST WAVE OF LEGISLATION BY HUNGARY'S NEW PARLIAMENT

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Three NGOs, the Eötvös Károly Institute, the Hungarian Civil Liberties Union and the Hungarian Helsinki Committee have reviewed and commented on the way the Fidesz-KDNP Government has performed its legislative work so far, and consequently submit their criticism below.

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In the past three months, the Hungarian Parliament adopted 56 bills. Only 11 of those bills were introduced to the Parliament by the Government, while the remaining 45 were introduced by Members of Parliament. The Constitution was amended 6 times in the last ten weeks.

Bills prepared by a Ministry shall be discussed by other state and social organizations, and Ministries preparing bills shall ensure that those bills may be commented on and allow related suggestions to be made. According to the procedural requirements set out in the Electronic Freedom of Information Act, Ministries shall publish bills, concepts of legislation and the reasoning thereof on their websites, indicating also the state of discussion about them. At the same time, opportunity for commenting on draft bills shall be ensured. It is obvious that the method of introducing bills, implementing the program of the Government by individual MPs was aimed at eluding the above mentioned rules, since the legal provisions guaranteeing the publicity of the procedure of preparing bills do not apply to bills introduced by MPs.

The three NGOs found that in the course of the analyzed period, the provisions above were clearly violated, since draft bills were not published and the possibility of commenting on them was not ensured. MPs introducing bills and the Parliament were constantly violating the provisions of the act of Parliament on the process of legislation.

It may be stated in general that the bills introduced by MPs were full of errors. Besides errors concerning spelling, grammatical correctness and legal dogmatics, the harmonization of the bills with EU legislation and domestic legal provisions was also absent. In a number of cases, MPs tried to legitimize unconstitutional proposals by passing amendments of the Constitution at the same time as introducing the bill concerned.

ELIMINATING THE BASIC GUARANTEES RELATED TO THE RULE OF LAW

1. Amending the rules on proposing Constitutional Court judges

According to the amended rules, the composition of the parliamentary committee nominating Constitutional Court judges will reflect the number of MPs in the parliamentary groups of parties. Thus, the Fidesz-KDNP may nominate and elect Constitutional Court judges without having to take into consideration the opinion of the opposition, determining the direction of the Constitutional Court's decisions.

2. Certain civil servants may be dismissed without justification

According to the amended rules, employers may dismiss certain civil servants (e.g. those working in Ministries) without justification. Thus in these cases, due to the lack of reasons given, the dismissal may not be challenged. As a result of the new provisions, civil servants are dependent on their employers, making it impossible for the public administration to operate in a professional way and endangering the democratic functioning of the state machinery.

3. Retroactive legislation in case of state allowances acquired in an indecent way

A special tax of 98% was introduced on the compensation for dismissal of those working in the public sphere with retroactive effect, as of January 1st, 2010. Since the relevant act of Parliament has created a tax obligation for the period preceding its promulgation, it violates the ban on retroactive legislation, considered as a fundamental requirement of the rule of law.

PENAL POLITICS

1. Changing the provisions on sentencing ('three strikes' bill)

According to the amended rules of the Penal Code, perpetrators committing violent criminal offences habitually shall be dealt with in a more severe way than before. In certain cases it is obligatory to sentence these perpetrators to life-long imprisonment. The latter provisions are unconstitutional, since they exclude the possibility of sentencing on an individual basis and violate the judges' right to discretion.

2. Broadening the scope of applicability of short-term detention in case of minor offences

Acts of Parliament aimed at enhancing public safety introduced more severe sanctions concerning minor offences. The new provisions broaden the scope of minor offences in which case short-term detention may be applied as a main rule. This will lead to the significant growth of prison population, thus the already overcrowded penitentiary system will face a task impossible to cope with.

3. Short-term detention of juveniles

Juveniles committing minor offences may be sentenced to short-term detention from now on, however, alternative sanctions are still not applicable in minor offence proceedings. Thus, the relevant act of Parliament does not take into account Hungary's international obligations and that juveniles would need help and education instead of detention. As a result of the current amendments, juveniles committing minor offences may be detained in the same penitentiary institutions as adults, which is also in breach of international expectations and does not reflect the special needs of juveniles.

4. Court employees without judicial appointment may proceed in certain cases

According to the new legal provisions, certain court employees, i.e. persons without a judicial appointment may rule on cases concerning the detention of those committing minor offences, among others.

MEDIA AND PUBLICITY

Provisions concerning the media authority

The act of Parliament transforming the media authority merged the leadership of the ORTT (National Radio and Television Board) and the NHH (National Telecommunications Authority) and the formerly independent media authority was placed under direct governmental control. It is evident that the provisions establishing that the media authority's chair will be nominated by the Prime Minister and elected by two-thirds of the MPs ensures that the Government has an overwhelming influence on the performance of the media authority. Beyond the appointment system of those in leading position, the adopted act does not establish any other institutional condition of the authority's convergence. Due to the lack of related bills, there is no information on the type of media intended to be placed under the supervision of the authority, furthermore, financing and guarantees of independence with regard to public media are also missing from the adopted act.

TRANSPARENT STATE

1. New rules concerning privatization

According to the new rules, the open bidding process may be omitted when privatizing state-owned property and conveying its management, provided it is justified by aims of general interest, taking into consideration social policy, development policy and further aspects. According to the adopted rules, the Government's decision on omitting open bidding shall be brought in the form of a public resolution. The new exception from the requirement of open bidding in these cases may be interpreted broadly, thus may lead to abuse and may endanger the transparency of public expenses.

2. Amendments concerning publicity of the management of public companies

The provision of the act on public finance regulating the transparency of state-owned companies carrying out public duties was repealed by the Parliament. This step endangers the publicity of contracts made by state-owned companies and data regarding their management, and weakens the citizens' position in enforcing publicity.