



Hungarian Helsinki Committee

HUNGARIAN HELSINKI COMMITTEE

H-1054 Budapest, Bajcsy-Zsilinszky út 36-38. I/12.

P.O. box: H-1242 Budapest, Pf. 317.

Tel/fax: + 36 1 321 4323, 321 4141, 321 4327

helsinki@helsinki.hu

www.helsinki.hu

Hungarian Helsinki Committee *UPR Fact sheet 1*

THE NEW CONSTITUTION OF HUNGARY

Hungary's new Constitution was signed by the President of Hungary on 25 April 2011, and will entry into force on 1 January 2012. However, the constitution-making process left much to be desired in terms of transparency and legitimacy,¹ and the "Fundamental Law" (i.e. the new Constitution) of Hungary suffers from serious deficiencies.²

1. The need for a new Constitution was not supported by clear and conclusive reasons. The concept paper prepared by the *ad-hoc* parliamentary committee mentioned in § 5 of the National Report was put aside, and the draft text was published **only one month** before the new Constitution was adopted. The parliamentary debate on the Constitution lasted for a net term of 9 session days. Consequently, **the constitution-making process failed to provide room any substantial professional or open public debate.** By removing those provisions from the old Constitution that would have forced the parliamentary majority to seek some consensus from the opposition, the majority created a situation where the opposition parties could have no substantial influence on the process. **The new Constitution of Hungary is therefore the product of one political party.** Thus, the new Constitution starts off with a severe lack of legitimacy.³

2. It follows from the provisions of the new Constitution that **Hungarian citizens not residing in Hungary may take part in the parliamentary elections,** even though they do not fall under the scope of the acts adopted by the Parliament, thus they do not take the consequences of the political decisions.

3. The National Avowal of Faith, **the "preamble" of the new Constitution does not meet the requirement of ideological neutrality.** It represents a Christian-nationalistic worldview and imposes this concept on everyone. It should be stressed that the National Avowal of Faith is not simply a declarative preamble, since the new Constitution sets forth that it shall be interpreted in accordance with the National Avowal of Faith. This can mean that **fundamental rights shall be interpreted and may be restricted on the basis of such values enshrined in the preamble as "faith", "loyalty" or the "prominent role of Christianity".**

4. The new Constitution decreases the level of protection in relation to certain specific fundamental rights:

- **Lifelong imprisonment without parole is expressly allowed** in the new Constitution without regard to the fact that this criminal sanction has been criticised by several international organizations, including the CPT.⁴
- Marriage is defined as the conjugal union of a man and a woman, which excludes the possibility of the legalization of same sex marriages. Furthermore, **sexual orientation is not explicitly mentioned as a protected ground** in terms of discrimination by the new Constitution.
- The relevant provision of the new Constitution **creates the basis for restricting women's reproductive rights** in the future.
- The article stating that the **nature and extent of social measures may be made dependent on the individual's activities that are useful for the community** denies the equal dignity principle.

The new Constitution also has a negative impact on the institutions that are set up to guarantee the protection of basic human rights:

¹ For an analysis on the process of framing the new Constitution of Hungary see:

http://helsinki.hu/dokumentum/Comments_on_the_Process_of_Framing_the_New_Constitution_of_Hungary_EKI_HCLU_HHC.pdf.

² For an analysis on the new Constitution of Hungary see:

http://helsinki.hu/dokumentum/Hungarian_NGOs_assessing_the_draft_Constitution_of_Hungary_20110414.pdf.

³ The Venice Commission of the Council of Europe voiced basically the same criticism in its opinion dated 28 March 2011, compiled upon the request of the Hungarian Government. (See: <http://www.venice.coe.int/docs/2011/CDL-AD%282011%29001-e.pdf>.)

⁴ See: <http://www.cpt.coe.int/documents/hun/2007-24-inf-eng.htm>



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- The new Constitution **eliminates the right to actio popularis petitions for the constitutional review of the laws** – a procedure that has become part of the Hungarian legal culture in the past twenty years.
- At present there are **four ombudspersons in Hungary** (ombudsman for citizen's rights, for national and ethnic minorities, the rights of future generations and data protection). The new Constitution **envisages only one**, thus decreasing the level of protection in relation to minority rights, data protection and environmental issues.

5. The new Constitution **restricts the jurisdiction of the Constitutional Court related to laws on the central budget and taxes** by making it possible for the Court to decide on the constitutionality of such laws only under exceptional circumstances.

6. The abrupt **decrease of the compulsory pension age limit of regular judges from 70 to 62 years makes it possible for the governing majority to change practically the entire leadership of the judiciary** through replacing the retired judges with persons who are in its confidence.

6. The new Constitution **undermines democratic political competition and political change**. It splits the authority to adopt the central budget between the Parliament and the Budgetary Council, and authorizing the President to dissolve the Parliament if the Budgetary Council vetoes the budget. The new Constitution **severely limits the political force replacing the current governing majority of the possibility to realize its own government program** since it declares that subject matters, such as family policy, the pension system or the acts on taxes shall be regulated by acts adopted by the two-third of the Parliament.

? Questions:

- Does Hungary intend to reconsider those provisions of the new Constitution on fundamental rights, which are or may not be in line with its international obligations, such as the provision on life-long imprisonment without parole, the failure to expressly list sexual orientation as a ground to be protected from discrimination and the provision that allows the making of the right to social security dependent on social usefulness?
- Does Hungary intend to reconsider the restriction of the jurisdiction of the Constitutional Court and the elimination of the right to actio popularis petitions for the constitutional review of the laws?
- What is the justification for replacing the four ombudspersons of Hungary by only one, thus reducing the level of institutional protection with regard to – among others – ethnic minorities?
- What is the justification for hindering future Parliaments in delivering decisions on budgetary matters and issues such as family policy, the pension system or the acts on taxes?

! Recommendations:

- The full jurisdiction of the Constitutional Court related to laws on the central budget and taxes should be restored.
- The independent ombudspersons for the protection of national and ethnic minorities, environmental issues and data protection should be preserved in the institutional system of rights protection.
- The new Constitution should not limit the powers of future Parliaments concerning budgetary matters and issues such as family policy, the pension system or the acts on taxes.