



in parliament. Fidesz politicians, who were critical about the transformation process, were proclaiming that the 'ballot box revolution' which had lifted them to power proved that the constitution of 1949 already had no public legitimacy, and the country after two decades of post-communist drift needed a new constitution.

József Szájer, a representative of Fidesz in the European Parliament, was put in charge of developing a draft constitution. He also led the National Consultation Committee, which prepared the formula for public consultations. When the draft constitution was announced in late February/early March 2011, a questionnaire with questions concerning the amendments proposed by Fidesz was sent out to the approximately 8 million citizens who have voting rights. Almost one million of the questionnaires were completed and sent back, which the ruling class deemed a successful public consultation. They were to ensure additional legitimacy to the draft constitution because Fidesz has been criticised for its refusal to hold a referendum concerning the constitution. However, the draft was presented to parliament only two weeks after the deadline for sending back the questionnaire, which gave opposition circles grounds to doubt whether the answers provided in the questionnaires had really been taken into account. The questionnaires also did not contain questions about the most controversial changes, such as the reduction of the competences of the Constitutional Court and granting voting rights to ethnic Hungarians living in other countries.

The opposition parties boycotted the work on the new constitution and demanded a referendum be held. They emphasised that this was a 'Fidesz constitution' and not a basic law resulting from a shared compromise. The Socialists while criticising the hastiness (only nine

days were envisaged for the parliamentary debate on the constitution) referred to the political change as a constitutional 'coup'. Although over 150 amendments were passed at that time, all of them were proposed by members of the government coalition. Criticism of the new constitution has become the main area of activity for

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the opposition, which has been seeking support abroad. The Socialist leaders declared that changing the new constitution is the key political goal of their party. The far right Jobbik in turn protested against the rejection of its twenty amendments, the most important of which in its opinion was the proposal of extending constitutional 'protection' to Hungarian land and water reserves.

## The symbols of the old Hungary and modifications of the tripartite system

The new constitution was adopted by the Hungarian Parliament on 18 April 2011; 262 of the 386 MPs voted for, 44 voted against and one abstained. MPs from Fidesz and the Christian Democrats voted to adopt the constitution, Jobbik voted against, while representatives of the other two clubs, Socialists from the MSzP and Greens from the LMP, did not participate in the vote in protest. The document was signed on 25 April by President Pál Schmitt, who is linked to the government team.

The new constitution changes the name of the state; what was known as the 'Republic of Hungary' (Magyar Köztársaság) will now be named simply 'Hungary' (Magyarország), while the word 'republic' is only mentioned in the article which determines the political system of the state. This change sparked a heated discussion. For Fidesz this was a symbolic dissociation from the country's communist past and it was drawing on the continuity of the historic name, which is also evident in the reference made in the preamble to the Holy Crown of Hungary as a symbol of the continuation of Hungarian statehood and the unity of the nation.

The left-wing opposition saw no reason for changing the official name of the country, and even saw this move as drawing on undemocratic traditions of Hungarian statehood.

However, the new constitution brings no fundamental change to the political system of this state. It slightly increases the competences of parliament (it will elect the presiding judge of the Constitutional Court) and the president (who may dissolve parliament if it fails to pass the budget by 31 March of any given year). It restricts the possibilities for holding referendums; while referendums of a binding nature will remain, those of a consultative nature will be liquidated. The constitution has also significantly increased the number of constitutional acts which provide detailed regulations for the most important issues concerning the operation of the state, the amendment of which will require a qualified majority of two third of the votes in parliament. Laws regulating pensions, taxes and the operation of the National Bank of Hungary have been added recently to the already thick catalogue of these acts.

## The weakened Constitutional Court

In the context of the separation of powers, the most fundamental and controversial changes concern the Constitutional Court. Fidesz reduced the court's powers already in 2010. When the court deemed a law retroactively imposing an additional 98% tax on the highest severance pays in the public sector to be unconstitutional, Fidesz amended the constitution to reduce the court's competences in budget and tax related issues and adopted the law in an unchanged form.

The new constitution provides for further reductions in the competences and changes in the operation of the Constitutional Court. The number of the judges will be increased from 11 to 15, which will allow the ruling team to nominate five new judges during its present tenure. The judges' nine-year terms in office have been extended to twelve years. The procedure for nominating the presiding judge has also changed. The presiding judge, currently elected from among the judges by the judges themselves, is to be nominated by parliament. Furthermore, the Constitutional Court will be deprived of its essential compe-

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tences. It will have competences to decide on budget issues only when public debt falls below the constitutional limit of 50% of GDP. The new constitution also liquidates the *actio popularis* rule, according to which each citizen may request the court to determine whether a given regulation is constitutional<sup>2</sup>. These changes have been criticised by the opposition and also by some experts in constitutional law (for example, László Solyom, a former

president, who was presiding judge of the Constitutional Court in 1990–1998). They have also pointed to the amendments made at the last moment under which the retirement age for judges and public prosecutors was lowered from 70 to 62. When the new constitution comes into force, this regulation may seriously upset the operation of the justice system, since around 300 judges and public prosecutors will be forced to retire<sup>3</sup>.

<sup>2</sup> Since 1 January 2012, this power will be vested in the government, a minimum of one quarter of MPs, the ombudsman and judges.

<sup>3</sup> This regulation does not pertain to the president of the Curia (the new constitution introduces this term in place of the Supreme Court) and to the attorney general.

## The strengthened Budget Council and the constitutional entrenchment of the forint

The article setting the 'prudence threshold' for public debt at a level of 50% of GDP has been widely appreciated both at home and abroad<sup>4</sup>. The state's high debt is one of the greatest problems Hungary has had to deal with for a long time. It has reached 80% of GDP, and one of the major tasks for the government led by Orbán is to significantly reduce the debt. Additionally, the new constitution strengthens the role of the Budget Council<sup>5</sup>, which has the right to veto a budget act. People linked to Fidesz will form this Council and will be nominated for six-year terms. So if Fidesz loses power after the elections in 2014, the Council may then play an essential political role. If it vetoes the budget, and the government fails to adopt a new one within the set deadline, the president will be authorised to dissolve parliament and schedule new elections.

The new constitution also includes a regulation, according to which the forint is the currency of Hungary. This seemingly insignificant statement may impede the introduction of the euro in Hungary in the future because this will require the constitution to be amended. Although it is expected that the euro will be adopted in 2020 at the earliest, the government will now have to ensure support from a qualified majority to make this change.

### Responsibility for the diaspora

The new constitution puts a stronger emphasis on bonds between Hungary and the Hungarian diaspora<sup>6</sup>. The state guided by the "idea of one Hungarian nation" is to be "responsible" for the lives of ethnic Hungarians living in other countries, it will support the preservation and development of these communities, their efforts "to remain Hungarian" and mutual co-operation and collaboration with the motherland (Article D). The constitutional obligation to have a registered residential address in Hungary in order to be granted voting rights has been lifted,

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and – as promised by government representatives – regulations concerning the use of voting rights by citizens living abroad will come into force already this year.

These are the next steps Orbán's government is making towards the reinforcement of the bonds between Hungary and Hungarian communities in neighbouring countries, the reasons for which include the will to put

off or at least slow down the ongoing assimilation processes and to facilitate travel in the EU for ethnic Hungarians who live in Ukraine and Serbia. The citizenship act was amended on 26 May 2010, soon after the formation of the new government. It came into force at the beginning of 2011 and brought facilitations in granting Hungarian citizenship primarily by lifting the obligation to have registered permanent residence in Hungary. In July 2011, the number applicants for Hungarian citizenship in the neighbouring countries exceeded 100,000. According to estimations presented by Deputy Prime Minister Zsolt Semjén on 18 July 2011, their number will have reached half a million by the end of the present parliament's term (2014).

It is still unclear whether Hungarians living abroad will also be granted passive electoral rights, whether they will vote for candidates from general Hungarian lists or whether separate seats in parliament will be granted to them. If the former is the case, they could influence the election of even approximately 20% of MPs, whereas in the latter situation they could have more than ten parliamentary seats ensured. According to the constitution, each citizen who has an active voting right may also take part in a referendum.

<sup>4</sup> When this limit is exceeded, the government has the obligation to pass a budget in which public debt is reduced.

<sup>5</sup> The Budget Council, which was established in 2008, supervises the process of adopting the budget, and its members are elected by the president (chairman), the president of the National Bank of Hungary and the head of the Audit Office.

<sup>6</sup> The constitution presently in force provides only that "the Republic of Hungary has the sense of responsibility for the fate of Hungarians living abroad and supports their contact with the motherland."

The granting of the right of vote to Hungarians living abroad will increase the significance of issues related to bonds with compatriots living abroad in Hungarian politics and will introduce a new electorate with the potential to influence Hungary's foreign policy. The political right is likely to benefit most from the decision to grant voting rights to the Hungarian diaspora (this is a predominantly conservative electorate, likely to vote for groupings which draw on national issues). This perspective gave rise to criticism from Socialists and was presented as an attempt to gain support from additional voters and to ensure long-lasting rule for the political right. However, Jobbik – calling for a “peaceful shift of the borders” – may benefit from granting voting rights to diaspora as well.

The efforts aimed at strengthening the ‘responsibility’ for compatriots living in other countries are accompanied by the rhetoric of ‘overcoming’ the Treaty of Trianon of 1920 (under which a significant part of Hungary was divided among its neighbours) through integration of the Hungarian nation above the existing political borders. The government's emphasising of these issues is also aimed at preventing radical groupings from taking over these slogans (first of all the opposition party Jobbik, which is the third strongest grouping in parliament). However, at the same time, under Orbán's rule, Trianon has become an official symbol of Hungarian identity as the quintessence of national tragedy. Although all right-wing movements have been aiming at this since 1989, it was Orbán who started building the state ideology on this foundation after he became prime minister in 2010.

## Reactions abroad

The new constitution includes references to God, the Christian roots of Hungary and the one thousand year history of the nation. It opens with the first line from the Hungarian national anthem ‘God, bless the Hungarians’ and a preamble called the ‘national confession of faith.’ Axiological, moral and ethical elements combined with conservative symbolism have raised controversies both at home and abroad. The Hungarian left-wing and liberal circles have criticised the government on the international forum. The constitution is also being criticised

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by the political left and liberals for ideological reasons because it defines marriage as a relationship between a man and woman, and provides for the protection of life from the moment conception, which is seen as opening up the way to a ban on abortion. Some non-governmental organisations also see the new constitution as a document which ‘excludes those who think otherwise’ and have criticised it for the lack of

regulations protecting sexual minorities, women and the handicapped<sup>7</sup>. In turn, the national symbolism of the preamble and references to the ‘old Hungary’ combined with regulations aimed at strengthening the bonds with compatriots living abroad have given rise to a number of comments (from politicians, political analysts and publicists, especially in Slovakia and Romania), who are warning against the legalising of revisionist tendencies.

The Hungarian constitution has also been criticised by the faction of Socialists, Liberals and Greens in the European Parliament. Although the largest grouping within these circles, the European People's Party – which Fidesz and KDNP are members of – opposed this, left-wing factions initiated a special debate and managed to push through a very critical resolution on 5 June 2011 pointing first of all to the general axiology of the constitution (including formulations concerning moral and ethical issues). In this stance, the European Parliament

<sup>7</sup> Including the Hungarian Civil Liberties Union (TASZ), Amnesty International and Human Rights Watch.



recommended that the European Commission check whether the Hungarian constitution and the laws which accompany it comply with the letter and spirit of EU law.

Representatives of the Hungarian political right rejected these accusations, and emphasised instead that this is the first basic law in Europe to include regulations from the Charter of Fundamental Rights of the European Union. The solutions they presented as the most innovative included regulations pertaining to the protection of the natural environment, sustainable economy and guarantees preventing excessive indebtedness of the state. Fidesz, while repelling the attacks on the constitution, eagerly presented its criticism at home and in the international community as a sign of a political clash between left-wing and liberal groupings on one side and the right on the other, or as a continuation of efforts aimed at undermining the Hungarian presidency of the Council of the EU.

The new constitution sparked an international discussion, including opinions questioning Hungary's right to determine the foundations of its own political system due to their alleged conflict with 'European values'. A suggestion of this type also appeared in a state-

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ment made by Werner Hoyer, secretary of state at the German Foreign Ministry, who criticised the way in which the new Hungarian constitution was adopted and its text<sup>8</sup>. Concern about 'some regulations' was expressed by UN Secretary General Ban Ki-moon, and US Secretary of State Hillary Clinton appealed for the building of a constitutional order which gives due respect to 'democratic freedoms' during her visit in Hungary at the end of June 2011.

Reservations about some regulations of the new constitution have also been made by Slovakia, where the Hungarian minority accounts for the largest part of the population as compared to other states neighbouring Hungary. Although the issue of electoral rights has not yet been precisely regulated, the promise of extending them to compatriots living in neighbouring countries and the formulations concerning Hungary's 'responsibility' for these communities was understood in Bratislava as support for the efforts of Hungarian communities abroad to be granted collective rights and provoked negative reactions<sup>9</sup>. Slovakia is opposing solutions of this kind, which are openly promoted by Hungary, believing that the model for minority protection which guarantees rights to representatives of national minorities as part of the rights vested individually in each human being and citizen and not in a certain cultural or ethnic group is the European standard. The Slovak parliament adopted a resolution stating that Slovakia would not recognise those provisions of the new Hungarian constitution which will have extraterritorial effect. However, the Slovak opposition insisted on a much more moderate reaction<sup>10</sup>.

Dual citizenship is still a disputable area in Slovak-Hungarian relations. Although it is a subject of bilateral talks, no major progress is likely to be made in this field. Extending voting right to citizens in neighbouring countries is likely to cause more tension in Slovak-Hungarian relations and heat up the political atmosphere in Slovakia. Compatriots voting abroad may also complicate Hungary's relations with its other neighbours, which are home to large Hungarian communities. These countries have not officially criticised the Hungarian citizenship regulations (partly because they have applied similar solutions to their own compatriots living in other countries). Nevertheless, activities which refer to 'overcoming' the Treaty of Trianon have also been used for internal political struggle in Romania and may adversely affect Romanian-Hungarian relations which have been developing well over the past few years.

<sup>8</sup> Új magyar alkotmány: aggódik a német külügyminisztérium, 18 April 2011, <http://hvg.hu>

<sup>9</sup> Vyhlásenie MZV SR k prijatiu maďarskej ústavy, 18 April 2011, [www.mzv.sk](http://www.mzv.sk)

<sup>10</sup> Vyhlásenie Národnej rady Slovenskej republiky k prijatiu Základného zákona Maďarska, 27 May 2011. [www.nrsr.sk](http://www.nrsr.sk)

## The stance of the Venice Commission

The Venice Commission, an advisory body of the Council of Europe for constitutional issues, reacted with satisfaction to the fact that the new Hungarian constitution is based on democratic principles, the rule of law and the protection of fundamental rights. However, it formulated a number of detailed reservations. The commission, which was asked by the Hungarian government to express an opinion on the draft constitution, made critical comments first of all regarding the reduction of the Constitutional Court's powers and increasing the number of laws which require a qualified majority to be passed<sup>11</sup>. The Venice Commission's complete opinion on the new constitution, prepared by five experts (including the former Polish prime minister, Hanna Suchocka), was passed at the plenary session on 17–18 June 2011<sup>12</sup>.

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The commission criticised above all the constitutional process itself, which in its opinion was insufficiently transparent. Dialogue between the ruling party and the opposition was missing, adequate conditions for a public debate were not created, and the process as a whole was too hasty. At the same time, the com-

mission expressed hope that the adoption of constitutional laws would be preceded by a proper public debate. In the commission's opinion, some areas should rather be passed by an ordinary majority of the votes than regulated with laws of this kind. This concerns for example: cultural, religious, moral, socio-economic and financial policy. The commission also addressed the issues which had been criticised most of all thus far, namely the reduction of the Constitutional Court's competences in the area of state finances and granting extensive powers to the Budget Council (including the right to veto the budget law). In the commission's opinion, these may have a potentially negative effect on the democratic order and upset the balance of power.

The Venice Commission also expressed reservations about the state's responsibility for Hungarian minority communities in other countries. The commission shared its concern that the extritorial application of the constitution's regulations could lead to unnecessary tension in relations with neighbouring countries. The commission also pointed out that responsibility for protecting minority rights rested primarily with the country where such minorities lived. The commission's opinion was received with satisfaction by the Slovakian Foreign Ministry, which saw it as completely complying with Slovakia's stance on this issue<sup>13</sup>.

Representatives of the governing Fidesz party stressed the positive evaluations included in the commission's opinion and stated that the fact that the detailed legal opinion differed at some points from their stance was something natural. They declared they would take into consideration the commission's comments further on in the legislative process, emphasizing however that these were not binding for Hungary.

## Possible developments

Fidesz has promised a continuation of the state's political reform. Around thirty constitutional laws are to be passed by the end of 2011, including those concerning local government, the operation of parliament, and judicial reform. Parliament will vote on them during its autumn session. It may be expected that the most heated debate will be over the voting system and local government reforms, which may bring about changes on the Hungarian political scene. Protests and also disputes within the government team may arise due to

<sup>11</sup> Több ponton kritizálják az új alkotmányt, 10 June 2011, <http://nol.hu>

<sup>12</sup> Opinion on the New Constitution of Hungary Adopted by the Venice Commission at its 87<sup>th</sup> Plenary Session (Venice, 17-18 June 2011), <http://www.venice.coe.int/docs/2011/CDL-AD%282011%29016-e.pdf>

<sup>13</sup> Ministerstvo zahraničných vecí Slovenskej republiky víta stanovisko Benátskej komisie k Ústave Maďarskej republiky, 22 June 2011, [www.mzv.sk](http://www.mzv.sk)

the reduction already announced of parliamentary seats from the present number of 386 to 200. Granting electoral rights to Hungarians living in neighbouring countries is likely to increase tension in Slovak-Hungarian relations and may give rise to negative reactions also in other neighbouring countries, thus strengthening the temptation to play the 'Hungarian card' also in domestic politics.

The new constitution has increased the already significant number of laws which require a qualified majority. Some of them have already been adopted, others will be amended in the next few months. These may be durable changes because the weak opposition has no chance of gaining a constitutional majority in parliament in the immediate future. This will make work difficult for subsequent governments because they will have to seek support from the opposition to amend laws regulating numerous areas related to state policy.

The new constitution and the activities which accompanied its creation betray efforts to preserve the existing system of ruling the country. This gives rise to reasonable suspicions that politicians from the governing team have hastily adopted the constitution and want to pass as many constitutional laws as possible because they are considering the possibility of holding new elections at the beginning of 2012.

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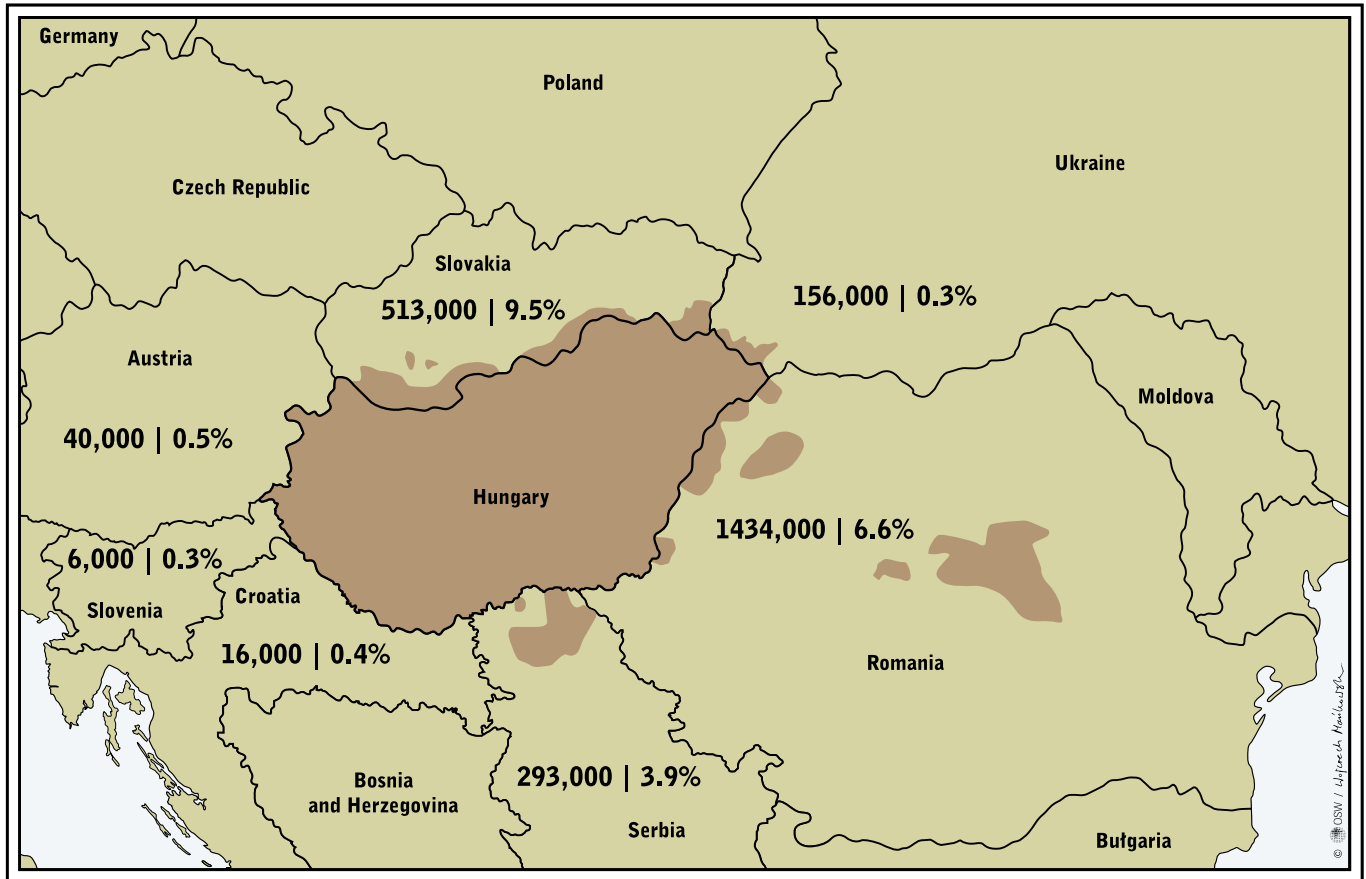
Fidesz still enjoys the strongest support (28% according to a poll in June, with 12% support for the Socialists)<sup>14</sup>, and is uncertain whether the public, tired with reforms, will not turn their backs on it before the elections in 2014. If elections were held next year, Fidesz would almost certainly win. Although it would not have the advantage it has now, the new constitution would already be in force and all the essential laws which require a qualified majority would have been passed. It cannot be ruled out that the entry into force of the new constitution and a major change in voting regulations could be used as a pretext for the dissolution of parliament and the holding of new elections.


<sup>14</sup> Ugrásszerűen nőtt a bizonytalanság aránya, gyengült az ellenzék, 22 June 2011, <http://www.tarki.hu/hu/news/2011/kitekint/20110622.html>



## MAP

### Hungarians in Central Europe



 Areas, where Hungarians constitute more than 50% of population

**293 tys. | 3,9%** Number of Hungarian minority and its share of the country's population



**Centre for Eastern Studies**  
Koszykowa 6A,  
00-564 Warsaw  
e-mail: info@osw.waw.pl

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Editors: Olaf Osica  
Anna Łabuszewska  
Translation: Ilona Duchnowicz  
Co-operation: Nicholas Furnival  
DTP: Wojciech Mańkowski