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## Emerging Anti-pluralism in New Democracies – the Case of Hungary

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Keywords: anti-pluralism, Hungary's new "system of national cooperation", imposed constitutional engineering without consent, political impact of the past and the economic crisis

The signs of a definite anti-pluralist turn in the politics of some newly democratized countries in Europe are growing. The paper describes the present Hungarian political situation since the 2010 election. Due to a landslide electoral victory of the Hungarian Civic Union – Fidesz, the new government felt free to rearrange the whole constitutional and political system. Earlier institutions of control over the government have been restrained. The declared need for a "strong state" in a crisis situation seemed to justify a resort to some authoritarian tendencies of the Hungarian past. The paper analyzes the political and ideological features that endanger the guarantees of rights and the achieved political pluralism. It deals with changes of the constitution and the role of the Constitutional Court, the much debated new media law, the constrained autonomy of interest organizations and local self-governments, and the decisive change of the electoral system. The paper analyses also presumable reasons for this anti-pluralist turn, weighing simple path-dependency in the political culture against the impact of the contemporary economic crisis. It stands in for the pluralist democratic engagement of 1989 that should be saved under the new challenges of the contemporary crisis.

### Die Herausbildung von Anti-Pluralismus in neuen Demokratien – der Fall Ungarns

Schlüsselwörter: Anti-pluralismus, Ungarns neues „System der nationalen Zusammenarbeit“, oktroyierte konstitutionelle Änderungen bei fehlendem Konsens, politische Nachwirkung der autoritären Vergangenheit und der sozio-ökonomischen Krise

Zeichen von anti-pluralistischen Tendenzen sind in einigen neulich demokratisierten Ländern in Europa immer mehr wahrnehmbar. Der Aufsatz beschreibt die ungarische politische Situation seit 2010, als die Ungarische Bürgerliche Allianz – Fidesz einen landesweiten Wahlsieg errichtete. Die neue Regierung nahm sich die Freiheit, die Verfassung und das politische System völlig neu zu gestalten. Frühere Kontrollinstanzen über die Regierung wurden in diesem „System nationaler Zusammenarbeit“ beschränkt. Die deklarierte Not eines starken Staates in Krisenlage wird begleitet von einer Rückbesinnung auf autoritäre Tendenzen der Vergangenheit. Der Aufsatz legt die politischen und ideologischen Züge der neuen Politik dar, welche die Garantien der Bürgerrechte sowie den schon erreichten Stand des politischen Pluralismus gefährden. Die Veränderungen in der Verfassung, samt Einengung der Rolle des Verfassungsgerichts, die viel bestrittenen neuen Mediengesetze, die beschränkte Autonomie der Interessenorganisationen und lokaler Selbstverwaltungen und die tief greifenden Veränderungen im Wahlsystem werden behandelt. Der Aufsatz analysiert auch die Ursachen dieser antipluralistischen Wendung, und identifiziert dabei neben den Nachwirkungen der autoritären politischen Kultur vor allem den Einfluss der ökonomischen und sozialen Krise. Der Autor betont die Notwendigkeit eines Engagements für demokratischen Pluralismus für die Lösung der Probleme der aktuellen Krise.

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After more than two decades of democracy since the system change in 1989–1990, and seven years of membership in the European Union since 2004, in some countries of the ECE region a new populism is on the rise, which questions the achieved consolidation of pluralist democracy. Although right wing populism is on the rise even in some Western European countries, in the new democracies it involves more risk for democracy and is probably motivated by general disappointment in the fruits of system change, deteriorated by hardships of economic crisis. We could discern signs of populist politics also earlier, but now it is at least in one case, Hungary, not only subject to severe criticism by political journalists and commentators, who complain about Hungarian government policies restricting democratic rights, but we can see also publicly announced concerns of officials of the EU commissioners, EP representatives and officials of other international organizations. An open debate about Hungarian media law and constitutional changes got on the agenda of the European Parliament, and in some basic policy issues a procedure against violation of EU norms is underway on European Commission level, not to speak about investigations initiated by the European Council and the Venice Commission for Democracy by Law. From the U.S. foreign office even a diplomatic demarche has been handed over to the Hungarian government in the autumn of 2011, which expressed concerns over violating the principle of checks and balances, curbing the autonomy of controlling institutions and the new media act restricting freedom of press. Such gestures are rather unusual among friendly powers belonging to the same alliance.

The Hungarian government led by Viktor Orbán refuses the criticism and denies the necessity of such procedures. It claims the sovereign rights of a nation state to change its constitution and remodel the whole political system according to its concept on national causes, referring to its great electoral victory in the 2010 parliamentary elections, when the Hungarian Civil Union gained 53% of the votes. Due to the disproportional electoral system and mandate distribution it acquired a decisive two-third majority in the parliament. The party leader called this a “revolution in the (electoral) booths”, and interpreted it as a general authorization by the people to change the whole political system. He asserted that the political system negotiated during the system change was ill-conceived and has run down, and must be replaced by a new “system of national co-operation”, a notion that has undeniable authoritarian overtones.

That the several waves of democratization may suffer setbacks was stated already in Huntington’s original concept on waves of democratization as a historical fact (Huntington 1993), a possibility reflected also critically by Wolfgang Merkel (Merkel 2010). My paper deals with the question how serious such concerns are in regard of democratic consolidation of the new ECE-member-states of EU, and what reasons might stand behind such an “authoritarian slide” in Hungary.

## Pluralist Democracy Wanted

Before the system change pluralism was with few exceptions (notably in Poland, see the article *Pluralism and Marxism* by Stanislaw Ehrlich in: Ehrlich/Wootton 1980, 34–46, and in Hungary, see Bayer/Hardy 1985) strongly refused and condemned by the official monistic Marxist-Leninist ideology as a bourgeois political concept which veiled the class-character of capitalist society and served to obscure the class-rule of the capitalists. The democratic effects, the positive sides of pluralism which (even under capitalism) allowed for the non-propertied classes the right to self-defense, and vindicated rights and defended interests for groups of people against an overwhelming state power, were thoroughly dismissed (as such powers had to be feared also in the own statist-corporative system). The monolithic structure of power under state-socialism, with the organizational monopoly of the state-party was regarded by the rulers as the only guarantee of maintaining public ownership of the means of production and a centrally administered socialist order. The dominant role of the state-party was secured even in countries where the remnants of the earlier party system survived in the form of so called block-parties (as in Poland, Czechoslovakia and GDR, which could later on serve as a ground for revitalizing party pluralism during and after the changes). *Anti-pluralism has been a basic tenet of the official ideology in the whole socialist camp*, and its acceptance was a pre-requisite for entering public service or playing a public role in general. But it affected not only party politics but the whole civil society which became paralyzed in its self-organizational capacity, as only licensed interest organizations were allowed to function under the supervision of the party-state power. Therefore the interpretation of the “soft revolutions” of 1989 as a revolt of the civil society against the omnipotent state power, shared by many leftist activists and ideologues, was a small misunderstanding. This myth has been successfully refuted by Stephen Kotkin in his book on *The Uncivil Society* (Kotkin 2010). Civil society could gain broad ground only after the changes.

It is generally acknowledged that one of the great achievements of the 1989/90 “soft” revolutions in ECE has been the establishment of Western type pluralist democracies on the ruins of the imploded monolithic order of soviet type political systems. The speed of the political changes was astounding, especially in regard of the seemingly unmovable, stable authoritarian regimes that – despite small modifications – withstood decades. Within one year all the regimes in ECE collapsed in the vogue of the implosion and dissolution of the Soviet Union and its declared withdrawal from its position of a guardian (in critical term: imperial) power over the ECE region – a relation established originally after its victory over Nazi Germany and its war allies in 1945, sanctioned by Yalta Agreement and frozen by the cold war. (The Agreement of course did not foresee that the victor should impose upon the defeated countries its own political system by force.)

The dissolution of this geopolitical deadlock was an epochal event of the late twentieth century which offered new perspectives for democratic political development in the region, not to speak about the new geopolitics of post-cold-war world order. More and more countries joined the “third wave of democratization”, a major trend that began with the fall of authoritarian regimes in South America and South Europe a decade before.

Poland has been the fore-runner in this development with its strong system-opposition of Solidarnosc, a movement which proved to be a major force in dissolving communist power. Its strength rooted in its massive social mobilization of working people, a fact that effectively questioned the self-legitimizing ideology of the regime as being a power in the interest of the workers. Hungary with its liberal economic reforms and a modestly tolerant political climate followed

this trend from the mid 1980s, after the regime proved ineffective in dealing with its protracted economic stagnation and high debt-crisis. Parties of opposition emerged here already before the system change, and the Central Committee of USAP, the ruling state party, had to officially acknowledge and declare the principle of political pluralism as early as 1988. Sooner or later as if through a domino effect all existing state-socialist regimes with their monolithic, apparently solid power-structure fell apart in the whole region. From social movements new political parties emerged that questioned the power monopoly of the ruling state party, whatever its name was. With the exception of Romania, where a palace revolt disguised as a genuine revolution of the street and broadcasted in state television, had to topple the autocratic and paranoid regime of Ceausescu, in all countries a peacefully negotiated “constitutional engineering” followed, whereby Western models of pluralist democracy were copied, being colored by elements of local traditions. All over Central Europe liberal-democratic parliamentary systems had been established with separation of powers, including new constitutional courts, a broad multi-party system, well established three-partite organized interests, a liberated media landscape, with guaranteed political freedoms for expression and organization, and free elections. The founding elections in 1990 legitimated the new order and later constitutional modifications (such as the local self-government act) have completed it. The new system could be rightly called pluralist democracy (Bozóki 2003). The new governments could begin with the difficult work of abolishing the command economy and introducing institutions of a market economy, with all the conflicts this process involved. There existed, above all political differences of the major parties, a basic consensus in regard of the pluralistic parliamentary democracy based on the rule of law, the necessity of the economic reforms (including privatization), and the joining of the Euro-Atlantic institutions (NATO and the European Community/Union).

I would like to stress that *the reestablishment of democratic pluralism was greeted with great relief in the whole polity*. The new freedoms were largely enjoyed by all democratic (and by the same token, of course, also by non-democratic) forces. After the regime changes, new parties and civil organizations blossomed and became part of everyday social life, even if many of them have been sooner or later occupied by the major parties which drew their elites foremost from the activists of civil societies and interest organizations.

Despite the emerging of a broad civil society with its numerous organizations and large networks, anti-pluralist attitudes remained strong in the political culture of the large population, having firm roots in the authoritarian past of the prewar period. The specters of the past haunted soon when the social conflicts accompanying the economic reforms emerged. Decades of communist power which suppressed rather than resolved old historical cleavages did not help to overcome authoritarian attitudes of the past. While Robert A. Dahl’s statement that a pluralist self-organizing of society emerges everywhere as soon as the brakes on freedom fall apart (Dahl: *Pluralism revisited*, in Ehrlich/Wootton 1980, 20), proved to be fully right in the process of the system change, it turned out that engraved authoritarian habits could not easily disappear from one day to another. Especially when the rival political forces used different political traditions to fight with each other, the old cultural and ideological cleavage of populists versus urbanites, nationalists versus liberal Westerners, modernizers versus conservatives have soon emerged as a major division of political life. Such cleavages were not necessarily detrimental to pluralism, rather part of it. However, when it turned out that the system change could not fulfill the welfare expectations the population awaited from democracy, and instead, a new impoverishment set in for a large segment of population, criticism on “party quarrels” became soon loud in the public discourse. Instead of the fine pluralism and liberal tolerance of many interests, world views,

life-styles and so on, they claimed that parties should rather unite in a big national consensus for resolving the basic economic problems and care for the needs of ordinary people. Concerned groups turned against the new democratic parties. In Hungary as early as 1992 the Society of “People Living below the Existential Minimum” initiated a national referendum aimed at dissolving the first multi-party parliament. They managed to collect the necessary number of signatures, but the newly established Constitutional Court ruled out such an anti-parliamentary action by principle, even if the initiators called only for new elections and did not want a return to authoritarian rule.

Nevertheless, party pluralism took hold, even if participation in party politics remained generally very low ever since. After two decades of political freedom politics is still regarded by many people as a dirty business in which they do not wish to be involved at all. In a European Social Survey comparative research report Hungary held the last position among 22 countries in 2002, according to mean values for political participation. “The relative position of Hungary improved by 2009, but only because Turkey and Bulgaria also entered the survey. Only Portugal lagged behind Hungary out of the ‘older’ member states” (European Social Register 2010, 138). As has been said by surveying sociologists, we generally like democracy but do not use it. Trust in political institution (foremost in parties and in parliament is utmost low (2 points from 10), lagging far behind in European comparison, but even trust in compatriots is not much better. Hungarian citizens are among the least satisfied with their life. These findings are bad news for democratic consolidation in a changing society.

### **A turn to anti-pluralism?**

Since the world financial crisis, the debt-ridden euro-zone and economic recession holds on, the *demand for being protected by the state*, instead of a not so well flourishing free market economy, *became louder and more perceptible in the large population. This is the ground on which political populism and collectivist ideologies flourish and a new anti-pluralist trend comes strong on the political agenda.* Such problems stood already earlier behind Meciarism in Slovakia, the populist government of the PIS with the Kaczynski twins in Poland, even before the world financial crisis. In Hungary the populist turn came along when the government of the party-leader Viktor Orbán achieved a landslide victory in the 2010 parliamentary elections. He stands out for a strong state, and for the re-nationalization of certain branches of the service sector and industry. The government strives for recentralization of power, taking rights back from the municipal self-governments and tries to curb rights of his opponents.

In my paper I would like to concentrate on the Hungarian experience I know best, all the more because it stands in the centre of international debates. The chances of democratic consolidation in the region under the strains of the present economic hardships became even more doubtful with the signs of a threatening backslide to authoritarianism.

### **Democracy endangered or pluralism constrained?**

I do not want to engage in discussing to what extent democracy is endangered because this might misguide the whole debate. A clear-cut distinction between democracy and dictatorship is a difficult task anyway, as government systems are very complex and ever more relegated to

multiple levels of governance. Such contrasting ideal-types seem anyway to lie on the two ends of a continuum. Also, there exist several types of democracies, institutionally better developed and less differentiated, stable and less stable ones, democracies of different quality due to duration and also depending on the established political culture in each country. We should not forget the warning of Ralph Dahrendorf that a certain dose of populism is part of any democracy, and that political rivals often indict each other by this term (Dahrendorf 2007). For my purpose I am therefore pleased with the minimalist definition of democracy used by Huntington, and concentrate rather on signs of a discernible anti-pluralist turn by the new political course of the Hungarian “system of national co-operation” conceived by Victor Orbán. This has been introduced since 2010, buttressed by hasty legislation, based on a new constitution (called “Basic Law”) with a clear ideological ground, and the creation of a lot of new institutions all labeled as “National”.

Huntington justified his “minimalist” definition of democracy with the argument that moral and material criteria cannot provide consensus about the essence of democracy. His main criterion is that the electorate, through periodically held elections, can peacefully remove the government by exercising its democratic oversight: “Elections, open, free and fair, are the essence of democracy, the inescapable *sine qua non* [...] Governments produced by elections may be inefficient, corrupt, shortsighted, irresponsible, and incapable of adopting policies demanded by the public good. These qualities may make such governments undesirable but they do not make them undemocratic. Democracy is one public virtue, not the only one, and the relation of democracy to other public virtues and vices can only be understood if democracy is clearly distinguished from other characteristics of political systems” (Huntington 1993, 9–10). I think this is a well formulated argument which is to be taken into consideration.

In the same vein Adam Przeworski states in his work on the relation of democracy and economic development: “democracy for us is a regime in which those who govern are selected through contested elections. This definition has two parts: ‘government’ and ‘contestation’” (Przeworski 2005, 265) It is worth mentioning that Robert A. Dahl introduced the term “polyarchy” exactly to avoid the strict classification into democracy and dictatorship. This notion stressed two basic elements of political order: public contestation and participation, and by crossing these two criteria he gained a comparative framework for more exact measuring and evaluation of changing political systems (Dahl 1970, 9).

Therefore, despite the severe criticism on the curbing of democratic rights and freedoms (of which I find many arguments rightful) I resist the temptation to question the existence of democracy as a system of government in Hungary, as long as it is possible to change the government in free and fair elections. I concentrate rather on the issue, how far pluralism is stifled by the present governing power through its new ideology and power politics, and how far the necessary freedoms for free and fair elections may have been impaired by the constitutional changes recently introduced in the country.

### **The New Vision of a sovereign, unitary nation state**

Every real political turn begins with a new vision and related conceptions. The political philosophy of the new course has been mapped out in a famous speech of the charismatic party leader Viktor Orbán shortly before the 2010 election held internally in front of a friendly circle of intellectuals: “Until recently, Hungarian politics had been characterized by a dual field of force.

In these days this duality of the system seems to cease, and a central political field of force is in the making [...].” And he follows:

*There is a real chance that the next fifteen-twenty years have not to be determined by the dual field of force, accompanied by constant quarrels about values, generating devising, narrow and needless social consequences. Instead, a big governing party comes into being, a central political power field, which persists and will be able to restate the national cause – and all this not through continuous debates, but representing this through its own natural weight. Either we try to build up a system of government, which minimizes the chance to restore the dual field of force, being able to arrange the political issues, or we prepare for a counter-government, but then the dual field of force will be reestablished. It is my conviction that we should not pursue a counter-governance, but that we should establish a government of the national cause(s).<sup>1</sup>*

This vision about a great unified national party which stays persistently in the centre of the political field unrivalled by any real alternative force has its historic predecessor in the Hungarian pre-war authoritarian system dominated by the “Unified Party”. Such a system was not really a pluralist party system, even if some other parties were tolerated, but could be defined rather as a “dominant” or a “hegemonic” party system (see Duverger 1964; Sartori 1976), in which all other parties are doomed to secondary role due to a clientele-policy of the ruling elite in a basically segmented society.

The cited text allows a more benign interpretation, too: that the exemplary source of this vision is to find rather in a modern Christian Democratic catch-all party like the German Union parties were under the long Adenauer period in Germany or later under Helmut Kohl (whom Orbán admired). The text allows such an interpretation when Orbán says (my italics): “my suggestion is that instead of the politics adjusted to the constant struggle, we should choose politics adjusted to the continuous government; not perpetual fighting of the opponents should determine our way of thinking but rather the convincing representation of certain national causes. *Naturally there will be competition and at the end the voters will decide.* The question is what kind of alternative we can provide”.

This section would support the democratic reading of the pronouncement. The critical test of this statement stands still out as the next election is coming only in 2014. The question is, what happens in the meantime, whether the possibility to form competing alternatives provided for the constituency to choose from will be maintained or restricted by various legal and political changes? A recent announcement of the prime minister according to which “you should look at my deeds, not my words”<sup>2</sup>, entitles us to judge on ground of political and institutional changes that had been introduced by the new government since its inauguration. Whether these support the more equitable interpretation of his great vision or just the opposite, proving the more critical interpretation, can be decided on ground of the policies pursued since getting to power. The evolving shape of the new “system of national co-operation” might leave some doubts for a favorable reading.

First, Orbán’s national sentiment seems to go well beyond being an ardent patriot; he uses nationalism as a means of “identity politics” characteristic generally of populism. This serves to unite his own political camp of followers (not to speak of the common ground with the radical right in this respect), by constant confrontation with opposing political forces that are often branded as un-national, alien-hearted or even enemies of the nation, who deny cooperation in

his understanding. This is an extremely populist interpretation of the polity – on the one side an elite, alienated from the nation respectively from the people, occasionally even indicted as of high treason, while on the other side the people with its self-appointed representatives, on top with the “eternal prime minister of the nation” (as Orbán was called since he lost election in 2002 – “The homeland cannot be in opposition”, was his famous saying in those disheartening days.) This expresses a kind of *Carl Schmittian world* in which every issue, should it be cultural, religious, economic or social, can and should be transformed to politics if it is able to group the people into friends and foes – a tactics Orbán used masterly as opposition leader in the last two legislative periods. This is one reason why every attempt to serious reform of the economic and social system failed in Hungary, with lasting detrimental consequences also for the present government. Akin with Schmitt’s political philosophy is Orbán’s obsession with state sovereignty, and his condemnation of the plural political forces that would tear apart the unitary state.

From this vision emanates the political concept of the brand-new “system of national co-operation”. The basic political aims of the Orbán-government were clearly expressed already in the first Declaration on National Co-operation that has been issued just after the electoral victory; it was a small leaflet that summarized the mission of the new power to change the Third Republic, which they found all too liberal, toward the “System of National Co-operation.” The new government made it compulsory to hang it out on the walls of every public offices and government and municipal institutions. This partly programmatic, partly propagandistic text does not deserve any deeper analysis, as it only anticipates the following legislation process which concretized the original vision.

The new government and its qualified parliamentary majority began its course indeed by a large-scale remodeling of the whole political system. It changed not only the personnel of many government offices, dissolved many existing institutions, but created brand new ones filling them exclusively with their own loyal party delegates. The changes affected even the composition of the government, which was reduced to only eight ministerial posts, all other ministries being reduced to mere state secretaries (a fact that caused some problems during the EU presidency of Hungary).

One of the first legislations affected the media system of the country. The existing multi-party supervising bodies, elected by the former parliament have been dissolved and a whole range of new administrative bodies were set up to control not only the public media but to supervise the whole media landscape in the country, including the National News Agency that got (unconstitutionally) anew under strict state control. All the new bodies have been filled with own political delegates, on the top with the leaders nominated for 9 years, i.e. well beyond one legislative period. Many other controlling instances have been reorganized only in order to bring them under control of the government. The Electoral Committee composed of multi-party delegations and experts, elected by the former parliament for 5 years, was the first to be dissolved, heading towards the municipal elections, and the new body has been filled with only ruling party delegates. The government curbed the role of the Constitutional Court in order not to endanger its financial policies (notably the nationalization of the private Pension Funds), but also as a kind of punishment because they throw back some other legislation they have found as unconstitutional. The Court was also completed by five new members, among them ardent party politicians in order to ensure decisive majority in the judicial body.

The earlier system of tripartite interest mediation was dismissed and replaced by a new consultative body with arbitrarily invited partners. The Budgetary Council beside the President of the National Bank of Issue was dissolved, and the Monetary Council was completed with

new members politically loyal to the government. The juridical system has also been changed, and all serving judges over 62 years age have been retired (formerly they could serve until the age of 70). The public and higher education system also undergoes major changes, and not only because of financial reasons. The new law on public education foresees the takeover of the schools maintained earlier by the municipal government. In the higher education, the state reduced heavily the financed places especially in the social sciences, legal studies and humanities, and foresees a self-maintaining higher education system financed by the students with the parallel provision of a “student loan” system. A much debated new act on religious freedom determined that religious nominations have to apply for acknowledgment and that the legislative body has the right to decide which religious community may count as churches and which not. The new spirit of the government course is, however, best expressed by the new constitution which was introduced without real consultation with political partners and without broad public discussion, which is rather curious when the common normative ground of the political community everybody should respect, is considered. It had been enacted only with the votes of the ruling party-coalition.

It is impossible to deal with all the new policies initiated by the government, also because I lack the necessary expertise to judge the content of all important policy innovations. Among them is the hotly debated new “un-orthodox” economic policy of the government which brought about conflicts with the EU, the IMF and with the international financial or political ranking institutions.<sup>3</sup> In the following I deal only with those issues which have a detrimental effect on pluralism. These are the same questions which elicited an *infringement procedure* initiated by the EU Commission, respectively a review by the Venice Commission for Democracy by Law and the Council of Europe. I concentrate on the Media Laws, on complains about violating the principles of checks and balances, on the new constitution called “Basic Law”, and the change of the electoral system.

## **On the Media Laws**

The Hungarian Parliament adopted two Media Acts, one on the freedom of the press and the fundamental rules on media content, usually referred to as Media Constitution, and one on media services and on the mass media (Act CIV. of 9 November 2010, and Act CLXXXV. of 30 December 2010), respectively. Usually simply called “media laws”, they have elicited serious criticism not only from the opposition but from the press home and abroad, and from international organizations like the European Parliament and the European Commission, the OSCE Representative on Freedom of the Media and the Commissioner for Human rights of the Council of Europe. The Acts changed the whole regulatory system of the print and electronic media and reshuffled the structure of the public media, uniting different providers and submitting them to central control and supervision both in regard of financing, personnel, content providing, and news production.

Content requirements are included in the mentioned Media Constitution that lists vague categories like the obligation to deliver objective and balanced information, to respect human dignity and human rights (the latter was taken out in a later amendment), to protect the majority from minority offences as well as the reputation of the church.

All the new decision-making powers, property and income of the public service media services (including the State News Agency) have been aggregated in the Public Service Fund,

which is overseen and managed by the President of the Authority. The public media is allowed to use only the news of the Hungarian News Agency. Experience showed that news often became manipulated, and public service media outlets are politically lopsided.

The practice of appointment to the regulating bodies deserved also critical attention: all the existing bodies, composed by delegated members on a corporative basis and elected by the former parliament, have been dissolved and new bodies created with members delegated exclusively by the government party faction. The President of the new Media Authority, a close political ally of the prime minister, got appointed for nine years and may be re-elected any number of times. She is also Head of the Media Council, whose members were nominated exclusively by the government. It is noticeable that she can even serve much longer, if the next parliament will not be able to choose another person with a two-third majority.

In case of violation of the law the Authority may impose a fine of up to EUR 722,000 (HUF 200,000,000) for electronic media and up to EUR 90,000 (HUF 25,000,000) for printed and online media. After repeated and severe violation of the law, it may also erase an audiovisual media service provider from the register.

In order to verify the violations, the Authority may access any data, even secrets protected by law, may hear witnesses even about secrets they hold, and may use this information in any other procedure anytime later. The Media Commissioner has the same investigative rights, even in cases when no violation of the law is suspected, and report to the Authority. Investigative authority may oblige the journalist to reveal his or her sources, in the interest of “national security, public order, or the investigation or prevention of crimes”. If someone who gets involved in the procedure – even if loosely connected to the media outlet against whom the procedure started – shows a behaviour which may potentially hinder the process, he or she may be fined up to EUR 3,600 (HUF 1,000,000), or, if it is an organisation, up to EUR 90,000 (HUF 25,000,000). The Parliament commissioned the Media Authority also with certain legislative rights.

Although governmental influence on public media is not unknown in some other European countries, in older democracies the political culture and unquestioned the long established press freedom may inhibit gross power abuse which can turn the public against the ruling elite. In Hungary with its protracted “*Kulturkampf*” such self-restraint of manipulating the public media is not to be expected, especially in case of a two-third majority of the government in office.

The above listed international organs stated that the new acts on media violate the European Convention on Human Rights, the European Convention on Transfrontier Television and recommendations of the Council of Europe regarding the freedom of expression. All critiques stated that the existence of a free, pluralistic media sector is a cornerstone of democracy. The regulatory system of media has to guarantee independence from political influence and control. Under the present overwhelming majority of the government in the parliament and the one-sided practice of appointment into the Media Council, the Board of Trustees of the Public Service Foundation, the Public Service Board cannot ensure political independence.

In the meantime findings of surveys conducted by media sociologists attested indeed heavy bias especially in the practice of news coverage for the governing parties and a negligence of broadcasting alternative rival messages. But the public sector is not the only which is affected by the “chilling effect” of content control. Community media content providers are not less endangered if they do not pare. The most famous case is the struggle around the Club Radio, a broadcasting station giving voice to opposition views. Despite two court decisions in favor of its continuation the Media Authority is unwilling to prolong its registration, consequently to renew its license for a next contract period, and its allowance is lengthened provisionally every two

month, threatened by closure. Commercial linear radios and televisions are not less dependent on the Authority's decisions for their registration and licenses.

Due to these criticisms the media law has been since slightly modified by the government, e.g. certain content rules do not apply to the print media, but the infringement procedure and monitoring by the European Committee and the Council of Europe still goes on. A recent report<sup>4</sup> admitted that some important changes came to effect due to amendments but expressed still some concerns about the guarantees of press freedom. Maintained is the criticism about the appointment practice and the constrained right to appeal against the verdict of the media authorities in the courts, two issues in which the government is reluctant to yield the international pressure.

The whole debate on the new media regulation is important from the point of ensuring the conditions of free and fair elections as a prerequisite for democracy. In this respect it is also worth noticing that the switch to digital broadcasting, the deadline of which was foreseen for 2012, has been postponed by the government until the end of 2014, i.e. after the time of the next election. This fact is important in the light that in many households, especially in the countryside, presently only the public radio and television and the two (rather apolitical) commercial television broadcast can be received.

### Constitutional engineering in second edition

During the election campaign of the party Hungarian Civic Union – Fidesz in 2010 there was no mention of any intention to change either of the political system or the existing constitution. Experts of course knew that the leaders of the conservative camp were sternly committed to give the nation a new constitution which expresses their lofty ideas and their concern to uphold the heritage of the great and glorious Hungarian past. This has been declared in the introduction to the new “Basic Law” under the title “National Creed”. This is not simply a usual preamble referring to human rights but it rather gives a short conservative narrative of the history of the Hungarian Nation. The text contains a reference to the unwritten *historical constitution*, whatever that be, to the role of Christianity in maintaining the Hungarian nation, and declares respect for the Holy Crown which would embody the continuity of Hungarian constitutional statehood and express the unity of the nation. Furthermore the text holds that this continuity was broken from 1944 on and until 1990 Hungary was under occupation. This narrative had served two aims: first to cancel the Nazi and Communist period from the historical continuity of the nation (including the short semi-democratic period 1945–1948), second to deprive the existing Constitution of any legitimacy because of its alleged Stalinist origin. The fundamental modifications by the Roundtable Negotiations of 1989 remain unmentioned. It would not make any sense to contest this interpretation because it is not a scientific, i.e. debatable issue, but an expression of political will, written large into the Basic Law of the country. The Preamble “expresses the will of the nation“, and the “citizens of Hungary are ready to found the order of the country on the ground of national co-operation.”

As for the political system, some innovations were made, whereas the bulk of the text does not differ much from the previous constitution. The name of the country has been changed to Hungary, the word republic having been omitted. It is more important that many issues have been written into the “Basic Law”, which would not belong to it. The number of decisions requiring qualified majority, a major flaw of the former constitution, increased instead of being reduced. The Basic Law fixed e.g. the official currency in the constitution, which means that the introduction of the European currency – an obligation for all newly accepted member-states – will depend

on a two-third majority in any next legislative period. Even the newly introduced linear flat tax system of the government has been written into the Basic Law. As Prime Minister Orbán declared openly to the international press, he wants to bind the hands of any next government in the foreseeable future. Some new institutions that should contribute to a strong national identity through art and ideological commitment, such as the Hungarian Academy of Arts, serving as an alternative institution to the existing Széchenyi Academy of Arts, are written into the Basic Law.

It is impossible to analyze the whole new constitution here, but it clearly serves two basic purposes of the present government: on the one hand, to anchor ideological commitments of the ruling party in the “Basic Law”, which is expressed in the preambulum as mentioned above, and on the other hand to ensure the protection of all its newly created institutions against intended changes by any next government. Instead of going into details, I summarize shortly some criticism of the report of the Venice Committee for Democracy by Law. This international body of constitutional judges found the whole procedure of preparing and accepting the Constitution unsatisfactory because of a lack of broad consultation and because of hasty introduction with only the consent of the governing party faction. The procedure lacked transparency and ignored real dialogue with the opposition, and provided “insufficient opportunities for an adequate public debate, and a very tight time frame.” The Venice Commission has not missed to criticize also some important ideological thesis of the Basic Law. It objects even the broad concept of nation in the Creed: “Such a wide understanding of the Hungarian nation and of Hungary’s responsibilities may hamper interstate relations and create inter-ethnic tension.” The concept of the unitary Hungarian nation within and beyond the border suggests an extraterritorial claim for legal competence, while the national minorities are not regarded as part of the nation, only that of the state. The report also objects some important issues in regard to the appointment practice of the government in relation to the Attorney in Chief, and the President of the National Juridical Office. It criticizes the curbing of the rights of Constitutional Court, and the dismissing of the Judges over the age of 62 years. It criticizes the high number of “cardinal issues” that require two third majority in order to be altered. In this respect also the new electoral law is of great interest (see below). The report criticizes the lack of mentioning international obligations, and some specific articles about the protection of fetal life, about the possibility of dissolving municipal self-governments by the parliament etc.<sup>5</sup>

It should be noted that the Hungarian constitution required some change indeed, if only because it declared itself in 1990 as provisional to be modified later. Since then there was only one occasion when it could have been changed, during the socialist-liberal coalition government which attained also two third majorities in the 1994–1998 legislation period. The government then restrained from altering the constitution because they could not find consensus with the opposition. This time the Fidesz-government did not have such scruples; its parliamentary majority imposed the new constitution upon the minority, and also against the public mood. The prime minister told journalists that he cannot feel any respect toward the old constitution. It remains to be seen, under such circumstances, how much respect the new constitution will elicit from the citizens of the country, not to speak of the opposition parties in the future.

### **Changes in the Electoral System**

The Hungarian Parliament passed a new electoral law at the end of 2011 (Act CCIII. of 2011), which modified the former electoral system, a mixture of proportional and majoritarian system,

in many points. One major innovation is that the number of the deputies became severely reduced from 386 to almost a half, to 199 members. 106 mandates will come from single member constituencies, where a plural vote (relative majority) decides over the mandate as opposed to the former system which required absolute majority. 93 mandates will come from a national list of party candidates. There remained one electoral round, whereas formerly there have been two rounds, which provided a chance for parties to coalesce in the second round. For the coming elections this means that parties challenging the present ruling party coalition have to decide before the elections whether they run on a common list or not. Without an electoral alliance parties of opposition will be doomed to failure at the next election, a fact they slowly recognized since. A smaller parliament with an overwhelming majoritarian character reduces the electoral chances of smaller parties. While the former electoral system also favored the winner (in order to get stable majority for government formation), the new system exacerbates this by assigning the unused votes of the winner in the individual districts (i.e. the difference of votes between the winner and the second challenger) to the national party list and thereby helps the winner to an overwhelming majority of mandates, a rather unique solution for getting premium mandates for the winner.

For national minorities in Hungary a special list of candidates can be set up. Voters opting for this, however, are not allowed to vote for the national party lists. More important is the newly introduced voting rights of members of ethnic Hungarians in neighboring countries, who took on double citizenship. Slovakia ruled out this possibility by law for their citizens, but Romania allowed this because its interest of double citizenship for their Romanian brethren living in Moldavia. Although Hungarians living beyond the border who gained Hungarian citizenship can vote only for the party list, it stands open how many of them will want to take part in the Hungarian elections at all. In a survey conducted in March 2011, 53% of ethnic Hungarians with double citizenship in Transylvania are opting for Fidesz.<sup>6</sup> The political landscape may change, however, until the next elections.

A next feature of the new electoral law is an outright gerrymandering of the electoral districts in favor of the governing coalition. It is a positive change that the numbers of individual districts have been reduced from 176 to 106, and by this they reflect a more proportional distribution of the voters. But in at least 25 cases the borderlines were changed to disrupt districts with usually strong socialist voting preferences. The new electoral law also reduced the number of the necessary supporting signatures that party candidates have to gather. Two further changes are problematic, both implying lower electoral participation. First, any participation threshold for a valid mandate was cancelled. Second, the government insisted on introducing a preliminary voter's registration system. While this could be reasonably argued for in the case of voters living beyond the borders, it was unnecessary for domestic voters. In spite of sharp protest of the whole opposition it was nevertheless pushed through the legislation and was elevated even into the transitional regulations of the Basic Law. The Constitutional Court, however, annihilated this part of the Act on Electoral Procedures with the argument that it curbs a basic right of citizens.

Other regulations foresee the exclusion of double posts for being municipal mayor and parliamentarian at the same time. (In the present parliament quite a few mayors possess parliamentary mandates.) This seems to be a reasonable change when the number of members of parliament is cut in half. As for the supervision of the fairness of the election, however, the new Electoral Committee, consisting only of members delegated by the government, has also the right to decide over the scope of activities of the visiting foreign monitoring experts.

As stated earlier, the next elections will be a critical test for the new order in proving its real democratic character. Free and fair elections are a basic precondition for democracy, and this elevates the importance of the new electoral system. This is the reason that international organizations find it necessary to monitor the whole legislation process in this respect.

### **Democracy requires pluralism, pluralism needs democracy**

Pluralism is a much broader concept than being merely political. It is a multidimensional concept which includes religious, spiritual and cultural diversity, the right to follow different life-styles, represent social values, to protect social interests of groups and maintain cultural identities. Political pluralism is, nevertheless, much needed to safeguard all the other aspects of pluralism. Clinging on a unitary concept of national community, however, is not an ideal ground for maintaining pluralist commitments and to foster that “bicameral orientation to political life” (Connolly 2005, 4) which furthers tolerance (as the most important value of pluralism) and peaceful settlement of unavoidable social conflicts. A narrow concept of national sovereignty (especially if it has ethnocentric biases or as in the case of the radical right, even racial connotations) denies pluralism and does not fit to the needs of people in a modern, complex, globalizing world. The political nation needed to be conceived rather as a “majority assemblage” (Connolly 2005, 9) in which alternative visions for the common good are provided and stand for electoral choice.

The German political scientist Wolfgang Merkel and his colleagues (Merkel et al. 2003, 68) summarized some basic types of weaknesses of new and unconsolidated democratic systems in the critical notion of “defective democracies”. Two categories are of interest here if we ponder on the character of the present political changes in new democracies. The one is the type of “delegated democracy”, the other the “illiberal democracy”. In the former, the separation of powers comes short, and the control over the highest authorities is weak or missing. Presidential systems are prone to slip into this, recalling the concept of “plebiscitary leader-democracy” coined by Max Weber. The parliament has here a mere sham-existence, the judiciary stands under constant political pressure, and the leader leans on direct popular mandate. Today the term “Putinization” refers to such a development. Charles Gati cites the words of Vaclav Havel in this respect: “Everything seems to follow the rules of democracy. There are parliaments, there are elections, and there are political parties. But there are also highly worrisome and unnaturally close ties between elected officials, the judiciary, the police, and the secret services.”

As for the other type, illiberal democracies appear in countries where traditions of the rule of law are weak. Here the governments have been elected by majority votes, but there are no guarantees for the citizen’s equal rights and liberties. Independence of jurisdiction does not prevail; principles of rule of law are often violated. The realm of politics and administration is often corrupt. A strong patronage and clientele system is in work, a *cleptocracy* finds its way into the state power, curbing also the development and functioning of the free market. A kind of *partocracy* is in the making, distorting political competition and constraining the emergence of new alternatives. The political culture shows strong populist characteristics, and political lethargy and exaltation alternate (see Bayer 2010, 20).

Such complaints about possible defects we can find more or less realized in most young democracies. Some of these problems are inherited from an authoritarian past, including both the pre-war and the post-war period of our national history. But path-dependency is not the only reason for such authoritarian inclinations. Many new problems derive from the parallel introduc-

tion of capitalist market economy and political democracy and from their uneasy relation for the next future, under economic strains of crisis and deep-going social differentiation. In the 1990ies the social and economic problems seemed to be transitional and there was hope that after going through the “valley of tears” (Dahrendorf) we shall arrive at safe harbors. But after 2000, despite the EU-accession in 2004, too many people lost hope that they can overcome their bad fate being losers of the system change. The social differentiation grew enormously in the last two decades, and impoverishment is growing. The rate of impoverishment according to the relative poverty rating (i.e. 60% of the mean income level) used by Eurostat seems not comparatively high (12 % of the whole population), but regarding the much lower general income level in Hungary the threshold of poverty is also lower. Using the minimum subsistence model based on a consumption basket necessary for livelihood, it is not surprising that almost 4 million people belong to the poor (KSH 2011). Unemployment statistics can be polished up only by government programs for miserably paid “public work” which should help about two hundred thousand people. The Hungarian economy suffers from a deep recession since 2008 and now also from a kind of investment strike due to unorthodox economic policies of the government. Hungary is at present plagued by lasting economic stagnation. The social-psychological climate in the country reminds one to the situation described by Erich Fromm in his famous book *Escape from freedom* (Fromm 1994 [1941]). Large parts of the population live in uncertainty and existential “Angst”, looking for a strong state and a helping hand of a strong leader, a fact that explains partly the landslide electoral victory of the present political rulers. In spite of the regrettable social situation, a remake of authoritarianism would not help overcoming social and economic problems, and cannot strengthen the nation as a community of solidarity (“*Solidaritätsgemeinschaft*”); just the opposite, it would seriously deteriorate its case. While “authoritarian temptations” might be strong in our country, its triumph would not provide any solution. Pluralism remains therefore much needed for a cooperative mindset and for looking common solutions to our situation, and is by far not an outdated concept, neither in theory, nor in praxis. With the growing diversity and disparity of our world it becomes even more important (see Eisfeld 2006, 2012). Which path the Hungarian democracy will go in the next future, remains to be seen. Lasting engagement for democratic pluralism remains at any rate of great importance if we want to avoid an authoritarian backslide.

#### NOTES

- 1 Orbán’s speech in the village of Kötöcsé in 2009, taken from the website <http://hvg.hu/nagyitas>; translated by the author.
- 2 In a speech held for diplomatic delegations in Budapest, 2010, in excuse when confronted with some disturbing utterances of him, Budapest, 2010.
- 3 For a short overview see: Hungary policy blunder spook rating agencies, on the homepage <http://www.euromoney.com/article3142163/category/6/ChannelPage/8959> (accessed: 1.3.2013).
- 4 ‘Commission Vice-president Kroes welcomes amendments to Hungarian Media Law’, <http://europa.eu/rapid/press-ReleasesAction.do?reference=MEMO/11/89>, 16 February 2011 (accessed: 1.3.2013).
- 5 The whole report is accessible on the homepage <http://www.coe.int/20120321-hongrie>. See also [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)016-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)016-e) (accessed: 1.3.2013).
- 6 This was one reason why Fidesz joined a referendum in 2005 for providing Hungarian citizenship for ethnic Hungarians living beyond the border. But this was also the main reason why the socialist-liberal coalition did not support it. The referendum was unsuccessful, but allowed the opposition to push liberals and socialists into the corner of being un-national forces. One of the first acts of the present government was to remedy this grievance by an act on providing double citizenship.

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