

# AN INDICTMENT OF THE HUNGARIAN GOVERNMENT'S ANTI-DEMOCRATIC CONDUCT

Issued and copyrighted

by

The Canadian-Hungarian Democratic Charter

October 23, 2011

## Introduction

Twenty-one years after the collapse of Communism, democracy is once again in peril in many of the countries that once belonged to the Soviet Empire. A warning to this effect was issued by Vaclav Havel, one of the most admired and respected anti-communist warriors of Eastern Europe, and the first President of the post-Communist, democratic Czech Republic. In a 2009 interview with the editors of the German daily, *Die Zeit*, Havel claimed that a new type of autocracy is emerging in Central and Eastern Europe. *"I am referring to governments that utilize very refined techniques of control,"* said the Czech President. *"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 an example Havel cited Russia, a nation where journalists critical of the government are frequently murdered under mysterious and unresolved circumstances. Not surprisingly, journalists in that country are intimidated and are increasingly reluctant to raise their voices against governmental wrongdoings.

At the beginning of 2011, Havel, along with former Polish Solidarity leader Adam Michnik and hundreds of others who fought against one-party communist dictatorships

in the region, sent a passionate appeal to the leaders of the European Union. (see: [www.iprotest.hu](http://www.iprotest.hu)): *We, the undersigned, are members and supporters of the democratic movements that fought against the communist regimes in Central and Eastern Europe, fought for our nations to join the community of European democracies....This time the destruction of democracy's guarantees is unfolding right before the eyes of the European Union, the very alliance founded to ensure that respect for our common values remain indivisible....Today, the goal of a Europe united in liberty is in grave danger. What the European Union meant to prevent and what many thought to be impossible, has now materialized: a full-fledged illiberal democracy inside its own borders – in Hungary, an EU member state since 2004. In just 20 years after communism collapsed, Hungary's government, though elected democratically, is misusing its legislative majority to methodically dismantle democracy's checks and balances, to remove constitutional constraints, and to subordinate to the will of the ruling party all branches of power, independent institutions and the media... We call on European parliamentarians and commissioners, on Europe's governments and parties to build clear standards of compliance with the values of democracy... Censorship anywhere in Europe is censorship everywhere else; the removal of constitutional constraints holds all our nations hostage; the denial of basic rights in one country humiliates all Europeans. Any member nation's shaken trust in Europe's capacity to stand up for democracy will lead to further charges of "democracy deficit" at the European level, and will end up in a global mistrust for Europe's democratic vocation...The European institutions should be able to name and shame the transgressors, so that our nations may continue to look to the Union for guidance in their daily struggle to keep freedoms alive."*

***The Canadian - Hungarian Democratic Charter*** has been launched on the 55<sup>th</sup> anniversary of Hungary's heroic rebellion against the the old, Soviet led communist dictatorship, and is in direct response to the appeals of democracy's friends inside and outside of the borders of Hungary. It is an affiliate of the Democratic Charter of Hungary. We, like our Hungarian associates, are a non-partisan civil rights advocacy group, not affiliated with any political party. Our purpose is to give encouragement and support to the defenders of universal democratic principles in Hungary and around the world, and to help in the fight against the spread of autocratic governance in Central and Eastern Europe. The following indictment is intentionally designed to "name and shame" – not the people of Hungary, not the Hungarian nation, but the current government of Hungary. It provides up-to-date, factual evidence of the premeditated betrayal of universal democratic principles by the government of Viktor Orbán, and in a country that is a member of both the European Union and of the North Atlantic Treaty Organization. We invite our readers to not only sign our declaration, but to comment on it, to share any new evidence they may have with us, or to bring to our attention any errors that may be present in this document, in order to enable us to make the appropriate corrections where needed. It is in our collective interest to maintain the factual, verifiable basis of this indictment in order to maintain credibility. This is a fundamental prerequisite for bringing about change.

## Background

John Adams, one of the Founding Fathers of the American democratic system and the second President of the United States, wrote: "*Democracy never lasts long. It soon wastes, exhausts and murders itself. There was never a democracy that did not commit suicide*" (John Adams' letter to John Taylor, April 15, 1814). Our indictment documents the government-led suicide of Hungary's fragile, 21-year old democracy.

Alexis de Tocqueville, in his well known study of *Democracy in America* (1835-1840), also warned that an elected democracy can easily degenerate into a dictatorship of the majority. Our indictment documents the degeneration of Hungary's democracy into a majority dictatorship under the leadership of Viktor Orbán's government. While there may be strength in numbers, justice or virtue is not necessarily a function of size. There are numerous historical examples of countries in which the momentary majority was not driven by universally accepted democratic principles. According to recent opinion polls, the third most popular politician in Russia today is none other than Joseph Stalin, a man who is responsible for the death of at least 40 million innocent people and for the establishment of a brutal empire that enslaved hundreds of millions of people in Eastern Europe. A significant majority of the German people from 1933-1943 enthusiastically supported the government of Adolf Hitler, even while their leader was busy putting an end to free speech and exterminating millions due to their racial origin. While the Soviet and Nazi dictators enjoyed significant popularity, no one can seriously claim, that theirs was a democratic society. Neither popularity, nor the mere profession of anti-communist sentiments can be taken as *prima facie* evidence of democratic conduct, especially not in a region where democratic traditions are very shallow and anti-communism had often marched to a fascist drum. The proof of the pudding is in the eating. The proof of any government's democratic qualifications are to be found in its conduct. Our indictment documents the failure of the Orbán government, popular though it may be at this time, to live up to universal principles of democratic governance.

In Hungary, 68% of the seats in Parliament are in the hands of one political party that is not ashamed to transgress universally accepted democratic principles in order to enhance its political power. The problem for democrats in Hungary is compounded by the fact, that another 12% of the seats in Parliament is in the hands of JOBBIK, an opposition party that openly endorses racist and discriminatory views. The leader of this party, Gábor Vona, founded a quasi-militia - the Hungarian Guard - which, in its rhetoric and the uniform its adherents wear, evokes Hungary's infamous Arrow Cross, pro-Nazi past. Prominent members of this democratically elected parliamentary party are frequently critical of Hungary's minorities - especially Roma, Jews and homosexuals. One of the most frequent speakers at JOBBIK rallies prior to the last national election, Imre Posta, went so far as to declare, that "*today, antisemitism is not only an opportunity but a duty for all Hungarians*" (www.kuruc.info 2009, January 31).

This document will show that the foundations of democracy have been greatly compromised in Hungary. Our indictment will demonstrate that this was not the result of an accident but of deliberate, wilful intent to harm. Before we marshal the evidence we would like to call as witnesses two of Hungary's most respected and internationally-known economists. The first, János Kornai, was a professor at Harvard University; the other, Peter Róna is a professor at Oxford:

- *The ultimate test of democracy is the procedure followed when removing a person, group or party in power.... In the period between 1989–1990 and the summer of 2010, Hungary was a democracy. It is no longer one now – the political formation today is an autocracy... A posteriori it can be stated that the Hungarian political structure passed the removability test between 1990 and the spring 2010 elections, for Hungarian voters removed several previous governments and elected new ones in clean elections.... What can be said today is that Viktor Orbán declared even before the elections that the political situations had to be organized in a way that would ensure them power for at least 15–20 years. Since taking power, they have made irreversible steps toward realizing that plan. They have destroyed or severely weakened the institutions to ensure the principle of removability... An independent and free press is usually given prominence among the political checks and balances. The press is often called the fourth branch of power in democracies, additional to the legislative, executive and judiciary. It is indispensable in ensuring that the government should not feel secure in possessing unlimited and uncontrollable power... Hungary's new media regulations, i.e. the institutional reorganization of the media authority and the passage of the Media Act, produce a level of centralization in the world of public media and political communication comparable only to the propaganda machine of a communist dictatorships. (János Kornai, Taking Stock, , Népszabadság, January 6, 2011.*

- *Adam Smith argued that the optimal allocation of resources can only come about through discourse and debate between citizens who are free, independent of the state, and committed to their societies' well being....It is not the market, not capital, not self interest, but discourse and debate that drives the system, and leads to the creation of the aforementioned mechanisms. Self interest can only give rise to free markets and capital, if it is equally possible for all to pursue it .... Politics in Hungary today, is not about discourse between free and equal citizens - the goal of politics is not the establishment of equality, in the legal or economic sense of the term – but, as so often in the past, the establishment of preferential treatment for select groups under new slogans and symbols (Peter Róna, In Dependency, Népszabadság, November 20, 2010.)*

Our indictment consists of 10 chapters. The first one documents the Orban government's harmful intent. The last nine provides factual evidence of the execution of this intent: namely, the establishment of an autocratic form of governance by the dictatorship of the majority in Hungary's parliament.

## 1. The evidence of harmful intent: a premeditated assault on democratic norms

The dismantling of Hungary's deliberative democracy did not take place accidentally or in an improvised manner. It was the result of a premeditated strategy. Our evidence of intentional harm is drawn not from hearsay, or secondary sources but from the public declarations of Mr Orbán and some of his closest associates. The quotations from Mr. Orbán demonstrate a mind-set that does not tolerate dissent or divergence from his view of the world. Orbán portrays the democratic opposition, indeed, any opposition to his party, as foreign to the Hungarian body politic, a barrier to the realisation of the Hungarian national interest. He and his followers the world over, follow the same script: Those who disagree with the current government's policies must be debased, dismissed, denigrated and ridiculed, treated as traitors and enemies of Hungary. This is the approach of all autocrats.

- i. Mr. Orbán's hostility to political discourse and debate, and his restrictive view of political competition goes back to the time just prior to his first prime ministership, in 1998, when he began to refer to his principal political rivals as "*foreign like.*"
- ii. This derogatory approach toward political opponents was given even stronger expression after he lost the 2002 national elections. Though he became the leader of the official opposition in Hungary's Parliament, Mr. Orbán rarely entered the building after his defeat. He seldom participated in the debates of the legislature. Why? His reasoning was simple and was made public before tens of thousands of his followers: "*the nation can not be in opposition.*" This declaration, never rescinded, stands as a stark reminder of what Mr. Orbán thinks of his political competitors.
- iii. Prior to the 2006 elections (which he also lost), Mr. Orbán claimed that "*throughout our history, and perhaps for genetic reasons, the Left has always ransacked our nation.*" Without wanting to diminish some of the genuine atrocities committed by the political Left during Hungary's often troubled history, it should not be forgotten that the political Right has also done its fair share of plundering. Between the two World Wars and under the Regency of Admiral Horthy--the man who is now one of the heroes of the political Right in Hungary--the secret ballot was abolished in the Hungarian countryside, the franchise was restricted to just under 30 percent of the population, and the changeability of governments was taken out of the hands of ordinary Hungarians. It was under Horthy's rule that Europe's first anti-Jewish laws were introduced in 1920, and tightened throughout the 1930s. It was under Horthy's

Regency, under the supervision of the Hungarian police and state bureaucracy, that 430,000 of Hungary's rural Jewish population was, in the space of 7 weeks, rounded up with the utmost of brutality, stripped of all their belongings, and shipped off under horrendous conditions to Auschwitz and other camps, to be exterminated. Mr. Orbán's portrayal of history is not only untrue, but highly irresponsible and opens the door to the kind of intolerance that Europe and parliamentary democracies have long ago abandoned.

- iv. The verbal assault on the legitimacy of the political competition continued unabated. On February 28, 2008 Orbán declared on his website, that Hungary, under the democratically elected government of Ferenc Gyurcsány is not a democracy. He repeated this charge on prime time national TV the following day. His closest Party associates, such as Mr Kubatov, began to accuse the Prime Minister of being mentally ill (*see Demokrata*, November 19, 2008), and Orbán's second in command, László Kövér declared that "*The government of Ferenc Gyurcsány is the equivalent of a national HIV infection*" (*Magyar Hirlap*, February 23, 2009)
- v. On March 15, 2009, on the occasion of the national commemoration of Hungary's 1848 rebellion against the Habsburgs, Orbán made a speech, in which he compared his political competitors, and Hungary's democratically elected government to the old Habsburg empire's local lackeys, positioning himself as the liberator of the country, and everyone else as foreign oppressors.
- vi. Orbán's denigration of his political opponents as somehow foreign and anti-Hungarian continued unabated after his electoral victory in May 2010. He congratulated his fellow politician, the new Mayor of Budapest, with the following words: "*finally, Budapest has rejoined Hungary*"--as if the previous and democratically-elected liberal mayor of Hungary had hijacked the country's largest city from its people during the previous two decades.
- vii. The rhetorical exclusion from the Hungarian body politic of all his competitors is also explicit in the words uttered to his followers in front of the Hungarian Parliament and broadcast on national television on October 23, 2010. In remembrance of the failed 1956 popular uprising against the Soviet imposed communist dictatorship, Mr. Orbán used the following words to describe his political adversaries "*We Hungarians are here, on this square. They, on the other hand, will end up where they belong soon.*"
- viii. In the spring of 2011 at a Brussels press conference, Mr. Orbán jokingly painted the following picture of the brand of political football being played in Hungary under his leadership: "*The opposition didn't come out onto the field to play, but the*

*audience has stayed on to watch the game"* A funny joke, but a sad commentary on the nature of political football in one of the EU member states.

- ix. As we have shown, the relationship between the State and citizens in Hungary today, is governed by a newly reconstituted "*harmony ideology*," which Orbán's party hastily pushed through parliament after last year's election victory. This decree – The National Harmony Declaration – must be posted in all publicly owned buildings in the country. Its purpose is to inspire unquestioning obedience and subservience to governmental authority. This newly codified ideology is highly evocative of harmony ideologies the world over, all of which are driven by an anti-democratic and repressive intent. Communist China, with whom Orban is building a very close relationship, is an excellent contemporary example of a country, where the government uses harmony ideology as an instrument o control its citizens. We refer once again, to Laura Nader, who studied harmony ideologies the world over::  
*"harmony ideology is a concerted assault on democracy... that always lends itself to covert censorship and self censorship... the tyranny of harmony, when pushed to the extreme, leads to a life of fantasy, that shuts out reality."* (Quoted in Chris Hedges, *Empire of Illusion*, Alfred A. Knopf, 2009. p. 129)
- x. But the most telling evidence of Mr. Orbán's *intent* to restrict political competition and debate is from a speech to party supporters at a closed door meeting in September 2009, eight months prior to his election to office. The text of the speech was reluctantly published many months later in a weekly paper financed by Orbán's followers in order to pre-empt a potentially embarrassing "leak" of the text during the home stretch of the last national election campaign. This quotation is from this officially sanctioned publication: *"In the past, politics in this country was a divisive game, with political opponents engaged in wasteful and petty debates, resulting in harmful societal consequences. With the ascendance of the Right and our newfound strength, we can change all this... My aim is to establish a strong, centralised government authority that will put an end to the petty debates, that characterised Hungary's dualist political playing field... I want to set up a powerful, centrally controlled government that will stay in office for 15-20 years... one that will formulate answers to the great national issues of the day, not as a consequence of discussion and debate, but by virtue of its own conviction and character... I want to establish a system of rule that will reduce the chances of the re-emergence of dualism to a minimum... we must prepare for permanent governance and we must ensure, that from now on, all the decisions of importance in this country will come from a strong and centralised command post".* („Flashpoint" Nagyítás. February 17, 2010.).

The above direct quotations from Hungary's prime minister and his closest colleagues show a wilful and premeditated strategy for putting an end to political competition and debate in an EU member state. The Hungarian prime minister's words clearly and unequivocally demonstrate that he does not believe in the virtues of deliberative

democracy, but only in the virtue of his own convictions and monopolistic political control. He considers his political competitors as foreign-like, and sees only himself and his political party as the legitimate representatives of Hungary's national interest. Such are the views of all autocrats. Mr. Orbán's public statements express unequivocal intent to introduce policy measures that will reduce competitiveness in the political arena--measures that will restrict and hamper the ability of his opposition to pursue the public interest according to universally-accepted democratic principles. The next sections of this indictment outline the steps that his government has undertaken to act on this harmful intent.

## 2. Assault on the rule of law

- i. In the Spring of 2011, and intentionally timed to coincide with Easter, the Orbán government pushed through a new constitution in the Hungarian Parliament, where it enjoys a two-thirds majority. The new constitution was not the result of consultation and debate with the opposition in the House. With the exception of the ultra-nationalist, neo-fascist JOBBIK, all of the democratically elected opposition parties in Hungary's parliament boycotted the constitutional process. As the EU's Venice Commission has noted, there was no meaningful consultation with the people of Hungary either. The government refused all calls to put the text to the test via a plebiscite. Hungary's new constitution is not the product of a broad consensus but reflects the self-righteous conviction of Mr. Orbán and his closest advisors. (According to insiders, the document was crafted on an iPad by one of Mr. Orbán's closest lieutenants, EU parliamentary deputy József Szájer, as he commuted back and forth between Budapest and Brussels).
- ii. The Orbán government's one-sided constitution-making has been sharply criticised by the Venice Commission, which is an advisory body of the Council of Europe and is composed of independent experts in the field of constitutional law. (The Commission was created in 1990 after the fall of the Berlin Wall, at a time of urgent need for constitutional assistance in Central and Eastern Europe.) We quote from its official declaration, published on June 6, 2011: *"It is regrettable that the constitution-making process, including the drafting and the final adoption of the new Constitution, has been affected by lack of transparency, shortcomings in the dialogue between the majority and the opposition, the insufficient opportunities for an adequate public debate, and a very tight timeframe... The significant number of matters relegated, for detailed regulation to cardinal laws... raises concerns. Cultural, religious, moral, socio-economic and financial policies should not be cemented in a cardinal law... The limitation of powers of the Constitutional Court on taxation and budgetary matters and the prominent role given to the Budget Council in the adoption of the State budget, represent further sensitive issues that have raised concern in the light of their potential impact on the functioning of democracy... With regard to the constitutional protection of fundamental rights, the Commission considers that more precise indications should be provided by the Constitution as to their content and stronger guarantees for their*



*effective protection and enjoyment by individuals, in line with international human rights.*" The Hungarian government rejected all of these criticisms of the Venice Commission.

- iii. *The Canadian-Hungarian Democratic Charter*, and all supporters of democracy welcome the concerns expressed by the Venice Commission with respect to Hungary's new Constitution. However, we feel that much more needs to be done by European authorities to preserve democracy within one of its member states. The new Hungarian constitution is, in fact, a severe blemish on the democratic face of Europe. As we shall demonstrate, it is an instrument expressly designed to hinder the democratic removability of the current government from office. It restricts free competition in the political arena. If by some miracle the opposition can overcome the constitutionally imposed obstacles in its path and wins an election, the new law is formulated in such a way as to enable Orbán's supporters to engineer a constitutional coup, and render impotent the new government the people have voted into office. No wonder that the democratic opposition in parliament refused to participate in this travesty of constitutional rule-making by the majority.
- iv. The new Hungarian Constitution changes the rules for the appointment of individuals to heads of independent state organisations, many of which are expressly mandated to serve as governmental watchdogs. From now on, the heads of these public watchdog agencies are appointed for 9-12 years, and all of the appointees come from either Orbán's party or from the ranks of his friends or cronies. By loading the dice this way, the Orbán government has terminated the independence of these institutions, eliminated transparency, provided itself with a convenient cover against any potential threat to its power. Making his friends irremovable, Orbán has also ensured that in the event of a change in government the new administration would be virtually paralysed.
- v. The best illustration of the above is the new Budgetary Council. This new constitutionally mandated body has been given veto power over the budget of any subsequent and popularly elected government. All of the members of this Council are unilaterally appointed by the Orbán government from the ranks of its fellow travellers, and again for more than two election terms. The country's president, who is also appointed by Orbán's party from its own ranks, can dismiss parliament anytime the Budgetary Council vetoes the budget of a newly-elected government. By virtue of the powers vested in it and its composition, the constitutionally entrenched Budgetary Council, for all intents and purposes, becomes a parallel government in the event Hungarians vote for a new government. This is but one of the many land-mines on the road to democracy that the Orbán government's "Easter Constitution" has planted for those who do not share the current government's convictions.

- vi. The passing of retroactive legislation has long been recognised as contrary to "the rule of law". Ever since it came to office, the government of Viktor Orbán has regularly engaged in passing such legislation, thanks to its unassailable two-thirds majority in the Hungarian Parliament, its extraordinary manner of dealing with dissenters, and its shackling of the media. A good illustration of this retroactive legislative conduct is the law which retroactively taxes the legally granted severance pay of state employees, going back five years. The Constitutional Court declared the new legislation unconstitutional, just as it should. Orbán's majority in Parliament, immediately changed the constitution, removing the right of the Court to rule in such matters, and re-passed the law exactly as before – but not before exempting its own political lieutenants from the retroactive tax-bite.
- vii. As we have shown above, when the Constitutional Court raised its voice against the government's unconstitutional conduct, the government changed the constitution, expanded the size of the court by five members and appointed five of its friends to the top court to ensure that the Constitutional Court will no longer object to its conduct. In Hungary today, only the friends and close associates of Mr. Orbán and his party can be appointed to the highest court. And some of the appointees are not even in possession of the minimum requirements for the job. The most blatant such case is that of Istvan Stumpf, appointed to the court by the government majority in parliament, shortly after Orbán became prime minister. Mr. Stumpf has never sat on the bench before his appointment to the highest court in the land. There is no record of his scholarship as a theoretician of constitutional law. He is a former Communist Youth Organisation leader, who befriended Mr. Orbán, was the top minister in Orbán's first government, and to this day, is a close personal friend of the prime minister. Another example is the appointment of one of Orbán's parliamentary deputies to the bench – Istvan Balsai. Mr. Balsai is the man, who until his Constitutional Court appointment, was the key architect of the criminal case being crafted within Orbán's Party against the former Prime Minister, Mr. Gyurcsány. This appointments of political cronies to the highest court of the land demonstrate one thing only: the transgression of the rule of law, and the reduction of the Constitutional Court's capacity to limit abuses of power by the current government.
- viii. Under Hungary's old constitution, anyone could petition the Constitutional Court. This right has been greatly restricted by the Orbán government's new, onesided revision. From now on, and for the most part, only people affiliated and appointed by Orbán's Party can initiate Constitutional Court interpretations, namely: the President (who is an Orbán appointment), the ombudsman (he is an Orbán appointee) or members of Orbán's government. There is one other, a

fourth recours – a 25% block of members of Parliament can also petition the Court. The chances of this happening in the foreseeable future are very remote, since a 25% coalition in the House would require that the neo-fascist members of parliament join forces with the democratic opposition: a highly unlikely proposition. Besides, the Court's politicised membership will quite likely not take a critical stance against Orbán, even if by some miracle, such an unlikely coalition would come into being.

- ix. According to Dr Gabor Halmai, one of Hungary's internationally most respected constitutional experts, the Orbán government's new constitution, and many of its legislative decisions and senior appointments are designed with one aim in mind – the uncontrolled use of state power. According to Dr. Halmai, the country's previous constitution, created in 1989 *"was the result of consensus and compromise between Hungary's democratic political forces. The 1989 constitution explicitly forbids the unilateral, coercive use of state power (Section 2 ¶3). The old constitution, which had served us well for the past 21 years, explicitly states that we should, indeed we must, use the instrumentalities of the law to forestall such attempts.... With the appointments of Istvan Stumpf and Mihály Bihari to the Constitutional Court and the adoption of a new media law, the parliamentary majority has put an end to the Third Republic and with it, the rule of law in Hungary"* (See: Gabor Halmai, „Farewell to the Rule of Law, *Élet és Irodalom*, "July 23, 2010.)
- x. Another Hungarian conservative analyst, well known for his balanced and at times somewhat pro-government views, wrote the following assessment after the Orbán government overruled the Constitutional Court and unilaterally appointed its own fellow travellers to the highest court: *"These steps are not only unprincipled (since they trample on everything that the party of Mr. Orbán stood for prior to taking power), but they also transcend all the boundaries that all responsible political actors in Hungary strove to respect during the past two decades. The attack on the country's Constitutional Court by the government of the day is unprecedented"* (See: Gábor Török's internet blog, 2010. October 26).

### **3. The elimination of checks and balances and of the separation of powers**

On August 26, 1789, the French National Constituent Assembly adopted its *Declaration of the Rights of Man and the Citizen*, which received a final and more rounded formulation in 1793 under the same title. The Declaration, which had a profound influence on America's Bill of Rights and all subsequent declarations (including Canada's and the United Nation's Universal Declaration of Human Rights) establishes

in paragraph 16 that the separation of powers--the implementation of a system of checks and balances on governmental power--is a prerequisite for the rule of law and for the protection of human rights. By its legislative acts, senior appointments and constitutional changes, the Orbán government has firmly broken with the above principle. Step by step, during its first year in office the Hungarian government has eliminated most of the checks and balances that the fathers of Hungary's post-communist democracy put in place to implement the rule of law and to protect citizens against potential abuses of power by the state. It is a shame that neither France nor the European Union has spoken up against the flagrant disregard of universal values by one of the EU's member states. This is the Orbán government's record:

- i. Shortly after coming into power, the Orbán government, through its majority in Parliament, appointed Pál Schmitt, one of Mr. Orbán's most loyal party lieutenants, to the presidency of Hungary. (In Hungary, the president is elected by Parliament by a simple majority). Mr. Schmitt was a loyal and favoured servant of the previous communist regime. He orchestrated Hungary's Communist Party-led boycott of the Los Angeles Olympic games. Then he joined Orbán's Party, which opened the door to the Presidency. In his new position as President, Mr. Schmitt broke with a 21-year tradition and declared that rather than acting as an impartial arbiter and guardian against governmental excess, he intends to be a loyal servant of the government. The appointment of a loyal party servant to the presidency eliminates an important check on governmental power.
- ii. The appointment of a political ally to the presidency also accelerated the demise of Hungary's Constitutional Court. In cases where there was deep political divisiveness or constitutional uncertainty, Hungary's president could intervene by asking the opinion of the Constitutional Court. All previous Hungarian presidents lived with this constitutional right and utilised this important mechanism in the overall system of political checks and balances. Mr. Schmitt is the first president of the democratic republic to turn his back on this principle by enthusiastically signing whatever his fellow party members put before him.
- iii. As we have indicated above, and in direct contrast with the practices of the past 21 years of democratic governance in Hungary, once the Orbán government was elected to office, it fired the heads of all public agencies, many of which are specifically mandated to oversee and guard against abuses of political power. At the bottom of this paragraph, we list those institutions which together make up an elaborate network of checks-and balances on governmental power in Hungary. All of these agencies have been brought under the control of the ruling party and government. Today, all of these organisations are lead and staffed by a person or persons who are either members of Mr. Orbán's government party or are close associates of the prime minister. So much for checks and balances.

- The national police (including numerous municipal police forces)
- The Prosecutor General's Office
- The committee that appoints Superior Court Judges
- The committee that appoints Constitutional Court Judges
- The National Election Committee
- The Auditor General's Office (Mr. Orbán appointed László Domokos, one of his parliamentary deputies, to head the regulatory body overseeing governmental expenditures)
- The national Office of Economic Competition (Miklós Juhász, the new head of this important agency, played a prominent role in many of the companies that cultivated close personal relationships with Orbán's political party - indeed, Mr. Juhász himself was the target of an earlier ruling by the Office of Economic Competition.)
- The Hungarian Financial Supervisory Authority
- The National Budget Council
- The Equal Opportunity Authority
- The Independent Police Complaint Authority
- The Hungarian Media Authority
- The National Bank (Though the government has been trying to fire the governor of the bank from the first day it came into office, so far international pressure has been able to prevent this from happening. The government appointed one of its closest supporters to the Head of the Bank's Supervisory Board (Orbán's previous Finance Minister, Zsigmond Járαι). All appointments to the President's Advisory Council have been unilateral government appointees, and once the current governor's mandate comes to an end he will no doubt be replaced by a person either from the government party or from the ranks of Orbán's followers. The independence of the National Bank from the government of the day is for all intents and purposes non-existent in Hungary and is totally counter to international practices.)

iv. As Vaclav Havel noted in the beginning of this document, one of the standard practices of the new autocracies in post-Communist Eastern Europe is to eliminate the independence of the police and the secret services, and to bring these services under the direct control of the governing political force in order to stifle dissent. Police forces in Hungary today are under the direct command of a trusted Orbán loyalist, Sándor Pintér, a man who faithfully served in the earlier Communist era as a card carrying Communist and senior member of the Ministry of Interior. Orbán's control of the Hungarian secret services causes even more concern. As soon as Orbán came to power the government promoted a large number of its trusted party supporters from various private security firms into the state secret service. Subsequently, and under the leadership of the Prime Minister's personal body-guards, Mr. Janos Hajdú, the government has set up a

new "anti-terrorist" agency which, according to many, resembles the communist-era KGB in its design and its lack of transparent structures. This new anti-terrorist organisation has the right to conduct secret investigations abroad as well against people, the government looks upon as undesirable.

In Hungary, checks and balances of executive power guaranteed by the earlier constitution have been eliminated. There is no separation of power between the executive and the legislature, because by virtue of its majority in parliament, the executive branch controls the legislature. The police, the secret services and the Prosecutor's Office are absolutely under government control. Hungary is fast becoming a police state. As we shall see in the next section, unchecked executive control is rapidly being extended over the judicial branch as well.

#### **4. The curtailment of judiciary independence from political control**

- i. The independence of the judiciary from direct governmental intervention is a universal democratic norm--perhaps the most sacred element of the separation of power principle first enshrined in France's Declaration of the Rights of Man and of the Citizen. In Hungary today, the government of Mr. Orbán is fast at work eliminating the last and remaining independence of the judiciary from executive control. We take our evidence for this assertion not from biased newspaper articles, but from Hungary's top judges. We quote directly from an open letter they recently addressed to *"the court of public opinion in Hungary and the European Union"* (April 10, 2011). The letter, which was signed by the Chief Justice of Hungary, the entire College of the Hungarian Supreme Court, the heads of the country's 19 regional courts, the Head of the Budapest Municipal Court, the President of the National Judicial Council, and finally, the President of the Hungarian Judges Association states the following: *"The undersigned never would have thought that 21 years after the collapse of communism and in a country that today is entrusted with the Presidency of the European Union, we would have to raise our voices in defense of basic democratic principles in Hungary... We never would have thought that as leaders of the judiciary we would be called upon to join hands and raise our voices in defense of the rule of law and basic democratic rights against a government, many of whose members played an important role in the defeat of the previous communist dictatorship and in turning Hungary toward the road to democracy... We declare that [the Orbán government] is engaged in practices that stand in opposition to long established international practices regarding the independence of the courts... We are compelled by our professional duty and our moral principles to speak up in opposition to any and all attempts at political interference, and have no choice but to turn to the court of public opinion in Hungary and in the European Union with this open letter"*

- ii. How did the government react to this extraordinary judicial indictment by the country's top judges? We quote the cynical words of the Prime Minister's official spokesperson, Péter Szijjártó: *"The Chief Justice should know that in constitutional matters it's not the head of the government that decides but Parliament."* Mr. Szijjártó is, of course, one hundred percent right. What he forgot to add was this: The Hungarian Parliament is subservient to the executive branch by virtue of the two thirds majority enjoyed by the Prime Minister's Party in Parliament. In Hungary, Parliament does what the Prime Minister's party dictates. In the words of Alexis de Tocqueville, it functions as a dictatorship of the majority. A more obscene and virtually unprintable response to criticisms levelled at the government came from the pen of EU parliamentary deputy, Tamas Deutsch, a man, who is not simply a close friend of Orbán, but served as the Prime Minister's cabinet chief until his high paying Brussels appointment. Responding to a recent criticism of the government's conduct by Thomas Melia, assistant deputy secretary in the U.S. State Department, Mr. Deutsch wrote the following in his regular Tweet column on July 27, 2011: *"Who the fuck is Thomas Melia and why do we have to spend our time on a piece of shit?"* When journalists asked Deutsch what the Party high brass thought of his obscene remarks, he said the following: *"We all had a good laugh."* The arrogance of power has spoken. This is the level that political discourse has been lowered to in Hungary by the ruling political oligarchy with respect to universal democratic principles.
- iii. In order to silence its critics amongst the high court judges and to pave the way to its ultimate control over the judiciary, the government passed legislation lowering the retirement age of Hungary's judges from 70 to 62, and, parallel to this, removed the power of the judiciary to control the appointment of new judges to the bench. For good measure, it put this decision into the Constitution, so that no one could challenge its unconstitutionality. The Hungarian Lawyer's Association and the Budapest Lawyer's association have both condemned this step, though without any effect. The legislation has been passed by Orbán's parliamentary majority, it's in the constitution and goes into effect on January 1, 2012.
- iv. As a final evidence of the wilful dismantling of judicial independence, the government also modified the country's criminal code to enable the Prosecutor General's Office to pick the district and the court for the hearings and eventual trials against the people it chooses to prosecute. This new power in the hands of the Prosecutor General's Office, is especially ominous in the case of those politicians, that have been targeted by the Orban Government's Special Prosecutor, Mr Budai. Giving the right to the prosecutor to choose a presiding judge in an environment where judicial appointments have been taken out of the hands of the judiciary, and are blatantly politicised, is a final nail in the coffin of judicial independence.

## 5. Restrictions of civil and human rights, the establishment of a climate of fear

To achieve and sustain the overwhelming concentration of power that Mr. Orbán spoke of prior to his election to office and to limit competitiveness in the political arena, the Orbán has to secure the obedience of Hungary's citizens. or at least ensure their compliance with governmental dictates. The unpopularity of the previous government, which led to Orbán's electoral victory in 2010 was undoubtedly an important precondition for an initial wellspring of support. Instead of building a new, more democratic, economically more just system of governance on this platform of support, the Orbán Government established a predator state, restricting civil and human rights. Instead of promoting discourse and debate between citizens who are free, independent of the state, and committed to their societies' well being, the Orbán government, in the words of respected economist Péter Róna, opted *"to establish preferential treatment for select groups under new slogans and symbols"*. To secure compliance with the dictatorship of the majority, it has restricted civil and human rights and established a climate of fear to stifle dissent. According to conservative politician Szabolcs Kerék-Bárczy, *"In Hungary today, fear and hatred has cast a giant shadow on the political realm. In all sectors of the public sphere where the state has some modicum of influence, people are afraid to speak their minds openly."* (He should have added, that fear is now creeping into even those sectors of life, that is outside of the government's domain: On October 5<sup>th</sup>, 2011, Kerék-Bárczy was beaten up in open daylight on a streetcar in downtown Budapest for his political views, by an unidentified assailant).

In the case of Hungary, we have already documented the network of collusion that Havel has spoken of between the police, the secret services, the Prosecutor General and the judiciary. This constitutes clearcut evidence of the removal of those fundamental safety-checks that normally guarantee civil and human rights in established democracies. Such a one sided, unopposed concentration of power is one of the telling signs of autocratic governance and of the endangerment of civil and human rights. The Orbán Government frequently proclaims that this concentration of power, this "loaded gun", hasn't killed anyone. The criticism directed against it is dismissed as unjust, since apparently there are no "bodies", hence no victims. Our argument is this: In a democracy, governments have no right pointing loaded guns at the heads of citizens who are engaged in the pursuit of their democratic rights. The past year has seen not only accidents but intentional acts of fire. Civil and human rights must be urgently restored in one of the EU's member states. Inaction will undermine the confidence of millions of people in the EU as an organisation dedicated to the protection



of civil and human rights within its member states and lend further encouragement to the fans and supporters of autocratic governance. Tolerating the Orbán government's practices poses a danger to people far beyond the borders of Hungary, and it must not be allowed to continue. In the following paragraphs, our indictment lays out the factual evidence for these claims.

- i. In Hungary, the ideological platform for limiting debate and competition is the aforementioned National Harmony Decree. Anyone who dares to speak against the spirit and letter of this decree is branded as an enemy, "foreign-like," and an opponent of the will of the people, as expressed through the majority in Parliament.
- ii. In parliamentary democracies, human rights are a fundamental entitlement. They are not given out as a reward for good behaviour, or as part of some barter deal between the citizen and the state. This principle has been enshrined in the United Nation's Universal Declaration of Human Rights in 1947. Until the Spring of 2011 and according to the terms of Hungary's first post-communist Constitution of 1989, this was the practice in Hungary as well. Not so under the new constitution pushed through parliament by the Orbán majority in April 2011. The protection of human and civil rights in Hungary is now tied to a series of preconditions, and nowhere more so than in the realm of social rights.
- iii. One of the standard practices of all autocracies is the criminalisation of their political opponents and the use of the criminal code to persecute political opponents. The process is in full swing in Hungary today. The politically staffed Prosecutor General's Office, led by former FIDESZ party member Peter Polt, has indicted not only the former prime minister, Mr. Gyurcsány, or the leader of the Conservative MDF party, Ibolya Dávid, but has hounded leading Liberal politicians (Erő Mesterházy, András Gyakiczky), and arrested some of the highest ranking ministers of the former government, such as Mr. George Szilvásy. Orbán's personal spokesperson, and other prominent Orbán ministers, including Orbán himself, are continuously threatening criminal charges against leading opposition members. All of this harks back to a time in Hungary's history which many had thought was long gone. As in Russia, under the leadership of a former KGB chief, political dissent in Hungary, is once more a dangerous pastime. And the politicians who are most likely to succeed in defeating Mr. Orbán run the gravest of risks. To ensure that the opposition is appropriately targeted, and intimidated, the Orbán government appointed a special prosecutor, Gyula Budai, to investigate and prosecute leaders and senior officials of the previous democratically elected government. Budai, like the Orbán Government's Presidential appointee, Mr. Schmitt, or the head of the Ministry of the Interior, was a faithful servant of the previous communist

dictatorship. Mr. Budai was a senior investigator in the Communist military apparatus. (The parallels with Vladimir Putin's role as head of the Communist KGB are striking). Today, virtually the entire top leadership of Hungary's major opposition parties – Socialists, Conservatives, Liberals – are under investigation on a series of charges, and the government is hard at work via retroactive lawmaking to reclassify as "illegal" legislative activities that were once legal. To raise the fear level among its opponents and competitors, the government-dominated enforcement apparatus has begun to arrest and parade former leaders in shackles before the TV cameras as if they were common criminals, even before their cases have come to trial.

- iv. After coming to power, in May 2010, the Orbán government unleashed a powerful and crude "political cleansing" of all the institutions under its jurisdiction. Within the state run institutions of higher learning, the cultural, artistic, scientific community, in the state financed entertainment industries, the museums, theatres, the various counter-cultural centres, and the public broadcasting system, a massive purge of personnel was implemented. Thousands lost their jobs without compensation or cause, only to be replaced by compliant and docile servants of Orbán's Party. Anyone suspected of harbouring unsympathetic thoughts about the government Party is faced with an immediate loss of employment and must worry about having to face additional charges compiled against them by the Prosecutor General's eager foot soldiers. Speaking out against governmental excess requires a major act of self-sacrifice and bravery today. We quote from a recent essay by one of Hungary's best known anti-communist crusaders, a former liberal politician and current high ranking EU civil servant, Balint Magyar: *"The assault on the philosophers, Heller, Vajda, Radnoti, is a politically motivated persecution. It's show-trial character made evident by the fact that the government views every one of the philosophers in question as liberal thinkers – scholars from the same or other disciplines of a different ideological persuasion are not targeted. The same one-sided campaign is being orchestrated against people working within the realm of contemporary art – the investigation into the use of PPP funds in higher education follows the same ideological score. In one case the operative word for triggering an investigation is "liberal" in another, such as the case of Laszlo Rajk – the operative word for triggering a police investigation is "non-figurative art".* (Balint Magyar, "The Unrefusable Offer of the Two-Thirds Majority" *Népszabadság*, March 12, 1011)
- v. One of the most effective compliance mechanism used by the Orbán government is the extraordinary level of influence played by the state in the socio-economic life of ordinary citizens. People who speak out against abuses of power today risk not only their personal freedoms, but also their livelihood and future existential well being, and ultimately, their dignity as human beings. Voicing criticism of Mr. Orbán and his Party carries a price tag unseen in genuine parliamentary democracies in Europe and North America. Laws have been

passed to empower the government to fire anyone without cause and without compensation in the public sector if they show any signs of independent thinking. We quote from a recent essay by one of Hungary's best known anti-communist crusaders, a former liberal politician and current high ranking EU civil servant: *"Losing our jobs in the Communist era for speaking out against an abusive state, was not the end of the world. Today the situation is quite different. People have much more to lose. From one moment to the next, people can end up in a totally hopeless existential situation if they speak out against injustice. The loss of employment or a state or municipal order by a small business, can be the kiss of death for a hitherto prosperous family or small enterprise. In a society such as ours, where the livelihood and existential well being of virtually hundreds of thousands of people depend on central or municipal governmental approval, government's capacity to cajole and control is massively inflated."* (Bálint Magyar, *ibid* ).

- vi. During the late summer, 2011, the Orban government twisted the screw a notch further. It passed a new criminal code which significantly extends the time an accused can be held in confinement without going to trial. The new law also significantly extends the time the accused can be questioned by the prosecutors without having access to legal counsel. These steps are not intended to expand but to restrict the human and civil rights of citizens and run counter to the human and civil rights traditions of established democracies.
- vii. At the same time as the above initiatives have been unleashed, the government has launched a massive propaganda attack against all of its critics within and outside the borders of Hungary. Through the state controlled media, and in all of the privately owned media controlled by the oligarchs that finance the government Party, (more details on this in Chapter 9) and via expensive PR campaigns inside and outside the borders of Hungary, the opponents of the Orban government are invariably described as "anti-Hungarian.", "anti-Christian" and in the service of the old and discredited communist dictatorship. Such highly respected anti-Communist crusaders as the former Czech President Vaclav Havel, Polish Solidarnos leader Adam Michnik, Hungary's own anti-communist crusader, Miklós Haraszti, well known Columbia Professor István Deák, or decorated Austrian journalist Paul Lendvai, are just a few of those that have been targeted by a moral assassination campaign orchestrated by the Orban government. This is also an example of the lack of respect being shown by the Orban government to the civil and human rights of its adversaries.
- viii. An important instrument for stifling dissent outside the boundaries of Hungary is via highly paid PR campaigns, and through the leadership of the émigré communities. Relying on the strong anti-communist and nationalist sentiments of these communities in Europe, North America and around the world – after all, most of the émigrés had to flee their homeland from the post-World War II communist dictatorship – Orbán's Party has followed an ingenious "diaspora"

strategy during the past decade. Though communism ended in Hungary over 20 years ago – and was a foreign, Soviet implant in any case, which shows no signs whatsoever of returning – Orbán's favourite pastime is to continuously tear away at the scabs left on the émigrés collective memory by the earlier Soviet imposed communist dictatorship. By his definition, anyone who does not endorse his Party's views, is a Communist fellow traveller. This message sells well in the far-off émigré communities. As soon as he was installed in office, Orbán promised members of this diaspora the right to vote in Hungary's future national elections regardless of the fact that they pay no taxes nor are residents of the country. Today, anyone who raises his or her voice against the Orbán government's conduct anywhere in the world can expect to be the target of a massive and orchestrated abuse and well-orchestrated attempts at character assassination. The list is very long indeed of those who have been subjected to such abuse and threats, and includes members of the Board of *the Canadian-Hungarian Democratic Charter*. (The members of the CHDC have been defamed in a public letter written by the Catholic Parish priest of Montreal's Hungarian Catholic Church. Father Tom Androvich, who, in addition to his ecclesiastic position, is also the vice-chairman of the major Hungarian Community organisation, the Montreal Hungarian Committee. He wrote, in two separate émigré papers that members of the CHDC *"are engaged in a devil-like divisive campaign... they cloak themselves in Hungarian colours, and strive to destroys the community from within...They are in the service of forces that trampled democracy underfoot in Hungary for 40 years and denied the basic rights of Hungarian citizens. They are in the service of forces in Hungary, that to this very day, are engaged in an anti Christian, anti Hungarian and anti-life political pursuits"* (Father Tom Androvich, *How Long will we Tolerate This ?* in Magyar Krónika, Montreal, September 22, 2011). It seems, that Hungary's anti-communist émigrés have not heeded the warnings of Shlomo Aveniri: *"We must not forget that being anti-communist does not necessarily make one a democrat"*. *The Canadian-Hungarian Democratic Charter* will undertake to continuously monitor and bring to the attention of the public the coercive tactics engaged in by Orbán's supporters in Canada and elsewhere.

- ix. One of the many examples of the above mentioned manipulative approaches engaged in by Orbán's government is the handling of the archives containing the dossiers of Hungary's former secret police informers – a database containing hundreds of thousands of names, that even 21 years after the fall of communism, Hungary's political elites are unwilling to make public. The reason for the reticence is simple - all of the political parties are implicated. After Orbán's party won the elections, the government dismissed the latest commission mandated to make the contents of the dossiers public. Furthermore, Orbán's newly appointed undersecretary in charge of the archives announced that the government intends to allow anyone to take the original of his or her secret files out of the archives

and destroy them. Instead of going after those that have destroyed the lives of hundreds of thousands with their despicable denunciations, the Orbán government turned its back on the victims, letting the criminals flee into the night. It seems obvious that the government wants to spare itself the embarrassment of having someone come along and show evidence of collaboration with the secret police from its own Party ranks. The myth of anti-communist cleanliness must be maintained at all costs, especially in front of the global anti-communist diaspora. The past must be erased, history must be rewritten, and the ability to falsely accuse and blackmail citizens must be fomented. Hungary has no parallel in Central Europe in its extensive and manipulative data-gathering and maintenance practices, all of which threaten to undermine the human and civil rights of its citizens.

## **6. The termination of the civil service's political neutrality**

For close to two hundred years, parliamentary democracies around the world have recognised the necessity of protecting career public servants from direct political interference. This has become a universally acquired right in all democracies. The Orbán government broke with this sacred trust by enacting legislation empowering the government to fire career civil servants, without notice, without cause and without severance pay, right down to the lowest levels of the bureaucracy. Moreover, it also eliminated the usual civil service competition tests and strict qualification requirements in order to facilitate, without competition, the promotion of loyal party hacks into ostensibly politically neutral civil service positions. In one fell swoop, the Hungarian government eliminated the entrenched civil rights of public servants to protection from politically motivated abuses of power. Much more was lost as a consequence of these measures than the civil rights of civil servants. The impact is devastating as far as the provision of professional service to the public is concerned, at national, regional and local levels. Instead of focusing on the provision of politically non-discriminatory service to the public and on upholding the rule of law, civil servants in Hungary are focused on one thing first and foremost – pleasing their political masters, and showing subservience and loyalty to the dominant political Party as a means of protecting their jobs.

## **7. The restriction of transparency and due process within the legislative arena**

- i. Contrary to the practices of previous democratically elected Hungarian governments, and contrary to the practices in virtually all Western democracies, the Orbán government keeps no minutes or tape-recordings of cabinet meetings. All meetings of the government are off limits to public scrutiny, there are no records kept for future accounting, and there is zero transparency.
- ii. Ever since it took control of Parliament in June, 2010, the Orbán government has manipulated the legislative branch in a manner that is a mockery of democratic governance and autocratic in its fundamental thrust. The government regularly shuns procedural custom and even legally prescribed parliamentary procedure in the process of enacting legislation. Until the election victory of Orbán's Party, professional or public consultations prior to the enactment of legislation and the provision of transparency, through the posting of legislative plans on ministerial home pages had been respected. These requirements, which were carefully adhered to by Hungary's previous democratically elected governments, are regularly ignored or circumvented. One of the favourite ploys of the new government is to put a new piece of legislation to vote in the house as a private member's bill. This way, legislation can be passed without public discussion, scrutiny or debate. In 2010, 80% of the bills passed in the Hungarian Parliament followed this insidious route - including 7 of the 8 constitutional modifications and the passage of the new Media Act, which severely curtails the freedom of the press and free speech in Hungary. As we showed earlier, even the country's Constitutional Court objected to this approach - whereupon, through a private member's bill, parliament changed the Constitution, curtailed the powers of the Court and appointed 5 of its political cronies to the highest court in the land, in order to forestall any future intervention into its unethical and autocratic mode of operation.

## **8. Undermining the principles of proportional representation, rigging the mechanisms of electoral monitoring**

- i. The institution and staff of Hungary's National Election Committee (NEC) has earned the respect and reputation of international observers during the past 21 years as a truly impartial and scrupulously neutral arbiter of electoral fairness in Hungary. As in the case of the 2010 elections, and all previous elections, the NEC earned high marks for its impartial professionalism. It seems that this was its major undoing. As in so many cases, and once again using the mechanism of the private member's bill which eliminates the need for public consultation and severely limits the time allotment for debate, the government majority in the House put through a Bill in the Hungarian Parliament during the second half of

2010 that disbanded the National Electoral Committee. At the same time, the government summarily dismissed all members of the NEC, even though they were appointed to four year terms of office two months prior to the last election.

- ii. Everyone agrees that Hungary is badly in need of a new electoral law. Hungary's system of party financing is utterly untransparent and is perhaps one of the major sources of political corruption in that country. After finishing off the NEC, Hungary's politically neutral electoral watchdog agency, the Orbán government began preparations for a thorough overhaul of Hungary's electoral law. The first draft of this new electoral law was previewed at the ruling Party's national congress in August 2011. The draft legislation, which was put together by one of Orbán's lieutenants, EU parliamentary deputy János Áder, behind closed doors and without any public consultations, does not propose any measures that will eliminate the country's corrupt party financing practices. It proposes no new measures to raise transparency in this critical area of governance. Instead of reducing the current distortions in the electoral system, the proposal accentuates them and clearly loads the deck in favour of the ruling government Party. The basic purpose of the proposed legislation is to provide unfair competitive advantage to the ruling Party and to diminish the possibility that it might be removed from office via democratic electoral means.
- iii. It is a fact that prior to the 2010 elections and following lengthy public consultations, numerous proposals were tabled in the Hungarian Parliament to limit the number of deputies in Parliament, and in a manner that would put an end to the current distortions and thereby restore proportionality of representation. Changes to the electoral law can only be implemented by a two-thirds majority vote in the House. Prior to the 2010 elections, no one party had a two-thirds majority, and in fact, Orbán's party vetoed every initiative that was designed to put an end to corruption in Party financing, or to bring an end to disproportionate representation. With its own two-thirds majority, the Orbán government is now embarking on changes that will *increase* disproportionality in representation and cause further distortions to electoral equity. As a consequence, hundreds of thousands of citizens will be cheated out of their right to equal and proportional representation. A simple illustration will suffice. In the national elections in April 2010, the FIDESZ-KDNP slate received 52 percent of the votes cast in the ballot boxes. The unprportional system currently in place, gave 68% of the parliamentary seats to the winner. The opposing Socialist Party received 19.3% of the ballots in April 2010, but received only 15% of the seats in Parliament. What would happen if the elections were held under the Orbán government's new electoral proposal ? A 52% win at the polls would provide Orbán's party with 75% of the seats in Parliament. The opposition's 19.3% would, however, only give them 10% of the parliamentary seats. Instead of working for greater equity and fairness, the Orbán government is clearly heading

in the opposite direction with its electoral reform package..

- iv. The Orbán government's electoral reform initiatives will reduce the number of seats in the Hungarian Parliament to 200 from the current level 386. This in itself is a good thing. The problem is not with the reduction in the number of representatives, but in the increased disproportionality in the number of parliamentary seats going to the winner. The proposal also calls for the elimination of the second-round run-off election mechanism in ridings that produce no clear-cut majority for any single party in the first round. Accordingly, whoever wins the largest share of the votes in a riding in the first round will automatically be declared winner. In a multi-party system such as Hungary's, where at least 5, but often more parties compete for electoral favour, a one-round election could produce acutely unrepresentative outcomes. Most observers agree that the changes proposed by the Orbán government discriminate against smaller parties and are clearly designed to provide unfair competitive advantage to the largest, government coalition. With the emergence of a neo-Nazi right wing party, JOBBIK, supported by approximately 18% of the electorate according to recent polls, and the disarray in the ranks of the current opposition, the likelihood of a common front alliance against the government in a national election is virtually zero. The government Party's electoral law would ensure that even in the case of a significant loss of popularity and with as little as a 20% backing at the polls, the government Party could secure another 4 year majority for itself in parliament. So much for proportionality and fairness in the electoral processes of an EU member state.
- v. But perhaps the most explosive of the new proposals is the plan to provide a vote in the country's national elections to all ethnic Hungarians worldwide, regardless of their non-resident and non-taxpaying **status**. Orbán's Party has long portrayed itself as the Party of all Hungarians and has expended a great deal of effort through its global diplomatic channels to blacken its political adversaries as aliens, foreign like and hostile to Hungary's traditions and national interest. Providing representation without taxation to millions of non-residents, in many cases thousands of miles away and cut off from the country's daily realities, would constitute the final nail in Hungary's coffin of representative democracy. It must be vigorously opposed by all who believe in the universal principles of representative and discursive democracy.

## 9. Restrictions on freespeech and of free media



This indictment claims, that the Orban government's restrictions of free speech and press freedoms are exercised through four separate, but highly interlinked mechanisms. Western analyses generally only concentrate on one of these instruments – the regulatory mechanism, enshrined in a new Media Law that went into effect during the summer of 2010. This one-sided focus on the regulatory levers, unfortunately misses the full and sad picture. It looks at only the tip of the iceberg. In this section we provide the full, four-dimensional picture of the Orban government's repressive controls over freedom of speech and the media in Hungary.

- i. During the past few years, privately owned media in Hungary – print, electronic and on-line – has been bought up almost in its entirety by four business families (or oligarchies) closely aligned with Orban's political Party, the FIDESZ. The oligarchs, who are the prime financial backers of Orban's Party and are heads of the business empires that control Hungary's privately owned mass media are, in alphabetical order: Károly Fonyó, Gábor Liskay, Kristóf Nobilis, Zsolt Nyerges, Lajos Simicska, Zoltán Spéder, Gábor Széles, István Töröcskei, Tamás Vitézy. Until he was appointed to Orban's cabinet, after the 2010 elections, Tamás Fellegi was also part of this group, as was István Stumpf, who was appointed to the Constitutional Court in recognition of his past services. There are others tycoons in the pack, some as silent or invisible investors. and the full network is difficult to fathom, due to lack of transparency and archaic corporate governance rules. Suffice it to say, that it is these people, divided into four distinct business groups, that control the public affairs content of almost the entire privately owned mass media market in Hungary. They decide who can work in the mass media, what can or cannot be said, and which media outlet will or will not be financed via advertising, loans, or equity capital. In **the print media market** these oligarchs own such influential dailies and weeklies as the country's largest and freely distributed daily, *Metropolis* (circulation is roughly twice as large as all of Hungary's major national dailies combined). *Metropolis* was bought in June 2011 by a group, headed by the former financial director of Orban's Party, Károly Fonyó. According to independent analysts (see Csörgő László, [www.tenyezo.hu](http://www.tenyezo.hu), June 9, 2011) 80% of the readers of *Metropolis* do not read any newspaper other than this freely distributed daily. Besides *Metropolis*, the pro-FIDESZ oligarchy owns *Magyar Nemzet* (the national daily that has the distinction of having the largest number of court decisions brought against it for publishing lies and slanders), *Magyar Hírlap*, *Napi Gazdaság*, *Helyi Téma*, *Heti Válasz*, *Demokrata* and dozens of tabloids, local or regional papers. In **the radio market**, the above named moguls own such plums as the number one news radio station, *Info Rádió*, and numerous other channels, such as top music station, *Class FM*, or *Lánchíd Rádió*. In **the television market**, they own the country's leading news TV stations, *HírTV*, and *EchoTV*, but also own significant shares in one of the leading

entertainment stations, *RTL Klub*. In the realm of **on-line media**, this politically aligned oligarchy owns the country's largest and most influential news portal, *index.hu*, and also owns such influential portals as *portfolio.hu*, or *inforadio.hu*. The pro-Orbán oligarchy owns the country's largest **media-buying** concern, *Mahir* (The head of *Mahir* is Orbán's best friend, and closest political advisor, Lajos Simicska. He is, amongst others, the manager of Orbán's personal financial portfolio). The bottom line is that in all of the media listed above – and we are talking about close to 90% of Hungary's privately owned public affairs programming – all vestiges of diversity, political debate and discourse have been eliminated. In these media, Orbán's government can do no wrong; the opposition is portrayed as basically corrupt, treacherous, anti-Hungarian and/or pro-communist. If anyone within the walls of these media outlets voices criticism of the government they are fired without cause, notice or severance pay. The silencing of free and critical journalism, and the enormous concentration of media power in the hands of politically motivated tycoons closely aligned to the government, is a festering sore on Europe's democratic political culture. It begs for immediate remedial action and should not be tolerated by Europe's lawmakers or European public opinion. This excessive level of market-concentration and the consequent repression of free speech by the politically tied oligarchy should be vigorously and forcefully condemned by the European Union, and by all independent media watchdog organisations. It is a violation of the European Union's competition and media guidelines and stands as a crass, politically motivated barrier to free speech, which is the very foundation of democratic governance.

- ii. While the stranglehold of the pro-Orbán oligarchy over the privately owned media market is overwhelming, within the state owned media sector it's not concentration but monopoly that reigns. In all segments of public During the first 21 years of Hungary's young democracy, news coverage on state owned Radio and Television was relatively balanced and free of direct governmental interference. There were, to be sure, frequent and clumsy attempts at state control of news content in the past, but by and large most foreign and domestic media analysts would agree that Hungary's public broadcasting system was no worse than others in Europe or North America as far as political interference was concerned. All of this began to change in 2009, a year prior to the national elections. The purge of independent journalists, from the corridors of Hungary's public broadcasting system was begun in anticipation of Orbán's election victory. To secure their future master's confidence (and hence their future livelihood), top management in the public broadcasting sector began in 2009 to fire many of the journalists who were independent minded and clamped down on editors and producers who dared to give air-time to political discourse and debate. This clampdown became a rout once Orbán was elected into office. Within a year, hundreds of journalists, editors, and producers were let go, programming was

radically restructured and all of the key positions in the public broadcasting system were occupied by former PR and communications staff from Orbán's political movement or by journalists who had demonstrated their political subservience in one of the media outlets owned and controlled by the pro-Orbán oligarchy. Not wanting to leave anything to chance, in 2010 the government owned national wire service *MTI* was given the responsibility to produce all of the news content for the country's public broadcasting system. Parallel to this move, the government also decreed that the news services of *MTI* will become free to any media outlet in Hungary. With one stroke, the government effectively killed off the wire service competition in Hungary and turned *MTI* into a monopolistic, single-source provider of news programming. The ruthlessly one-sided coverage of the news and of issues of public importance by the Orbán government's public broadcasting system is a disgrace and a mockery of the freedom of the press. The toleration of such a state of affairs within the public information systems of an EU member state is an outright contradiction of the European Union's media directives and a blight on EU's reputation as a guarantor of free speech.

- iii. The third instrument of political control over the media is regulatory in nature. The new Media Act was passed through Parliament as a private member bill, and hence didn't require any public consultation. The name of the deputy that moved the Bill is Antal Rogan; his name should be etched on the memory of all those for whom the freedom of the media is sacred trust. Hungary's new Media Act puts content regulation into the hands of a political body with draconian punitive powers. Every member of this regulatory authority was drawn from the ranks of the government Party and appointed for nine years. The Head of the Authority is a woman who has the distinct reputation as one of the fiercest, most dogmatic ideologues of Orbán's Party. There is no precedence in Europe or in any democracy for a media authority whose members are drawn from the ruling political Party, who possess punitive powers as severe as Hungary's media authority and who are locked into their positions for the duration of virtually three electoral cycles. The regulatory body can impose fines of 700,000 euros against a TV broadcaster whose conduct it finds objectionable. In the case of radio stations, dailies and internet portals, this figure is 90,000 euros; in the case of weeklies, the fine level is 37,000. Anyone slightly familiar with the financial state of the Hungarian media market knows – and this is true especially of the owners of the small independent outlets – that a single fine of this magnitude can be the kiss of death to a broadcaster. But governmental control via regulation is not restricted to punitive fines. The Media Authority regulates not only content but licensing as well. It can force any radio or television station off the air by unilaterally changing the licensing requirements of a politically incorrect station, no matter how popular the station may be. In fact, this is precisely the tack the regulatory body has chosen to follow with respect of the licensing of KlubRadio,

Hungary's independent public affairs talk radio. Owners of the station have been put on notice that the authority has unilaterally changed the conditions of their operating license. In order to have their license renewed, they must change format and become a music station. End of discussion. There is no right of appeal of the decision. When irate listeners raised their voices, the government's response was simple and direct. Two-thirds of Hungary's Parliament had voted for this law. The will of the majority will be upheld. This then is the dictatorship of the majority in Hungary that Alexis de Tocqueville spoke about over two hundred years ago. We quote Harvard professor János Kornai: *„Hungary's new media regulations, i.e. the institutional reorganization of the media authority and the passage of the Media Act, produces a level of centralization in the world of public media and political communication comparable only to the propaganda machine of communist dictatorships.”* It is important at this point, to refer to the criticisms of the Vienna based Organization for Security and Cooperation in Europe (OSCE), which was created to maintain security, peace and good governance in Europe following the collapse of the Soviet empire. Canada is one of the members of the OSCE, along with the United States. One can accuse this organization of many things, if one likes to, but the one thing that cannot be said is, that this body is working to rejuvenate the old communist dictatorship in Central Europe. The OSCE had issued a number of advisory notes and warnings to Orbán's government, pointing out that parts of its proposed Media Act threaten the freedom of the press and runs counter to accepted international practices. The organisation pointed especially to the harmful and unprecedented practice of appointing a Media Authority, all of whose members are drawn from a single political party. According to the OSCE's media spokesperson, the Hungarian government ignored all of its warnings, and its unwillingness to take these warnings into consideration is a violation of the OSCE's collective undertakings. We quote from the OSCE's official press release of March 8, 2011. *“Hungary's media legislation still violates OSCE press freedom commitments, despite recent adjustments...The legislation can still be misused to curb alternative and differing voices in Hungary despite modifications adopted following a request from the European Commission...The law vests unusually broad powers in the politically homogeneous Media Authority and Media Council, enabling them to control content of all media. The legislation regulates broadcast, print and online media content based on identical principles. It leaves key terms undefined. It requires all media to be registered with the Media Authority. It punishes violations with high fines. It fails to guarantee the political independence of public service media.”* The warnings and declarations have had no impact whatsoever. The trampling under foot of media freedoms continues unabated in Hungary. The future of two of the government's most critical media outlets, the radio station, *KlubRadio* and the daily *Népszava*, are highly uncertain. The first one will unlikely be re-licensed according to the current format, and its advertising revenues have been drastically curtailed through consciously discriminatory advertising practices. *Népszava* faces massive fines for calling a

spade a spade.

- iv. In case the independent media outlets do not respond to the first three instruments of control, and still insist on exercising their critical, scrutinising functions over governmental behaviour, the government has a fourth instrument at its disposal, which it uses with a vengeance. This fourth instrument of State control is public advertising spending, by local, regional and national enterprises, and governments. The State is the single largest source of advertising spending in Hungary. The Orbán government consciously utilises this advertising clout to silence its critics. By withholding advertising spending from its critics, it also signals to other market players, that it expects them to follow its example. The country's two principal independent media outlets, KlubRadio and Népszava have been virtually driven to the door of bankruptcy by this fourth instrument. The demonstration affect is not lost on other broadcasters. As a consequence of the practices we have outlined above, the fourth branch of government, the critical mass media, is virtually strangled in Hungary. The continuation toleration of this strangulation of the free press by an EU member state is a mockery of Europe's commitment to the protection of free speech and free media.

## **10. An assault on private property rights**

- i. Breaking with a 21 year constitutional tradition, and Western democratic practice, Hungary's new, and unilaterally imposed constitution offers virtually no guarantees for the protection of private property. The last time the protection of private property was taken out of the Constitution was under the dictatorship of the proletariat. Now it seems this constitutional safeguard has been removed under the dictatorship of the majority. Hungary's previous Communist run government may be excused by virtue of the fact that the government had no option but to apply the constitutional principles enforced upon them by the Soviet Empire. Orbán's government has no such excuse, for its unprecedented actions, which stand out in stark contrast to the constitutional practices of established Western democracies.
- ii. The Orbán government's failure to provide constitutional guarantees for private ownership rights is also evident from a series of policy initiatives introduced during its first year and a half in office. The first and most blatant incident came with the unilateral nationalisation of the country's privately owned pension funds. The utilisation of these privately accumulated funds for the reduction of the national debt, rather than for shoring up the country's underfunded pension system clearly demonstrates the predatory nature of this expropriation. As with the removal of property rights from the constitution, this step undermined not only faith in the sanctity of private property, but faith in the trustworthiness of

the Hungarian State in guaranteeing the rights of foreign investors.

- iii. The expropriation of the country's privately owned pension funds was one of the first signs, that Hungary, under Orban, was fast becoming a Predator State. Additional evidence came with the introduction of the flat-tax rate, which is a well known mechanism for catering to the rich at the expense of the poor. The newest predatory grab, once again punishes the poor, by increasing the rate of the VAT, or consumption tax, to a level, that is perhaps the highest in the world. The list of such predatory activities by the Hungarian State is long, and is bound to escalate. After realising that its flat-rate rip-off left a big hole in the budget, the Government, at the end of the summer, in 2011, introduced a new tax measure that imposes a special tax on those, who earn on average 200,000 forints (approx 1,000 USD) per month.
- iv. During the first year and a half into its term, the Orban government unleashed a series of highly punitive special taxes on a select, and arbitrarily chosen group of multinational corporations. These special taxes have had a devastating effect on the bottom line of the affected companies. The companies have lodged a complaint with the EU, so far with little effect (The group included telecomm, energy, retail and pharmaceutical firms) The latest to feel the pain stemming from a selective and highly punitive money-grab are a group of foreign owned banks, especially those based in Austria. The Austrian government has objected to this unprecedented expropriation and the case is very likely to go before the European Union. The Orban government's response to the objection this time is less vulgar, than that uttered by Tamás Deutsch. The Prime Minister's Secretary of State, Mihály Varga did not use four letter words. He merely said this: *"It's no great tragedy if two or three foreign banks disappear from Hungary. There has already been precedents for this"* ([www.hetivalasz.hu](http://www.hetivalasz.hu), September 26, 2011) This answer, is no different in substance, from that of its more vulgar variant. It is the voice of all Predatory States. It is the voice of Hugo Chavez, a voice that clearly stands in contradiction to the principles that are central to the European Union. Whether foreign investors and the Union will tolerate such predatory conduct is yet to be tested.

## Epilogue

This document provided detailed and factual evidence to back up the assertions of Vaclav Havel and thousands of other anti-communist democrats, that ... *In just 20 years after communism collapsed, Hungary's government, though elected democratically, is misusing its legislative majority to methodically dismantle democracy's checks and balances, to remove*

*constitutional constraints, and to subordinate to the will of the ruling party all branches of power, independent institutions and the media"* ([www.iprotest.hu](http://www.iprotest.hu)). Our document also provided detailed factual evidence for the assertion of Harvard professor, János Kornai, namely, that prior to the election to office of Viktor Orban, in 2010, "*Hungary was a democracy. It is no longer one now – the political formation today is an autocracy*" We invite anyone to scrutinize the facts contained herein, and to bring any errors of fact to our attention. We shall immediately rectify any errors. The verifiability, credibility of this indictment is in everyone's interest.

We reject, however, any attempts to dismiss this document as an attack on the people of Hungary. The indictment is not directed at the people of Hungary but at its government, and at those of its politicians who are systematically eradicating, some of the fundamental principles of democratic governance from Hungary's political landscape. *The Canadian-Hungarian Democratic Charter* issued its indictment on October 23<sup>rd</sup> 2011, on the occasion of the 55<sup>th</sup> anniversary of the Hungarian people's heroic uprising against communist tyranny. We intend to demonstrate with this publication, our respect for the sacrifices that Hungarians have made to promote and uphold universally valid democratic principles. We hope, our effort will help the citizens of Hungary to once again enjoy the fruits of their past sacrifices. We intend, with this action, to provide them comfort, solidarity and encouragement to remain steadfast to the principles that are common to us all. We solemnly believe, that justice will prevail, and with collective effort, Hungary will once again be ruled by a government, regardless of whether it is of the Left, the Center, or the Right, as long as it respects the sacred tenets of democratic governance. Let there be no mercy and tolerance shown towards autocracy anywhere.

But we want to also underline, that this indictment intends to be of service to a much larger constituency than Hungary's citizenry. It is this much larger constituency that necessitated the translation of this document into Europe's major languages. We go back, once again to Czech President Vaclav Havel's, Adam Michnik's and those thousands of anti-communist crusaders cry for help: *Censorship anywhere in Europe is censorship everywhere else; the removal of constitutional constraints holds all our nations hostage; the denial of basic rights in one country humiliates all Europeans. Any member nation's shaken trust in Europe's capacity to stand up for democracy will lead to further charges of "democracy deficit" at the European level, and will end up in a global mistrust for Europe's democratic vocation...The European institutions should be able to name and shame the transgressors, so that our nations may continue to look to the Union for guidance in their daily struggle to keep freedoms alive."* Let there be no mistake about this: the virus of autocracy, the dictatorship of the majority, the marriage between authoritarianism and capitalism is a global threat. Hungary is the first country inside the European Union, where such an illegitim marriage has taken place at the highest levels of power. The toleration of a Pradator State, within the confines of the European Union, strikes at the security of all, threatens the freedom of all. The fight against the infectious virus of autocracy is not

only in the interest of Hungarians but all citizens, on both sides of the Atlantic. Tolerance towards such rogue governments as Viktor Orban's will simply demonstrate to other would be autocrats, that the road is open towards autocracy. We must not allow that to happen.