

## Democracy at halftime

*Fuelled by the perception that its electoral victory was a mandate to influence the course of Hungarian politics for a long time, Fidesz has comprehensively restructured democratic institutions so as to enhance its own powers. Though the enacted changes primarily seek to ensure that Fidesz prevails in the electoral contests of the near future, the ruling party also put in place a contingency plan. Should Fidesz lose power in 2014, many of its irremovable loyalists will retain their positions in key supervisory roles. Even without a majority in the legislature or direct influence over the executive, Fidesz could exert significant indirect power over political decisions.*

During its first two years in office, Fidesz has introduced a number of laws that changed the way democracy and the system of checks and balances work. Some of these – most notably the restrictions on the Constitutional Court’s power of judicial review – pertained directly to the legal definitions of the authority and independence of key supervisory institutions. Others were merely or mostly pretexts for removing unwanted officials, such as the heads of the Fiscal Council and the Supreme Court (the government’s designs on the National Bank were temporarily foiled by the EU and the IMF). It would be difficult to make an intellectually honest argument that Fidesz has not substantially harmed the institutional framework of democratic politics in Hungary. Interestingly, even in the government and its affiliated intellectual circles few if any bother to make such an argument in any detail.

### ***A revolution?***

Whenever someone makes the rare effort to defend the government’s policies concerning democracy and the rule of law, they generally cite the scope of Fidesz’ victory in 2010. Such a huge victory, it is said, implicitly delimits the effect of the norms that generally circumscribe the government’s powers in a modern democracy.

More crudely put, a revolution has taken place, and the classic institutions of checks and balances serve as the last vestiges of the old regime that the people have chosen to do away with. Consequently, if these institutions thwart the government in *any* way, they are serving the pre-revolutionary state and thereby counteract the people and democracy itself. To be clear: the notion that a revolution has taken place was not introduced by us, but by Fidesz, which clearly chose the term not only because it needed something flowery to describe the magnitude of its victory but precisely because the term subverts the legitimacy of any institution whose professional operation could put a spanner in the Fidesz machine.

### ***Is one democratic election superior to others?***

Unless one assumes, however, that the popular choice of 2010 is democratically superior to subsequent selections performed by the public, there is no reason that the outcome of that particular vote ought to limit the impact of later elections. Yet Fidesz’ approach towards democracy is seeking to ensure exactly that.

There are two strategic ways in which Fidesz approaches this issue. The first and obvious approach is to manipulate the various components that go into a democratic choice with the goal to reduce the probability that Fidesz will actually lose an election. The second one makes provisions for the unfortunate – for Fidesz – scenario that despite the governing party's earnest efforts to enhance its strategic electoral position, the opposition manages to prevail. In addition to these two long-term issues, there is of course a third trend that has proven detrimental to democracy, namely Fidesz' decision to undermine independent supervisory institutions that could hamper the immediate exercise of its vast legislative and executive powers. Hence the mostly successful struggle against the “old regime”, as embodied in the Constitutional Court, the judiciary, the Fiscal Council, etc. – in the composition and institutional structure and authority that these organs enjoyed in the summer of 2010.

## ***A convenient election law***

We have already devoted ample space to the biases in the new election law (see weeks 2011/41, 2011/42, 2011/48), so here we will just say that it was designed for the purposes of making an opposition victory more difficult. Most realistic distributions of votes would yield more seats for Fidesz under new election law than under the previous electoral regime. Yet with Fidesz' popularity dropping to lows that the party has not experienced in well over a decade, a change in government is no longer as inconceivable as it seemed for most of the past two years. If the widespread disillusionment persists and the opposition somehow manages to translate some of the vast levels of frustrated absenteeism into anti-government votes, then Fidesz could be in trouble.

This calls for an added buffer: the most recently flaunted idea is optional and voluntary voter registration. Rather than being automatically added to the voter rolls, as is the European norm, voters would have to actively request the possibility to vote, as in the US. Many of Fidesz' policies have materially benefited the upper strata and hurt the lower income and/or less educated Hungarians. In light of our knowledge of participation patterns, voluntary registration would be an instrument for depressing the electoral participation of the latter group and thereby increasing the relative weight in the electorate of the former. Moreover, generally many of those who are frustrated with politics and make up their minds to vote at the last minute tend to harbour anti-incumbent sentiments – these voters, too, would be less likely to participate unless they consciously registered just in case. Much would depend on the details, but the earlier the deadline is and the more cumbersome the process, the better Fidesz' electoral prospects. One crucial question is whether Fidesz will require voters to declare a party affiliation when they register; such an unconstitutional requirement would end Hungary's experiment with democracy as we know it.

## ***Ducks in order***

For the cynically inclined, the best sign for a democratic election in 2014 is the fact that Fidesz is busy setting up contingency plans for a defeat. If it had any plans for completely subverting elections, then a backup would be unnecessary. So far for the good news. The backup plan itself is disconcerting, however.



A plain parliamentary majority for a however constituted anti-Fidesz majority is no longer sufficient to exercise the powers that a democratically elected government would normally be entitled to. While on several issues Fidesz has blatantly overstepped the boundaries that should limit the exercise of democratic powers, its plan is to straitjacket a non-Fidesz successor government through constitutionally protected Fidesz' cadres in key oversight positions.

## ***Loyalists everywhere***

Apart from temporarily limiting the Constitutional Court's power of judicial review, Fidesz has decided that its interests are better served by controlling independent supervisory organs rather than by eliminating their powers. Replacing the personnel of these institutions with party hacks fulfils the immediate need to ensure that the current government's policies are not subject to any of the controls that are customary in a modern system of checks and balances.

At the same time, it also offers the possibility to "activate" these dormant institutions should Fidesz lose power. Ideally, of course, it is better that these institutions work later than never. Still, in the opposition there is a reasonable suspicion that the party loyalists in independent supervisory capacities will not exercise their functions with a view towards the impartial implementation of their respective mandates, but rather with the objective of sabotaging a new government. Unfortunately, many of Fidesz' actions and pronouncements suggest that it sees itself as the only legitimate repository of the public interest, thereby feeding the apprehensions of those who see its capture of independent institutions as a power grab that would secure Fidesz' influence for a long time beyond the current term.

## ***Maybe later***

Underlying all of Fidesz' efforts is the conviction that its electoral authorisation is not for one electoral term, but that it offered the opportunity – and the obligation – by the people to reshape and redefine the Hungarian state as one finally reflecting the values and worldview of the Hungarian right, which has been illicitly kept from power for six decades. Even in the short period when it prevailed between 1990-94 and 1998-2002, the state was substantially under a continued left-wing dominance through its nominally independent experts and institutions (says Fidesz).

This argument fails on several grounds, of which we only raise a few. First, it constructs an overdrawn continuity between pre-transition communist politics and post-transition left-wing politics. For all its flaws, including the undeniable immorality in clinging to many of the material spoils of dictatorship, the left in power after 1990 was not the continuation of dictatorial politics. Fidesz' reasoning furthermore posits that independent institutions such as the Constitutional Court were in cahoots with the communist "hydra", which is patently untrue. Finally, none of Fidesz' measures work towards actually enhancing democratic competition. Instead, they seek to reduce it by cementing Fidesz' position. If the problem with the left is its alleged ability and desire to control power even when formally being excluded from it, the answer would hardly be to fill up the state apparatus with Fidesz apparatchiks. For the time being, that's the only answer Hungarian citizens will get, however.