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Can trust in democracy return to Hungary?

Only one in three Hungarians think the country is still a democracy, 56% mistrust the government, 57% mistrust the Parliament and 46% of the population mistrust the justice system. This is alarming because the loss of trust in democratic institutions contributes to the rise of autocratic regimes.

- **It is difficult to measure public trust in institutions in an autocracy because opinion polls and statistics cannot properly differentiate between independent institutions empowering the people and satellite institutions subordinated to the supreme ruler.**
- **In 1989 Hungary became a democracy for the first time in its history. The new constitutional order recognised inalienable human rights and institutionalised a parliamentary democracy, with a government answerable to the legislature and an indirectly elected president with limited powers.**
- **A decade after the democratic transition, public trust in institutions started to decline. Subsequent domestic political scandals, collapsing state finances, and a global economic crisis resulted in a deep constitutional and moral crisis. All this made the electorate ready for change in 2010. That year, Viktor Orbán's Fidesz party gained a supermajority of parliamentary seats, opening the way for a profound change of direction.**
- **In 2011, a parliament dominated by Fidesz deputies adopted a new constitution, called the Fundamental Law, which marked the first major step in the country's de-democratisation. It dismantled the democratic structure, and made its procedures and institutions superfluous.**
- **Deliberation is lacking because parliamentary debate and opposition rights have been restricted up to the point that there is no more effective parliamentary opposition.**
- **To regain public trust in the Hungarian political institutions, a new constitution that re-establishes representative democracy with vital public participatory elements, and which bases democracy on the possibility for citizens to actively participate in public life is needed.**
- **The next Hungarian general elections are set to be held in 2022. The political parties of the democratic opposition will have to compete on a distinctly**

unlevel playing field. The most likely outcome is that Fidesz will secure its fourth consecutive electoral victory.

Recent figures from the *Democracy Perception Index* paint an astonishing picture of the state of democracy in Hungary: Only one in three Hungarians think the country is still a democracy, and in a similar vein, most Hungarians do not trust public institutions, as e recent *Standard Eurobarometer* survey measuring public opinion in the European Union reveals. 56% mistrust the government, 57% mistrust the parliament and 46% of the population mistrust the justice system. By comparison, the same poll conducted in early 2006 indicated that 42% mistrusted the government, 44% mistrusted the parliament and 37% mistrusted the justice system.

What has caused this decline in trust in national political institutions? How can Hungary succeed in dealing with this problem? This piece focuses on these questions and suggests developing a new constitution through a process that combines representative democracy with public participation, in order to regain trust in democratic institutions.

To begin this process, we need to look at the meaning of the term 'trust' more closely. Trust can be defined as the firm belief that someone or something is reliable, truthful, or possesses the means or skills to do something. It is, first and foremost, an interpersonal and communal relationship, and much of human social life relies on it – most aspects of our lives and interactions with individuals take the existence of trust for granted; without it, life would be difficult, if not inconceivable.

Beyond trust in individuals, we may talk about trust in political institutions. The correlation between political institutions and public trust is a complex one. In a democratic regime, political institutions (e.g., parliament, courts) are established to protect human rights and prevent the emergence of an autocracy. People therefore tend to trust institutions only as long as these institutions can fulfil this duty and are accessible to the people. Over the past three decades, a gradual loss of trust in democratic institutions has occurred on an almost global scale. This is alarming because the loss of trust in democratic institutions contributes to the rise of autocratic regimes. It is difficult to measure public trust in institutions in an autocracy because opinion polls and statistics cannot properly differentiate between independent institutions empowering the people and satellite institutions subordinated to the supreme ruler. For example, while parliament may be an independent institution in a democracy, it is likely a subordinate one in an autocracy. Public faith in a charismatic leader can also influence the public perception of state institutions, as can state-party propaganda, which plays a crucial role in public opinion formation.

Cases in which a country transitions from autocracy to democracy are truly exceptional. During such a transition, people turn away from the autocratic leader and seek an institutional order, i.e, an order in which people can trust democratic institutions and in which the government and parliament do not systematically violate their human rights but instead maintain and promote them. Such was the situation in Hungary in 1989.

Deliberative democracy in action

That year, Hungary became a democracy for the first time in its history. The round table was the emblematic instrument of the democratic transition. During the round table talks, agreement among the delegates nominated by the undemocratic ruling party and the democratic opposition ensured the peaceful transition from autocracy to democracy. Although some have labelled the round table talks 'elite-driven', these talks made it possible for the people to have their voices heard. Ordinary citizens could influence the functioning of the representative institutions, and they had the opportunity to participate in town hall meetings, public gatherings, and nationwide referendums. All these resulted in dramatic changes, which were manifested in the 1989 constitutional order.

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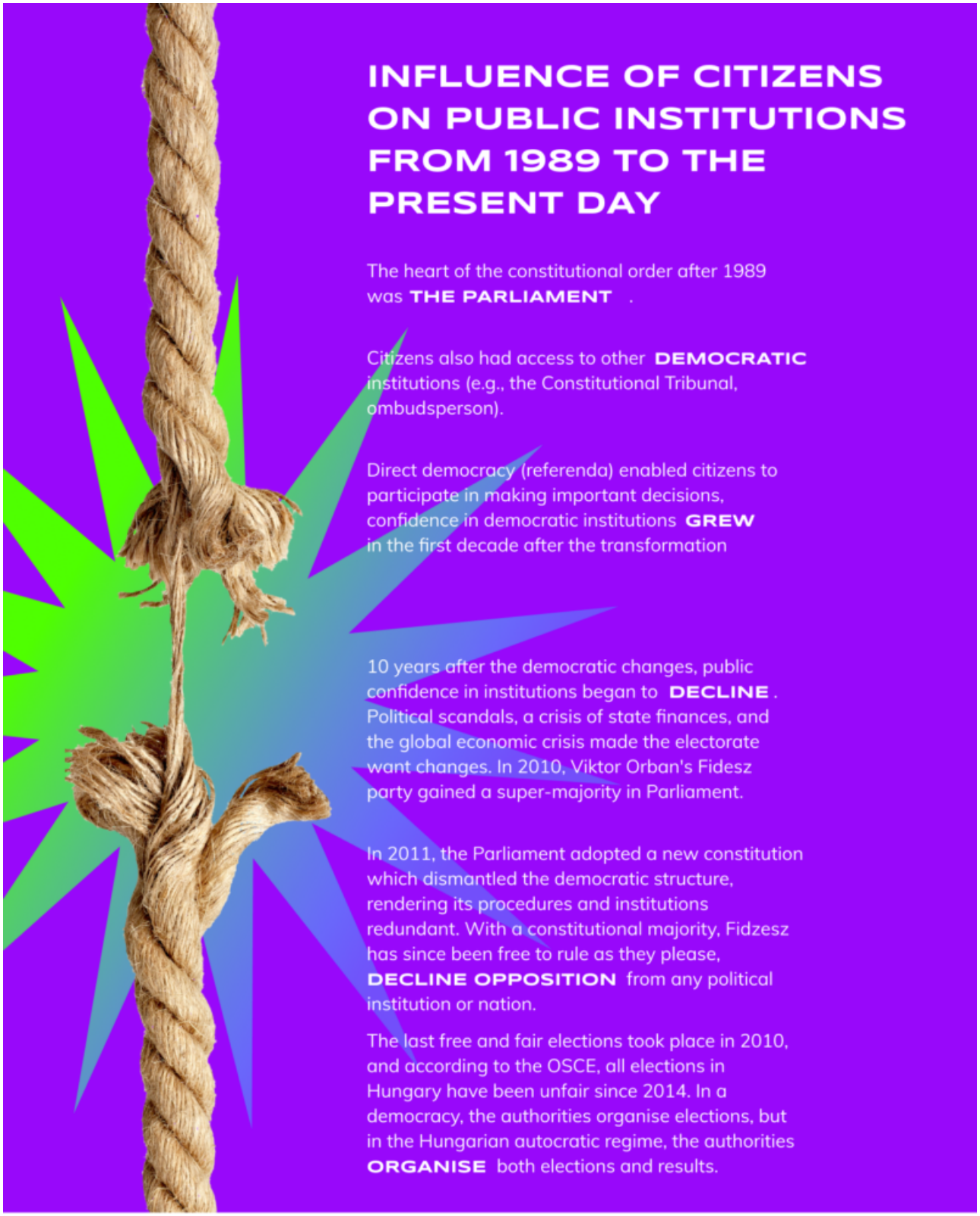

INFLUENCE OF CITIZENS ON PUBLIC INSTITUTIONS FROM 1989 TO THE PRESENT DAY

The heart of the constitutional order after 1989 was **THE PARLIAMENT** .

Citizens also had access to other **DEMOCRATIC** institutions (e.g., the Constitutional Tribunal, ombudsperson).

Direct democracy (referenda) enabled citizens to participate in making important decisions, confidence in democratic institutions **GREW** in the first decade after the transformation

10 years after the democratic changes, public confidence in institutions began to **DECLINE** . Political scandals, a crisis of state finances, and the global economic crisis made the electorate want changes. In 2010, Viktor Orban's Fidesz party gained a super-majority in Parliament.

In 2011, the Parliament adopted a new constitution which dismantled the democratic structure, rendering its procedures and institutions redundant. With a constitutional majority, Fidzesz has since been free to rule as they please, **DECLINE OPPOSITION** from any political institution or nation.

The last free and fair elections took place in 2010, and according to the OSCE, all elections in Hungary have been unfair since 2014. In a democracy, the authorities organise elections, but in the Hungarian autocratic regime, the authorities **ORGANISE** both elections and results.

For the first time in Hungarian history, the 1989 constitutional order recognised inalienable human rights and institutionalised a parliamentary democracy, with a government answerable to the legislature and an indirectly elected president with limited powers. When the constitution drafters were making constitutional choices in 1989, they followed the Hungarian democratic-republican traditions established in the period from the 1848 revolution to the 1946 proclamation of the republic. The 1989 constitutional order also had vital public participatory elements, which gave the people the right to play a meaningful role in the governance process beyond merely voting in elections. They had the right to initiate proceedings before the Constitutional Court and ombudspersons; these institutions were accessible to everyone. Besides, the constitution provided ways to exercise popular sovereignty directly. By using popular initiative, citizens could force parliament to put a particular issue onto its agenda. Achieving a quorum of least two hundred thousand voters could initiate a public referendum, the result of which was binding on the parliament. More than a dozen popular initiatives were launched and five referendums were held based on these rules in the three decades between 1990 and 2010.

In sum, parliament was at the heart of the 1989 constitutional order, but it also provided the opportunity for everyone to access the parliament and other democratic institutions (e.g., the Constitutional Court, the ombudspersons). It ensured immediate forms of expression of the people's will through direct democracy and, importantly, these participatory elements made the democratic institutions publicly accessible. Turning away from the adoration of communist party leader János Kádár's charismatic autocratic leadership, people started to trust in these new, democratic institutions, and they turned to them frequently. This was deliberative democracy in action.

Profound change of direction

A decade after the democratic transition, public trust in institutions started to decline. The inexperience of the politicians and institutions in managing a democratic regime made consolidating the newly achieved democracy extremely difficult. Subsequent domestic political scandals, collapsing state finances, and a global economic crisis that pushed Hungary into an IMF bailout resulted in a deep constitutional and moral crisis. All this made the electorate ready for change in 2010. That year, Viktor Orbán's Fidesz party gained a supermajority of parliamentary seats, opening the way for a profound change of direction.

In 2011, a parliament dominated by Fidesz deputies adopted a new constitution, called the Fundamental Law, which marked the first major step in the country's de-democratisation. The Fundamental Law introduced a regime based on the personification of the charismatic leader and mobilisation from above that would not be disturbed by any public institutions or

the people. It dismantled the democratic structure, and made its procedures and institutions superfluous. With a constitutional majority, Fidzesz are free to rule as they wish, without being challenged by any political institution or the people. The last free and fair election took place in 2010, and according to the OSCE general elections in Hungary have not been fair since 2014. This is because the Orbán government has introduced election rules and campaign finance laws, captured the electoral bodies and deployed electoral clientelism, ensuring that the outcome is essentially preordained. In a democracy, the authorities organise elections, but under the Hungarian autocratic regime, the authorities organise both the elections and the results.

No wonder, then, that the outcome of the 2014 and 2018 elections did not lead legislative assemblies embodying political pluralism, deliberation, and democratic decision-making under the rule of law. Deliberation is lacking because parliamentary debate and opposition rights have been restricted up to the point that there is no more effective parliamentary opposition. Moreover, we cannot speak of democratic decision-making because the current parliament is not the institution where the political will of the Hungarian people is formed. There is no open discussion, and laws do not arise out of a conflict of opinion in the parliament but rather from the prime minister's dictats. The Hungarian parliament is no longer a democratic institution but rather an effectively oppressive instrument in the hands of Viktor Orbán.

There is another way in which the Fundamental Law inhibits citizens' chances to influence political life. It does not recognise the primary vehicle for constitutional challenges: the individual petition, through which anyone can turn to the Constitutional Court to request a review of the constitutionality of laws. And even if people did have access to the Constitutional Court, it has already been captured by the ruling majority. A similar story can be said about the role of ombudspersons. Under the Fundamental Law, a single ombudsperson elected by the ruling majority replaced the previous four ombudspersons (fundamental rights, data protection, minority rights, and environmental issues). The capture of the Constitutional Court and the reorganisation of the role ombudspersons has harmed the system of checks and balances and made human rights protection an illusion, both in terms of quantity and quality. For instance, while in 1997, the fundamental rights ombudsperson issued opinions in 855 cases, in 2019, the number of opinions dropped to only 58. The current operation of the ombudsperson role is more reminiscent of a state regulatory body than a public advocate.

The Fundamental Law also abolished previously existing participatory elements. It does not mention the citizen's right to initiate a popular initiative, and it substantially limits the possibility of holding a valid and successful referendum by raising the threshold for validity.

According to its rules, a national referendum is valid only if more than half of all electors (approx. 4 million voters) have cast a valid vote. This threshold has only been met once, in the miraculous and exceptional year of 1989.

Since the Fundamental Law entered into force, no one has successfully initiated a referendum, either because of the new referendum law or its interpretation by the authorities. The National Election Committee and the court of jurisdiction captured by the Fidesz party successfully hindered all efforts to put questions of public interest to a referendum. In one instance, extreme right-wing skinheads were even hired to prevent, by physical force, an opposition politician from submitting a referendum question. Only Prime Minister Orbán has succeeded in initiating a referendum in the last decade, on the EU refugee reallocation scheme. The 'quota referendum' as the Orbán government called it was, in the end, unsuccessful due to low turnout.

Although Orbán advocated using referendums when in opposition, he has refrained from using these participatory tools when in government. Ostensibly, the so-called 'national consultation' process should serve as a 'substitute' for the referendum. Since 2010, the government has launched several national consultations to ask the population about pensions (2010), the Fundamental Law and social issues (2011), economic issues (2012), 'illegal migration' and terrorism (2015), the 'Soros Plan' and 'Stopping Brussels' (2017) and lifting Covid restrictions (2021). Neither the Fundamental Law, nor indeed any other law regulates national consultations. In practice, these consultations come in the form of dubious questionnaires, which the government sends directly to the electorate with rhetorical questions put by the government. There is no independent verification of either the number of surveys returned or the answers, and the government refuses to allow outside verification of its claims regarding the results.

In short, the Fundamental Law reorganised a once well-functioning democratic institutions and neutralised or abolished the checks on the government. Parliament mainly rubberstamps the laws and constitutional amendments initiated by the Orbán government instead of reining in its excesses. The ruling majority has captured the courts and the ombudsperson institution to make it impossible to oppose the government in politically sensitive cases. The Fundamental Law also made the previously existing participatory tools unavailable to the people. All these changes have eroded public trust in the democratic institutions and ultimately ended constitutional democracy in Hungary.

Ways out of the crisis

To regain public trust in the Hungarian political institutions, a new constitution that re-

establishes representative democracy with vital public participatory elements, and which bases democracy on the possibility for citizens to actively participate in public life is needed. While the process of reconfiguring the current undemocratic Hungarian system is underway, it is crucial to ensure that it is consensual and that the solution is based on an agreement among conflicting political actors regarding the foundational values of democracy. This consensus is essential because the polity needs a consensual minimum to frame a constitutional democracy. How can this consensual minimum be secured?

The next Hungarian general elections are set to be held in 2022. The political parties of the democratic opposition will be in a difficult position, as they will have to compete on a distinctly unlevel playing field. The most likely outcome is that Fidesz will secure its fourth consecutive electoral victory. But even if the elections were to bring an opposition victory, this alone would not just suddenly improve the democratic quality of the regime and the people's trust in political institutions. The democratic parties would be powerless to change the constitution. It would require a two-thirds majority vote in parliament, and it is almost inconceivable that the democratic opposition parties would have a constitutional majority in parliament. Given the apparent uncertainties surrounding the elections, if the parties of the democratic opposition do win and nominally control parliament, the following three scenarios can be imagined.

In the first scenario, these parties would form a coalition government that would have to co-exist with the non-representative institutions: the courts, the prosecution office, and the police, which can perpetuate the current regime's authoritarian character. The coalition would also be forced to obey the Fundamental Law, which requires the parliament's two-thirds majority to regulate social, fiscal, and financial policies. That means that an opposition win during the 2022 elections would not ensure that the democratic majority would be able to govern and institutionalise its social, fiscal, and financial policies as authoritative. Moreover, the principle of representation of the majority would not be respected, so the people would not rule, even though they should. This state of affairs would result in the paralysis, and ultimately the collapse of the democratic coalition.

The second possible scenario is that the democratic coalition, using its simple parliamentary majority, would start dismantling the autocracy by reorganising its constitutional framework and dismissing the main functionaries of the Orbán regime. Although it is a widespread and popular scenario in today's opposition circles, this scenario raises more problems than it solves. Reconfiguring the constitutional framework requires a two-thirds majority vote in parliament; thus, dismantling the regime with just a simple parliamentary majority would represent a clear violation of the procedural rules. So, in a formal sense, this move would violate the principle of legality. More importantly, one-sided constitution making would not

help to regain public trust in political actors and institutions. Suppose the democratic coalition does not cooperate with its opponents in changing the constitutional rules and framework. In that case, the suspicion that the new framework would serve a partisan advantage and not the common good would be irresistible. And thus, the requisite public trust would be eroded.

In the third optimistic scenario, an electoral victory for the democratic opposition and the changes in the political spectrum would result in disintegration in the Fidesz party. This erosion may make coordination possible, and some of its members may realise that satisfying a host of opposing claims is a goal that can be achieved in a roundtable-like situation. With all these considerations in mind, the democratic opposition would refrain from acting one-sidedly and engage in cooperation on the constitutional framework with a moderate, centre-right party which may replace Fidesz.

Kriszta Kovács and Gábor Attila Tóth

* *Photo: "Thanks for your vote", street advertise of the Fidesz after the 2009 EU parlament elections (the Fidesz won), author: Gergely Horváth. Source: Flickr (CC BY-NC 2.0).*