Analyses OSW

CENTRE FOR EASTERN STUDIES 13.03.2013 www.osw.waw.pl

Hungary: Controversy over constitutional changes

Andrzej Sadecki, Węgry: kontrowersje wokół zmian konstytucyjnych

On 11 March, the Hungarian National Assembly amended the constitution which has been in force since 1 January 2012 for the fourth time. The package of changes sparked a new wave of protests against the government of Viktor Orbán, which were especially strongly expressed abroad. The criticism concerns not only the content of the individual amendments, but also the way in which they were presented, because they introduce legislation that has been previously challenged by the Constitutional Court; this means a *de facto* challenge to the finality of the Court's decisions. A further dispute with the European Commission and the Council of Europe will weaken Hungary's international political position. However, this dispute will not weaken the ruling camp, and may even contribute to the consolidation of its electorate and of Fidesz's dominant position.

Changes to the constitution

The amendments to the constitution which were voted through by the ruling camp limit the powers of the Constitutional Court. It can now only rule on specific, contested passages of a law and not the entire act; and it can no longer draw on legislation dating from before the entry into force of the present constitution. In the case of constitutional laws (adopted by a two-thirds majority) or amendments to the constitution, the Court will only be able to pronounce on procedural matters. The package of 23 amendments also includes: limiting electoral campaigns on radio and television to public media (all parties will be allowed free and equal access); establishing an obligation for graduates who have studied for free at public schools to work in Hungary; the right of Parliament to decide which religious communities constitute churches (and so may receive state support); the possibility of penalising homeless people who camp in public places; and defining marriage as the union of a man and a woman, and stating that together with the 'parent-child relationship', it alone is the foundation of the family.

The weakening of the Constitutional Court will disturb the mechanisms of control and the balance of powers. Although the amendment limits its powers only slightly, forcing through issues which the Court had previously considered inconsistent with the constitution, by a constitutional majority, means that the ruling camp can circumvent its rulings. The diversity of the amendments adopted demonstrates that Fidesz is willing to give constitutional status to all the laws challenged by the Constitutional Court. However, taking advantage of the principle of the supremacy of the constitution, and altering wide areas of statutory regulation by means of constitutional provisions, calls the authority of the Constitution into

question, and raises a number of concerns about the erosion of the prestige of Hungarian law.

Foreign and domestic reactions

Even before the vote on the amendment to the Constitution, it was sharply criticised abroad. Viktor Orbán's government has been accused of limiting the role of independent institutions and violating the rule of law. On 8 March, the European Commission President José Manuel Barroso sent a letter and made a phone call to Orbán, and the Chairman of the Council of Europe Thorbjørn Jagland called for a postponement of the changes so that they can be examined by the Venice Commission (the CE's advisory body on constitutional matters). Reservations were also expressed by the US Department of State. This is now the third wave of fierce foreign criticism of Viktor Orbán since he came to power in spring 2010. At the beginning of 2011, protests were caused by a restrictive media law; and the year after by constitutional changes, including limiting the independence of the central bank. Although Prime Minister Orbán employed confrontational rhetoric for domestic needs, he eventually withdrew from the most controversial provisions in both cases, making changes to comply with the recommendations of the Council of Europe and the European Commission. On this occasion too, Foreign Minister János Martonyi has expressed a willingness to discuss the changes. The government will probably try to appease concerns by holding consultations on individual provisions of the constitutional acts.

The successive constitutional amendments have met with opposition within the country, but they have not brought about mass protests by Hungarian standards. Rallies and demonstrations were held for a few days in Budapest, gathering a few thousand people. To some extent, the ruling camp has succeeded in neutralising the criticism by reducing it to an attack on conservative values, and situating it in the context of defending Hungarian interests. It is no coincidence that during the constitutional debate, Orbán focused on criticising the court, which had questioned the government's efforts to compel foreign companies to lower their energy prices for Hungarian consumers. The constitutional amendments have thus come into a broader context of the fight for the welfare of Hungarian families, and criticism from the opposition and abroad has been linked to the interests of foreign capital. This type of strategy has helped Orbán consolidate his electorate. Thus, in the face of the weakness of the opposition and the general disillusionment with the Hungarian political class, Fidesz is still leading in the polls, and could well win the elections which the constitution states must be held by the spring of 2014.

Prospects

The President of Hungary, János Áder, who was elected by Fidesz MPs, is likely to sign the amendments. According to the constitution, he has five days to do this. The question of whether the president can send the constitutional amendments back to the parliament, or

refer them to the Constitutional Court, is the subject of a legal dispute. The opposition, as well as László Sólyom, the former chairman of the Constitutional Court and president of Hungary in 2005-2010, have appealed to the president not to sign the package of amendments, referring to the provision that the President must uphold democratic order. While Áder has already shown some independence from the government camp, and has several times sent back laws voted for by Fidesz, he is not expected to do the same on an issue which is so important for the party. Pressure on the president will come from the opposition and civil society organisations which are preparing demonstrations for the Hungarian national holiday of 15 March. However, Fidesz could well succeed in assembling large masses of followers on the capital's streets in support of Orbán (who at that time will be involved in the European Council meeting in Brussels), and the occasion will not turn into an anti-government protest.

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