

THE TRAJECTORY OF DEMOCRACY—WHY HUNGARY MATTERS

HEARING BEFORE THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE ONE HUNDRED THIRTEENTH CONGRESS FIRST SESSION

MARCH 19, 2013

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MARCH 19, 2013

COMMISSION ON SECURITY AND COOPERATION IN EUROPE,
Washington, DC.

The hearing was held at 3:00 p.m. EST in the Capitol Visitor Center, Senate Room 210–212, Washington, District of Columbia, Senator Benjamin L. Cardin, Chairman of the Commission on Security and Cooperation in Europe, presiding.

Commissioners present: Hon. Benjamin L. Cardin, Chairman, Commission on Security and Cooperation in Europe.

Witnesses present: Brent Hartley, Deputy Assistant secretary for European and Eurasian Affairs, U.S. Department of State; The Honorable Jozsef Szajer, Hungarian Member of the European Parliament, Fidesz-Hungarian Civic Union; Lane Scheppelle, Director, Program in Law and Public Affairs, Princeton University; Sylvana Habdank-Kolaczowska, Director for Nations in Transit, Freedom House; and Paul A. Shapiro, Director, Center for Advanced Holocaust Studies, United States Holocaust Memorial Museum.

HON. BENJAMIN CARDIN, CHAIRMAN, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Mr. CARDIN. Well, good afternoon, everyone, and thank you for being here. This is the first hearing of the Helsinki Commission in this Congress. I can't think of a more appropriate subject than to talk about the trajectory of democracy, why Hungary matters. I want to thank all of our witnesses for being here today. I particularly want to thank Mr. Szajer, who's here from Hungary to represent the government, or at least inform us, from the—from the country's point of view, what is happening in Hungary. That makes this hearing, I think, even more helpful to us. And I thank you very much for your participation.

The progressive inclusion of post-communist countries into trans-Atlantic and European institutions reflected the expansion of democracy and shared values, as well as the realization of aspirations long denied. Indeed, in 1997 the Helsinki Commission held a series of hearings to examine the historic transition to democracy of post-communist candidate countries like Hungary prior to NATO expansion.

I was one among many of the legislators that cheered when Hungary was—joined NATO in 1999, and again when Hungary joined the EU in 2004—illustrating not only Hungary's post-communist transformation, but also Hungary's ability to join alliances of its own choosing and follow a path of its own design. Hungary has

been a valued friend and partner as we have sought to extend the benefits of democracy in Europe and elsewhere around the globe.

But today concerns have arisen among Hungary's friends. We, the United States, value our friendship and our strategic relationship with Hungary. As a friend, we are concerned about the trajectory of democracy in that country. Over the past two years, Hungary has instituted sweeping and controversial changes to its constitutional framework, effectively remaking the country's entire legal foundation.

This has included the adoption of a new constitution, already amended multiple times, including the adoption of a far-reaching fourth amendment just days ago, and hundreds of new laws on everything from elections, to the media, to religious organizations. More than that, these changes have affected the independence of judiciary, role of the constitutional court, the balance of power and the basic checks and balances that were in place to safeguard democracy.

It seems to me that any country that would undertake such voluminous and profound changes would find itself in the spotlight. But these changes have also coincided with a rise of extremism and intolerance in Hungary. Mob demonstrations have continued to terrorize Roma neighborhoods. Fascist-era figures have been promoted in public discourse and the public places.

A new law on religion stripped scores of minorities' faiths of their legal status as religious organizations overnight, including initially Coptic Christians, Mormons and the Reformed Jewish Congregation. Most have been unable to regain legal status, including the Evangelical Methodist Fellowship, a church that had to survive as an illegal church during the communist period and today serves many Roma communities.

At the same time, the constituencies of Hungary have been redefined on an ethnic basis. Citizenship has been extended into neighboring states on an ethnic basis and voting rights now follow that. As the late Ambassador Max Kampelman once observed: Minorities are like the canary in the coal mine. In the end, democracy and minority rights stand or fall together—if respect for minorities falls, democracy cannot be far behind. And the rights of persons belonging to ethnic, religious, and linguistic minority groups will likely suffer in the absence of a robust democracy.

Max Kampelman, a long-time friend of the Helsinki Commission, served with distinction as the head of the U.S. delegation to the seminal 1990 Copenhagen meetings, where some of the most important democracy commitments ever articulated in the OSCE were adopted.

The participating States, and I quote from that document, considered that “the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression. They reaffirm that democracy is an inherent element of the rule of law.”

At issue now is whether Hungary's democratically elected government is steadily eroding the democratic norms to which Hun-

gary has committed itself, in the OSCE and elsewhere. And we care about democracy in Hungary, for the people in Hungary as well as for the example it sets everywhere we seek to promote democracy.

I welcome all of our witnesses today, and let me thank you all for being here. It really—I think this will be a hearing that will get a lot of information and be able together on these issues. Our first witness will be Brent Hartley, the deputy assistant secretary of state for European affairs. Mr. Hartley, thank you for being here. We welcome your testimony.

BRENT HARTLEY, DEPUTY ASSISTANT SECRETARY FOR EUROPEAN AND EURASIAN AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. HARTLEY. Thank you very much, Mr. Chairman, for inviting me to join you today. I appreciate very much your continued interest in events in Hungary and in the OSCE more generally. I want to be clear at the outset and echo a bit what you said in your own statement. Hungary remains a strong ally of the United States. It is a valued member of two bedrock trans-Atlantic organizations—the Organization for Security and Cooperation in Europe and the North Atlantic Treaty Organization—which define and defend democracy in Europe and beyond.

However, in the last two years we've been open about our concerns regarding the state of checks and balances and independence of key institutions in Hungary. The United States has not been alone in this regard, as the Council of Europe, the European Commission, other friends and allies of Hungary, and civil society organizations have expressed similar views. If the government of Hungary does not address these concerns, not only will the lives of Hungarian citizens be affected, but it will also set a bad precedent for OSCE participating states and new members of, and aspirants to, NATO.

Last year marked the 90th anniversary of U.S.-Hungarian diplomatic relations: relations which remain strong, based on a common security architecture as NATO allies, a deep economic partnership and what we believe are fundamental values shared by the American and Hungarian people. However, before Secretary Clinton's June 2011 visit to Hungary, we took notice of Hungary's controversial media law and a new constitution, the Fundamental Law, portions of which also raised concerns among impartial observers. In both cases, we had concerns about the content as well as the process by which they were passed.

As we have often said, Hungarian laws should be for Hungarians to decide. But the speed with which these laws were drafted and passed, and the lack of serious consultation with different sectors of Hungarian society, did not honor the democratic spirit that the people of Hungary have long embraced. Since then, the Hungarian parliament has passed scores of laws at an accelerated pace. More than a few of these laws posed threats, in our view, to systemic checks and balances and the independence of key institutions that are the bedrock of mature democracies. Privately and publicly, we expressed our concern to the government of Hungary, as did several European institutions and governments. Unfortunately, in many respects, our message went unheeded.

When Hungary's Constitutional Court struck down a law on fiscal issues, the parliament swiftly passed another law taking away the court's competency to decide cases based on fiscal matters. The government expanded the Constitutional Court from 11 to 15 members, allowing the current administration to select the additional justice—justices, and thereby alter the court's juridical balance. The new laws created a Media Council and gave it significant powers to oversee broadcast media, including the right to fine media for, quote, "unbalanced coverage," end-quote, an unsettlingly vague term.

No opposition parties are represented on Hungary's new Media Council. The council members have nine-year terms and cannot be removed without a two-thirds vote of parliament. The new laws also created a National Judicial Office and gave it a powerful, politically appointed president with a nine-year term and the authority to assign cases to any court she sees fit—a recipe for potential abuse. Another new law stripped over three hundred religious congregations or communities of their official recognition. To be clear, nonrecognized religious groups are still free to practice their faith in Hungary, but in order to regain legal status religions will have to be approved by two-thirds of parliament, an onerous and unnecessarily politicized mechanism.

In mid-2012 as expressions of concern from the United States and Europeans mounted, the Hungarian government responding in constructive ways. The government voluntarily submitted many laws for review by the legal experts of the Council of Europe's Venice Commission. We were further heartened when, early this year, Hungary's Constitutional Court issued several rulings striking down controversial legislation, thus affirming its role in constitutional checks and balances.

Unfortunately, the government drafted and swiftly passed a new constitutional amendment, the fourth amendment, on March 11th, parts of which were reinstated laws that had just been struck down by the court. In doing so, the Hungarian government ignored pleas from the Council of Europe, the United States, the European Commission, and a number of allies, as well as several respected, non-partisan Hungarian NGOs, to engage in a more careful, deliberative process and allow for Venice Commission review.

I would like to address one other area that has provoked much concern: the rise of extremism in Hungary. This phenomenon is, sadly, not unique to Hungary. The rise in Hungary of the extremist Jobbik Party as one of the largest opposition groups in parliament, and Jobbik's affiliated paramilitary groups that incite violence, are a clear challenge to tolerance. Let me be clear, the ruling Fidesz party is not Jobbik. Fidesz' ideology is within the mainstream of center-right politics, and its platform is devoid of anti-Semitism or racism. Moreover, we have seen a growing willingness by Hungarian government leaders to condemn anti-Semitic acts and expressions.

However, such condemnation is not always perhaps as swift or as resolute as it might be. One concern that some—one concern also is that some local governments in Hungary have, with little objection from the governing party, erected statues and memorials to figures from Hungary's past tainted by their support for fascism

and anti-Semitism. And some of those figures have been reintroduced into the national educational curriculum without context. This contributes to a climate of acceptance of extremist ideology in which racism, anti-Semitism, anti-Romani actions and other forms of intolerance can thrive. We also call upon Hungarian leaders to do more to defend Romani Hungarians, who face discrimination, racist speech and violence that too often goes unanswered.

In conclusion, the United States has long enjoyed and benefitted from its strong alliance with Hungary and its people. We respect their drive for freedom and democracy that made Hungary the leader in bringing down the Iron Curtain. Just as we continue to do hard work together in Afghanistan and address other challenges around the globe, so too will we continue to have a sincere, and at times difficult, dialogue on the importance of resolutely upholding the fundamental values that bind us.

Thank you, Mr. Chairman, for allowing me to express the State Department's views on these issues. And I'm available for your questions.

Mr. CARDIN. Mr. Hartley, thank you for your—for your comments. Let me just ask you a few points. Some of the trends that we see in Hungary, we see in other countries in Europe that have made progress towards democracy but seem to be now moving in the wrong direction. Hungary is indeed unique because it's our NATO ally. It also has advanced in integration in Europe.

Is what is happening in Hungary—what impact does that have on giving strength to other countries that are now going through their second or third election cycle where they're taking action against opposition that many of us think is pretty extreme? Is it legitimating some of the other illegitimate actions in Europe? Is it having a concern that this could erode development in other countries?

Mr. HARTLEY. Well, I think the short answer is that—is that there is a concern there. When Hungary and other new members of NATO and the OSCE joined—well, joined NATO after the fall of the—after the fall of the wall, and took up their positions and the—and the commitments they made in the OSCE following the fall of communism, they fundamentally agreed to a certain set of values—democratic values, and to support fundamental human rights.

When an ally, an OSCE member and a member of the EU, such as Hungary, begins to take actions that call those commitments into question, then of course it's a concern, not only for the country itself—for Hungary itself—but for the example that it can set for others. The—as the—as the bounds of what is permissible gets stretched into directions that we think are causes for concern, it gives space for other countries to consider what the—and other governments to consider what they might do in the same vein. So there's a concern for the example it sets.

Mr. CARDIN. I've heard from other countries that have been—that we've had bilaterals with, that they'll use Hungary as an example to justify some of their own conduct and point out very clearly that NATO—that Hungary's one of our NATO allies, that again, by association, saying, well, America's OK with that, when in fact obviously we're not.

You mentioned the rise of extremism, which is happening in many European countries. Jobbik, the party, is not part of government, but some of its actions have been identified with government. I specifically mention the case of Zsolt Bayer, who was—who is known for his anti-Semitic, anti-Roma comments, receiving recognition by one of the Cabinet members of the current government. There have been other activities of extremists that have been rehabilitated through recent recognition.

That's a real troublesome sign to the Helsinki Commission. Do you have any views as to why government officials would be giving legitimacy to those types of extremist and outrageous individuals trying to legitimate their place in history?

Mr. HARTLEY. Well, first of all, I don't—if I may, sir—I think Zsolt Bayer is—was a founding member of Fidesz. I don't think is a member of Jobbik.

Mr. CARDIN. No, he's not, but he received an award from the Cabinet officials, right?

Mr. HARTLEY. Yeah. Yes. Yeah, just to clarify that point.

Well, I'm—I know you've got a panel of other experts coming up who I think are probably in a better position to talk about the internal domestic calculations that might go into something like that. Certainly we are—we are disturbed by such actions. There was also a state award for journalism that was extended to a journalist just in the last several days, who has been known to make anti-Semitic and anti-Roma comments. And we—our embassy issued a statement today questioning that and suggesting that the government may want to look for a way to revoke that award.

It is—it's disturbing when these things happen. As I—as I think I mentioned earlier in my statement, the tolerance of this—of intolerant acts simply gives more space and more room for extremist philosophies to grow. So we're—we've expressed our concern as a government on numerous occasions in the past when these sorts of things have happened, and we'll continue to keep a close watch.

Mr. CARDIN. Thank you. Some of these laws, we're obviously looking as to how they're going to be implemented. We had the Media Council that you've already referred to. We have the religions law. You have the court changes that were—some of which have been struck down by the courts. Now they're changing once again to try to reaffirm their positions. Do we have any indication in our conversations with the Hungarians as to whether they're reacting to some of our concerns—some of the international community's concerns in the way these laws will be implemented?

Mr. HARTLEY. Well, I think we were encouraged over the course of 2012 by the dialogue—by the impact that the dialogue that we, the European Commission, the Council of Europe and others had with our Hungarian colleagues on a range of these issues. Unfortunately, as has been mentioned, we were disappointed that many of those positive steps with regard to the judiciary, media law, things like that, seemed to take a step backward with the adoption on March 11th of the—of this new constitutional amendment.

We are heartened that the—again, in the spirit of friendship and in the spirit of engaging a country that is a co-member of NATO, and I think for others a co-member of the European Union—there's been I think more of a public commentary on the Hungarian gov-

ernment actions. We're pleased that they've—have apparently agreed to submit the fourth amendment to the Venice Commission for review. We had argued—we'd supported the Secretary-General of the Council of Europe in his statement on March 6th, that perhaps they would want to do that before they adopt the law rather than after. We're—they chose not to do that, but we're pleased that they'll go forward with that now.

It is—but we—so I think that, you know, we're going to remain engaged with them in dialogue. It's clear that a number of their friends and allies in Europe—whether from international organizations or bilaterally—will be raising similar concerns. So we're hopeful that that dialogue will—that they'll be—that they'll be responsive to that dialogue.

Mr. CARDIN. Let me tell you one of my major concerns. And that is that a lot of this is being done with minimal amount of transparency. It happens. There is no evidence of widespread corruption—at least I'm not aware of it—in the Hungarian government. So I will make clear my concern here. The lack of transparency in many cases lead to corruption. It's—you know, it's how people can get away with personal corruption, which ends up being pretty much part of government. And again, there's no indication of this that I know of in Hungary. But if the—if they condone a process that allows laws to be made and policies to be implemented with little accountability or transparency, it can breed a more serious problem within the government itself.

Has that point been made by our people or Europe in regards to conversations with Hungary, the concerns about the process that they've been using in getting these laws passed?

Mr. HARTLEY. The—thank you sir—the—yes, we have been very concerned about the process. I think you noted and I noted in my statement that we've—the speed with which the new constitution's been adopted, frequently—and other laws frequently with major amendments being made, you know, deep into the night before the—before the final vote—we've raised that repeatedly and consistently and have suggested that it would be a better process if they were to consult with the opposition in the Parliament to give them a chance to voice their views, if they were to consult with civil society and otherwise open up the process by which they consider and vote on legislation.

Mr. CARDIN. Which brings me to, I guess, the point that you raised, and that is it's up to Hungary to pass its own laws. It's a—it's an independent country, it's a democratic country. Laws they pass are subject to their system, and that we fully support and fully understand.

Mr. HARTLEY. Yes, sir.

Mr. CARDIN. What is the appropriate role for the Council of Europe or the United States in pointing out or commenting on what is happening in Hungary, as far as their legislation is being enacted?

Mr. HARTLEY. Well, I think—thank you for the question, sir—I think as most people are aware, the United States has never been terribly shy about offering advice at any level of government. The—and—but seriously, we take the commitments that we and other NATO allies and other members of the OSEE, we take those com-

mitments very seriously. And regardless of where—what country or what government it may be, if those commitments, we feel, are not being fully observed or—in both spirit and letter, then we will voice our concerns.

I am a little bit hesitant to speak for the Council of Europe on it, but the Council of Europe, as I understand it, is the keeper of the various human rights and other conventions that European governments sign up to when they—when they join the Council of Europe. And that is why the Council of Europe, and in particular, the Venice Commission, which is a body of legal experts, has played such an important role both in addressing some of the issues that have been presented in Hungary over the last couple of years, not to mention in other parts of Europe; for instance, the capacity-building in the Balkans and things like that.

Mr. CARDIN. Well, I agree with the assessment. We are both signatories to the OSCE, which gives us the right and actually, the responsibility to raise issues where we believe they are out of compliance with the commitments within the OSCE. We have—we will continue to report on human rights records of all countries, including the United States, including our commitments to Helsinki, with OSCE, we'll comment on that.

So this—the—(inaudible)—question was sort of aimed at pointing out that we all have responsibilities to point out where we think they're out of compliance with their international or OSCE commitments, and that we have a right and responsibility to point that out. It's up to Hungary to pass the laws that they believe is right for the people of their own country.

Mr. HARTLEY. That's right, sir.

Mr. CARDIN. Thank you very much, Mr. Hartley. Appreciate your testimony.

Mr. HARTLEY. Thank you very much, sir. It's a pleasure to be here.

Mr. CARDIN. We will now go to Jozsef Szajer who has been asked by the government of Hungary to represent it here today.

As I said in my opening statement and in my questions, that Hungary is a close friend to the United States, a NATO ally, a country that we share a common vision, and we very much appreciate the fact that you are present here today. Thank you.

**HON. JOZSEF SZAJER, HUNGARIAN MEMBER OF THE
EUROPEAN PARLIAMENT, FIDESZ-HUNGARIAN CIVIC UNION**

Mr. SZAJER. Honorable Chairman Cardin, ladies and gentlemen, just by coincidence, two weeks ago, my caucus leader at the European Parliament—(inaudible)—asked me to—if the European Parliament is planning to introduce U.S. Congress-type hearings in the—in the European Parliament, and asked me to—and appointed me on behalf of our political group, the EPP, to study it. I didn't think at that time that two days later, I will get a phone call from my foreign minister, and I will be just studying this event from inside immediately. But this is—this is just what sometimes happens in life.

Mr. CARDIN. I'm glad we could be helpful to you in giving you the experience. (Laughter.)

Mr. SZAJER. Right, that will be helpful definitely to see inside from inside as much as from studying in the school books.

Well, it's an honor for me and for my colleague, a member of the European Parliament, member of the Hungary Parliament, Gulyas Gergely, to share my views on the state of the Hungarian democracy. I am a founding member of Fidesz. Twenty five years ago, I was fighting against communism, and later in my capacity as member of the first freely-elected Hungarian Parliament, and since then, several times have participated in the preparation of almost every major constitutional change. Recently, I had the great honor of being the chairman of the drafting committee on the Fundamental Law of Hungary, which included some other members, including Gergely Gulyas.

I also would like to commemorate that today is the 69th anniversary of when Hungary was occupied by the Nazi troops, taking of the final bits off our national independence.

As a legislator myself, I would like to express my appreciation for your personal interest and the U.S. Congress interest the sovereign act of the Hungarian nation's historic constitution-making enterprise. I admire your great constitution, and we held it as a compass creating our new one. Just a reference to the previous speaker, I would like to say that our's was a little bit longer made, in nine months, compared to the United States Constitution. But we held it as a compass in creating our new one.

Elected representatives of our great freedom-loving nations, the American and the Hungarian, should always find appropriate occasions to exchange on equal grounds views and experiences on matters of great importance. And what could be more important than a nation's constitution? And what could be more significant part of a nation's sovereignty than creating her own constitution?

You in America gained your independence more than 200 years ago. In the course of our history, thousands of Hungarians died for Hungary's independence, but finally, we won it only a little more than 20 years ago, when the Soviet occupation finally ended. I was there. I was part of that generation which achieved it. And now, our task is to consolidate freedom and democracy.

Hence, you should be aware of the high sensitivity of our nation towards questions of independence and self-determination. We Hungarians, like you Americans, consider that our nation's own Constitution is an exercise in democracy that we should conduct ourselves. We listen to advice given in good faith; we learn from the experience of others, as we did in the preparation of our constitution from the South African to the Spanish constitution; we studied many examples. This is the very reason I am here, but we insist on our right to decide. This is democracy and self-determination that we have been fighting for so long.

In the 2010 election, my party won a victory of rare magnitude, it has been already mentioned, obtaining a constitutional majority, more than two thirds of the seats in the National Assembly. The choice of the Hungarian people was a response to a deep economic, social and political crisis before 2010. The mismanagement of public finances, public debt slipping out of control, the collapse of public security and skyrocketing corruption were among its symptoms. We also witnessed serious violations in basic human rights by the

authorities; the most serious ones concerning the freedom of assembly in the autumn of 2006.

At those difficult times, we were expecting the support of the democratic community, of the world, to speak out against state oppression of the citizens' freedoms. Unfortunately, the international community turned a blind eye. For your information, Mr. Chairman, I broke—I brought a book from—of those events of trespasses of the police against the violation of the right of assembly in 2006, which was one of the reasons why we won so big majority later on.

Mr. CARDIN. Thank you.

Mr. SZAJER. Public order was seriously challenged also by shocking events like the serial killings of our Roma compatriots with clear racist motivations and with the public authorities standing by, crippled.

In 2010, we received a mandate and the corresponding responsibility to put an end to all that. A new constitution was long overdue. All Central and Eastern European countries except Hungary have adopted their new democratic constitutions long before. The Venice Commission welcomed efforts, and I quote, "made to establish a constitutional order in line with the common European democratic values and standards and to regulate fundamental rights and freedoms in compliance with the international instruments." This quote is closed.

A few words on the recent amendment, which has been already subject of the discussion before. Ninety-five percent of these provisions, the so-called Fourth Amendment adopted last week, had been in effect since the entry into force of the new constitution in the form of the so-called Transitory Provisions of the Fundamental Law. We did not intend to change our Fundamental Law so soon after its adoption, but the Constitutional Court—and I would like to remind, better checks and balances are working in Hungary—annulled some of the transitory provisions. The provision of the Court, based on the German constitutional doctrine of obligation of incorporation, which is a very specific doctrine, which the Constitutional Court applied, is that the Constitution should be one single act; therefore, what had to be done was basically copy-paste exercise to incorporate the Transitory Provisions to the main text, hence, the length of the new amendment.

I also would like to remind on the basis of the previous exchange of views that in Hungary, the constitution cannot be adopted in an extraordinary procedure in Parliament, so that all the procedural requirements of adopting or amending the constitution have been met and it has been a public debate. It has been a constitutional discussion on this.

Also, I would like to add that originally, when we adopted our—(inaudible)—constitution, we had a survey of 7 million voting-rights members of the Hungarian society, has been consulted by 12 different questions about the future constitution. This has been a nation rife with consultation, 1 million responses have arrived—(inaudible).

Back to the Fourth Amendment: The Fourth Amendment on the request of the Court and not against it, as some critics misleadingly claim. In fact, they do not understand what really could be here the problem. The recent bombastic headlines and

judging editorials of certain newspapers failed to underpin their argument 'til now, and they are misleading the public.

There are some new elements as well in the Fourth Amendment, and these follow: All assertions to the contrary, the—notwithstanding the Fourth Amendment does not reduce the powers of the Constitutional Court, but it does—it's exactly the opposite. It adds additional authorities to those having the right to turn to the Constitutional Court. It repeals the rulings of the Court passed under the previous constitution, but as specified by an additional amendment before the final vote, the Court shall remain free to refer to its own previous case-law in its future jurisdiction.

Contrary to noisy criticism, the amendment does not strip the Court of the power of review and annul the Constitution text itself or its amendments, since in Hungary, during this existence for two years—for two decades—the Constitutional Court never had that power. So we couldn't take it off. My definition of the separation of powers is that the Court interprets but does not legislate the text of the Constitution. In fact, the Fourth Amendment extended the power of the Court explicitly, giving the right to scrutinize the constitutionality of the procedure of amending the Constitution, which is a widening of the rights of the Constitutional Court and not narrowing.

Expressions of anti-Semitism and racism are and should be cause for concern for every democrat. Even though the phenomenon is not new and unfortunately widespread all over Europe, Hungary is not an exception in this respect. Each and every such incident in my own conviction and the Hungarian government's conviction is deplorable and cause for more determination to eliminate them. Prime Minister Orbán has confirmed in Parliament that the government shall protect every citizen equally, including those who belong in minorities, and the government will defend every Jewish citizen of Hungary.

The only Roma member of the 750-odd members, European Parliament, Livia Jaroka, citizen of my great home city, Sopron, was elected on the list of Fidesz. The only one of an ethnic community numbering about 10 million in Europe, it comes from Fidesz. It was under the Hungarian presidency of the European Union that the first European Roma strategy was adopted. In the Fourth Amendment, we choose to lay the constitutional grounds for a single procedure open for any person in case his or her religious, ethnic or national community should be seriously offended in dignity.

So in the case you mentioned, Senator, about Zsolt Bayer, in the case of Zsolt Bayer, after this amendment passed, there will be a legal instrument and every Roma, every single Roma person can claim in a civil procedure a remedy from this person who is making such a deplorable statement. This is an instrument and strong, long legal instrument against hate speech for decades demanded by the different Jewish and ethnic communities in Hungary. Rabbi Koves, leader of the United Hungarian Jewish Congregation, called the relevant article of the draft Fourth Amendment, and I quote, historic step forward in this defense of the dignity of the communities.

Our policy is consistent with our unambiguous relations in the past. It was the first Orbán government which founded the Holo-

caust Memorial Center in Budapest, and included a special Holocaust Remembrance Day for the first time in the curriculum of high schools. Yet, the latest shining evidence is the international Wallenberg Memorial Year in 2012, launched by the second Orban cabinet.

The time allotted to my testimony, Mr. Senator, may not be long enough to address all your points raised, but I encourage you to look at the amendments closely. We could dismiss your worries in the past in the case of the Media Law, the Law on the Judiciary, and I can cite many other examples. We welcome your criticism if based on facts and arguments. Foreign Minister Martonyi had requested the Venice Commission to give its opinion on the Fourth Amendment. We abide by the rules of the European Institution and expect the same from others.

However, there should not be double standards. I'm deeply convinced that in a constructive dialogue, we can enrich each other's constitutional experience and thus avoid unfounded accusations and disagreements arising from misunderstanding.

For more details, information to make your judgment, I brought you another book, which has been written together with my colleague here on my left, on the background of the new constitution of Hungary. It's titled *Conversations on the Fundamental Law of Hungary*. We also opened the Hungarian Constitutional Library on Amazon.com in English language.

Let me close my remarks with the first line of our national anthem, hence, the first line of our new constitution: God bless Hungarians: "Isten, add meg a magyart."

Mr. CARDIN. Well, once again, thank you for your—for your being here. And thank you for your testimony. We appreciate the information you're making available to the commission.

First, let me make an observation and I have a few questions. For a democratic country, the first election is always a challenge to have a free and fair election after you've been under the dominance of communist regimes. It's always a challenge, but the great test comes in the second, third and fourth elections, as to how you treat the opposition and how you establish an ongoing way to deal with the government and with opposition and different views and how you respect the rights of all people, including those who oppose the government itself. That's the real test of a democracy.

And therefore, the laws that you look at today need to be laws that protect all of the people of Hungary and not just the ability of a ruling party to be able to pass laws and their policies. And that's one of the reasons that some of these laws give us real pause. Let me mention a few and get your response.

You mention in your written statement that the freedom of the press—the laws that you passed—that you are not aware of any case of censorship or harassment of journalists. We understand that ATV, a private television station, was warned by the Media Council in February that if ATV characterized the far-right extremist party, Jobbik, as far-right in their broadcasts, that they could be fined.

Now, I would like to get your view on that. But I can tell you, those types of statements have real chilling effects on the freedom of the media, which is a critical ingredient of a democratic state.

Mr. SZAJER. I didn't have the time in my previous statement to go on the—on the freedom of the press. Also, I would like to say that the media law and the correction of the media law was by the consultation with the European Commission on one hand, and later on, by the constitutional court decision it also shows a success story about how we can correct and normal conversation—we can finally end up—end up to a—to a satisfactory result.

The European Commission started an infringement procedure concerning the media law, and finally, the Hungarian government and the Hungarian parliament changed the media law accordingly addressed exactly the questions which is why there is a wide debate in every country. If you see the debate in the United Kingdom about what are the limits of the freedom of the media, is very clear.

I have no knowledge of any fines taken on any media in Hungary. The Hungarian media, if you read it—there are some web pages which are translating Hungarian daily newspapers on the daily grounds. On that, you will see that anything could be said about the Hungarian media, but not that it's—cannot express anything. The Hungarian style, anyway—it's a very vivid and open style, which means that we are not hiding our views. We are—we like to speak directly.

I also would like to address that maybe even the Helsinki Commission has failed to address the Hungarian social government after the third election or the fourth election concerning human rights or media regulations. There was a time in Hungary—a not very long time ago—only eight years ago, when every single newspaper had a background of some kind of socialist ownership, which was one side of the political spectrum. Even the biggest center-right newspaper was in the hands of—directly entrepreneurs connected to the socialist party. The situation is much more balanced now, and for that reason, the Hungarian media is very open and clear. There is a competition there, both on the market and both of the ideas.

Mr. CARDIN. We don't really take a position on the leaning of any particular media group, but what we will fight for is an open, free media that can feel free to investigate and do reports without fear of intimidation. And if there are threats or fines, that has a chilling impact on independent reporting. I would appreciate if you would investigate what I just said or at least look into what I just said, because the rule of law is not just the laws that you pass, but how you implement those laws. And if there is a feeling that you cannot operate an independent press, then there's a concern. And there's at least some who believe that's the case in Hungary.

But let me move onto the second point. You mentioned you received the advice of the Council of Europe in regard to the media law. I have some information as to what they think about your religious—

Mr. SZAJER. Commission—European Commission—

Mr. CARDIN. European Commission.

Mr. SZAJER. Not the Council.

Mr. CARDIN. I have the Council of Europe—excuse me on that—on your religious law, where they say that the act sets a range of requirements that are excessive and based on arbitrary criteria with regard to the recognition of a church—in particular, a require-

ment related to the national and international duration of a religious community and the recognition procedures based on a political decision should be reviewed. This recognition confers a number of privileges to churches concerned. The act has led to the deregistration process of hundreds of previously lawfully recognized churches that can hardly be considered in line with international standards.

Finally, the act induces, to some extent, an unequal and even discriminatory treatment of religious beliefs and communities depending on whether they are recognized or not. That's from the Council of Europe. Any comment?

Mr. SZAJER. Chairman, if you allow me one sentence still on the previous subject, that any decision of the Media Council is subject to court review in Hungary. So if you are not satisfied with the decision, you can go there, and there is a bill where you can go through all of this process.

On the—concerning on the religious communities, I think it's a very big and great misunderstanding. The paragraph which is dealing with media—with religious freedom in Hungary states nothing else than your constitution or several constitutions of the world—the charter fundamental rights of the European Union states, that every single citizen, individually or collectively, has the right to exercise their religion publicly or in their home, which means that—this is what your constitution says. It doesn't go farther than that.

However, the European system—and I think the misunderstanding comes from this point. The European system is not about whether an individual or a community can exercise—whether it can exercise or not their religion in—individually or in a community, but in the European system, it's whether—about—they have some additional rights, whether they are entitled to some taxpayers' money, which means that the media—the church law in Hungary is not really about church freedom. I understand that the basis of the first amendment in this country—it's even prohibited to regulate any religion because of the—of the ban like this.

In Hungary, this is also—every single community, let it be whatever. I am not giving examples, because that always leads to—but any community and any individual can exercise this. There is no restriction of any on this right. What the state, in the church law, introduces as a procedure is a recognition—as a—as a religious community, which has some extra claims by cooperating with the state and getting state money—getting the taxpayer's money as a support for paying their priest, for having their charity organization and so on. And so the church law is going beyond that, and the church law is a normative law, so you cannot apply it arbitrarily.

And why—two-thirds majority in the Hungarian parliament is something which is exactly the guarantee of the right consensus needed on—concerning churches.

I also would like to add that in the neighboring countries, the same recognition process—religious communities becoming churches which are supported by the state, is, in number, much less. Austria has much less, Slovakia has less state—less churches. Hungary has, at the moment, 34. Romania has less, and several European countries have less recognized churches like that.

So we have various regulations in European countries in which the Hungarian is the most accepting—the most open system which is a public system, and the transparent procedure—how do you recognize, not as a church—a religious community—as a church, but as a religious community which is entitled to taxpayer money.

I think the big misunderstanding here lies here. This is about taxpayer money. It's not really a church law. It's church financing law, which doesn't exist in this country, because it's prohibited by the first amendment of your constitution.

Mr. CARDIN. I thank you for that explanation, but I still believe the discriminatory treatment of one church versus another is of concern. Each country has a different set of circumstances—its relationship to the faith community, but discrimination against one church versus another is an issue of concern, and I take it it is correct to say that this law did deregister hundreds of previously lawful churches in Hungary? Is that accurate?

Mr. SZAJER. Yes, and the reason is that the state doesn't want to provide taxpayers money for, for instance, business religions—for religions which are doing only business. So they are free to exercise their religious activity—their faith, because that's the first sentence of our constitution, but they are not recognized as churches which are entitled for taxpayers' money. This is the difference.

However, it also comes to your statements, Senator, to the question of double standards, which I think we have to be very careful. In Europe, there are several countries—and I don't name them, because we all know, in this room which they are—they have state religions. They have state religions, which means that the state religion has extra and specific rights over other churches. They are coming from history, but the Hungarian system, I can assure you, is not discriminatory. The constitutional court had a decision on this and gave guidelines, and a new amendment—the fourth amendment made clear how the differences between religious exercise of our religion in community and the cooperation with the state, which involves taxpayers' money.

Mr. CARDIN. I understand that point. The other area that just doesn't look well is that, as I understand it, to become registered under the law—if you're not registered, you need a two-thirds vote of the parliament. Is that correct?

Mr. SZAJER. No, no. There is a procedure in which a religious community—which is an existing religious community, can ask the recognition as a church, and so, entitled for cooperation or benefits from the—

Mr. CARDIN. And that requires a two-thirds vote of the parliament?

Mr. SZAJER. That requires a two-third qualified vote in the Hungarian parliament in order to recognize a church for that. But the fourth amendment introduces and acts on the request of the constitutional court that, on procedural basis, there is an opportunity to have a review of that in the constitutional court, so you can appeal against this decision—on procedural basis—to the constitutional court, which—it built in an extra guarantee to the process, because that's what the constitutional court was missing.

Mr. CARDIN. Which, of course, brings me to the fourth amendment, and our concern about the independence of the judiciary. You

said that you processed that law and put it into effect because you were requested to by the court, yet I understand the former chief justice of the constitutional court and the former president urged the current president of Austria to withhold signing the fourth amendment. Any reason why the former chief of justice would have concerns that the—

Mr. SZAJER. I am not aware of Hungary's conflict with Austria, and that might be a hundred years before. I don't understand the question.

Mr. CARDIN. Well, we're concerned about an independent judiciary. You've mentioned several times appeal to the courts—the courts can do this—

Mr. SZAJER. But how does it come to Austria?

Mr. CARDIN. (Off mic)—

Mr. SZAJER. We are hearing on Hungary.

Mr. CARDIN. Did I say Austria? I meant Hungary. I'm sorry—my apologies.

Mr. SZAJER. Well, on the—what concerns the independence of the judiciary—there are no new rules concerning—in this fourth amendment, concerning the judiciary. All the rules which are included are copied and pasted from the provisional, the transitional provisions of the constitution, which had been adopted in 2011. And in 2011—since 2011, the European Commission, the Council of Europe, the Venice Commission all studied in very big details—detailed judiciary.

And the day after, the Hungarian parliament voted on the fourth amendment of the constitution, they voted also on the amendment to the judicial law, which included, basically all the catalog—all the list of which the European Commission demanded. The European Commission made a statement on Tuesday, which was a week ago, about—that they were studying, but on the first glance, they see that it complies with the request which has been made. There are no new rules in this sense. All the rules which are now incorporated in the constitution, as I said—it needed to be taken over from the provisional. Just, if you ask my view on that, I don't think that this German concept of incorporation obligation is something which Hungary should apply. Sweden has four constitutions, Austria has two. So there are pieces. But that was the constitutional court, and we abide with the rules. But this incorporation concerning the judiciary and the judiciary review is nothing new in there.

What your concern might be about signing the new constitution—the former president of Hungary and the former president of the constitutional court was asking the current president for something which is not in line with our constitution. I would say he was asking for something which would be unconstitutional if the president—if President Ader would be signing this—would be sending this amendment to the constitutional court—the constitutional court should have said that it comes from someone who is not entitled to do that, because the constitutional authority in Hungary is not divided. The constitutional authority stands for the legislator, and that's—so in the last 24 years, in Hungarian constitutional history.

Mr. CARDIN. Well, I very much appreciate your explanation in filling in the blanks on these issues. I would just point out that the view of the international community—the view of the—of Europe and the United States—when we look at the changes that you’ve done to the judiciary, the changes that you’ve in your religious laws, the changes that you’ve made in your media laws, it gives us concern, because we are looking beyond the current ruling party. We’re looking at how this framework will work for Hungary’s future. And we see the potential of real problems.

So I would just urge you, since you seem very willing to seek the advice of Europe and the advice of your friends, to look at our concerns—and we’ll be glad to make sure that we follow up and give you more information on this—that it is—it presents some real serious concerns that your fundamental document—the Constitution—could become a real problem in the future democratic course for Hungary.

I want to end on one additional question. And you commented that all Hungarians have the protections, whether they are Roma, whether they are Jewish—all have the protections of the law and will be protected by the government.

I very much appreciate that statement. It’s a very important statement, and coming from you, it’s a—it means a lot. And I mean that sincerely.

I do point out that the Helsinki Commission here in the United States has invested a great deal of our attention to dealing with anti-Semitism, the problems of anti-Semitism, the problems of xenophobia, anti-Muslim activities, the tolerance agenda. We are very proud that we now have special representatives within OSCE that look at best practices in countries and try to provide assistance to promote better understanding and protection for minorities in all countries of the OSCE and beyond the OSCE itself.

And one of the leading recommendations is to exercise leadership. I remember very vividly, when there was a tragedy in Turkey—the bombing of a synagogue—and the president of Turkey went to the synagogue and showed solidarity with the—with the Jewish residents of Turkey, that was a huge signal about—the government would not tolerate that type of discriminatory action. When we see, in Hungary, government officials embracing individuals who are known for their anti-Semitism and their anti-Roma activities, it is just the reverse. It is a signal that the government really doesn’t care about those issues.

And then, it allows for more extreme activities within that country to be accepted. Leadership becomes very important, and the government has a responsibility to exercise leadership. In Hungary today, we are concerned because we don’t see that clear direction by the leaders of the government—the consistent direction that you will not tolerate discriminatory actions against any Hungarian or a person from the Roma community, Jewish community—any community, and that you will stand up against those who promote that type of extremism to question a person’s loyalty based upon their blood as to whether they’re Hungarian. That activity needs to be condemned at the highest levels, and we don’t see that.

Mr. SZAJER. Honorable chairman, may I answer in two parts? The first is for your comment that you viewed major—and the mag-

nitude of the changes in Hungary with some concern. And I fully understand that. Sometimes, myself—I work in Brussels in the European parliament. I follow the events in Hungary, but sometimes myself lose the track of speed by which these changes are there.

But I would like to remind you—and I mentioned it briefly in my original statement—that Hungary was a country at the brink of bankruptcy in 2010. You really had to start from scratch to build up the new country, and you had to start from scratch from the foundations with the new constitution, and then, dozens of new cardinal laws to make this country economically, socially work. The reason for changing the judicial system is not of gripping power over the judicial, but because, in Budapest, in order to have your first hearing in your very simple case—in a court case, you have to wait a couple of months—dozens of months in order to have your first time. So, the reason for the judicial review—or the changing of the judicial system is making it more effective.

There has been criticism that the—that the court's procedure of the Roma killings under the previous government has been too slow. Yes, I agree, and I am also very much unsatisfied with what's happening there. But exactly this is why we are changing our court system—in order to make it a modern, efficient judiciary. No one in the last 60 years has made those efforts.

You have to—your institutions when you are financing it by public money, they have to work. They have to provide the citizens the necessary service. This was not the case in 2010. Corruption, delays, bankruptcy—Hungary almost went bankrupt. We had to go to the IMF for a—for a quick relief—and so on, so which means that because the country was in so deep difficulty and crisis, you had to use and restart it as you here used the reset button. We pushed the reset button, and sometimes you do not know why something is happening because things are connected. But after the time—after you study—and this is why I really recommend you the books which I was bringing you and I also would like to ask the letter of our ambassador to—on the Freedom House to include in their—in the minutes of this meeting—

Mr. CARDIN. Without objection.

Mr. SZAJER.—That I provided for you which gives more detailed information on these issues on that. But that we should do. This is why I said that on our work, on our laws, there is a very big burden of responsibility to taking over and changing the country. Our mandate is like that. In Hungary, it borders impossible to get to certain majority, but people were so much unsatisfied with the current situation that they wanted change, they wanted big change, and this is what we are doing.

Concerning anti-Semitism and the Roma, well, first I would like personally express—maybe let me start on a personal note. I am not of Jewish origin but many people in the media for whatever reasons, they presume that I am. And I was subject—in the media, in the public sphere, in the Internet—subject of anti-Semitic statements myself. So, personally, I also cannot accept and tolerate any kind of intolerance, any kind of racist or anti-Semitic motives because I know how to be—what to be the victim of that.

In Hungary, there are living hundreds, thousands of people of the Jewish community whose ancestors and whose family had to

survive Holocaust. This is why our President Áder went to the Knesset to express the share of the responsibility of the Hungarian nation just a few months ago and also to recognize that. This is why the prime minister said what I—what I mentioned, that we defend every Hungarian citizen. But all the things—and it has been refuted on the highest level—Deputy Prime Minister Tibor Navracsics has made a very clear statement about the statement of Zsolt Bayer which is a deplorable statement which cannot be accepted in a democratic society. So, in that sense, I think the Hungarian government's stance is clear and I agree with the previous speaker here in this place which said that the government is not part of that. And we are not permissive in this area. I don't think that we can afford that because we are not thinking—Fidesz has never been a party which was conducting these anti-Semitism—any kinds of this ideas.

We were founding our organization 25 years ago under the communist system exactly in order to fight this kind of thing. So, in that sense, your concerns are right because in every society there are people who are anti-Semites, who are racist but we have to do the most in order to eliminate and diminish the number of those. I think on this grounds, if we start our cooperation and our observation of the Hungarian constitution and the constitutional order and the rule of law and separation of powers and checks and balances, this could be a good and very firm foundation, and I assure you that the Hungarian government will be always partner on this—not only on the symbolic issues but also on the ground.

Mr. CARDIN. Well, I think that was a very fine summary, one I completely agree with. As I said in my opening comments there's no—that we understand that the ruling party is an inclusive party. That, we fully understand. What I asked for was leadership against those who do things that are inappropriate. Not in your government but in your society. We hope they're not in your government; they're not in your government.

There are—we don't want to legitimate or give greater credence to those who would affect the rights of all of your citizens. But I must tell you I think the—your colleagues have chosen the right person to study the system we have here, as far as how hearings are going. You did an extremely effective job. So, I know that you'll take back that experience to Europe, and I look forward to continuing this dialogue and this exchange. The Helsinki Commission is set up as the implementing arm for the OSCE commitments. And as I said, we very much want to work with our friends in areas that we have concern. And we are—we raise issues not just in Hungary; we've raised issues in the United States of America where we think we're out of compliance with some of those standards.

So, we very much appreciate your participation here because it did fill in the blanks in many different areas and we look forward to the continuation of this dialogue. And it's been a pleasure to have you before the commission.

Mr. SZAJER. Chairman, I know it's very unpolite, but I have to say this—that, first, I has been always open to this—I know your colleagues, basically many people in this room—consultations. We very rarely get this kind of occasion that we can state our posi-

tions. Normally you hear our views with second-hand or third-hand or fourth-hand or non-hand; just some kind of headlines.

And I appreciate any kind of dialogue in Hungary, in the United States, because I am deeply convinced that the Hungarian democracy is a strong democracy and we are—Fidesz is a strong democratic party committed to democracy, to rule of law, checks and balances. This is our conviction for 25 years. This is why we founded our organization at that time. And we didn't change it. The circumstances, however, changed. There are very big difficulties in my country. It's not easy to govern a country from the brink of bankruptcy. And for that reason, I really would like to ask you and encourage you to create more occasions than we can speak directly with each other on these issues to avoid misunderstandings which lead us to bitter disillusionment. Thank you very much.

Mr. CARDIN. I think that is a very good suggestion and I look forward to those types of meetings and to continue to strengthen the ties between our countries. Thank you very much.

We have a third panel. It will consist of Dr. Kim Lane Scheppele, an expert on constitutional law from Princeton University; Ms. Sylvana Habdank-Kolaczowska from Freedom House; and Dr. Paul Shapiro from the U.S. Holocaust Memorial Museum.

I thank the three of you for your being here but also for your patience. We don't normally have three panels but it was a—I think particularly appropriate that we had a panel from the country involved. So, we'll start with Dr. Scheppele.

**KIM LANE SCHEPPELE, DIRECTOR, PROGRAM IN LAW AND
PUBLIC AFFAIRS, PRINCETON UNIVERSITY**

Ms. SCHEPPELE. Ah, yes, thank you. I am honored to testify before you today. My remarks will be short; I have much longer written testimony that I would like to enter into the record.

Ms. CARDIN. Without objection. We'll take—all three of your statements will be made part of the committee record.

Ms. SCHEPPELE. Great, thank you. I am here today because the current Hungarian government has felled the tree of democratic constitutionalism that Hungary planted in 1989.

Since its election in 2010, the Fidesz government has created a constitutional frenzy. It won two-thirds of the seats in the parliament in a system where a single two-thirds vote is enough to change the constitution. Twelve times in its first year in office it amended the constitution that it inherited. Those amendments removed most of the institutional checks that could have stopped what the government did next, which was to install a new constitution. The Fidesz constitution was drafted in secret, presented to the parliament with only one month for debate, passed by the votes of only the Fidesz parliamentary block and signed by a president that Fidesz had named. Neither the opposition parties nor civil society organizations nor the general public had any influence in the constitutional process. There was no popular ratification. This did not stop the constitutional juggernaut.

The constitution—the government has amended its new constitution four times in 15 months. Each time, the government has done so with the votes of only its own political block, rejecting all proposals from the political opposition or from civil society groups. So,

the current Hungarian constitution remains a one-party constitution.

We've talked already about the fourth amendment passed last week. It is a 15-page amendment to a 45-page constitution. László Sólyom, mentioned earlier, the conservative former president of the Hungarian constitutional court and of the Republic of Hungary, has said in conjunction with the fourth amendment that it removes the last traces of separation of powers from the Hungarian constitutional system. Under cover of constitutional reform, the Fidesz government has given itself absolute power. It now has discretion to do virtually anything it wants, even if civil society, the general public and all other political parties are opposed. The importance of divided and checked powers is of course well-known—was well-known to the American constitutional framers. James Madison wrote in *Federalist* number 47: “The accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.”

By James Madison's definition, Hungary is on the verge of tyranny. To demonstrate this, we should start with the basics. Hungary has a unicameral parliamentary system of government. A unicameral parliament has no upper house to check the lower house, no senate to complicate life for the house of representatives and vice versa; a parliamentary system means that the most powerful executive—that is the prime minister—is elected by the parliament rather than by the people. As a result, the prime minister in Hungary is guaranteed a majority for all of his legislative initiatives.

In 1990, the primary check on this system since that time has been the constitutional court. Unlike a supreme court, which is the highest court of appeal in the legal system, as we know in the United States, a constitutional court is the only court that is allowed to hear and decide constitutional questions. And it does nothing else besides rule on constitutional matters. Because the Hungarian constitutional court conducts the primary oversight in a system that has little formal separation of legislative and executive power, it is even more important than the Supreme Court is in the United States. But the Fidesz government has neutralized that court's ability to provide that check.

Before 2010, the procedure for electing judges to the constitutional court prevented the court from being captured by any one political faction. But Fidesz changed the system for electing constitutional judges so that now only a single two-thirds vote of parliament is sufficient to put a judge on the court. And, of course, they have the two-thirds. Fidesz also expanded the number of judges on the court from 11 to 15, which gave the governing party four more judges. Think of Roosevelt's court-packing plan, only it worked in Hungary.

Between changing the process for electing judges and expanding the number of judges that could be elected by this government, the Fidesz government has been able to elect, as of next month, nine of the 15 judges on this court—all with the votes of only its own parliamentary bloc, although actually Jobbik voted for a couple of their judges.

But even if the court is in Fidesz-friendly hands, a powerful court might still be dangerous to a government that shuns checks on its freedom of action. So, the jurisdiction of the court has been cut. Mr. Hartley already mentioned that the power of the court to review budget and tax laws has been—has been cut back so that now the court may never review budget and tax laws passed when the national debt is more than 50 percent of GDP, which will be true for a long time.

So, let me give you a couple of examples. If a tax law passed this year infringes an individual's or a corporation's constitutionally guaranteed property rights or if such a tax is applied selectively to particular minority groups, there is nothing the constitutional court can do in perpetuity. And this opens up a space for the government to violate many personal rights without constitutional oversight.

The fourth amendment has also removed from the court the power to review constitutional amendments for substantive conflicts with constitutional principles. Mr. Szajer emphasized that actually the court was given the power to review amendments procedurally, which is a power it already had. So, at least that power is confirmed. But its ability to review amendments for substance has now been taken away.

So, for example, to give you just a couple of examples of things that have just happened, if the constitution provides for freedom of religion but a constitutional amendment requires a two-third parliamentary vote before a church is officially recognized—which has already happened—the court can't review that because it's now in the constitution. Or if the constitution says anyone may freely express her opinion, but an amendment—for example, one added last week—says that no one may defame the Hungarian nation, nothing the court can do. So, the government can now bypass the constitutional court whenever it wants by simply adding something to the constitution.

The fourth amendment also annuls the entire case law of the constitutional court from before the constitution came into effect. No other court in the world has ever had its whole jurisprudence cancelled in this way, even when a new constitution was written.

Just to put it in the American context, imagine if the framers had decided to nullify the whole common law before proceeding. It just cuts the ground out from under things that were legally taken for granted. As you know, the independence of the ordinary judiciary has also been compromised. The Fidesz government lowered the judicial retirement age which knocked out the senior-most 10 percent of the judiciary—disproportionately the leadership. So, 20 percent of supreme court justices and more than half of the appeals court presidents were removed from their office in that way. Both the constitutional court and the European Court of Justice found against Hungary on that matter. And at first the government defied those court judgments before finally agreeing to reinstate at least some of the fired judges. But by the time the judges were reinstated, all of the court leadership positions were filled with new judges, which meant that when the old judges were taken back, they were taken into much less important positions.

So, how were those judgeships filled? The government created something called the National Judicial Office, which has a presi-

dent who single-handedly has the power to hire, fire, promote, demote and discipline all judges without substantive check from any other institution. Just this one person. And the Venice Commission has expressed an extraordinary amount of concern over this issue. And so the leadership of the—of the judiciary has been replaced by this one person who, not surprisingly, was elected by a two-thirds vote of the Fidesz parliament. The president of this office also has the power to take a case and to move it to any court in the country other than the one that the law would normally assign it to. And as you've heard, one of the government's defenses of this is that this is supposed to speed up the processing of cases. But this rationale is belied by the facts.

From public sources, I have been monitoring the movement of these cases in the first year that the president of the National Judicial Office has had this power. She has moved only a few dozen cases away from the courts—and these are courts that have thousands of backlogged cases. And she has moved these cases not to the least crowded courts in the countryside but to other courts that also have backlogs. So, while my statistics cannot reveal the motivation of the government, they can show that the government is not moving a substantial enough number of cases to make a difference in waiting time and they are not moving cases from the most to the least crowded courts. I'm happy to make the data available if you would like to see it.

So, in addition, we're worried as well about the electoral framework because the legal framework for the 2014 election a year from now is still in flux. The Fidesz parliamentary majority has already enacted two election laws over vociferous protest from opposition parties. These laws gerrymander the districts for the next election. And it's not just a typical American gerrymander, which happens one state at a time, but this is a national gerrymander. And, moreover, all of the boundaries of the electoral districts are put in a law that it will take a two-thirds subsequent vote to change. So, it's going to be very difficult to undo.

The new law also eliminates the second round of voting for single-member districts, which allows, for the first time, candidates without majority support to win a parliamentary seat. And these changes keep doing. In fact, the election system is not fixed. The fourth amendment actually created a constitutional ban on political advertising during the election campaign in any venue other than in the public broadcast media, which is controlled by the all-Fidesz media board.

There's much more I could say. My testimony—my written testimony says a lot more. And so what I would like to do is just say something about what I think might be done in this—at this intersection. The Hungarian government vociferously claims that it is still a democracy because the political parties freely organize for democratic elections. But its critics are concerned that the government presently controls the media landscape, has enacted a number of legal provisions that disadvantage opposition parties, and continues to change the electoral rules. The OSCE, which is a specialist in election monitoring among other things, should insist that the electoral rules be fixed far enough ahead of the election so that

all those who want to contest the election have a reasonable amount of time to organize themselves accordingly.

In addition, the OSCE should also fully monitor the 2014 Hungarian parliamentary elections. This should not—this should include not just election day or long-term monitoring missions. The comprehensive changes in the constitutional framework warrants an early needs assessment mission, one that can fully review the effects of all the changes to Hungary’s electoral system.

Of course, as we’ve heard here, the U.S. government shares with Hungary membership in both the OSCE and in NATO. Under both of these organizations, Hungary and the U.S. have together committed to a series of democratic principles and human rights, and this gives, I think, the U.S. some substantial interest in monitoring these things.

But the U.S. government should also be aware that under pressure, the Fidesz government in the past has promised minor changes to its comprehensive framework—changes that have not in fact addressed the most serious problem, and that most serious problem is concentration of political power in the hands of one party.

The U.S. should resist entering the battle of competing checklists of constitutional features. The Hungarian government also insists that some other European country has the same individual rule that its friends criticize. Perhaps in this connection we should remember Frankenstein’s monster, who was stitched together from perfectly normal bits of once—of other once-living things but who nonetheless was a monster. No other constitutional democracy in the world, let alone in Europe, has the combination of features that Hungary now has.

We might also say—and this came up actually in the first panel—that other countries in Hungary’s neighborhood are looking with great interest at what Hungary is doing. They can see that the EU, the Council of Europe, the OSCE, NATO and the United States have limited ability to persuade a country to change its domestic laws. Hungary’s neighbors understand that Hungary’s getting away with consolidating all political power in the hands of one party, and many find that enticing. Troubling recent developments in Romania, Bulgaria and Slovenia show that the Hungarian disease could spread if the U.S. and—if the U.S. and its European allies don’t stand up for their values in the Hungarian case.

In closing, then, I would strongly urge the United States, the U.S. Helsinki Commission and the OSCE to take Hungary seriously, engage with the Hungarian government on matters of constitutional reform and work toward ensuring that the channels of democratic participation remain open in Hungary so that the Hungarian people retain the capacity to determine the sort of government under which they will live. Thank you.

Mr. CARDIN. Well, thank you very much for your testimony.

Ms. Habdank-Kolaczowska.

**SYLVANA HABDANK-KOLACZKOWSKA, DIRECTOR FOR
NATIONS IN TRANSIT, FREEDOM HOUSE**

Ms. HABDANK-KOLACZKOWSKA. Thank you very much. Thank you for this opportunity to appear before the commission and discuss recent developments affecting civil society in Hungary.

Freedom House's annual Nations in Transit report, which focuses specifically on democratic governance in post-communist world as well as our global surveys Freedom in the World and Freedom of the Press, have all drawn attention to the vulnerabilities and potential threats to democracy created by these legislative changes affecting Hungary's media sector, data protection authority and judicial system. We remain deeply troubled by the restructuring and restaffing of Hungarian public institutions in a way that appears to decrease their independence from the political leadership. The ongoing use of Fidesz's parliamentary two-thirds majority to insert these and really striking array of other legislative changes into Hungary's only less-than-two-year-old constitution is also extremely troubling, particularly as some of the measures had already been struck down by the Constitutional Court.

I was asked to comment specifically on recent Hungarian media legislation and the law on churches, which I will do briefly now.

Changes introduced in 2010 consolidated media regulation under the supervision of a single entity, the National Media and Infocommunications Authority, whose members are elected by a two-thirds majority in parliament. A subordinate body, the five-person Media Council, is responsible for content regulation. Both the Media Authority and the Media Council currently consist entirely of Fidesz nominees, and they are headed by a single official who has the authority to nominate the executive directors of all public media. The head of the Media Authority and Media Council is appointed by the president for a nine-year term. This year, the government responded to criticism of the appointment process by introducing term limits for this particular position and minimum background qualifications; however, these will only take effect when the current officeholder—when their term expires, six years from now.

The particular issues of concern to us are the broad scope of regulatory control and content requirements—for example, the definition of “balanced” reporting—and the lack of safeguards for the independence of the Media Authority and Media Council.

Under the revised version of the so-called Hungarian Media Law, the Media Council is officially responsible for interpreting and enforcing numerous vaguely worded provisions affecting all print, broadcast and online media. The council can fine the media for “inciting hatred” against individuals, nations, communities, or minorities. It can initiate a regulatory procedure in response to “unbalanced” reporting in broadcast media, though this no longer applies to print media. All fines must be paid before an appeals process can be initiated, and under the Media Law, the Media Authority can also suspend the right to broadcast.

The Media Council is responsible for evaluating bids for broadcast frequencies. Freedom House applauds the council's recent decision to grant a license to the opposition-oriented talk radio station Klubradio for its main frequency, in line with a recent court ruling.

We regret that it took nearly two years and four court decisions for the council to reverse its original decision, during which time the radio was forced to exist on temporary, 60-day licenses, during which time it was extremely difficult for them to attract advertisers. The episode has cast a shadow on public perceptions of the Media Council, even among those who were previously prepared to believe that a one-party council could function as a politically neutral body.

In 2011, the Hungarian National News Agency, MTI, became the official source of all public media news content. The government-funded agency publishes nearly all of its news and photos online for free, and allows media service providers to download and republish them. News services that rely on paid subscriptions obviously cannot compete with MTI, and the incentive to practice “copy-and-paste journalism” is extremely high, particularly among smaller outlets with limited resources. The accuracy and objectivity of MTI’s reporting has come under criticism since the Orban government came to power in 2010. Under the Media Law, the funding for all public media is centralized under one body, which is also supervised by the Media Council.

Now Hungary’s Constitutional Court, as we discussed a little bit, has attempted to push back against some of the more problematic legal changes introduced since 2010. At the end of 2011, it annulled several pieces of legislation affecting the media. These revisions, most of which were confirmed by the parliament in May 2012, represent only a small fraction of those recommended by the Council of Europe. Moreover, they may not even prove permanent, given the government’s recent habit of ignoring or overruling Constitutional Court decisions by inserting voided legislation into the constitution.

This seems likely to be the fate of the law on churches, which the court struck down last month, but which has already made a reappearance in a proposed constitutional amendment that is currently under consideration. The law essentially strips all but 32 religious groups of their legal status and accompanying financial and tax privileges. The over 300 other previously recognized groups are allowed to apply for official recognition by the parliament, which must approve them by a two-thirds majority.

It should be noted that the previous regulations were quite liberal, with associated financial benefits fueling an often opportunistic proliferation of religious groups over the last two decades. However, the new law has the potential to deprive even well-established and legitimate congregations of their official status and privileges. More fundamentally, the law represents another instance in which the parliamentary two-thirds majority has given itself new power over independent civil society activity. The fact that the parliament will have the right to decide what is and is not a legitimate religious organization is without precedent in post-communist Hungary.

As our—as Mr. Szajer has mentioned, many of the areas targeted for reform by the Orban administration, including public media, health care, the education system, and even electoral legislation, were in need of reform long before the April 2010 elections brought Fidesz to power. No government until now has felt emboldened or

compelled to address so many of these problem systematically—systematically and simultaneously. However, speed and volume in lawmaking cannot come at the expense of quality, which only broad consultation and proper judicial review can ensure. Nor should reforms create hierarchical structures whose top tier, again and again, is the dominant party in parliament. Voters can still change the ruling party through elections, providing some opportunity for corrective measures, but the ubiquitous two-thirds majority thresholds in recent legislation make it extremely difficult for any future government to tamper with the legacy of the current administration.

Ongoing economic crisis and political frustration in Europe are likely to yield other governments that feel empowered to reject international advice, make sweeping changes that entrench their influence, and weaken checks and balances, damaging democratic development for years to come. But such—we believe that such behavior can be deterred if early examples like the situation in Hungary are resolved in a positive manner.

The threats to democracy that Freedom House has observed in Hungary are troubling in their own right, but they are particularly disturbing in the sense that the United States has come to rely on countries of Central Europe to help propel democratization further east, and indeed to the rest of the world. The idea that these partners could themselves require closer monitoring and encouragement bodes ill for more difficult cases in Eastern Europe and the Caucasus. It's therefore essential that the United States and its European counterparts closely coordinate their efforts to address backsliding in countries like Hungary and support them on their way back to a democratic path.

Thank you.

Mr. CARDIN. Thank you very much for your testimony.

Dr. Shapiro.

PAUL A. SHAPIRO, DIRECTOR, CENTER FOR ADVANCED HOLOCAUST STUDIES, UNITED STATES HOLOCAUST MEMORIAL MUSEUM

Mr. SHAPIRO. Thank you, Mr. Chairman. On behalf of the United States Holocaust Memorial Museum, I'd like to thank the commission for organizing this important hearing regarding democracy and memory in Hungary. My remarks today will summarize some of the main points of my written statement, and I request that my written statement—

Mr. CARDIN. And—all your statements will be put in the record.

Mr. SHAPIRO. Thank you.

Over a hundred years ago, philosopher George Santayana wrote that "Those who cannot remember the past are condemned to repeat it." In mid-1944, the Jewish community of Hungary was assaulted and nearly destroyed in its entirety over the course of just a few months. That—those losses represented one of every 10 Jewish victims of the Holocaust, one of every three Jews murdered at Auschwitz. Today the memory of that tragedy is under serious challenge in Hungary, with consequences that we cannot yet fully predict but which are certainly ominous.

In my written remarks, I've provided the commission with a brief summary of Hungary's Holocaust history. Here, just one minute about this. Under Regent and Head of State Miklos Horthy, foreign Jews resident in Hungary were deported to their deaths. Jewish men were forced into labor battalions, where tens of thousands died. And over 400,000 Hungarian Jews and at least 28,000 Romani citizens of the country were deported from Hungary to Auschwitz.

During the months that followed the removal of Horthy from power in October 1944, the Arrow Cross Party of Ferenc Szálasi committed additional atrocities. The record is one of immense tragedy: 600,000 Hungarian Jews murdered out of a total Jewish population of over 800,000, at least 28,000 Romani victims and significant participation and complicity in the crime by Hungarian authorities from the head of state down to local gendarmes, police and tax collectors in tiny villages.

When one turns to the manner in which the memory of this history has been treated in Hungary since the fall of communism, two distinct phases are visible. The first spanned Viktor Orban's first term as prime minister, 1998 to 2002, when the coalition government that he led established a National Holocaust Commemoration Day, brought Hungary into the International Task Force for Cooperation on Holocaust Education Remembrance and Research and appointed a commission to create the Holocaust Memorial and Documentation Center in Budapest. That center's permanent exhibition is certainly one of the best in Europe. Socialist Party governments from 2002 to 2010 remained, more or less, on this positive path.

But the appearance in the middle of the last decade of the openly anti-Semitic and anti-Romani Jobbik Party and the paramilitary-style Magyar Gárda or Hungarian Guard associated with Jobbik, brought about a change of atmosphere. Symbols associated with wartime fascism reappeared in public, incidents of anti-Semitic intimidation and violence increased and anti-Romani discourse took on an increasingly Nazi-like tone.

An especially noteworthy portent of change occurred in 2008 when the then out of power but still powerful Fidesz Party failed to join with other mainstream political parties in forceful condemnation of Jobbik's anti-Semitic and anti-Romani sloganeering and Magyar Gárda intimidation of Jews and violence against the Romani population.

After Fidesz won the 2010 elections and returned to government with an overpowering two-thirds majority in parliament, the warning signs of 2008 proved to be accurate. Still led by Prime Minister Orban, Fidesz and the Fidesz government changed their approach to issues of the Holocaust. In the judgment of some people, this was done in order to appeal to Jobbik voters. Others were more inclined to see the change as reflecting accurately the prejudices and actual beliefs of Fidesz leaders and membership. It was likely some of both.

Over the past three years, we've witnessed in Hungary attempts to trivialize and distort the history of the Holocaust, the development of an atmosphere that has given reign to openly anti-Semitic discourse in the country and efforts to rehabilitate political and cul-

tural figures who played a part in Hungary's tragic Holocaust history. This deterioration of a once-better state of affairs has predictably gone hand-in-hand with the broad political trends that the commission is examining today.

For anyone who is familiar with the history of Nazi Germany, efforts to impose government control on the media, efforts to politicize and undermine the independence of the judiciary and efforts to deprive certain religious groups of equal status, all echo a past in which propagandistic control of the media stoked race hatred, perversion of the law led to lawlessness and mass murder and the de-legitimization of a religious community led to the persecution and murder of its members.

Racial violence against the Romani minority in Hungary, while not perpetrated by the government, has not been effectively addressed by the government either. And people like Zsolt Bayer, a founding member of Fidesz, whose brutal anti-Semitic rhetoric is equaled only by his truly despicable and incendiary anti-Romani slurs, still finds a comfortable political home inside the Fidesz Party.

Can a party with truly democratic intentions harbor a person who recently called Gypsies, quote, "cowardly, repulsive, noxious animals" that are, quote again, "unfit to live among people," and who incited violence by a call to deal with the Romani population, quote again, "immediately and by any means necessary"? A Fidesz spokesman, with a wink and a nod, allowed that Bayer had penned his hateful words as a journalist, not as a member of Fidesz.

With the Fidesz government and change of atmosphere in Hungary has come an assault on the memory of the Holocaust. And this has taken four principle forms. Here I will summarize in respect of my time. First came an assault on the history displayed at the Holocaust Memorial and Documentation Center. Series of proposals to change the permanent exhibition were made by Dr. Andras Levente Gal, the then-new, Fidesz-appointed state secretary in the Ministry of Public Administration.

The first proposal was to eliminate mention on Miklos Horthy's alliance with Adolf Hitler and participation in the dismemberment of three neighboring states. Mr. Gal claimed that that is irrelevant to the Holocaust. And yet, violation of post-World War I national boundaries brought war in Europe. War provided cover for the mass murder of the Jews. And it was precisely the Jews of the regions that Hitler restored to Admiral Horthy's Hungary who became the first targets of deportation and death. Gal's second proposal was to sanitize the record of Hungarian collaboration in the ghettoization and deportation of the country's Jews.

Then came the so-called Nyiro affair, and here I cannot go into detail. But it was the speaker of the Hungarian National Assembly, parliament, founding member of Fidesz, together with Hungarian state secretary for culture, also from Fidesz, who united with the leader of Jobbik to honor posthumously Jozsef Nyiro, a Transylvanian-born writer and fascist ideologue, who had been vice chair of the Education Commission in the murderous Arrow Cross regime and had fled the country, together with Szalasi, in the final days of the war.

The plan was to rebury Nyiro's ashes in Transylvania, while attempting to whip up nationalist sentiment among the ethnic Hungarian minority there, through an elaborate official funerary procession that would wend its way by train from the Hungarian border to Nyiro's birthplace, some 200 miles inside Romania. How did the Hungarian government deal with this embarrassing incident? Of course, two members of the government planned it. But there was no rebuke, only a claim, again, that the planners were acting in their personal, not their official, capacities.

The third root of assault on the Holocaust has been through the inclusion of anti-Semites as positive role models in the national school curriculum, a curriculum that also includes efforts to relativize the significance of the Holocaust. I could explain who the anti-Semitic players are. They are in my—in my extended remarks. The curriculum—so let me address the second point—the curriculum suggests that teachers treat the Holocaust and Hungarian military losses at Stalingrad as equal tragedies.

Now, equating the loss of military forces to an enemy army in battle with the systematic, racially inspired murder of civilian men, women and children who were citizens of one's own country, solely because they were of a different religion or ethnicity, of course, makes no sense unless relativization and distortion of the Holocaust is the goal.

Final element in the assault on the Holocaust has been the attempted rehabilitation of Holocaust perpetrators. The most emblematic case is the attempted rehabilitation of Admiral Horthy himself. Someone has already referred to statues of Horthy, public places being named for him. When asked to take action to halt the de facto rehabilitation of Miklos Horthy, the Hungarian government has responded evasively.

The government isn't seeking to rehabilitate Horthy, goes the standard line. But it's important to realize the Horthy is a controversial figure and that there's no consensus of opinion about his legacy. This, of course, leaves the door wide open. Meanwhile, the government has played to nationalist sentiment, seeking to purge Horthy's record as Hitler's ally and glorifying the restoration of Hungary's, quote, "lost territories," unquote, that Horthy was able to achieve by alliance with Adolf Hitler.

The government hasn't taken serious steps to research and more rigorously evaluate Horthy's record of anti-Semitism and complicity in the Holocaust. In short, the history of the Holocaust is under assault and the rehabilitation of some of the people responsible for the murder of 600,000 of the country's Jews is well under way. It's understood that anti-Semitic and anti-Romani discourse, and even intimidation and violence, is not likely to illicit effective government action to alter the atmosphere or the situation.

So the question is what to do? After extensive consultations in the United States, in Hungary, and with members of Prime Minister's Orban's government and the Hungarian embassy in Washington, U.S. Holocaust Memorial Museum has encouraged the government of Hungary to take a series of actions, among them: establish a state-sponsored, international commission of scholars to prepare a definitive report on the history of the Holocaust in Hungary, including the history of anti-Semitism, and to make recommenda-

tions to the government regarding future Holocaust memorialization, education and research activities; enact legislation to prevent the creation of monuments, naming of streets or other public sites honoring individuals who played significant roles in the Holocaust-era wartime governments of the country; mandate in Hungarian secondary—in the Hungarian secondary school curriculum that every student in the country visit the Holocaust Memorial and Documentation Center in an organized class visit during his or her final four years of high school education; ensure that the speaker of parliament consistently applies the recently established authority of the speaker to censure, suspend and fine MPs for expressions of racist and anti-Semitic views; and take whatever additional steps are necessary to prevent ranking members of government ministries and members of Fidesz from participating, in either public or, quote, “private,” unquote, capacity, in activities that are likely reinforce racist, anti-Semitic or anti-Romani prejudices or that appear to rehabilitate the reputations of individuals who participated in the mass murder of Hungarian Jewry.

Our museum has confirmed to the Hungarian government that we stand ready to be helpful in ways that our experience or expertise would allow.

Mr. Chairman, democracy and memory are closely interrelated. Undermine democracy, and the rights of human beings deemed to be different are easily violated. Misrepresent the tragedies of one’s national past, and soon it becomes necessary to control the media, manipulate electoral mechanisms, dispense with the legal niceties and adopt populist and jingoist stances in order to stay in control of the story by staying in power. That outcome is only available in dictatorships, not in democracies.

Let me close. I appear here today—our museum appears here today on behalf of 600,000 Hungarian Jews and thousands of Hungarian Romani who can’t be here, their lives snuffed out through the decisions, prejudices and failures of their country’s leadership, fascist writers and ideologues and their fellow citizens who are directly complicit in acts of theft, deportation and murder. In their late name, let me stress that what happens in Hungary matters.

Some weeks ago Hungary volunteered to assume the chair of the International Holocaust Remembrance Alliance in 2015. I would hope that before any decision is taken—to accept or reject that, the Hungarian government will dramatically alter the approaches that it has taken in addressing anti-Semitism and Holocaust issues, reverse the current downward trajectory and guide Hungary onto a path that is admired and praised rather than criticized.

Nobel laureate and founding chairman of our museum Elie Wiesel, who was himself forced into a ghetto by Hungarian gendarmes and deported with his family to Auschwitz while Miklós Horthy was regent of Hungary, once wrote: If anything can, it is memory that will save humanity. Securing the memory of the Holocaust in Hungary is essential.

Thank you, Mr. Chairman.

Mr. CARDIN. Well, let me thank all three of you for your testimony. I’m not going to have questions because I think your statements, all three, were very, very comprehensive and very, very clear and complete the record.

I do want to make a few observations. First to Dr. Shapiro, I think you gave a very compelling account as to why we have to be very concerned about what we see happening in Hungary as it relates to Holocaust and the revisionists in history and rehabilitation of figures that were involved in the Holocaust. You cannot accept the fact that a person is doing this as a person rather than as a government official, and you can't condone silence. Why—where's the leadership? Where are the leaders of the country speaking out against these types of actions? I don't see it. So I think your concerns are very much warranted for us to be very concerned as to how they will respond to the points that you raise. So I just really want to compliment on your complete presentation.

Dr. Scheppele, I want to—I will review with ODIHR and the parliamentary assembly your suggestions on monitoring of the elections. I think that is an important point, and we will do what we can in that regard. I think your comment about this being a one-party constitution is a very valid point. It's not a constitution that appears to be aimed at the stability, over the long term, of a democracy where you're going to have governments that will change over time as what happens in a democratic society.

You also point out that the changes that were made in Amendment Four, as the Hungarians pointed out, were requested by the courts—well, maybe they were, knowing the type of courts that were appointed there, but clearly it takes away the independence of the courts.

And I must tell you, Ms. Habdank-Kolaczowska, that the—your point about the media laws incorporating conditions that are just not reasonable must have a chilling effect. And then as you said on the religious laws, it's knocked down by the courts and they're going to put it back in the constitution—it just shows the failure of the Hungarian government to recognize an independent judiciary. And that is a real serious concern as we look at the development of Hungary as a democratic country.

And the point that all three of you have made, that what happens in Hungary is important in Hungary but it's also important in Europe, there are so many countries that look to what is happening in Hungary and say, you know, maybe we should stack the deck in our favor? And how can the West complain after all their NATO allies are allowed to do this, so why shouldn't we be allowed to do this. So I think it is a—very troublesome developments. And we're going to continue to focus on this. We're going to continue to take up the offer of consulting with the Hungarians, and we'll work with our European friends to point out that these laws do not fit the type of development that Hungary is committed to doing. And we will follow this very, very closely.

So again, thank you for all of your comments. They were, I said, very, very complete and part of our record. And with that, the commission stands adjourned. Thank you.

Ms. SCHEPPELE. Thank you.

Mr. SHAPIRO. Thank you.

Ms. HABDANK-KOLACZKOWSKA. Thank you.

APPENDIX

PREPARED STATEMENTS

 PREPARED STATEMENT OF HON. BENJAMIN L. CARDIN, CHAIRMAN, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

The progressive inclusion of post-communist countries into transatlantic and European institutions reflected the expansion of democracy and shared values, as well as the realization of aspirations long denied. Indeed, in 1997, the Helsinki Commission held a series of hearings to examine the historic transition to democracy of post-communist candidate countries like Hungary prior to NATO expansion.

I was among the many in the United States who cheered when Hungary joined NATO in 1999, and again when Hungary joined the EU in 2004—illustrating not only Hungary’s post-communist transformation, but also Hungary’s ability to join alliances of its own choosing and follow a path of its own design. Hungary has been a valued friend and partner as we have sought to extend the benefits of democracy in Europe, and elsewhere around the globe.

But today, concerns have arisen among Hungary’s friends about the trajectory of democracy in that country.

Over the past two years, Hungary has instituted sweeping and controversial changes to its constitutional framework, effectively re-making the country’s entire legal foundation. This has included the adoption of a new constitution—already amended multiple times including the adoption of a far-reaching Fourth Amendment just days ago—and hundreds of new laws on everything from elections to the media to religious organizations.

More than that, these changes have affected the independence of judiciary, role of the constitutional court, the balance of power, and the basic checks-and-balances that were in place to safeguard democracy.

It seems to me that any country that would undertake such voluminous and profound changes would find itself in the spotlight.

But these changes have also coincided with a rise of extremism and intolerance in Hungary. Mob demonstrations have continued to terrorize Romani neighborhoods. Fascist-era figures are promoted in public discourse and the public place. A new law on religion stripped scores of minority faiths of their legal status as religious organizations overnight including, initially, Coptic Christians, Mormons, and the Reformed Jewish Congregation. Most have been unable to regain legal status, including the Evangelical Methodist Fellowship, a church that had to survive as an “illegal” church during the communist period and today serves many Romani communities.

At the same time, the constituency of Hungary has been re-defined on an ethnic basis: citizenship has been extended into neighboring states on an ethnic basis, and voting rights now follow that.

As the late Ambassador Max Kampelman once observed, minorities are like the canary in the coal mine. In the end, democracy and minority rights stand or fall together. If respect for minorities falls, democracy can’t be far behind. And the rights of persons belonging to ethnic, religious, or linguistic minority groups will likely suffer in the absence of a robust democracy.

Max Kampelman, who was long a friend of the Helsinki Commission, served with distinction as the head of the U.S. delegation to the seminal 1990 Copenhagen meeting, where some of the most important democracy commitments ever articulated in the OSCE were adopted:

The participating States “consider that the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression. They reaffirm that democracy is an inherent element of the rule of law.”

At issue now is whether Hungary’s democratically elected government is steadily eroding the democratic norms to which Hungary has committed itself, in the OSCE and elsewhere. And we care about democracy in Hungary, for the people in Hungary as well as for the example it sets everywhere we seek to promote democracy.

I welcome all of our witnesses here today, and I appreciate that you are giving of your considerable expertise, your insights, and your time.

I especially appreciate that our second witness, Jozsef Szajer, has been asked by the Government of Hungary to represent it here today. As one of the framers of the constitution, we could have no more authoritative voice on the issues we are dis-

cussing and I thank you from coming from the European Parliament where you serve to share your views.

Our first witness will be Mr. Brent Hartley, Deputy Assistant Secretary of State for European Affairs, followed by Mr. Szajer.

Our final panel will include Dr. Kim Lane Scheppelle, an expert on constitutional law from Princeton University; Ms. Sylvana Habdank-Kolaczowska from Freedom House; and Dr. Paul Shapiro from the U.S. Holocaust Memorial Museum.

PREPARED STATEMENT OF HON. CHRISTOPHER H. SMITH, CO-CHAIRMAN, COMMISSION
ON SECURITY AND COOPERATION IN EUROPE

Less than a month ago I chaired a hearing on “Anti-Semitism: A Growing Threat to All Faiths.” One of the witnesses was Tamas Fellegi, a former minister in the Orban government, who is himself Jewish. His testimony was impressive, as was the long list of significant actions the Orban government has taken to combat anti-Semitism in Hungarian society.

Mr. Fellegi admitted frankly that anti-Semitism is a serious social problem in Hungary. Fortunately, the Orban government is on a clear upward trajectory here, and gives every sign that it will continue to be part of the solution rather than the problem. I’m confident it will particularly take on the persistent attempts to rehabilitate Holocaust perpetrators and vicious anti-Semites, both from the 1930s and 1940s and today. I will certainly continue to urge it to do so.

We all know that many NGOs and a few governments, including our own, have been vocal in criticizing the Hungarian government on various grounds touching on democracy and human rights—and that the Hungarian government and its supporters have rejected these criticisms vigorously.

Having reviewed material on both sides, I must say that I believe the Orban government is right when it says that many of the criticisms are unfair, involving double standards, misrepresentations, and inaccurate information. The Hungarian government has carefully documented this, for example in its “Open Letter to Freedom House.”

For another example, the administration, in criticizing the Orban government’s adoption of a new constitution, claims in its written testimony that in “fundamental” matters, “the process must lead to a consensus built from a cross-section of society, rather than reflect only the opinions of the ruling coalition . . . the lack of serious consultation with different sectors of society, did not honor the democratic spirit . . .” Anyone familiar with the passage of the Obamacare legislation might well question whether this is a message our government is ideally situated to deliver. Certainly it should have avoided the rude insinuation about democracy.

Yet these kinds of messages need to be delivered—we must not give in to the cynicism induced by our own or any other government’s failings.

But we should be a lot more humble—especially when we are dealing with a country like Hungary, where the system of constitutional checks and balances is alive and well, where a democratic party with an unprecedented supermajority and a mandate for dramatic change, gained in a free and fair election, passed a democratic constitution and shows itself open to working with others to amend and improve the flaws in its new laws.

This is a conversation between equals, and there is a lot we can learn from Hungary. I’m thinking particularly here of the constitutional cap on public debt and the statement that life will be protected in the womb.

I’d like to congratulate the Hungarian government for the many laudable things in the new constitution—many things that advance human rights, including the prohibition of human trafficking, reproductive cloning, and its promotion of the culture of life. And for the rest, I look forward to a continuing conversation with the Hungarian government about their and our constitutional traditions and how they can both be improved.

PREPARED STATEMENT OF BRENT HARTLEY

Thank you, Chairman Cardin and members of the Commission, for inviting me to join you today. Mr. Chairman, I am well aware of—and appreciate—your continued interest in events in Hungary. I believe your interest is warranted. Hungary remains a strong ally of the United States. Hungary is a member of two bedrock transatlantic organizations—the OSCE and NATO—which define and defend democracy in Europe and beyond. However, in the last two years we have been open about our concerns regarding the state of checks and balances, and independence of key institutions, in Hungary. The United States has not been alone in this regard, as the Council of Europe, the European Commission, other friends and allies of Hungary, and civil society organizations have expressed similar views. If the Government of Hungary does not address these concerns, not only will the lives of Hungarian citizens be affected, but it will also set a bad precedent for OSCE participating States and new members and aspirants to NATO.

Last year marked the 90th anniversary of U.S.-Hungarian diplomatic relations: relations which remain strong, based on a common security architecture as NATO allies, a deep economic partnership, and what we believe are fundamental values shared by the American and Hungarian people. Hungary plays an active and positive role in international fora, leading the way towards goals compatible with ours on a wide range of issues.

U.S.-Hungarian security cooperation, especially with respect to military, law enforcement, and counter-terrorism issues, is exceptionally robust. We have enjoyed warm relations with each and every Hungarian government since the transition from Communism over 20 years ago. This underscores a point that we always stress with our Hungarian friends: our expressions of concern over the last two years should be taken in the proper spirit because they come from a strong friend of Hungary, and friends should be able to speak truth to friends. Our concerns do not arise from any hostility toward Hungary, ignorance of the specifics of the laws, or from a partisan slant against its current leadership. They are a sincere expression of what we and other friends of Hungary in Europe see as troubling trends in laws passed in the last few years.

Before former Secretary Clinton visited Hungary in June 2011, we took notice of Hungary's controversial media law and a new constitution—which in Hungarian is called the Fundamental Law—portions of which also raised concerns among impartial observers. In both cases, we had concerns about the content as well as the process by which they were passed. Due to the mechanics of the electoral system, the current government gained a two-thirds majority of Parliament based on winning 52 percent of the vote in free and fair elections in 2010. This gave it the authority to pass new laws, and indeed a new constitution. As we have often said, Hungarian laws should be for Hungarians to decide. But for something as fundamental as a constitution or a law impacting freedom of the press, the process must lead to a consensus built from a broad cross-section of society, rather than reflect only the opinions of the ruling coalition. The speed with which these laws were drafted and then passed, and the lack of serious consultation with different sectors of society, did not honor the democratic spirit that the people of Hungary have long embraced.

That is why when Secretary Clinton visited Budapest in 2011, she called for Hungary to show “a real commitment to the independence of the judiciary, a free press, and governmental transparency.”

Since then, the Hungarian parliament has passed scores of laws at an accelerated pace. Most of these laws were unobjectionable and aimed at addressing issues that had not been addressed in the early days after Hungary's democratic transitions in 1989. But more than a few of these laws posed threats to systemic checks and balances and the independence of key institutions that are the bedrock of mature democracies. Privately and publicly, we expressed our concern to the Government of Hungary, as did several European institutions and governments. Our message to our Hungarian allies is that all democracies have a duty to safeguard institutional checks and balances. Unfortunately, in many respects our message went unheeded.

My colleague Deputy Assistant Secretary Thomas O. Melia, whose experience in Hungary goes back to 1989, has described the root of our concerns with key Hungarian laws as the concentration of too much power into too few hands.

When Hungary's Constitutional Court struck down a law on fiscal issues, the parliament swiftly passed another law taking away the Court's competency to decide cases based on fiscal matters. The government also expanded the Constitutional Court from 11 to 15 members, allowing the current administration to select the additional justices and thereby alter the Court's juridical balance. The new laws created a Media Council and gave it significant powers to oversee broadcast media, including the right to fine media for “unbalanced coverage,” an unsettlingly vague

term. Unlike similar media bodies in other democracies, such as our Federal Communications Commission, no opposition parties are represented on Hungary's new Media Council. The Council members have nine-year terms, and cannot be removed without a two-thirds vote of parliament. The long length of these terms ensures that these political appointees will remain in place well past the next planned parliamentary elections in 2014. This would tie the hands of the next government should it have anything less than a two-thirds majority.

The new laws also created a National Judicial Office and gave it a powerful, politically-appointed President with a nine-year term and the authority to assign cases to any court she sees fit. This enables the office-holder to engage in "venue shopping" by steering specific cases to specific judges—a recipe for potential abuse.

Another new law stripped over three hundred religious congregations or communities of their official recognition. To be clear, non-recognized religious groups are still free to practice their faith in Hungary. However, they do not enjoy certain tax benefits and subsidies that recognized religious groups do. In order to regain recognition, religions will have to be approved by a two-thirds vote of parliament, an onerous and unnecessarily politicized mechanism. While we understand that the new religion law was adopted to stop fraud, we have urged the Hungarian Government to seek a less onerous and less politicized procedure to weed out malfeasance.

In mid-2012, as expressions of concern from the United States and Europeans mounted, the Hungarian Government began responding in constructive ways. The government voluntarily submitted many laws for review by the legal experts of the Council of Europe's Venice Commission. In some cases, though by no means all, the government modified laws to take into account specific concerns expressed by the Commission. While some important issues remained unresolved, we were heartened that Hungary was engaging in dialogue, recognizing the merits of concerns expressed by the United States and others, and taking steps to address them.

We were further heartened when, early this year, Hungary's Constitutional Court issued several rulings striking down controversial legislation. This demonstrated that the Court could serve as an effective check on government. Unfortunately, the reaction by the Hungarian government again called into question its commitment to checks and balances and institutional independence. The government drafted and swiftly passed a new constitutional amendment, parts of which reinstated laws that had just been struck down by the Court. Again, the process was rushed and lacking in broad societal consultation. Moreover, the Hungarian Government ignored pleas from the State Department, European Commission, and Council of Europe—as well as several respected, non-partisan Hungarian NGOs—to engage in a more careful, deliberative process and allow for the Venice Commission's experts to review the amendment. This has prompted renewed expressions of concern from the Council of Europe, the President of the European Commission, and other allied governments, including the United States. While the Government of Hungary has now submitted the amendment to the Venice Commission, this is the opposite of the normal procedure, whereby the Commission reviews laws before they are passed, not after passage.

I would like to address one other area that has provoked much concern: the rise of extremism in Hungary. This phenomenon is, sadly, not unique to Hungary. The rise in Hungary of the extremist Jobbik party as one of the largest opposition groups in parliament, and Jobbik's affiliated paramilitary groups that incite violence, are clear challenges to tolerance.

Let me be clear: the ruling Fidesz party is not Jobbik. Fidesz' ideology is within the mainstream of center-right politics, and its platform is devoid of anti-Semitism or racism. In 2012, the Government of Hungary used the centenary of Raoul Wallenberg's birth to promote tolerance. Moreover, we have seen a growing willingness by Hungarian government leaders to condemn anti-Semitic and racist acts and expressions. However, such condemnation is not always swift or resolute. The Hungarian Government can and must do more to foster tirelessly a climate of tolerance. One concern is that some local governments in Hungary have, with little objection from the governing party, erected statues and memorials to tainted figures from Hungary's past. And some of these figures have been re-introduced into the national educational curriculum. As the Department's former Special Envoy to Monitor and Combat Anti-Semitism said last year, "the recent rehabilitation of figures from Hungary's past who are tainted by their support for Fascism and anti-Semitism contributes to a climate of acceptance of extremist ideology in which racism, anti-Semitism, and other forms of intolerance can thrive."

We also call upon Hungarian leaders to do more to defend Romani Hungarians, who—like Romani in many other European countries—face discrimination, racist speech and violence that too often goes unanswered, just as in the United States leaders from both parties routinely speak out against racism. We urge that per-

petrators of violent attacks against Roma—in Hungary as well as elsewhere in Europe—will be arrested and prosecuted as swiftly as those who commit anti-Semitic attacks.

In conclusion, the United States has long enjoyed and benefitted from its strong alliance with Hungary and its people. Just as we continue to do hard work together in Afghanistan and other danger spots around the world, so too will we continue to have a sincere—and at times difficult—dialogue on the importance of resolutely upholding the fundamental values that bind us.

Thank you, Mr. Chairman, for allowing me to express the State Department's views on these important issues.

PREPARED STATEMENT OF THE HON. JOZSEF SZAJER

Chairman Cardin, Co-Chairman Smith and distinguished members of the U.S. Helsinki Commission, Distinguished Members, Ladies and Gentlemen:

It is an honor for me to appear here to share my views on the state of Hungarian democracy. I am a founding member of the now governing party, Fidesz, which was the first opposition organization during our transition to democracy 25 years ago. I am also Member of the European Parliament elected directly by the citizens of Hungary. In my capacity as member of the Hungarian Parliament, I have participated in the preparation of almost every major constitutional change over the last twenty years. Recently, I had the great honor of being the Chairman of the Drafting Committee on the Fundamental Law of Hungary, the new Constitution of my country, which is a subject matter of this hearing.

I want to underline that Hungary has been a constitutional democracy, respecting the rule of law and the rights of the citizen ever since the transition to democracy more than twenty years ago. Anyone who might claim otherwise should be encouraged to come to Hungary and make a first-hand experience, to study our difficult past and recent history, to ask the Hungarians themselves. This is an invitation I warmly extend to the U.S. Helsinki Commission.

Hungary is a nation with one of the longest, one thousand year old constitutional tradition, which my country is very proud of. One of the finest pieces of our historic constitution, the *Bulla Aurea* (our *Magna Charta*) dates back to 1222. Hungary boasts the first ever constitutional document on religious tolerance, the *Torda Declaration* from the sixteenth century. Our new constitution follows the steps of these historic achievements. It aims also to restore one thousand years of historic constitutional continuity which was lost in 1944 as a consequence of the Nazi, and the subsequent Soviet occupation of my country.

As a legislator myself, I would like to express my appreciation for your interest in the sovereign act of the Hungarian nation's historic constitution making enterprise. I admire your great Constitution and we held it as a compass in creating our new one. Elected representatives of our great, freedom loving nations like the American and the Hungarian should always find appropriate occasions to exchange, on equal grounds, views and experiences on matters of great importance. And what could be more important than a nation's constitution? And what could be a more significant part of a nation's sovereignty than creating her own constitution? You in America gained your independence more than two hundred years ago. Thousands of Hungarians died for Hungary's independence, but finally we won it only a little more than twenty years ago when the Soviet occupation ended. I was there, I was part of that generation, which achieved it, and now our task is to consolidate it! Hence, you should be aware of the high sensitivity of our nation towards questions of independence and non-interference. We Hungarians consider that our nation's own constitution is an exercise in democracy that we should conduct. We listen to advice given in good faith, we learn from the experience of others. This is the very reason I am here now, but we insist on our right to decide. This is democracy and self-determination that we had been fighting for so long.

My core message is that on your behalf there is no reason to worry about the commitment of Hungary to democracy and the rule of law. My main argument is that the new amendment does not carry any significant element which has not been tested before by the competent European institutions and modified if necessary.

In the 2010 elections, FIDESZ won a victory of rare magnitude, obtaining a constitutional majority, more than two-thirds of the seats in the National Assembly. The choice of the Hungarian people was a response to a deep economic, social and political crisis. The mismanagement of public finances, public deficit and debt slipping out of control and the frequent parading of paramilitary organizations were among its symptoms. We also witnessed serious violations of basic human rights by the authorities: the most serious ones concerning the freedom of assembly in the autumn of 2006. At those difficult times we were expecting the support of the democratic community of the world to speak out against state oppression of the citizens' freedoms. Unfortunately, the international community turned a blind eye. Public order was seriously challenged by shocking events like the serial killings of our Roma compatriots with clear racist motivations and with the public authorities standing by crippled.

In 2010 we received the mandate and the corresponding responsibility to put an end to all that: start a comprehensive reform, including the adoption of a new constitution. In other words: correct the trajectory of our democracy.

A new constitution was long overdue. All Central and Eastern European countries had adopted their new, democratic constitutions long before, while Hungary had to live with an updated, explicitly transitory version of its 1949, Stalinist Constitution:

in spite of several attempts, previous governments and parliaments lacked either the necessary majority or the political will to replace it altogether.

The Constitution of Hungary, as a member of the European Union and of the wider Euro-Atlantic community, respects and promotes the values of democracy and the rule of law. Large parts of the ensuing legislation have been subject to political debate and to legal review by the competent European institutions. For instance, it has been subject to controversy right from the start for its pro-life and pro-family stance. The new Fundamental Law was scrutinized by the Venice Commission of the Council of Europe, which welcomed the “*efforts made to establish a constitutional order in line with the common European democratic values and standards and to regulate fundamental rights and freedoms in compliance with the international instruments . . .*” and noted that “*the current parliamentary system and the country’s form of government . . . have been maintained.*” While the European Commission launched four infringement procedures on some cardinal laws following the adoption of the Fundamental Law, it never challenged the Fundamental Law itself. (Under Article 4 of the Treaty on European Union the Union ‘shall respect’ the constitutional sovereignty of the member states.) The Hungarian Government was cooperating and complying throughout the process: it changed the Media Law and the Law on the Judiciary at the request of the Commission.

A few words on the new amendment. Around 95 percent of the provisions of the so-called Fourth Amendment, adopted last week, had been in effect ever since the entry into force of the new Constitution. We did not intend to change our Fundamental Law so soon after its adoption. What happened is that the Constitutional Court, in its recent decision, annulled some of the Transitory Provisions of the Fundamental Law on technical grounds. In fact, under the legislation, the Transitory Provisions, subject to a two-thirds majority and as such put on equal footing with the Fundamental Law, carried some constitutional provisions the Court now ruled should be moved to the Fundamental Law itself. In other words, the position of the Court, based on the German constitutional doctrine of ‘obligation to incorporation’ is that the Constitution should be one single act: therefore, what had to be done was basically a copy-paste exercise of a purely technical nature. Hence the length of the new amendment! But not much new text. The Fourth Amendment was based on the request of the Court, and not against it, as some critics misleadingly claim.

Some words on the new elements.

All assertions to the contrary notwithstanding, the Fourth Amendment does not reduce the powers of the Constitutional Court. In fact, it does the opposite. It adds the President of the Supreme Court and the Chief Prosecutor, to those having the right to file for the constitutional review of laws. It repeals the rulings of the Court passed under the old Constitution, but clarifies at the same time that its rulings shall not lose their legal effect and—as specified by an additional amendment—the Court shall remain free to refer to its own previous case-law in its future jurisdiction. Nor can the Amendment strip the Court of a power it never had: the right to review and annul the Constitution text itself or its amendments, unless on the grounds of procedural flaws. My definition of the separation of the powers is that the Court interprets but does not change the text of the law. The power to change (or annul) the text of the Constitution should belong exclusively to the constitutional authority, which is the National Assembly in the case of Hungary. The Fourth Amendment makes a big step forward in making the procedures of the Constitutional Court transparent, by opening it to public access. It also adds—following several European examples—that the parties concerned in the proceedings should have the right to express their views in the procedure, changing the annoying and much criticized ‘black box’ nature of the Court.

Concerning the status of churches, I would like to reiterate that the criticized legislation has nothing to do with religious freedom or even with religion. According to Article VII (1) of the Fundamental Law, the confession and exercise of faith individually or collectively is a basic right of individuals and religious communities (without any need for registration). The only power the National Assembly has in this regard is to choose, on the basis of criteria codified by law, on which religious community to confer the additional right to subsidies from taxpayers’ money. This is common practice in Europe but our list of churches is more generous than the European average. I know that on the basis of your Constitution’s First Amendment, your system is different from the European model. Our Fourth Amendment adds an important correction: the parliamentary decision (by 2/3 majority) can be appealed at the Constitutional Court on procedural grounds. This change was adopted to implement the relevant Court decision.

On the front of the media, I have no breaking news. Here we can tell a real success story, at least if measured by the sheer number of reports, articles and other expressions that are harshly critical of the government published every single day

in the free press of my country. If you read them, you will not witness any sign of the infamous self-censorship either! Anybody taking the trouble to check the situation on the ground rather than judging by hearsay would agree with that. I am not aware of any case of censorship or harassment of journalists during the three years of the current government. The actual purpose of the Media Law was to adapt to the Internet age and to streamline the financing of public media by our taxpayers. Many other countries are studying this law. There are huge debates in countries like the UK about appropriate press regulation. As mentioned earlier, the Media Law has been corrected on a couple of occasions at the request of the European Commission and the Constitutional Court.

Expressions of anti-Semitism and of racism in Hungary are cause for concern. Even though the phenomenon is not new and unfortunately widespread all over Europe, each and every such incident is deplorable and calls for more determination to eliminate them. The Hungarian Government is equal to the challenge. Prime Minister Orbán has repeatedly underlined that he stands for a policy of “zero tolerance” when it comes to anti-Semitism.

Here we are confronted with two conflicting expectations: to combat hate speech and safeguard the freedom of expression at one and the same time. One has to strike a balance. In the Fourth Amendment, we chose to lay the constitutional grounds for civil procedure open for any person in case his or her religious, ethnic or national community should be seriously offended in its dignity. This might not be the only solution to the problem; there has been criticism but we cannot stand aside idly. To illustrate the paradox, let me remind you of the kuruc.info case. Kuruc.info is a Hungarian language website, registered in the U.S., infamous for propagating racial hatred and violence, targeting the Hungarian public. The Hungarian authorities have in vain requested its closure by the U.S. authorities. The answer has always been that it was not possible under the more liberal U.S. laws.

Jewish communities in Hungary, which had been waiting for stronger legal instruments against hate speech for decades, welcomed the move. Rabbi Köves, leader of the Unified Hungarian Jewish Congregation and the Action and Protection Foundation called the relevant article of the Draft 4th Amendment as an ‘historic step forward in defense of the dignity of the communities’.

Our policy is consistent with our unambiguous relationship with the past. It was the first Orbán Government which founded the Holocaust Memorial Center in Budapest and included a special Holocaust Remembrance Day for the first time in the curriculum of high schools. Yet the latest shining evidence is the international Wallenberg memorial year in 2012, launched by the second Orbán cabinet to commemorate the centenary of the birth of the Swedish diplomat who rescued thousands of Jewish lives in Budapest at the end of World War II and who was posthumously given the highest recognition by your legislature, the Congressional Medal of Honor. The Wallenberg year has earned universal acclaim. It gave us an opportunity to admit Hungarian co-responsibility in the Shoah, which Mr. János Ader, President of Hungary, solemnly did in his speech before the Israeli Knesset.

The time allotted for my testimony may not be long enough to dismiss all your concerns but I am confident that they will abate once the amendments are looked at more closely—as was the case with the Media Law, the Law on the Judiciary, and I can cite many other examples. I am here to assure you that the Hungarian Government is at your disposal for further clarifications. We are open to criticism if based on facts and arguments. Foreign Minister Martonyi has requested the Venice Commission to give its opinion on the Fourth Amendment and would propose changes if necessary. We abide by the rules of the European institutions and expect the same from all others, including our critics. I am deeply convinced that in a constructive dialogue we can enrich each other’s constitutional experience, and thus avoid unfounded accusations and disagreements arising from misunderstandings.

The friendship between our two nations, Hungary and the U.S. belonging to the same alliance and being each other’s solid partners in promoting, shoulder to shoulder, our common values in places like Afghanistan and the Balkans will help.

Let me close my remarks with the first line of our national anthem, hence the first line of our new constitution: God bless Hungarians! Isten, áldd meg a magyart.

PREPARED STATEMENT OF DR. KIM LANE SCHEPPELE

I am honored to testify before you today. My name is Kim Lane Scheppele, and I am the Rockefeller Professor of Sociology and International Affairs, as well as the Director of the Program in Law and Public Affairs, at Princeton University. I am also a Faculty Fellow at the University of Pennsylvania Law School.

Nearly twenty years ago, the US National Science Foundation gave me a grant to move to Hungary to study the Hungarian Constitutional Court, then the most impressive of the new courts in Eastern Europe. I planned to go for one year but stayed for four, working as a researcher at the Constitutional Court and serving as an expert advisor to the constitutional drafting committee of the Hungarian Parliament in 1995–1996, a position I occupied with the assistance of a second NSF grant. I am grateful to the NSF for having funded my research on Hungary, which documented how the new Hungarian constitution of 1989 put down roots and grew to support a vibrant Hungarian constitutional democracy. I have followed Hungarian constitutional developments closely ever since.

I am here today because the current Hungarian government has felled the tree of democratic constitutionalism that Hungary planted in 1989.

Since its election in 2010, the Fidesz government has created a constitutional frenzy. It won two-thirds of the seats in the Parliament in a system where a single two-thirds vote is enough to change the constitution. Twelve times in its first year in office, it amended the constitution it inherited. Those amendments removed most of the institutional checks that could have stopped what the government did next—which was to install a new constitution. The new Fidesz constitution was drafted in secret, presented to the Parliament with only one month for debate, passed by the votes of only the Fidesz parliamentary bloc, and signed by a President that Fidesz had named. Neither the opposition parties nor civil society organizations nor the general public had any influence in the constitutional process. There was no popular ratification. The Fidesz constitution went into effect on January 1, 2012.

While the government claims it was given a mandate to make major changes, the general Hungarian public thinks otherwise. During the election campaign in 2010, Fidesz never said it would change the whole constitutional system. Once the Fidesz governing program became clear after the party came to power, the popularity of Fidesz has plummeted, even more so after the government undertook to replace the constitution.

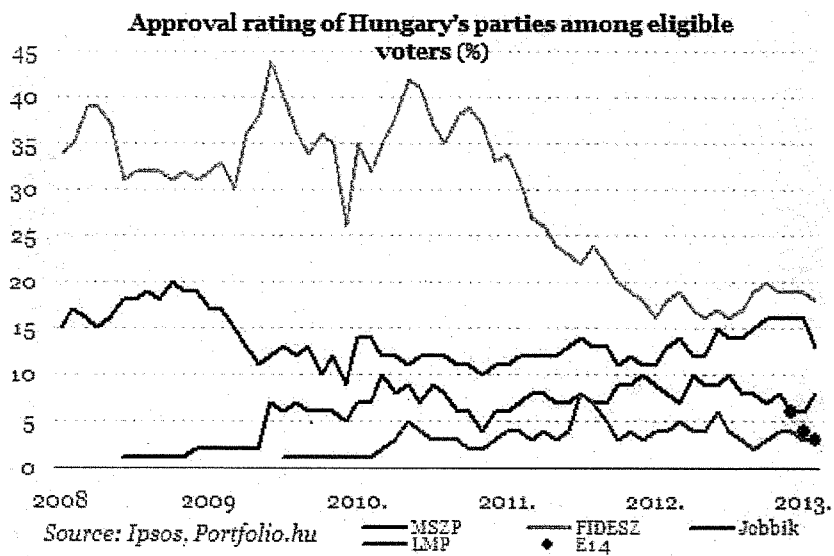


Figure 1: Political Party Popularity in Hungary 2008-2013
 Source: Ipsos/Portfolio.hu.

After the April 2010 election, Fidesz's popularity has steadily dropped. But none of the other parties—the MSzP (Socialists), Jobbik (far-right party), LMP (Politics Can be Different, a liberal/green/youth party) or the new liberal electoral coalition Együtt 2014 (Together 2014)—is any more popular. Surveys show that 50% or more of Hungarian voters say that there is no political party that they support.

Even though the government pushed through a one-party constitution without support from any other political fraction, except its own party-list partner the Christian Democrats, this didn't stop the constitutional juggernaut. The government has amended its new constitution four times in 15 months. Each time, the government has done so with the votes of only its own political bloc, rejecting all proposals from the political opposition or from civil society groups. The current Hungarian constitution remains a one-party constitution.

Just last week, the Fidesz government passed a 15-page amendment to the new 45-page constitution. László Sólyom, the conservative former president of both the Constitutional Court and the Republic of Hungary, said in a public statement last week that the "Fourth Amendment" removes the last traces of separation of powers from the Hungarian constitutional system. Under the constitution as amended, no institution has the legal right to check many of the key powers of the one-party government.

The Fourth Amendment nullifies more than 20 years of rights-protecting case law of the Hungarian Constitutional Court that had been developed before the new constitution went into effect. This leaves a giant gap where firm legal protection of basic rights once stood. The Fourth Amendment specifically overturns nearly all of the decisions that the Constitutional Court made in the last year striking down controversial new laws the Fidesz government had passed. The Fourth Amendment removes the Court's power to evaluate on substantive grounds any new constitutional amendments, a move which allows the government to escape review by inserting any controversial new proposal directly into the constitution. The Fourth Amendment entrenches political control of the judiciary and gives the government new tools to prevent the opposition from coming to power. The Fourth Amendment reverses many of the concessions Hungary made last year when the European Union, the Council of Europe and the US State Department criticized fundamental aspects of that constitution.

Under cover of constitutional reform, the Fidesz government has given itself absolute power. It now has discretion to do virtually anything it wants, even if civil society, the general public, and all other political parties are opposed.

How could Hungary have fallen so far so fast from the family of stable constitutional democracies? The answer lies in the Achilles' heel of the old constitutional system: a disproportionate election law combined with an easy constitutional amendment rule.

Hungary's 1990 election law gave disproportionate numbers of seats to the winner of an election, a feature that was designed to help plurality parties form stable governments. When Fidesz got 53% of the vote in the 2010 election, the election law converted this victory into 68% of the seats in the Parliament. While Fidesz won this vote in a joint party list with the Christian Democrats (the KDNP), the Christian Democrats barely have an independent existence apart from Fidesz and its members vote in a bloc with Fidesz on every issue.

Az új Országgyűlés összetétele

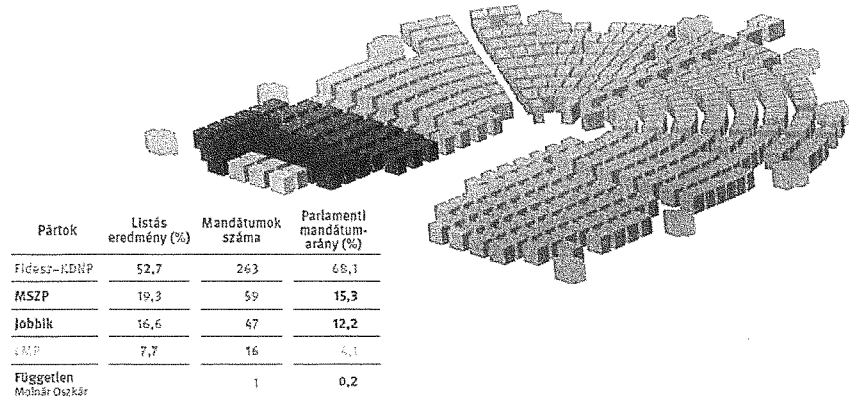


Figure 2: Composition of the Hungarian Parliament 2010
Source: Hungarian National Election Commission

Translation: The Fidesz/KDNP joint party list (orange) received 52.7% of the vote, 263 of the seats and 68.1% of the Parliament. MSzP (Socialists) (red) received 19.3% of the vote, 59 of the seats and 15.3% of the Parliament. Jobbik (far-right party) (dark green) received 16.6% of the vote, 47 of the seats and 12.2% of the Parliament and LMP (Politics Can be Different) (light green) received 7.7% of the vote, 16 of the seats and 4.1% of the Parliament. There was one independent MP.

Armed with its two-thirds supermajority, the Fidesz government has been able to make use of the old constitution's amendment rule, dating to the communist constitution of 1949, which permitted the constitution to be changed with a single two-thirds vote of the Parliament. This "magic two-thirds" has enabled Fidesz to make all of its constitutional changes in a formally legal manner. Only one barrier remained: In 1995, under a prior two-thirds government, the old constitution was amended to require a *four-fifths* vote of the Parliament before any new constitutional drafting process could begin. One month into its term, Fidesz used its two-thirds vote to amend the constitution to remove the four-fifths requirement.

Many of the laws, including the constitution itself, many of the constitutional amendments and most of the cardinal laws, were introduced through the parliamentary procedure of a "private member's bill," which bypasses the stage of public consultation required of all government bills. That, combined with the fact that the Parliament instituted a new rule through which a two-thirds vote could cut off parliamentary debate on any topic, has meant that most of these new laws have received very little public discussion. It has not been uncommon for a constitutional amendment to go from first proposal to final enactment in just a few weeks.

Taken over three years, the constitutional changes are complicated, detailed, and spread out across a new constitution, four major constitutional amendments, dozens of "cardinal" (super-majority) laws, and thousands of pages of ordinary laws that were all passed in a giant legislative blur, sometimes in the middle of the night. I strongly suspect that most Hungarians do not understand the details of this new constitutional system. Even Hungarian lawyers are not able to keep up with the total revolution in the law. In what follows, I will try to explain how the new system of Hungarian government is structured, current as of March 15, 2013, taking all of this new law into account.

The primary source for my testimony is the *Magyar Közlöny*, the official gazette of the Hungarian government that publishes all of the laws. From my perch in the United States, I cannot say how the laws are being carried out. But I can say how the laws are structured and what they do and do not permit. I will call this whole new legal structure the "Fidesz constitution" even though not everything is in the single constitutional text or its amendments. Many elements of the system I describe are in two-thirds "cardinal" laws that are almost as entrenched as the constitution itself, which is why I don't make the fine distinctions here except where they are crucial for understanding how the system works. I am happy to provide detailed legal citations for all of the claims I make below if you are interested in checking more precisely what I say or precisely where in the law each of these statements can find support.

Others who are providing testimony for this hearing will address other crucial issues raised by the current Hungarian government's actions over the last three years. They will address the fate of civil liberties, the difficult situation for many churches in Hungary and the growing and increasingly virulent strains of anti-Semitism and anti-Roma agitation that have occurred alongside this constitutional revolution.

My remit at this hearing today is to talk about something altogether more boring, but no less important: the system of divided and checked powers necessary for a government to remain both constitutional and democratic. History tells us that a government that has no limits on what it can do and that concentrates all powers in a single party will soon cease to be either constitutional or democratic.

The importance of checked and limited powers was an insight very familiar to the American constitutional framers. The Philadelphia Convention did not even include a bill of rights in the US Constitution because the framers believed that the most effective protection for rights was a government that was limited by law. While American history has taught us that a bill of rights matters—and the ratification process of the US Constitution insisted on including one—we have also learned much from Princeton graduate James Madison, who wrote in *Federalist* #47: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."

By James Madison's definition, Hungary is on the verge of tyranny.

In what follows, I will show that the Fidesz political party has gathered all of the powers of the Hungarian government into its own hands, without checks from any other political quarter and without any limits on what it can do.

We should start with the basics: Hungary has a unicameral parliamentary system of government. A unicameral Parliament has no upper house to check what the lower house does, no “Senate” to complicate life for the “House of Representatives” and vice versa. A parliamentary system means that the most powerful executive, the prime minister, is elected by the Parliament rather than directly by the people. As a result, the prime minister in Hungary is virtually guaranteed a majority for all of his legislative initiatives because that legislative majority put him into his job. Not surprisingly, the legislative-executive cooperation guaranteed in Hungary’s unicameral parliamentary system dates back to the communist constitution of 1949. (From the mid-19th to the mid-20th centuries, Hungary had a bicameral parliament.)

In 1989, however, major constitutional changes in Hungary added a number of checks to this basic framework. A Constitutional Court was created as the primary watchdog on the majoritarian dangers of a unicameral parliamentary system. Unlike a Supreme Court which is the highest court of appeal in the legal system (something we are familiar with in the United States), a Constitutional Court is the only court that is allowed to hear and decide constitutional questions—and it does nothing else besides rule on constitutional matters. Because the Hungarian Constitutional Court conducts the primary oversight in a system that has little formal separation of legislative and executive power, it is even more important than the Supreme Court in the American separation-of-powers system.

Given such weighty responsibility in the 1989 constitutional design, the Constitutional Court was made highly accessible to the new democratic public in Hungary. Literally, anyone could ask the Constitutional Court to review a law for constitutionality using a so-called *actio popularis* petition. As a result, virtually every law was challenged. From the time it opened in January 1990, the active Constitutional Court kept each new government under constitutional constraint regardless of the political leanings of the government. Opinion polls showed that the Constitutional Court was consistently the most highly respected political institution in Hungary.

The procedure for electing judges to the Constitutional Court before 2010 prevented the Court from being captured by any one political fraction. Because each judicial nominee to the Constitutional Court had to first be approved by a majority of parliamentary parties before then being elected to the Court by a two-thirds vote of the Parliament, the Court always had a balance of different political views represented on the bench.

Other changes that were made to the constitutional system in 1989 provided more checks on Hungary’s unicameral parliamentary government. Revamped parliamentary procedure required extensive consultation with both civil society and opposition parties before government bills could be put to a vote. Important issues of constitutional concern required a two-thirds vote of the Parliament. As we have seen, however, the private member’s bill procedure allowed the consultation stage for legislation to be bypassed and the two-thirds laws could cease to be a real check on power when the government had two-thirds of the parliamentary seats, something the disproportionate election law made quite likely.

Four ombudsmen added after 1989 to the system of rights protection. Other independent institutions—the central bank, state audit office, prosecutor general’s office, national election commission and media board—provided both expertise and additional checkpoints. For example, both the national election commission and the media board were structured to ensure representation from across the political spectrum. An independent self-governing judiciary ensured that the laws were fairly applied.

There were so many different checks instituted after 1989 on the power of the prime minister and his parliamentary majority that the post-1989 constitutional system worked reliably to ensure that the operation of majoritarian political power didn’t ride roughshod over democratic guarantees and constitutional limitations.

By contrast with this robust system of complementary powers, the new “Fidesz constitution” removes virtually all of the checks added to the prior communist constitution after 1989. I will detail the major reversals here.

Under the Fidesz constitution, the Constitutional Court’s power and independence have been compromised in multiple ways. The system for electing constitutional judges was changed so that now a single two-thirds vote of the Parliament is sufficient to put a judge on the Court, abolishing the multiparty agreement that was once necessary for nomination. The Fidesz constitution also expanded the number of judges on the Court from 11 to 15, giving the governing party four more judges to name immediately.

Between changing the process for electing judges and expanding the number of judges to be elected, Fidesz government has been able to select nine of the 15 judges on the Court in its first three years in office. The Fidesz parliamentary bloc, voting in unison as it always does, put these judges onto the Court without multiparty support, though a few of the new judges were able to garner some votes from the far-right Jobbik party. The new constitutional judges have almost always voted for the Fidesz government position in each case. Some of the new judges have just voted for the government's position without even giving reasons.

Even if the Court is in Fidesz-friendly hands, however, a powerful Court might still be dangerous to a government that shuns checks on its freedom of action. This may explain why the jurisdiction of the Court has been cut. The Court no longer has the power to review laws based on "actio popularis" petitions, which are petitions that anyone can file. Now, the only individuals who can challenge laws must show that they have been concretely injured by the application of a potentially unconstitutional law and that they have exhausted their remedies in the ordinary courts. If the Constitutional Court can only hear cases that have concrete victims, it is hard for the Court to rule on matters pertaining to separation of powers and the structure of democratic institutions. Individuals rarely get "standing" to challenge a law that creates a new system for judicial appointments or a law that gives a government agency the power to issue decrees without parliamentary oversight, both laws that have been passed since Fidesz came to power. Some elements of "abstract review" remain with the Constitutional Court, but these, too, have been restricted.

Abstract review allows the Court to hear challenges to laws without a concrete dispute before it. With the exception of the Parliamentary Commissioner for Human Rights (who will himself be replaced by Fidesz parliamentary majority later this year), the constitution gives the power to challenge laws abstractly only to particular offices that are currently occupied by people affiliated with Fidesz. One might guess that Fidesz appointees do not have a strong incentive to limit the power of their own government. While one-quarter of the Parliament is also given the power to challenge a law at the Constitutional Court, the one-third of the seats in the current Parliament that are not held by the governing party are divided between parties of the center-left and a party of the far right, who would have to agree on a challenge, something that is not very likely. As a result, many laws have been effectively insulated from constitutional challenge by the way that abstract review power has been designed.

Even with the limitations on access to the Constitutional Court that were built into the Fidesz constitution, the system of judicial review in Hungary may seem broader than the system we have in the United States. Therefore, the dangers of the new system in Hungary may not be apparent to an American eye. Limiting the power to initiate judicial review only to those who have been directly injured and only to officials who owe their jobs to this government limits the ability of the Court to reach constitutional violations that it used to be able to reach. The U.S. Supreme Court cannot reach all constitutional violations either, but the United States has a bicameral Congress, a separately elected president, a vigilant and active civil society, and federalism, which adds state governments and state courts as additional checks on the power of temporary majorities. Hungary has none of those checking institutions and so relies on the Constitutional Court to carry more weight in the constitutional system. Making it difficult for this Court to reach all constitutional violations creates blind spots in which unconstrained political discretion can override constitutional values.

In addition to limiting access to the Court, the Fidesz constitution restricts the jurisdiction of the Court in other ways as well. The Court may no longer review any law that deals with taxes or budgets when those laws are passed at a time when the national debt is more than 50% of GDP. Under the Fourth Amendment passed last week, the Court will never have the power to review budget and tax laws that were passed under these circumstances. As a result, if a tax law passed this year infringes an individual's constitutionally guaranteed property rights or if such a tax is applied selectively to particular minority groups, there is nothing that the Constitutional Court can do—in perpetuity. This opens up a space for the government to violate many personal rights without any constitutional oversight.

The Fourth Amendment has also banned the Court from reviewing constitutional amendments for substantive conflicts with constitutional principles. As a result, if the constitution promises freedom of religion but a constitutional amendment requires a two-thirds parliamentary vote before a church is officially recognized (a provision that was added to the constitution with the Fourth Amendment), the Court can do nothing about this. Or if the constitution says anyone may freely express her opinion but an amendment says that no one may defame the Hungarian nation (a

provision that was also added to the constitution with the Fourth Amendment), there is nothing the Court can do. These examples show that the government can now directly amend the constitution any time it thinks the Constitutional Court might strike down some policy that the government wants to enact regardless of how much these new amendments violate principles that have been guaranteed elsewhere in the constitution. In fact, the Fourth Amendment already puts back into the constitution laws that the Constitutional Court has already struck down as unconstitutional once before under the new constitution.

To make matters worse, the Fourth Amendment also nullifies all decisions made by the Constitutional Court before the new constitution took effect. At one level, this makes sense: old constitution, old decisions/new constitution, new decisions. But the Constitutional Court had already worked out a sensible new rule for the constitutional transition by deciding that in those cases where the language of the old and new constitutions was substantially the same, the opinions of the prior Court would still be valid and could still be applied. Otherwise, where the new constitution was substantially different from the old one, the previous decisions would no longer be used. Constitutional rights are key provisions that are the same in the old and new constitutions—which means that, practically speaking, the Fourth Amendment annuls primarily the cases that defined and protected constitutional rights. With those decisions gone, no one can say for certain whether Hungarian law protects free speech, freedom of religion, equality of all Hungarians before the law, property rights, and virtually every other right in precisely the way that everyone in Hungary had come to take for granted.

What other checks on Fidesz's untrammelled power have now been removed in the Fidesz constitution? The independence of the ordinary judicial system has taken a big hit. In 2011, the Fidesz government suddenly lowered the judicial retirement age from 70 to 62, thus removing the most senior 10% of the judiciary, including 20% of the Supreme Court judges and more than half of the appeals court presidents. Both the Hungarian Constitutional Court and the European Court of Justice found that the sudden change in the judicial retirement age was illegal.

The government's first reaction was to defy both courts' judgments, before finally agreeing at the end of 2012 to reinstate fired judges who wanted to return to their jobs. In the meantime, however, all of the court leadership positions were filled with new judges, so the old judges who wanted to be reinstated were returned to much less important positions. Through this move, the government was able to replace much of the top leadership of the judiciary in a single year. One court leader who could not have been replaced in this manner (because he was too young) was the then-President of the Supreme Court, András Baka. He was removed from office when the new constitution went into effect because of a new requirement, effectively immediately, that judges must have five years of judicial experience in Hungary before being named to the Supreme Court (newly renamed the Curia). President Baka's 16 years of experience as a judge on the European Court of Human Rights did not count.

How were the new judges named? The new president of the Supreme Court/Curia was elected by a two-thirds vote of the Fidesz Parliament. Beyond that, a new institution was created to oversee the appointment of all other judges as well as the administration of the judiciary: the National Judicial Office. This office replaced a system of judicial self-government. The president of the NJO, elected by two-thirds of the Parliament, has the power to hire, fire, promote, demote and discipline all judges in the system without any substantive oversight from any other institution. The national President has to countersign in cases where a judge is appointed for the first time in the system, but it is not clear he could refuse to do so. The new leadership of the ordinary courts has thus been replaced by judges who owe their careers to an official elected by the "magic two-thirds" of the Fidesz Parliament.

The Council of Europe's Commission on Democracy through Law (the Venice Commission) sharply criticized the extraordinary powers of and general lack of legal standards governing the president of the National Judicial Office. The US State Department has also raised questions about the independence of the judiciary under this system. In a concession to criticism, the Fidesz government agreed to limit the powers of the president of the NJO in legislation passed in summer 2012. But with the Fourth Amendment to the Constitution, those concessions are clawed back. The constitution now entrenches the National Judicial Office (NJO), whose president has the constitutional power to "manage the central administrative affairs of the courts," a set of responsibilities in which the judges merely "participate." None of the constraints that the Fidesz government agreed to under international pressure—requiring a significant role for the judges in their own self-government, establishing legal standards for the president of the NJO to use in managing the judiciary, and no longer allowing the president of the NJO to stay in office until her suc-

cessor is elected—are in the constitution itself. In fact, the concessions that the Fidesz government made to Hungary's international critics may be unconstitutional now that the Fourth Amendment gives the sole power to manage the courts without these constraints to the president of the National Judicial Office.

In another move that has attracted universal criticism, the Fidesz government gave the president of the National Judicial Office the power to take any case in the entire court system and move it to a court different from the one to which normal procedure would assign it. So, for example, if a political corruption case against members of the main opposition party would normally be assigned to the trial-level court in Pest, the president of the National Judicial Office can move the case to Kecském. In fact, this is not a hypothetical; that very example has already happened. The rationale given for this extraordinary power to move cases is that the courts are overcrowded and case resolution can be speeded up by moving cases to less crowded courts.

But this rationale is belied by the facts: From public sources, I have been keeping track of the movement of these cases in the first year that the president of the NJO has had this power. She has moved only a few dozen cases away from courts that have thousands of backlogged cases. And she has moved the cases not to the least crowded courts in the countryside but to other courts that also have backlogs. She has moved some of the most high-profile political cases in which the political opposition has a stake, leading the opposition to charge the government with picking the judges particularly in cases that have strong political overtones. While my statistics cannot reveal the motivation of the government, they can show that the government is not moving a substantial enough number of cases to make a difference in waiting times and it is not moving cases from the most to the least crowded courts. I am happy to make the data available upon request.

With the Fourth Amendment passed last week, the power of the president of the NJO to move any case to any court in the country is entrenched in the constitution itself. And the constitution does not include the legal constraints that Hungary agreed to under pressure. Giving power to the president of the NJO to select which court handles individual cases outside the rules of ordinary legal procedure is for many—myself included—the end of the rule of law in Hungary.

The Constitutional Court and the ordinary judiciary have suffered a severe blow under the Fidesz constitution. Other independent institutions have fared no better.

The ombudsman system, which once comprised four independent ombudsmen with independent jurisdictions, has now been folded into one office with a much smaller staff. The former data protection ombudsman was fired and the office has been absorbed directly into the government, something that has generated an infringement action launched by the European Commission against Hungary at the European Court of Justice because EU law requires an independent data privacy officer.

As of two weeks ago, the central bank has a new governor, who moved to that job from being minister of the economy. He used his ministerial power to unilaterally change the rules for the central bank. Without the need for parliamentary approval or Court review, then, György Matolcsy, as the Fidesz economics minister, gave the office of György Matolcsy, the new central bank governor, dramatically increased powers just before he moved from one job to the next. The charter of the central bank, as it turns out, is not even a statute passed by Parliament but a document that either the bank itself or the minister of the economy can change at will.

The new media council has a chair appointed directly by the prime minister and a membership that consists exclusively of members elected by the Fidesz parliamentary two-thirds, both for nine-year terms. The media council has draconian powers to levy bankrupting fines based on a review of the content of both public and private media, including broadcast, print and internet media. A Constitutional Court decision freed the print media from some of these constraints, but the Fidesz government could now easily amend the constitution to bring the print media back under control and the Constitutional Court could say nothing further about it.

The election commission has been revamped and now consists exclusively of members who have been elected by the Fidesz parliamentary two-thirds majority, all for terms of nine years. While each party with a national list in the next election (scheduled for April 2014) will have a temporary member on the commission during the campaign, opposition parties will be easily outvoted by the Fidesz majority.

The legal framework for the 2014 election is still in flux. The Fidesz parliamentary two-thirds has already enacted two election laws over vociferous protest from opposition parties, creating an even more disproportionate system than the one it replaced. One law gerrymanders the districts for the next election in such a way that it will be very difficult for the opposition to win. The law even fixes the exact boundaries of election districts in a cardinal law that requires a two-thirds vote of

the Parliament to change. This law also eliminates the second round of voting for single-member districts so that someone without majority support in a district can enter Parliament, which was not previously the case.

The government passed a second cardinal law on elections that instituted a system of voter registration, even though the country has conducted more than 20 years of elections with an excellent “civil list” that has never produced any complaints of irregularity. The Constitutional Court struck down voter registration as unconstitutional, and for now the governing party seems to have given up on this idea. But with its parliamentary two-thirds vote, the government has the power to override the Constitutional Court by simply adding voter registration to the constitution. The government may also change other important features of the election system right up until the election takes place. In fact, at the moment, the election framework is presently incomplete. Among other things, no rules have yet been devised for making and verifying voter lists for ethnic Hungarians in the neighboring states who have recently become eligible for citizenship as the result of constitutional changes.

The Fourth Amendment added new electoral rules just last week. The amendment created a constitutional ban on political advertising during the election campaign in any venue other than in the public broadcast media, which is controlled by the all-Fidesz media board. Moreover, only parties with national party lists can advertise at all in the national media, which might exclude smaller and newer parties. These restrictions had been previously declared unconstitutional by the Constitutional Court, so the government amended the constitution to override that decision. And since these provisions are now in the constitution itself, the Constitutional Court cannot review them again.

But suppose that, despite all of the obstacles that the current governing party has put in the way of the political opposition, an opposition coalition manages to win the next election. The Fidesz constitution has created a trap that can be snapped in just such a case. The constitution creates a national budget council with the power to veto any future budget that adds to the national debt, which any foreseeable budget will do. The members of the budget council have been chosen by the Fidesz two-thirds majority for terms of 6 or 12 years and can be replaced only if two-thirds of the parliament can agree on their successors when their terms are over. Not only does this mean that, for three elections cycles out, any future government must follow a budgetary course agreed on by a council where all of the members were elected by the Fidesz government, but this budget council has even more power than that.

The constitution requires the Parliament to pass a budget by March 31 of each year. If the Parliament fails to do so, the president of the country can dissolve the Parliament and call new elections. When this provision is put together with the powers of the budgetary council, the constraints on any future government are clear. If a new non-Fidesz government passes a budget that adds to the debt, that budget can be vetoed by the all-Fidesz budgetary council at any time, including on the eve of the budget deadline given in the constitution. The parliament would then miss the deadline and the president (also named by Fidesz and serving through 2017) could call new elections. And this process can be repeated until an acceptable government is voted back into power.

The Fidesz government may have created this unfortunate interaction of constitutional provisions inadvertently in an earnest attempt to create a binding mechanism to achieve budget discipline. But it would be easy for the Fidesz government to achieve fiscal discipline without creating this anti-democratic trap. The Fidesz government could amend the constitution to require that the budget council veto the budget by a deadline that would give the Parliament time to pass a new budget before the president gains the power to dissolve it. I have personally suggested this to high-level members of Fidesz, but an amendment to this effect has so far not appeared.

There is more that could be said about the new Fidesz constitution. I have only mentioned what I take to be the biggest obstacles posed to constitutionalism and democracy by this new constitutional framework.

What can be done about the Fidesz consolidation of power by the United States, the US Helsinki Commission, and by the Organization for Security and Cooperation in Europe?

First, of course, Hungarian democracy must be created and maintained by Hungarians themselves. But a democratic public must be an educated public and Hungarians themselves need to learn what has happened to their own constitution over the last three years. Most have no idea, and not because they couldn't or wouldn't understand.

The government celebrated its new constitution with great fanfare. They set up “constitutional tables” at every town hall where people could sign up to receive their very own copy of the constitution. Last June, the government presented to every secondary school graduate a coffee-table book with the words of the new constitution illustrated with historic and specially commissioned paintings. But much of what I have mentioned above is not contained in the text that government has distributed. Many of the most worrisome provisions that I have highlighted here are in the constitutional amendments made since that time or in the cardinal laws that can only be accessed through reading the immensely difficult legalese of the *Magyar Közlöny*. These laws are posted online only in PDF form, not searchable unless one goes through each individual daily issue separately.

Hungary’s friends, including the United States, could assist financially with a program to educate citizens, lawyers and judges in Hungary about the new constitutional framework in Hungary. A public education campaign about the new constitutional structure—conducted by Hungarian constitutional experts from the government, from the opposition and from academia—may assist in giving Hungarians better information about their new constitutional system. Such a campaign would be especially effective if it could be conducted through the broadcast media in Hungary, though since the government functionally controls the broadcast media through its Media Council, some monitoring system would have to be put in place to ensure that both the government and opposition voices are heard. Having read thousands of petitions that ordinary Hungarians sent to the Constitutional Court in the 1990s, I am confident that Hungarians themselves will rise to the defense of both democracy and constitutionalism once they see the dangers of a flawed constitutional design.

Second, the Hungarian government vociferously claims that it is still a democracy because political parties may freely organize for the parliamentary elections next year. But its critics are concerned that the government presently controls the media landscape, has enacted a number of legal provisions that disadvantage opposition parties, and continues to change the electoral rules. In fact, nothing prohibits the government from changing important elements of the electoral framework at the last minute. With the election only one year away, it is important to get the rules of the game fixed—fairly—as soon as possible.

The OSCE has expertise in monitoring elections to ensure that they are free and fair. The OSCE should insist that the electoral rules be settled far enough ahead of the election so that all who want to contest the election have a reasonable amount of time to organize themselves accordingly.

Enough questions have been raised about the willingness of the current Hungarian government to recognize the political opposition that the OSCE/ODIHR should also fully monitor the 2014 Hungarian parliamentary elections. This should include not just election-day or long-term monitoring missions. The comprehensively changed new constitutional framework warrants an early Needs Assessment Mission from OSCE/ODIHR, one that can fully review the effects of all the new provisions. It should focus on the ability of political parties to organize and to get their message out, access to the media, and the fairness of the basic election framework including the creation of electoral districts and the compatibility of both the content and timing of the new electoral rules with the principles of free and fair elections.

Third, the US government should press the Hungarian government to live up to its international commitments to democracy, constitutionalism, the rule of law and robust rights protection. The US should be vigilant in monitoring backsliding from the high level of constitutional democratic protections that Hungary had achieved after 1989 and the US should cooperate with the Venice Commission, the Council of Europe Parliamentary Assembly Monitoring Committee, and the European Union (for example, the LIBE Committee of the European Parliament), all of which have ongoing monitoring processes in place.

But the US government should also be aware that, under pressure, the Fidesz government has in the past promised minor changes to its comprehensive framework and then has discarded those changes when the pressure lifted. Moreover, the changes that the Fidesz government has previously offered to make do not really address the key problems of the system. The Fidesz constitutional framework is a highly redundant system that must be understood as a whole. Each individual legal rule cannot be evaluated by itself because one must understand the function of that rule in the larger system. Changing a number of small features of this constitutional order may not in fact address the most serious problem—which is the concentration of political power in the hands of one party. In deciding whether the Hungarian government has been responsive to international and domestic criticism, Hungary’s allies need to examine whether proposed changes really alter the way this complex and integrated system works as a whole.

The US should resist entering the battle of competing checklists of constitutional features. The Hungarian government often insists that some other European country has the same individual rule that its friends criticize. Perhaps we should remember Frankenstein's monster, who was stitched together from perfectly normal bits of other once-living things, but who was, nonetheless, a monster. No other constitutional democracy in the world, let alone in Europe, has the *combination* of constitutional features that Hungary now has. In evaluating Hungary for its compliance with international standards, its international friends must look at the whole constitutional system and not just at individual pieces as it assesses whether Hungary still belongs to the family of constitutional democracies.

Finally, Hungary is a small country in Europe. It may be hard to see why the United States should spend any of its political capital to address what former Secretary of State Hillary Clinton called Hungary's backsliding from constitutional democracy. There are two main reasons why the US should care, apart from the fact that it is painful to see any country retreat from democracy and one should always be concerned about the people adversely affected.

Hungary is a partner with the US not only in the OSCE, but also in NATO. OSCE commits its member states to the protection of human rights as defined under the Helsinki Final Act of 1975, and long experience shows that human rights receive their best protection from the maintenance of a constitutional and democratic government, both of which are now in doubt in Hungary. The NATO Charter creates a union of states "determined to safeguard the freedom, common heritage and civilisation of their peoples, founded on the principles of democracy, individual liberty and the rule of law." But these commitments are also being challenged by the concentration of power in Hungary under its new constitutional framework. Both the OSCE and NATO commit its member states to good behavior and good government, which these organizations should be able to monitor.

In addition, other countries in Hungary's neighborhood are looking with great interest at what Hungary is doing. They can see that the European Union, the Council of Europe, the OSCE, NATO and the United States have limited influence and ability to induce a national government to change its domestic laws. Hungary's neighbors understand that Hungary is getting away with consolidating all political power in the hands of one party, and many find that enticing. Troubling recent developments in Romania, Bulgaria and Slovenia show that the Hungarian problem of overly concentrated power could spread if the US and its European allies don't stand up for their values in the Hungarian case. The US should therefore treat constitutional problems in Hungary with a sense of urgency, both because of the speed with which this system is being locked in and because of the likelihood that the Hungarian constitutional disease could spread around the neighborhood.

In closing then, I strongly urge the United States, the US Helsinki Commission and the OSCE to take Hungary seriously, engage with the Hungarian government on matters of constitutional reform, and work toward ensuring that the channels of democratic participation remain open in Hungary so that the Hungarian people retain the capacity to determine the sort of government under which they will live. The legal changes I have described today pose a real danger to fundamental democratic and constitutional values, and Hungary's friends need to sound the alarm.

PREPARED STATEMENT OF SYLVANA HADBANK-KOLACZKOWSKA

Senator Cardin and Congressman Smith, thank you for this opportunity to appear before the commission and discuss recent developments affecting civil society in Hungary. The topic is one of pressing importance, not only for democracy in Europe, but for the fate of similar young democracies around the world.

Freedom House's annual Nations in Transit report, which focuses specifically on democratic governance in the postcommunist world, and our global surveys Freedom in the World and Freedom of the Press have all drawn attention to the vulnerabilities and potential threats to democracy created by legislative changes affecting Hungary's media sector, data protection authority, and judicial system. We remain deeply concerned by the restructuring and restaffing of Hungarian public institutions in a way that appears to decrease their independence from the political leadership. The ongoing use of Fidesz's parliamentary supermajority to insert these and a surprising array of other legislative changes into Hungary's two-year-old constitution is also extremely troubling, particularly because some of the measures had already been struck down by the Constitutional Court.

I was asked to comment specifically on recent Hungarian media regulation and the law on churches, which I will do briefly now.

Changes introduced in 2010 consolidated media regulation under the supervision of a single entity, the National Media and Infocommunications Authority, whose members are elected by a two-thirds majority in parliament. A subordinate body, the five-person Media Council, is responsible for content regulation. Both the Media Authority and the Media Council currently consist entirely of Fidesz nominees, and they are headed by a single official who has the authority to nominate the executive directors of all public media. The head of the Media Authority and Media Council is appointed by the president for a nine-year term. This year, the government responded to criticism of the appointment process by introducing term limits and minimum background qualifications, but those will only take effect when the current officeholder's term expires, six years from now.

The particular issues of concern to us are the broad scope of regulatory control and content requirements (for example, the definition of "balanced" reporting) and the lack of safeguards for the independence of the Media Authority and Media Council.

Under the revised version of the so-called Hungarian Media Law, the Media Council is officially responsible for interpreting and enforcing numerous vaguely worded provisions affecting all print, broadcast, and online media, including service providers and publishers. The council can fine the media for "inciting hatred" against individuals, nations, communities, or minorities. It can initiate a regulatory procedure in response to "unbalanced" reporting in broadcast media. If found to be in violation of the law, radio and television stations with a market share of 15 percent or higher may receive fines proportional to their "level of influence." These fines must then be paid before an appeals process can be initiated. Under the Media Law, the Media Authority can also suspend the right to broadcast.

The Media Council is also responsible for evaluating bids for broadcast frequencies. Freedom House applauds the council's recent decision to grant a license to the opposition-oriented talk radio station Klubradio for its main frequency, in line with a recent court ruling. However, we regret that it took nearly two years and four court decisions for the council to reverse its original decision, during which time the radio station operated under temporary, 60-day licenses and struggled to attract advertisers. The episode has cast a shadow on public perceptions of the Media Council, even among those who were previously prepared to believe that a one-party council could function as a politically neutral body.

In 2011, the Hungarian National News Agency, MTI, became the official source for all public media news content. The government-funded agency publishes nearly all of its news and photos online for free, and allows media service providers to download and republish them. News services that rely on paid subscriptions cannot compete with MTI, and the incentive to practice "copy-and-paste journalism" is high, particularly among smaller outlets with limited resources. The accuracy and objectivity of MTI's reporting has come under criticism since the Orbán government came to power in 2010. Under the Media Law, the funding for all public media is centralized under one body, the Media Service Support and Asset Management Fund, supervised by the Media Council.

Hungary's Constitutional Court has attempted to push back against some of the more problematic legal changes introduced since 2010. At the end of 2011, it annulled several pieces of legislation affecting the media. For example, it excluded print and online media from the scope of the sanctioning powers of the Media Authority; revoked the media authority's right to demand data from media service pro-

viders; deleted a provision limiting the confidentiality of journalists' sources; and eliminated the position of media commissioner, an appointee of the Media Authority president with the power to initiate proceedings that do not involve violations of the law but can nevertheless be enforced by fines and sanctions. These revisions, most of which were confirmed by the parliament in May 2012, represent only a small fraction of those recommended by the Council of Europe. Moreover, they may not even prove permanent, given the government's recent habit of ignoring or overruling Constitutional Court decisions by inserting voided legislation into the constitution.

This seems likely to be the fate of the law on churches, which the court struck down last month, but which has already made a reappearance in a proposed constitutional amendment that is currently under consideration. The law essentially strips all but 32 religious groups of their legal status and accompanying financial and tax privileges. The over 300 other previously recognized groups are allowed to apply for official recognition by the parliament, which must approve them with a two-thirds majority.

It should be noted that the previous regulations were quite liberal, with associated financial benefits fueling an often opportunistic proliferation of religious groups over the last two decades. However, the new law has the potential to deprive numerous well-established and legitimate congregations of their official status and privileges. More fundamentally, the law represents another instance in which the parliamentary supermajority has given itself new power over independent civil society activity. The fact that the parliament will have the right to decide what is and is not a legitimate religious organization is without precedent in postcommunist Hungary.

Many of the areas targeted for reform by the Orbán government, including public media, health care, the education system, and even electoral legislation, were in need of reform long before the April 2010 elections brought Fidesz to power. No government until now has felt emboldened or compelled to address so many of these problem areas simultaneously. However, speed and volume in lawmaking cannot come at the expense of quality, which only broad consultation and proper judicial review can ensure. Nor should reforms create hierarchical structures whose top tier, again and again, is the dominant party in parliament. Voters can still change the ruling party through elections, providing some opportunity for corrective measures, but the ubiquitous two-thirds majority thresholds in recent legislation make it extremely difficult for any future government to tamper with the legacy of the current administration.

Ongoing economic crisis and political frustration in Europe are likely to yield other governments that feel empowered to reject international advice, make sweeping changes that entrench their influence, and weaken checks and balances, damaging democratic development for many years to come. But such behavior can be deterred if early examples like the situation in Hungary are resolved in a positive manner.

The threats to democracy that Freedom House has observed in Hungary are troubling in their own right, but they are particularly disturbing in the sense that the United States has come to rely on the countries of Central Europe to help propel democratization further east, and indeed in the rest of the world. The idea that these partners could themselves require closer monitoring and encouragement bodes ill for the more difficult cases in Eastern Europe and the Caucasus. It is therefore essential that the United States and its European counterparts closely coordinate their efforts to address backsliding in countries like Hungary and support them on their way back to a democratic path.

Thank you.

PREPARED STATEMENT OF PAUL A. SHAPIRO

Mr. Chairman, Mr. Vice-Chairman, Distinguished Members of the Commission:

The Commission on Security and Cooperation in Europe continues to focus the world's attention on manifestations of anti-Semitism, anti-Romani prejudice, and other threats to democracy as they appear in Europe and elsewhere. On behalf of the United States Holocaust Memorial Museum, I would like to thank you for organizing this important hearing regarding democracy and memory in Hungary.

Over a hundred years ago, the Spanish-born American philosopher George Santayana wrote that "Those who cannot remember the past are condemned to repeat it" (*The Life of Reason*, Vol. 1, 1905). In mid-1944, the Jewish community of Hungary—the last major Jewish community in Europe that was still largely intact—was assaulted and nearly destroyed in its entirety over the course of a few months in mid- and late-1944. Today, the memory of that tragedy is under serious challenge in Hungary, with consequences that we cannot yet fully predict, but which are ominous.

The Holocaust in Hungary

Before addressing what appears to be a coordinated assault on memory of the Holocaust, or at least a concerted attempt to rewrite Holocaust history, permit me to briefly review the history. According to Professor Randolph Braham's authoritative 2-volume *The Politics of Genocide: The Holocaust in Hungary*, the Jewish population of Hungary at the start of World War II totaled just over 825,000 souls. Many of these Jews lived in territories that Hungary had recently occupied or reacquired from neighboring countries as Hungary's Regent and Head of State, Admiral Miklos Horthy, participated as an ally of Adolf Hitler in the destabilization of Europe and the dismemberment of Czechoslovakia (in 1938 and 1939), then Romania (in 1940), then Yugoslavia (in 1941). Hungary withdrew from the League of Nations and joined Nazi Germany in its military invasion of the Soviet Union in June 1941. Unlike Italy, which withdrew from its German alliance in 1943, and unlike Romania, which did the same in 1944, Hungary remained allied with Nazi Germany to the end, until the country was overrun by Soviet military forces advancing on Germany from the east. As a result of these government policies, the Hungarian military suffered some 300,000 casualties during the war.

Of the country's 825,000 Jews, nearly 75 percent were murdered. Antisemitism in Hungary did not arrive from abroad. Miklos Horthy's Hungary was the first European country after World War I to put in place *numerus clausus* legislation, which restricted Jewish participation in higher education (1920). Racial laws similar to those of Nazi Germany, which defined Jews based on religion and "race," and deprived them of the right to practice their professions, to own land, and which forbade intermarriage, were passed in 1938 and 1939. With war came the systematic theft of Jewish property and mass murder. In 1941, 20,000 "foreign Jews," who were residents of Hungary but not Hungarian citizens, were deported across the border by Admiral Horthy's government to Kamenetz-Podolsky in Ukraine, where they were executed by waiting German forces. Hungarian troops executed another 1,000-plus Jews during their invasion of northeast Yugoslavia that same year. Over 40,000 of the Jewish men conscripted into Jewish forced labor battalions and taken to the eastern front, armed only with shovels to dig defenses for the Hungarian military, died there of exposure, killed in battle areas, or massively executed by the Hungarians as they retreated following their defeat at the battle of Stalingrad in early 1943. Then, between April and July 1944, over 400,000 Hungarian Jews were driven from their homes, concentrated in ghettos, and deported to Auschwitz, where the overwhelming majority of them were gassed on arrival. It was the Hungarian gendarmerie and police who identified and concentrated the Jews, loaded them onto trains, and delivered them into the hands of German SS units waiting at the German-Hungarian border. This process continued systematically until only the Jews of Budapest remained alive.

Admiral Horthy, whose governments had done all of this, hesitated to use the same tactics against the Jews in Budapest that he had sanctioned in the rest of the country. After Horthy was ousted following the invasion of Hungary by German forces in mid-October, in the wake of a last-minute attempt to extricate Hungary from its alliance with Hitler (Soviet troops were already advancing across the country's borders), the Hungarian fascist Arrow Cross Party (Nyilas) government that took over had no such hesitation. The weeks that followed saw a combination of forced ghettoization in Budapest; death marches involving men, women and children, whose slightest misstep was rewarded with a bullwhip or a bullet; and renewed deportations to Auschwitz. Nyilas gangs engaged in wild shooting orgies in Budapest. They massacred the patients, doctors and nurses at the Maros Street

Jewish Hospital, to give just one example, and considered it sport to shoot Jews seized at random into the Danube from the riverbank. Three months of Nyilas government cost the lives of an additional 85,000 Hungarian Jews.

Hungarian collaboration and complicity in the Holocaust was thus substantial, as were the losses suffered by this once-large and great Jewish community. Statistics can speak volumes. Nearly one in ten of the approximately six million Jews murdered in the Holocaust was a Hungarian Jew. One of every three Jews murdered at Auschwitz was a Hungarian Jew. And while every country in which the Holocaust took place would like to place ultimate responsibility on someone else, we must be clear. These Jewish men, women, and children—from grandparents to grandchildren and great-grandchildren—were murdered either directly by, or as a result of collaboration by, Hungarian government authorities, from the Regent, Miklos Horthy, and the “Leader of the Nation” (Nemzetvezető) Ferenc Szalasi who succeeded him, at the highest level, to the civil authorities, gendarmerie, and police, as well as military forces and Arrow Cross thugs, who represented the government from the capital to the smallest Hungarian village and town where Jews lived. Some 28,000 Romani citizens of Hungary were also deported and fell victim to this horrific carnage.

The Early Post-Communist Period

How has the history of the Holocaust been treated in Hungary since the fall of communism? A decade ago, I would have said quite decently. During Viktor Orban’s first term as Prime Minister (1998–2002), the coalition government that he led established a national Holocaust Commemoration Day and brought Hungary into the International Task Force for Cooperation on Holocaust Education, Remembrance and Research (since renamed the International Holocaust Remembrance Alliance or IHRA). The government also appointed a commission to create a Holocaust Memorial and Documentation Center (HDKE) in Budapest. In 2004 I attended the dedication at the HDKE of what was rightly recognized one of the best exhibitions on the Holocaust in continental Europe.

The Socialist Party governments from 2002 to 2010 remained on this positive path.

But during these years, the situation in Hungary began to change dramatically. In late 2008, at a European regional conference on anti-Semitism held in Bucharest, Romania, I expressed concern about the public display in Hungary of symbols associated with the wartime fascist Arrow Cross Party, increasing incidents of anti-Semitic intimidation and violence, and anti-Romani discourse that was increasingly Nazi-like in tone. A party of the extreme right called Jobbik (abbreviation for “Movement for a Better Hungary”) made its appearance in 2003. Its leader also created a so-called Magyar Garda, or “Hungarian Guard” force, formations of which paraded through Budapest and towns elsewhere in the country, dressed in uniforms reminiscent of Arrow Cross uniforms, brandishing fascist symbols and slogans and intimidating the remnant of the country’s Jewish community that had survived the Holocaust and remained in Hungary. An especially noteworthy indication of change was the failure of the then out-of-power, but still powerful Fidesz party to join with other major political parties in forceful condemnation of Jobbik’s anti-Semitic and anti-Romani sloganeering and Magyar Garda intimidation of Jews and violence against Roma.

Recent Developments

In the 2010 elections, Fidesz received 52 percent of the vote and returned to government with an empowering two-thirds majority in the Hungarian Parliament. Jobbik, however, which was already being described in European political and media circles as “fascist,” “neo-fascist,” “neo-Nazi,” “racist,” “anti-Semitic,” “anti-Roma,” and “homophobic,” had obtained nearly 17 percent of the vote. In this circumstance, regrettably, the warning signs apparent in 2008 regarding Fidesz proved to be accurate. Still led by Prime Minister Orban, he and his party changed their approach to issues of the Holocaust. In the judgment of some people, this was the result of a desire to appeal to Jobbik voters and thus secure better prospects for future electoral victory than the just experienced 52 percent performance. Others were less inclined to see the change as mere political maneuver, and more inclined to see it as reflecting the internal prejudices and beliefs of Fidesz itself.

The United States Holocaust Memorial Museum praised publicly some actions of the first Fidesz government. But attempts over the past three years to trivialize or distort the history of the Holocaust, actions that have given rein to open manifestations of anti-Semitism in the country, and efforts to rehabilitate political and cultural figures that played a part in Hungary’s tragic Holocaust history, now require us to be publicly critical. In June of last year, the Museum issued a press release

expressing grave concern about the rehabilitation of fascist ideologues and political leaders from World War II that is taking place in Hungary and called on the government of Hungary to “unequivocally renounce all forms of antisemitism and racism and to reject every effort to honor individuals responsible for the genocide of Europe’s Jews.” Our Founding Chairman, Nobel Laureate Elie Wiesel, repudiated a high decoration that had been conferred on him by Hungary, to protest these same trends.

What are the causes of our concern? They begin with the broad political trends that the Commission is examining today. For anyone who is familiar with the history of Nazi Germany and the other fascist and authoritarian regimes that appeared in Europe in the middle of the 20th century—and especially for Holocaust survivors who experienced the full fury of those times and those regimes—what is happening in Hungary today will sound eerily familiar and ominous.

The Hungarian government has enacted laws to place restrictions on the media. Just recall the Nazis’ manipulation of the media if you need a reminder of the danger to democracy that this represents and where it can lead. Think of all you know about Joseph Goebbels and the images that you can conjure up of Nazi propaganda. Control the media, and this is where you can end up.

The Hungarian government has taken steps to politicize and undermine the independence of the judiciary, and now through amendment of the constitution, to undermine the ability of the judiciary to review government-generated laws and decrees. Recall, please, the undermining of the practice and administration of law, the racist Nuremberg Laws of 1935, and the subversion of the judiciary in Nazi Germany and elsewhere in Nazi-dominated Europe. Ultimately, lawlessness on the part of the government and mass murder were the results.

Hungary’s law on religion has stripped many religious groups of their officially recognized status as “registered” religions, in effect depriving them of equal rights and making the legitimacy of religious faith an object of political whim. For Jews and Jehovah’s Witnesses, Polish Catholics, Seventh Day Adventists, Baptists, Old Believers and others, the echo of the Holocaust era could not be more powerful. Delegitimizing one’s faith delegitimizes the person.

Racial violence, including outright murder, against the Romani minority in Hungary, while not perpetrated by the government, has not been effectively addressed by the government either. When Szolt Bayer, a founding member of Fidesz, whose brutal anti-Semitic rhetoric has long been recognized and commented upon in European and Israeli media, wrote an editorial in the newspaper *Magyar Hirlap* (Jan. 5, 2013) in which he called “Gypsies” “cowardly, repulsive, noxious animals,” that are “unfit to live among people,” are “animals and behave like animals,” and incited action by calling for dealing with them “immediately, and by any means necessary,” it was not possible to miss the echo of the despicable propaganda campaigns of dehumanization that preceded the mass murder of the Jews of Europe, Hungarian Jews included. Hungary’s Justice Minister made a statement critical of Bayer, but no legal action by the government followed. Here was what we Americans would call a classic “wink and a nod” approach by the government. Nor was the author of this vile incitement to violence expelled from Fidesz. The party’s spokesperson also finessed the issue in a manner that has become all too common: Szolt Bayer wrote the article as a journalist, not as a Fidesz party member, was the line taken. The Prime Minister and leader of Fidesz remained silent, giving a clear sign that the views that had been expressed by Bayer were not unacceptable. If there is one thing that the Holocaust teaches above all others, it is that silence empowers the perpetrator, empowers the hater; and when it is the head of government that is silent, silence messages assent and license to proceed.

This pattern has unfortunately become the norm, perhaps giving answer to the question of whether it is maneuver or conviction that is determining the actions of the Hungarian government and Fidesz vis-a-vis the Holocaust.

Assault on Memory of the Holocaust

Is the history of the Holocaust secure in Hungary today? Thus far, the government’s actions raise serious doubt.

The Holocaust Memorial and Documentation Center (HDKE): Shortly after Fidesz returned to power, the government appointed new leadership at the Holocaust Memorial and Documentation Center. Then, a series of proposals to change the permanent exhibition at the Center were made by Dr. Andras Levente Gal, the new Fidesz-appointed Hungarian State Secretary in the Ministry of Public Administration and Justice, which had governmental oversight of the Center. Gal’s first proposal was to eliminate mention of Miklos Horthy’s alliance with Adolf Hitler and participation in the dismemberment of three neighboring states—Czechoslovakia, Romania, and Yugoslavia—as “irrelevant” to the Holocaust. Yet, violation of the

post-World War I national boundaries brought war in Europe, and war provided opportunity and cover for the mass murder of the Jews. Moreover, it was precisely the Jews of the regions that Hitler restored to Hungary who were the first targets of the Hungarian gendarmerie and police as they drove to create a country “cleansed of Jews.” Gal’s second proposal was to sanitize the record of Hungarian participation in the ghettoization and deportation of the country’s Jews and placed full blame for the destruction of Hungarian Jewry on Germany. Word of the proposed changes leaked out, and there was strong international reaction. Thus far the exhibition remains intact. But much of the staff of the HDKE was fired, and budget allocations to the Center as late as last December left the staff that remained fearful that they, too, would be released. Meanwhile, visitation to the Center has declined, and the lack of mandated Holocaust education in the school system has left the institution severely underutilized.

Eventually, Andras Levente Gal left his position, and government officials noted that he was gone if the issue of changing the permanent exhibition at the HDKE was raised. But Gal remains an insider, and at no point did the government, or Fidesz party spokespeople, or the Prime Minister publicly criticize or issue a rebuke of Mr. Gal’s attempt to distort and sanitize Holocaust history. This left the impression publicly that what Mr. Gal had tried to do was fine in the eyes of the government and Fidesz, probably even inspired from above. Gal simply had not succeeded in getting the job done.

The Nyiro Affair: A similar situation developed in the aftermath of the so-called Nyiro affair. Last spring, Speaker of the Hungarian National Assembly (Parliament) Laszlo Kover, who is a founding member of Fidesz, together with Hungarian State Secretary for Culture Geza Szocs, and Gabor Vona, the leader of Jobbik, united to honor posthumously Jozsef Nyiro (1889–1953), a Transylvanian-born writer and fascist ideologue, and member of Hungary’s wartime parliament from 1941 to 1945. Nyiro served as Vice-chair of the Education Commission in the Arrow Cross regime of Ferenc Szalasi. He was a member of the pro-Nazi National Association of Legislators, and was one of a group of legislators in the so-called “Arrow Cross Parliament” that left Budapest and fled the country together with Szalasi in the final days of the war. Nyiro had been a popular writer of short stories and novels in the 1930s and 1940s, but he also characterized Joseph Goebbels as someone who “exudes intellect and genius.” In parliament, Nyiro labeled the “discredited liberal Jewish heritage” the enemy of Hungary and, dispensing race hatred in all directions, called Hungarian marriages with non-ethnic Hungarians “mutt marriages” and “mule marriages.” Nyiro was editor-in-chief of the newspaper *Magyar Erö* (“Hungarian Power”), whose editorials proclaimed that “Getting rid of the Jews is not a mere sign of the times, nor the agenda of a political party, but a unified and pressing demand of all nations that have recognized the Jewish threat and come to the conclusion that life without Jews is much better, much happier” (*Magyar Erö*, Nov. 6, 1942).

Nyiro passed away in Franco’s Spain. The plan developed by Kover, Szocs and Vona was to rebury Nyiro’s ashes in Transylvania, while attempting to whip up nationalistic sentiment among the ethnic Hungarian minority there through an elaborate official funerary procession that would wend its way by train from the Hungarian border to Nyiro’s birthplace, Odorheiu Secuiesc (Szekelyudvarhely), some 200 miles inside Romania and close to the easternmost demarcation line of the Romanian territory awarded to Hungary by Nazi Germany in 1940. In the end, the Romanian government protested, there was no train, but the Hungarian officials I have mentioned still participated in an “unofficial” burial ceremony, following which Kover, accompanied by Szolt Bayer, stayed on in Romania for the purpose of visiting with the ethnic Hungarian (and Szekler) communities in Transylvania. Diplomatically, the incident was not quite the equivalent of Admiral Horthy astride his white horse leading the Hungarian army into the regions of Transylvania given him by Adolf Hitler, as happened in 1940. But symbolically, this was the intent.

How did the Fidesz government deal with this incident? Speaker Kover personally was unrepentant. He labeled the Romanian Government’s action to prevent the reburial plan “uncivilized,” “paranoid,” and “hysterical,” and he called on the Hungarian ethnic minority in Transylvania to “press the books of Nyiro into the hands of their children” so that “a new generation of Nyiros” would be raised there. He responded to criticism by Elie Wiesel by claiming that he was honoring Nyiro the writer, not Nyiro the politician. Moreover, wrote Kover, Nyiro was neither a war criminal, nor a fascist, nor anti-Semitic, for if he had been, how could one explain the fact that the Allies did not put him on trial after the war or extradite him to Hungary in response to requests by the by-then Communist government of the country? Pushing back by laying blame on others in this manner has become a frequent tool in the Hungarian government’s responses to criticism of its actions. The Prime

Minister, for example, responded to a letter from a Member of the U.S. House of Representatives (Hon. Joseph Crowley, 14th Dist., NY) by laying blame for the rise of anti-Semitism in Hungary on a U.S.-based web site (kuruc.info), the implication being that the Hungarian government could do nothing until the United States dealt with its First Amendment “problem.” Meanwhile, Laszlo Kover has remained Speaker of the Hungarian parliament, and recently proclaimed his eternal solidarity with Szolt Bayer (see above) at Bayer’s 50th birthday celebration.

As in the case of Andras Levente Gal, neither Fidesz nor the Hungarian government, nor the Prime Minister himself, took any action to criticize publicly or disassociate themselves from what Kover and Szocs had attempted. Quite the contrary. The detailed “Communications Guidelines to Counter Accusations of Antisemitism” that was sent to Hungarian diplomats abroad following the Nyiro affair instructed the government’s representatives to stress that Speaker Kover participated in the memorial ceremony for Nyiro “in his private capacity,” not as Speaker of the National Assembly, and that Nyiro’s record should be appraised based on his literary merits, not his political activity. In other words, the government was comfortable seeking to gloss over Nyiro’s involvement in a regime that perpetrated the Holocaust. The government’s talking points failed to mention that the Hungarian Parliament had spent 6 million forints (over \$25,000) on preparations for the reburial, or that Speaker Kover’s web site had announced his planned trip to Romania as an official visit. As for Szocs, after some delay he left office. His departure is noted by government representatives when inquiries are made, but there has been no government statement linking his departure to the Nyiro affair or indicating that he was fired.

Anti-Semites in the National Curriculum: Nyiro’s name and legacy became issues again in connection with a review and proposed revision of Hungary’s national public school curriculum that was initiated by the Fidesz government and is being carried out by the Ministry of National Resources. The government has proposed to include among the interwar authors whose works it is recommended teachers present to their students Jozsef Nyiro (novels), Albert Wass (children’s tales), and Deszo Szabo, among others. The guidelines in the National Curriculum provide no assistance to help teachers provide contextual information about these writers—including information about their political activities that might help teachers decide whether and how to teach about them. I have already discussed Nyiro. Let me introduce Deszo Szabo and Albert Wass, without attempting to evaluate the literary merits of their prose. Deszo Szabo wrote, “Jews are the most serious and the most deadly enemy of Hungarians. The Jewish question is a life and death question for Hungarians—a question that is linked to every aspect of Hungarian life and the Hungarian future” (“Antisemitizmus,” *Virradat* [Dawn], Jan. 21, 1921); and two months later, after designating Judaism “a tribal superstition exalted as a religion,” concluded “In the interest of human progress, the barbarian, murderous memories of dark, primeval centuries [that is, the Jews—PAS] must be exterminated” (“1848 marcius 15,” *Virradat*, Mar. 16, 1921). Albert Wass, like Nyiro born in Transylvania, was convicted by the Romanian government of war crimes during his service in the Hungarian army, including complicity in the documented murder of two Jews and two Romanians in Hungarian-administered Transylvania during World War II. This did not prevent the incoming President of Hungary, Fidesz Deputy President Pal Schmitt from quoting Wass in his inaugural address in 2011.

In addition to the inclusion of problematic figures such as these, each of whom either fostered anti-Semitism or participated politically or militarily in regime-sponsored murder, the draft National Curriculum also stresses the country’s territorial losses after World War I as Hungary’s singular national tragedy, while suggesting equivalency with lesser significance between the Holocaust and Hungarian military losses on the Don River (Stalingrad) during World War II. Equating the loss of military forces to an enemy in battle with the systematic, racially inspired murder of civilian men, women and children who are citizens of one’s own country, solely because they are of different religion or ethnicity, of course makes no sense, unless motivated by prejudice and intended to reinforce prejudice.

Finally, while some information relating to Jewish history and the contributions of Jews to Hungarian intellectual, cultural, and economic life were included in the new National Curriculum approved at the end of 2012, the information fell short of the subject matter suggested by a consortium of Hungarian Jewish organizations. In a classic case of the government seeking to have it both ways, directing students’ attention to the likes of Nyiro, Szabo and Wass will likely undercut any positive effect of the new material reflecting positively on Jews, unless the latter is considerably expanded. Hungarian Jewish organizations have petitioned the government to remove these “anti-Semites” from the curriculum, but thus far the reply has been

negative; indeed, it has been a more rigorous coordinated defense of the three “writers.”

The tactic of seeking to divert attention elsewhere to deflect criticism has been mobilized on the curriculum issue. Government spokespeople have responded to criticism from the United States, for example, by pointing out that Henry Ford, Charles Lindbergh, and Ezra Pound are included in American high school curricula, despite their demonstrable anti-Semitism. At this point, downplaying the significance of anti-Semitism as a factor to be considered, undermining understanding of the contributions of Hungarian Jewry to Hungarian national life, while trivializing and relativizing the significance of the Holocaust have been codified as elements of the Hungarian educational system that the Fidesz government has designed.

Rehabilitation of Holocaust Perpetrators: Hand in hand with attempts to whitewash Hungarian collaboration and complicity during the Holocaust, hand in hand with efforts to justify Hungary’s alliance with Nazi Germany, has gone a growing effort to rehabilitate the murderers. See Nyilas operative Nyiro as a writer who deserves to be honored as a national icon, not as a fascist. See Albert Wass as a writer of children’s tales, not as a convicted war criminal. In this context, it is hardly surprising that we are witnessing the attempted rehabilitation of Admiral Horthy himself. Several towns have erected statues or placed plaques on buildings in his honor (e.g., in Kereki and Debrecen). Placing an equestrian statue of the Regent on Budapest’s Castle Hill has also been discussed. In other localities, streets, parks and public squares now bear his name (e.g., in Gyomro).

When asked to take action to halt the de facto rehabilitation of Hungary’s anti-Semitic interwar and wartime leader, during whose tenure as Regent a half million Hungarian Jews were killed, the Hungarian government responds evasively. The government is not seeking to rehabilitate Horthy, goes the standard line, but it is important to realize that Horthy is a “controversial” figure. Foreign Minister Janos Martonyi, responding to a joint letter addressed by the American Jewish Committee, B’Nai B’rith, and our Museum to Prime Minister Orban, adopted precisely this approach, stating, on the one hand, “that the Hungarian Government has no intention to rehabilitate Regent Horthy,” but qualifying the assurance with a reminder that “there is no consensus of opinion about his legacy” (Martonyi letter of July 18, 2012). Implicit in such a response is that the government’s approach could change if a consensus favorable to Horthy develops. Meanwhile, the government has taken advantage of the situation, and in the process added its weight to a more positive evaluation of Horthy, by playing to nationalist and populist sentiments, seeking to purge Horthy’s record as a Hitler ally, and glorifying the restoration of Hungary’s “lost territories” that Horthy was able to achieve, if only for a few years. The government has not taken serious steps to research and more rigorously evaluate Horthy’s record. It has certainly not placed equal emphasis on his record of anti-Semitism and complicity in the murder of the country’s Jews. Nor has it sought to defuse tensions with Hungary’s neighbors by tempering the country’s fixation on the so-called “lost territories”—territories that today are parts of Austria, Slovakia, Ukraine, Romania, Croatia, and Serbia.

Indeed, rather than assuming the responsibility of government to clarify issues of historical and political significance, Fidesz and the Hungarian government have thrown up a smokescreen to further confuse the Horthy issue by allowing—perhaps encouraging—people who speak for or represent Fidesz and the Hungarian Government to suggest that the fact that Horthy was not put on trial by allied authorities after the war is sufficient to indicate that Horthy’s record was clean (Author’s conversation with Tamas Fellegi, December 3, 2012). This tactic of shifting “responsibility” for the problem abroad, as we saw with the Nyiro case and regarding the kuruc.info web site, has become routine. But it hardly suffices to cleanse the reputation of Miklos Horthy, who could write with pride to his Prime Minister in 1940, “I have been an anti-Semite my whole life,” and to Adolf Hitler in May 1943, “The measures that I have imposed have, in practice, deprived the Jews of any opportunity to practice their damaging influence on public life in this country” (Miklos Sinai and Laszlo Szucs, *Horthy Miklós titkos iratai* [Miklos Horthy’s Secret Correspondence], Budapest, 1965, pp. 262 and 392). Given his lifelong record of anti-Semitism and his complicity in the murder of the Jews of Hungary, the attempt to rehabilitate Miklos Horthy, or to condone his elevation even to the status of someone whose reputation is “controversial,” might reasonably be considered a manifestation of anti-Semitism.

The government has labeled the statues, streets and other Horthy monuments that have appeared around the country local initiatives which the national government has no way to prevent. The fact that the Fidesz government has an overwhelming parliamentary majority, has promulgated a new national constitution, and has recently passed dramatic new constitutional amendments that limit the

power of the Constitutional Court to review the content of legislation, obviates the credibility of such assertions.

In short, the history of the Holocaust is under assault in Hungary and the rehabilitation of some of the people responsible for the murder of 600,000 of the country's Jews during the Holocaust is well under way. An atmosphere has been created in which it is understood that anti-Semitic and anti-Romani discourse, and even intimidation and violence, will not elicit effective government action to alter the situation. The government and people perceived to be closely tied to it may, in some cases, issue after-the-fact statements condemning anti-Semitic or anti-Romani discourse and deed. But they are just as likely not to do so, thus messaging clearly that such expression and activity is, in fact, acceptable. The participation of Fidesz members and government officials in activities that further inflame the toxic atmosphere is clear. Such behavior requires swift and public censure, including disavowal and censure by the Prime Minister himself. But this has not happened. Government spokespeople assert that the problem is Jobbik, but neither they nor the Prime Minister have thus far forcefully and publicly condemned Jobbik as outside the boundaries of what is acceptable in a democratic society.

Nor have the leaders of Fidesz distanced their party unequivocally from Jobbik. When a party member or spokesperson makes a stronger statement of condemnation of Jobbik, or takes a clearly critical position vis-à-vis a manifestation of anti-Semitism or trivialization or obfuscation of the Holocaust, the statement is very frequently qualified, almost immediately, as a personal opinion, not a governmental or party opinion. Thus, when Antal Rogan, leader of the Fidesz faction in parliament, spoke out against Jobbik at a public demonstration in front of the parliament building on December 2, following an inflammatory speech by Jobbik MP and Vice Chairman of the parliamentary Foreign Affairs Committee Marton Gyongyosi, who proposed that lists of Jews be kept because Jews represented a national security risk, Fidesz representatives pointed out the following day that Rogan had been speaking in his personal capacity, not on behalf of the party. A similar occurrence took place in Washington on February 27, 2013, when Tamas Fellegi, a confidant of Prime Minister Orban, testified in these august halls before a subcommittee of the U.S. House of Representatives Committee on Foreign Affairs, at a hearing on "Antisemitism: A Growing Threat to All Faiths." Mr. Fellegi took up defense of the Hungarian government by stating that while Jobbik is "an openly anti-Semitic party," "[t]here is a clear line of demarcation between Jobbik, and the center-right government and all other mainstream parties." He delivered a lengthy and forceful defense of the Prime Minister's party and performance in the first and second Orban administrations. But when, perhaps to impress his independence of opinion on his listeners, he allowed that the "infamous commentaries of [Fidesz member] Szojt Bayer" could be "deemed as racist," and stated opposition to the "rehabilitation of the historic period of Admiral Horthy," he immediately made it clear that these were only his personal views.

A Way Forward?

The issue that must be addressed, given the record I have described, is how to find a way forward in combatting anti-Semitism and ensuring Holocaust remembrance and education in Hungary. Every criticism, explicit or implicit, in this testimony has been intended to identify a problem that can be solved, not to induce despair or the sense that the problems cannot be solved. It is important to remember that Hungarian society emerged from communist dictatorship less than 25 years ago. It is important to remember that Fidesz was, at its origin, a democratic movement in a totalitarian era. And it is important to recall that it was the current Prime Minister, Mr. Orban, who during his first administration established Hungary's national Holocaust Commemoration Day and laid the foundation for establishment of the Holocaust Memorial and Documentation Center in Budapest. Thus the potential for sensitivity to the dangers inherent in anti-Semitism and distortion or trivialization of the Holocaust exists.

And yet, in today's Hungary it was possible for a female member of parliament to be shouted down and ridiculed by MPs from both Jobbik and Fidesz, when she questioned the wisdom of rehabilitating Miklos Horthy and members of the Arrow Cross (Hungarian National Assembly, May 29, 2012). It was possible for Jobbik's Marton Gyongyosi to suggest in the parliamentary chamber that Jews were a national security risk, and to experience no formal censure, only belated criticism by the government, followed by refusal of the state prosecutor to pursue legal sanctions that had been requested by the Jewish community (Hungarian National Assembly, November 27, 2012). It is possible for Magyar Garda units to continue to assemble and march, to intimidate Jews and Roma, despite a formal legal ban. It is possible for incremental rehabilitation to be under way for political figures who aligned the

country with Adolf Hitler; participated in the disruption of peace in Europe and the murder of 600,000 Hungarian Jews and thousands of Romani; adopted policies that resulted in hundreds of thousands of Hungarian military casualties; and, ultimately, bore responsibility for policies that led to the occupation of the country by Soviet military forces and led to 45 years of communist dictatorship. It is even possible for the legacy of such people to be labeled “controversial” by Fidesz and Hungarian government spokespeople.

In 2012, three major Holocaust-related monuments in Budapest—the Holocaust Memorial and Documentation Center, the memorial statue honoring Raoul Wallenberg, and the iconic bronze shoes on the banks of the Danube which memorialize the 10,000 or more Jews shot into the river during the final months of the war—were vandalized. A 2012 survey by the Anti-Defamation League identified Hungary as the European country where anti-Semitic attitudes are most widespread.

Under circumstances such as these, we believe that it is the responsibility of the Prime Minister to lead and the government to take remedial action, not to equivocate, excuse, deflect, seek to divert attention elsewhere, or lobby. The Hungarian government, by virtue of its overwhelming parliamentary majority, is able to act, and for precisely this reason bears responsibility for what is or is not done vis-à-vis manifestations of anti-Semitism and Holocaust issues.

To be fair, the government has taken some steps of potential significance in the right direction in recent months. In November, Parliament passed a ban on the naming of public institutions or spaces after individuals who played a role in establishing or sustaining “totalitarian political regimes” in the 20th century. In December, the Government provided supplemental funding to the Holocaust Memorial and Documentation Center to permit the Center to keep its doors open and pay its staff through the remainder of the current fiscal year. A week after the incident and in the wake of a major public demonstration on December 2 to protest Jobbik MP Gyongyosi’s suggestion that name lists of the country’s Jews be created, Prime Minister Orban finally criticized Gyongyosi’s remarks as “unworthy of Hungary.” Later in the month, the Speaker of the Hungarian Parliament was given authority to censure and potentially exclude from the chamber and fine MPs who used hate speech during parliamentary sessions. The government has also established a Hungarian Holocaust 2014 Memorial Committee, under auspices of the Prime Minister’s Office, to plan commemorative events for the 70th anniversary of the mass deportation and murder of Hungarian Jewry.

The actual impact of each of these steps, however, remains to be seen. It is unclear whether Hungary’s wartime governments, those under the authority of Miklos Horthy as well as the government headed by Ferenc Szalasi, will be considered to fall under the rubric of “totalitarian political regimes.” The Horthy statues and memorial plaques and spaces remain in place, even though the new law stipulates that existing memorials within the purview of the law were to have been removed by January 1, 2013. The Holocaust Memorial and Documentation Center, while open, remains severely underutilized and unable to pursue much of the educational mission for which it was created. While he did criticize Gyongyosi’s speech, albeit belatedly, Prime Minister Orban has yet to clearly draw a line that definitively separates Fidesz from Jobbik. Nor has he publicly censured or repudiated members of Fidesz, such as Szolt Bayer, who engage in distasteful and incendiary racist and anti-Semitic discourse. It remains to be seen whether the Speaker’s new authority actually will be put to use to control anti-Semitic and anti-Romani discourse in parliament. The activities to be undertaken by the 2014 Memorial Committee remain to be defined. Whether or not they effectively reduce anti-Semitic manifestations in Hungary and clarify for the country’s population issues that today are deemed “controversial,” relating to Hungary’s wartime governments and the Holocaust, will be the only true measures of the significance of the current government’s action.

Moreover, the steps that the Government has taken, even if all implemented and effective, in our view will not suffice to address the full range of issues relating to anti-Semitism and the Holocaust that confront the country. The United States Holocaust Memorial Museum has engaged in broad-ranging consultations with organizations in the United States with which we regularly work, with members of Prime Minister Orban’s staff, with other members of the Hungarian Government, including Ambassador Gyorgy Szapary, who represents his government in Washington, and with NGO leaders, representatives of the Hungarian Jewish community, and representatives of mainstream opposition political parties in Hungary. Based on these consultations and our own experience, in December we recommended the following to the Prime Minister’s Office:

a) *Establish and appoint a state-sponsored International Commission of Scholars to prepare a definitive report on the history of the Holocaust in Hungary, including*

the history of anti-Semitism in the country, and to make recommendations to the Government regarding future Holocaust memorialization, education and research activities. The Museum has provided the Prime Minister's Office with information regarding the establishment and organization of such commissions in other European countries. While the placement within the government of responsibility for organizational, administrative, and financial support for such a commission is clearly to be determined by the Hungarian government, following appointment of the Hungarian Holocaust 2014 Memorial Committee, under auspices of the Office of the Prime Minister, we have further suggested that the International Commission of Scholars be established under the same auspices. The two-year time frame established for the Memorial Committee would coincide very well in practical terms with the time needed for preparation of a thorough report by the International Commission of Scholars.

b) *Enact legislation (or amend existing legislation) to prevent the creation of monuments to, naming of streets or other public sites in memory of, or otherwise honoring individuals (including but not limited to Regent Miklos Horthy) who played significant roles in the Holocaust-era wartime governments of Hungary.* Clarify the inclusion of these governments in the November 2012 law regarding individuals involved in Hungary's 20th century "totalitarian political regimes."

c) *Mandate in the Hungarian secondary school curriculum that every student in the country visit the Holocaust Memorial and Documentation Center in an organized class visit during his/her final four years of high school education.* This would require the provision of subsidized transportation for students and teachers for day trips to and from Budapest; enhancement of staff and management at the Center; and the provision of additional space to the Center for student briefings and post-visit discussions (potentially a rented nearby apartment retrofitted as classroom/meeting room space). The initiative would finally and effectively capitalize on the investment that Hungary has already made in creating the Center.

d) *Ensure that the Speaker of the Parliament consistently applies the recently established authority of the Speaker to censure, suspend, and fine MPs for expressions of racist and anti-Semitic views, or use of other forms of hate speech.* In addition, we recommend that such censure be publicly announced, through official statements by the Office of the Speaker issued to the media.

e) *Institute a policy of censure by the Office of the Prime Minister of ranking members of government ministries who participate, in either public or "private" capacity, in activities that are likely to reinforce racist, anti-Semitic or anti-Romani prejudices or that appear to rehabilitate the reputations of individuals who participated in the wartime governments of Hungary.* Such censure should be publicly announced through official statements issued by the Office of the Prime Minister to the media.

f) *Issue to the media an unequivocal statement by the Prime Minister clearly defining the racist and extremist views expressed by Jobbik as lying outside the boundaries of acceptable discourse in a democratic society and totally unacceptable within the Prime Minister's own political party, Fidesz.* Members of the Prime Minister's party who express similar views should be publicly reprimanded.

Our Museum has confirmed to the Hungarian Government that we stand ready to be helpful. We have offered to host here in Washington one of the plenary meetings of the proposed International Commission of Scholars that would be required to enable members to complete the drafting, debate and discussion of a comprehensive Commission report. We believe that the actions we have suggested would help to reverse the dangerous downward cycle which appears to define events in Hungary today. In just a few weeks, Museum Director Bloomfield and I will be participating in the dedication of a new permanent exhibition at the Mauthausen Camp Memorial (KZ-Gedenkstätte Mauthausen) in Austria. Late in the war, thousands of Hungarian Jews who had been selected for labor in Auschwitz were "transferred" to Mauthausen. Many perished during death marches that stretched between the two camps. Most of those who reached Mauthausen perished there. In the shadow of that history, Director Bloomfield and I have offered to travel to Budapest following the Mauthausen dedication ceremony to meet with Prime Minister Orban and those to whom he has entrusted responsibility for dealing constructively with Holocaust issues and combatting manifestations of anti-Semitism. We are hopeful that we will receive a positive response.

In the meantime, the Museum has planned a number of scholarly activities for the coming year that will sustain focus on Hungary and secure the historical record regarding what happened there during the Holocaust. In April, we will publish, in partnership with Northwestern University Press, a three-volume encyclopedia, edited by Professor Randolph Brahm of the City University of New York, that provides information—county by county, town by town, village by village—on the pre-Holocaust Jewish community of Hungary and the events of the Holocaust in each respec-

tive community. Professor Braham, who is a survivor of the notorious Hungarian Jewish labor battalions established by the Horthy regime, is the world's leading expert on this history. Later during the year, we will publish a document collection on *The Holocaust in Hungary* as part of our archival studies series "Documenting Life and Destruction." And in March of next year, on the 70th anniversary of the beginning of deportations of Hungarian Jewry to Auschwitz, we will host at the Museum a major international conference on the Holocaust in Hungary. When first proposing to the Hungarian government the establishment of an International Commission of Scholars on the Holocaust in Hungary, I had hoped that a plenary session of the Commission might coincide with and be coordinated with this conference. Timely action to establish a Commission might still allow for a degree of coordination.

Conclusion

Today's hearing is focused on the trajectory of democracy and the danger of extremism—in the form of racism, anti-Semitism, and Holocaust trivialization—in Hungary. I have described trends that potentially undermine the safety of Jews, Roma, and other minorities in Hungary and that threaten the ability of Hungarians to come to grips with the truth regarding the Holocaust—a national tragedy of a different era. Democracy and memory: I want to stress that these two concerns are interrelated. Undermine democracy, and the rights of human beings deemed to be "different" are easily violated. The Hungary of World War II provided an extreme example. And misrepresenting the tragedies of one's national past—trivializing them, relativizing them, or failing to clarify issues of fact when they become "controversial" or are distorted for political purpose—forces those in power to subvert democratic practice, to control the media, manipulate electoral mechanisms, and adopt increasingly extreme "populist" and jingoist stances, in the hope of staying in power permanently—an outcome that is only available in dictatorships, never in democracies.

I know that lobbyists are not seen in every instance in a favorable light. But I appear today on behalf of the United States Holocaust Memorial Museum as a lobbyist for the truth, a lobbyist for 600,000 Hungarian Jews and thousands of Hungarian Romani who cannot be here. Their lives were snuffed out due to the decisions, prejudices and failures of their country's leadership—Miklos Horthy, Ferenc Szalasi, and numerous other political and military leaders, fascist "writers" like Nyiro, Szabo, and Wass—and those who collaborated or were directly complicit in acts of theft, deportation and murder.

Will Hungary become a source of instability in Europe, this time in the heart of the European Union, as it was in the late 1930s? Will ethnic and religious minorities, including a Jewish community of 80–100,000 souls remain free of harassment and safe there? Will this country, which was once home to a Jewish population that numbered over 800,000, trivialize memory of the Holocaust and lead a revival of anti-Semitic sentiment in Europe? Are contemporary developments appropriate for a state that is a member of the International Holocaust Remembrance Alliance (IHRA), a member of the European Union, and a member of NATO?

I will restrict my response to my assigned topic and expertise—the Holocaust and anti-Semitism. Some weeks ago, Hungary volunteered to assume the chair of the International Holocaust Remembrance Alliance in 2015. Given the current situation, which I have endeavored to describe, this would be inappropriate and an insult to the living and desecration of the memory of the dead. Ultimately, of course, the decision will be taken by the state members of the IHRA, in all likelihood based on more practical and political considerations. But I would hope that before any decision is taken, including by our own representatives at the IHRA, the Hungarian Government will alter the approaches that it has taken in addressing anti-Semitism and Holocaust issues in Hungary, adopt the suggestions our Museum has made, and guide Hungary—a country with much to be proud of in its history—onto a path that is admired and praised rather than scorned and criticized. Representatives of Fidesz and the Hungarian Government with whom I have spoken frequently complain that their missteps are always criticized, while their positive actions are never commended. I for one, and the institution I represent here, commit to praise when positive steps are taken.

I began these remarks by citing philosopher George Santayana. I would like to conclude by quoting our Museum's Founding Chairman and Nobel Laureate Elie Wiesel, who was sent to the ghetto by Hungarian gendarmes and deported with his family to Auschwitz while Miklos Horthy served as Regent of Hungary. "There may be times when we are powerless to prevent injustice," wrote Wiesel, "but there must never be a time when we fail to protest." I hope that my testimony today is sufficient protest to stimulate action. On another occasion, Elie Wiesel declared, "If any-

thing can, it is memory that will save humanity." Securing the memory of the Holocaust in Hungary is essential.

Mr. Chairman, I request that my written statement be included in the record in full.

TESTIMONY CONCERNING THE CONDITION OF RELIGIOUS FREEDOM IN HUNGARY, H.
DAVID BAER, TEXAS LUTHERAN UNIVERSITY

In July 2011, Hungary's Parliament passed Act C of 2011 "on the Right to Freedom of Conscience and Religion, and on the Legal Status of Churches, Religious Denominations and Religious Communities." Act C of 2011 was a cardinal law, requiring a 2/3 parliamentary vote to be passed or amended. However, the law was passed through a highly irregular parliamentary procedure inappropriate for legislation on such a fundamental matter as religious freedom. An initial bill was brought to the floor by a representative of the Christian Democratic People's Party (KDNP), a coalition party in the ruling government, but two hours before the final vote, a member of Fidesz, János Lázár, proposed an amendment from the floor that changed the bill in its entirety. Lázár's surprise version of the bill was debated on the floor for two hours and passed by Parliament.

On December 19, 2011, the Constitutional Court struck down Act C on the basis of a narrow objection to the irregular procedure by which the law was passed. Three days later, on December 22, a new religion bill essentially identical to Act C was submitted to Parliament's Committee on Constitutional, Legislative and Judicial Matters (Alkotmányügyi, igazságügyi és ügyrendi bizottság). The Constitutional Committee discussed the bill from 9:09 to 9:53 a.m. and then forwarded it to Parliament, where debate was taken up and closed the very same day. Although representatives in Parliament had less than 24 hours to consider the contents of the bill and propose amendments, it was passed as Act CCVI of 2011 and went into effect January 1, 2012.

Act CCVI of 2011 introduced an elaborate registration procedure for legal recognition of churches. The Act stipulates that religious groups seeking legal recognition must conform to numerous criteria, almost all of which are problematic. Some criteria presuppose a substantive definition of religion that is biased toward Christianity. For example, groups seeking legal recognition need to have "a confession of faith and rites containing the essence of its teaching." Although this criterion may be appropriate for what are called "orthodox" religions, that is, religions like Christianity which emphasize confessional and official teaching, it is hardly appropriate for what are called "orthoprax" religions, that is, religions like Judaism and Buddhism which emphasize religious practices but do not produce authoritative confessions. Other criteria are excessively burdensome. For example, groups seeking legal recognition need to have been "operating internationally for at least 100 years or in an organized manner as an association in Hungary for at least 20 years." Some criteria are sweepingly vague. For example, the activities of a religious group seeking registration cannot be contrary to the Hungarian constitution—a constitution, one might add, that has already been substantially amended four times in a single year.

According to the Act, legal recognition to churches is granted only by a 2/3 vote of Parliament. However, even in cases where a religious group meets all of the criteria enumerated in the law, Parliament is not required to grant that religious group legal recognition. Tamás Lukács, chair of the parliamentary Committee on Human Rights, Minority, Civic and Religious Affairs (Emberi jogi, kisebbségi és vallásügyi bizottság), has stated repeatedly that religious groups do not have a right to be legally recognized as a church or religious community, but that legal recognition is a matter of political discretion. In Lukács's view the state is free to refuse recognition to religious groups even in cases where they meet all the criteria enunciated in law. Importantly, the Committee on Human Rights which Lukács chairs has been responsible for determining whether applications by religious groups for legal recognition are forwarded to Parliament. Thus Lukács's views on these matters are of consequence.

When Act CCVI of 2011 was first passed, Parliament recognized only 14 churches/religious communities, all of which were either Christian or Jewish. In February 2012, perhaps in response to international pressure, Parliament recognized an additional 13 groups, including Muslims, Buddhists, and smaller Christian groups, thereby raising the number of recognized churches to 27. (Numerous reports have listed the number of accepted churches as 32. However, Act CCVI of 2011 and its "annex" list a total of 27 churches. Five Buddhist communities merged and were recognized collectively as one church in the law. If one incorrectly adds those five Buddhist groups separately to the list of 27 accepted churches, one gets 32). Act CCVI of 2011 also stripped all religious groups not recognized by Parliament of legal standing, forcing them to apply for recognition as civil associations.

Criticisms of Hungary's religion law

In March 2012, the European Commission for Democracy Through Law (Venice Commission) issued an opinion on Act CCVI of 2011. Although the Commission

raised questions about many aspects of the law, its most severe criticism was directed against the procedure by which Parliament determined legal recognition. According to the Venice Commission:

The recognition or de-recognition of a religious community (organization) remains fully in the hands of Parliament, which inevitably tends to be more or less based on political considerations. Not only because Parliament as such is hardly able to perform detailed studies related to the interpretation of the definitions contained in the Act, but also because this procedure does not offer sufficient guarantees for a neutral and impartial application of the Act. . . . Motives of the decisions of the Hungarian Parliament are not public and not grounded. The recognition is taken by a Parliamentary Committee in the form of a law (in case of a positive decision) or a resolution (in case of a negative decision). This cannot be viewed as complying with the standards of due process of law. (Opinion 664/2012 par. 76–77).

In fact, as Tamás Lukács pointed out in the Hungarian media, since church recognition is a matter of political discretion, members of Parliament are not even required to offer reasons related to the criteria enumerated in the law for refusing recognition to a religious group.

That members of Parliament do not feel constrained by the criteria set forth in Act CCVI of 2011 was made clear in a meeting of the Committee on Human Rights, Minority, Civic and Religious Affairs held on November 27, 2012. The Committee considered and rejected an application for recognition by a Christian group named Lectorium Rosicrucianum. The publicly available minutes from this meeting indicate clearly that members of the Committee did not make their evaluations on the basis of the criteria enunciated in Act CCVI of 2011. Mária Wittner, a member of Fidesz, reasoned against legal recognition on the following grounds:

There was a time when we were considered pagans; yet we weren't pagans—we believed in one God. Then came the Reformation, the Reformed Church, then the Lutheran, and churches have multiplied, even though there is only one God. Well, even though I don't believe that this association will be able to attract many members in Hungary, I still believe that sects should not be considered churches. I don't know for what purpose or whether it is to reach worldwide hegemony, but I see that the tendency today, even in religion, is to divide and conquer! We have Christianity here, we have a Catholic Church, which is more than two thousand years old and has existed in Hungary for a thousand years, and we have a reformed Church as a result of the Reformation, but what I was most struck by is that 187 churches have been registered in this country since 1990. Gentlemen! There is only one God! One God! (EMB/147–1/2012, page 11).

The inappropriate character of this reasoning will be apparent to everyone. The point to emphasize, however, is that Act CCVI of 2011 allowed reasoning of this sort to be the basis for determining whether or not a religious group received legal recognition.

The troubling features of Act CCVI of 2011 led Hungary's ombudsman to file a petition with the Constitutional Court, and numerous deregistered religious groups also filed petitions. On February 26, 2013, in a substantial and carefully reasoned decision, Hungary's Constitutional Court struck down as unconstitutional numerous provisions within Act CCVI of 2011. Article 7 of Hungary's new constitution guarantees religious freedom. Article 15 guarantees equality under the law. Articles 24 and 29 guarantee each citizen the rights of due process and legal redress. Thus a religious association of Hungarian citizens has an equal right to apply for recognition as a church by means of a procedure that follows due process and ensures the right of legal redress. The provisions for recognition set forth in Act CCVI of 2011 failed to do this. Thus the Court struck down those parts of the Act in which Parliament had determined legal recognition of religious groups.

Fidesz's response to this, as to other decisions of the high court, has been to amend the constitution. The controversial fourth amendment, passed on March 11, grants Parliament the authority to determine which religious groups are recognized as churches by changing the text of article 7 on religious freedom. The provision of Act CCVI of 2011 most severely criticized by the Venice Commission has now been written into the Hungarian constitution. Reconciling Parliament's power to bestow legal recognition with the rights of due process and legal redress will be a challenge. Furthermore, article 7 allows Parliament to decide not only the content of the law concerning religious freedom, but also its application in individual cases. Such a provision would appear in tension with the separation of powers principle enshrined in article C of Hungary's constitution.

Impact of Hungary's religion law on unrecognized religious groups

In addition to undermining principles of constitutionalism, Act CCVI of 2011 has had a significant impact on religious groups not legally recognized by Parliament.

As a consequence of the Act numerous religious communities that had been legally recognized as churches prior to 2011 were stripped of their status. Indeed, Act CCVI of 2011 completely replaced the legal regime that had governed religious freedom in Hungary since 1990. Thus far not much attention has been directed toward assessing the impact of deregistration on those groups. The Venice Commission opinion focused on the registration procedure itself, as did the ruling of the Constitution Court. But in the meantime deregistered religious communities have been forced to adapt to a new legal context in which they are denied what most Americans would consider basic aspects of the right of religious freedom.

Over the past six months I have been working to assess the impact of Act CCVI of 2011 on Hungary's unrecognized religious communities. Using public records and resources available on the internet, I have attempted to compile a comprehensive list of Hungary's unrecognized religious communities. I also visited Hungary in summer 2012 and interviewed numerous representatives of deregistered churches. Additionally, I recently completed a survey of deregistered religious communities that seeks to measure objective indicators of religious discrimination.

Estimates concerning the number of deregistered churches vary. The Hungarian government claims there were well over 300 registered churches in Hungary prior to 2011, but has never explained how it arrived at this estimate. I have been able to identify 122 deregistered churches thus far, some of which ceased operating on their own prior to 2011. I believe this list to be accurate and close to complete.

I estimate that somewhere between 160 and 180 independent churches/religious communities were operating in Hungary prior to passage of Act CCVI of 2011, and that the Act deprived approximately 130 religious communities of legal recognition. I have been able to establish contact with 106 unrecognized religious groups, whom I invited to participate in my discrimination survey. Forty-nine groups responded to my inquiry and 43 agreed to participate, which translates to a participation rate of 40%. I closed the survey only two weeks ago and have not yet run a complete statistical analysis of the data. I wish to emphasize, therefore, that the statistical information provided below is provisional.

Initial analysis suggests that while almost all religious groups report some level of discrimination, the amount of discrimination varies significantly, with a little over half of the participants reporting what I would call significant discrimination. After Act CCVI was passed, deregistered churches were told they must apply for recognition as civil associations. Failure to apply for status as a civil association, or failure to meet the deadline for applying as such, would result in total liquidation of the community's assets, that is, appropriation of the community's property by the state. The overwhelming majority of religious groups surveyed indicate that they have been recognized as civil associations. However, I was able to identify two instances where courts ordered the liquidation of a community and a few additional instances where a final decision has yet to be rendered. Even so, a surprising number of those surveyed, almost 15%, report that some of their property was liquidated after deregistration. Others report, again about 15%, that leases they held on rental property were terminated. Among those surveyed, 16% indicated they were forced to shut down schools as a consequence of being deregistered; 30% indicated they were forced to close down charitable organizations; 40% indicated they were forced to abandon additional ministries (other than education and charity work).

Unlike legally recognized churches, religious groups classified as civil associations do not enjoy complete internal autonomy. Civil associations must have a specific administrative structure. For example, they must have a presidency and all members must have the right to vote on decisions made by the association. In many cases, although not all, these administrative requirements violate the religious conscience of believers. Among deregistered religious groups participating in my survey, 17% refused to apply for civil association status, and many of them reported in written comments that their refusal to apply was based on reasons of conscience. These groups now live under the fear of court ordered liquidation. Among deregistered religious groups that did apply for recognition as a civil association, 36% reported that they had been required to change their organizational structure. Additionally, a high number of respondents, 30%, reported that their clergy had been prevented from visiting patients in the hospital; 27% reported that they were prevented from visiting persons in prison. A small but noticeable number of respondents, a little over 10%, reported that they had been forced to change their religious confession, their official teaching, or worship services in order to be recognized as a civil association. Also, unrecognized religious groups are not permitted to have the word church in their official name. Among those groups applying for recognition as a civil association, 60% reported that they had been forced to change their name.

Reasons offered for the new law by the Hungarian government

When Parliament first passed Act CCVI of 2011, the Hungarian government claimed the new law was necessary in order to correct abuses made possible by the previous religion law. In the Hungarian media, representatives of the government frequently spoke of “business churches,” an imprecise and polemical term. The claim was that non-religious organizations were registering themselves as churches in order to receive tax exemptions and state subsidies. However, no impact studies were conducted, so neither the extent of abuse nor the effectiveness of the remedy could be evaluated. The only evidence of abuse offered by the government was the claim that more than 300 churches were operating in Hungary. This number, the government believed, was clearly excessive and indirect evidence of the existence of “business churches.” As already indicated, I believe the 300+ estimate is too high. I would also add that in the course of my research I have been able to identify only two cases where I suspect organizations registered as churches under pretext. The most notable of these involves the mayor of Erpatak, a man named Mihály Orosz who is a member of the right-wing political party Jobbik. Mr. Orosz was affiliated with, or the founder of, at least four different groups registered as churches under the old law.

Even if there were significant abuse under the old law, having Parliament bestow legal recognition on religious groups hardly seems an effective remedy. In fact, the possibility of remedy existed under the old legal regime, something pointed out by the Constitutional Court in its February 2013 ruling. According to the Court, under the old law a state prosecutor had a right to request information and investigate a church suspected of illegal activity. An organization engaged in running a business but seeking registration as a church could thus be prevented from registering, or if already registered, prosecuted for violations of the law. According to the Constitutional Court, under the old law state prosecutors initiated legal proceedings against registered churches on a number of occasions.

Conclusion

When attempting to interpret the behavior of a political regime whose decision-making process is not transparent, political scientists often attempt to infer intentions from effects. That is, instead of taking the public pronouncements of the regime at face value, political scientists examine the effects of the regime’s actions to determine its true intentions. Viktor Orbán’s government is not transparent. Cardinal laws addressing basic human rights and constitutional amendments addressing the rule of law are introduced in Parliament and approved in a matter of hours. Even after fundamental laws have been passed, they are amended immediately whenever the Constitutional Court renders a decision not to the government’s liking. I therefore submit that the best way to understand Viktor Orbán is to look not at what he says, but at what he does.

If we look at what the Orbán government has done in respect to religious freedom, inferring intentions from effects, it becomes difficult to believe that the intention behind Act CCVI of 2011 was to eliminate legal abuses occurring under the old law. First, the Orbán government never made an attempt to assess the extent and nature of the alleged abuse. Second, legal remedy against abuse was already available. Third, the negative impacts on religious freedom caused by Act CCVI of 2011 were far greater than any legal abuses the Act putatively sought to correct. If the aim of the government had been to eliminate abuse, much simpler and less destructive solutions were available. Addressing the problem of “business churches” certainly did not require modifying the constitution in a way that allows Parliament to bestow legal recognition.

A more plausible explanation for Act CCVI of 2011 is that the Orbán government is seeking to hinder the activities of religious groups it dislikes, perhaps because it views those groups as “sects,” perhaps because the leaders of some of those groups have criticized the government, or perhaps because the membership of many of those groups is Roma. Whatever the Orbán government says, its actions indicate that it holds the right of religious freedom in low regard.

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