Democratic Backsliding in Hungary: Implications of Recent Legislation

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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 providers; 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.