



ARTICLE

The role of populist NGOs in building a populist democracy in Hungary

Fruzsina Gárdos-Orosz¹  and Zoltán Szenté²

¹Research Professor, Director, Institute for Legal Studies, HUN-REN Centre for Social Sciences; Professor of Law, ELTE Law School, Budapest and ²Research Professor, Institute for Legal Studies, HUN-REN Centre for Social Sciences, Budapest; Fernand Braudel Senior Fellow, European University Institute, Firenze

Corresponding author: Fruzsina Gárdos-Orosz; Email: orosz.fruzsina@tk.hun-ren.hu

(Received 11 July 2024; accepted 15 July 2024)

Abstract

What are the legal and political criteria that distinguish between ‘correct’ and ‘unacceptable’ legal mobilisation? How does populism facilitate legal mobilisation? The questions of the workshop organizers led us back in Hungary to the democratic transition from socialism to liberal democracy in 1989, when legal mobilisation for the rule of law, democracy and human rights was led first and primarily by non-state actors (National Round Table). Participants of the democratic transition prepared the complete revision of the 1949 Constitution, which was an emblematic element in addition to the many legislative drafts of the transitory nature of the creation of the new system. In 2010, after the successful political mobilisation, the populist party coalition (lead by Viktor Orban) gained a two-thirds constitution-making majority in Parliament (in the absence of two opposition parties), and the Parliament adopted the new Fundamental Law (new constitution). This was also an emblematic element of the new legal mobilisation conducted by the two-thirds populist Government majority. This article will describe how populism – through the instrumentalisation of the law (disregarding the inherent values in/of law based on value choice) and the destruction of institutional checks and balances – facilitated new legal mobilisation. Based on this experience of the outcome of the equally strong and effective legal mobilisation in Hungary of the liberal and the illiberal (democratic and autocratic, respectively) transitions, in this article we aim to make valid theoretical propositions on how to assess ‘correct’ and ‘incorrect’ legal mobilisation and what influences the relevance of non-state actors in populism.

Keywords: populist NGOs; populist democracy; Hungary

1 Introduction

According to conventional wisdom, the use of legal instruments for achieving societal goals, so-called legal mobilisation, is a political activity in the broader context of political advocacy. The mobilisation of legal institutions and procedures is used for political purposes, which might include autonomously created or supported policy goals in different policy areas or party-policy-related objectives that support daily partisan politics. The expression ‘legal mobilisation’ comes from the United States, where the civil rights movement worked towards its goals through strategic litigation, *amicus curiae* submitted to courts, comments on legislative drafts, advocating for new bills etc. (Southworth 2024). Legal mobilisation is seen as a “possible aspect or phase of a larger, complex, dynamic multi-stage process of dispute between different parties’ (McCann 2008, 524). Making legally enforceable claims is one form of political possibility, broadening the scope of claim enforcement when appropriate to the legal means (Hilson 2002). The role and possibilities of legal mobilisation by civil society are substantially influenced by the nature of the political

system in which it operates (Toepler et al 2020) and the development and character of the civil society within the given state (Farkas and Körtvélyesi 2022; Mikecz 2023).

This article examines how populist non-state actors have used the tools of legal mobilisation over the past decade or more in Hungary. The choice of this topic is particularly justified because Hungary has been governed since the political turnaround in 2010 by a nationalist–populist political force that, apart from a brief period, has had a two-thirds (i.e. a constitution-making) parliamentary majority for more than thirteen years. It used this power to adopt a new Fundamental Law in 2011 and then to amend it twelve times, dismantling the system of checks and balances in favour of an authoritarian transition (Chronowski 2021; Szente 2022a). One of the basic characteristics of populism is that it develops its political aspirations with reference to the ‘real will’ of the people, and its self-image is based on the claim that it represents popular sovereignty (Blokker 2019, 524; Corrias 2016, 11; Mueller 2019, 1033). Therefore, it may be assumed not only that it pays great attention to public opinion in its policy-making but also that it is open to civil society initiatives, including legal mobilisation efforts. However, the prevailing scholarly opinion is that a nationalist, authoritarian version of modern populism has spread throughout contemporary Europe that acknowledges the presumed unity of the people only as a basis for reference and legitimacy and, in reality, identifies the will of the people perceived in this way with its own political goals (Müller 2016, 28). Thus, the Hungarian example illustrates the role and the importance of legal mobilisation by civilians in a political-legal context involving a populist government implementing a thorough reform of the entire legal system.

Part 1 of this article briefly describes the political and legal context in which NGOs in Hungary operated in recent years. Part 2 focuses on the current forms and trends of political and legal mobilisation, while Part 3 explores the emergence and logically possible roles and the activities of populist non-governmental organisations as part of a very new development in the Hungarian civil sector. The case studies in Part 4 help to establish the considerations and analyse the forms of mobilisation of some leading populist NGOs that have played prominent roles in the public sphere. This is relevant for understanding the limited possibilities of liberal legal mobilisation in the country. Part 5 briefly summarises the Hungarian experience and the lessons learned about the legal mobilisation of populist non-state actors.

2 The context – the general situation of NGOs in Hungary

In Hungary, the right of association is guaranteed by the 2011 Fundamental Law (the Constitution), which states that ‘everyone shall have the right to peaceful assembly’ as well as ‘to establish and join organisations’.¹ On this constitutional basis, legal frameworks within which civil organisations exist and work are defined by a law from 2011.² Article 2 of this Act defines civil organisations as associations registered in Hungary, with the exception of political parties, trade unions and mutual insurance associations. The law does not apply to the foundations of political parties and public foundations. Such organisations are regulated by specific legal rules. The legal status of churches is also governed by a separate law, while chambers (of commerce, lawyers, doctors etc.) are also regulated by different statutes. According to the Civil Code,³ which determines the conditions and content of legal personalities, an association is a legal person with registered membership established for the common, permanent and continuous realisation of the purpose of its members as defined in its statutes. An association may be formed by at least ten persons.

In general, the role of civil society in the social and political integrations of a country is related to political framework conditions and their changes (Gerő and Kerényi 2020). According to

¹Fundamental Law, Art VIII paras (1)–(2).

²Act CLXXV of 2011 on the Right of Association, Public Benefit Status and the Functioning and Support of Non-Governmental Organisations.

³Act V of 2013.

official data, there are 2,700 such registered organisations, of which 261 are foundations and 2,439 are social organisations.⁴ In recent years, the state has created – a new phenomenon – organisations that call themselves ‘civil’ (i.e. are nominally independent of the government) yet openly serve government interests according to their communications and activities (Gerő 2018; Gerő and Kerényi 2017, 5; Gerő et al 2020). These are often referred to in the literature as GONGOs (Governmental Nongovernmental Organizations) or ‘uncivil civil society’ (Arato and Cohen 2021; Blokker 2024), which is encouraged and promoted by the government (Gerő et al 2022).

The government provides support to the civil sector from several different funds in the state budget, among which the so-called National Cooperation Fund, the Bethlen Gábor Fund and the Urban Civic Fund are the major sources of finance. However, other special funds (e.g. the Hungarian Village Programme) support NGOs financially. Some state funding is given to certain civil organisations specified by law on a lump sum basis, while most NGOs can apply for funding on a competitive basis for specific purposes. Finally, all registered civil organisations are entitled to donations from citizens of one percent of their annual personal income tax.

Although these budgetary resources are, in principle, open to all registered civil organisations, data-based research shows that, in reality, an important condition of the allocation of such financial resources is providing support that meets the political and ideological aims of the government (see below). Thus, for example, the declared purpose of the Bethlen Gábor Fund is to promote the realisation of the goals related to the national policy strategy of the Hungarian Government.⁵

3 Legal mobilisation in Hungary since 2010 and the role of non-state actors

In Hungary from 1988 to 1990, which parallels the collapse of the Soviet-type communist regime, legal mobilisation for the rule of law, democracy and human rights was inspired first and primarily by non-state actors in the form of the so-called “National Round Table”, an informal forum in which the representatives of the state party (the Hungarian Socialist Party, a successor of the old communist party) and opposition movements agreed on the political and legal framework and conditions for the democratic transition. In this process, they prepared a complete revision of the 1949 Constitution,⁶ which was an emblematic document in addition to many legislative drafts associated with the transitory nature of the creation of the new system. As a result of these developments, a new, Western-style constitutional democracy was created that had a republican parliamentary form of government, broad recognition of fundamental rights and institutional guarantees of democracy and the rule of law. In the following years, the new political and constitutional system was consolidated. Despite the political cleavages and sharp polarisation among parliamentary parties, there was a general consensus that the country should be part of the Euro-Atlantic integration process, which was achieved by joining NATO (in 1997) and the European Union (in 2004). The country was widely considered one of the success stories of the democratisation process of the post-communist world and was seen as a stable democracy even in comparison to other countries in the region (Rupnik 1989).

In 2010, after the populist party coalition of Fidesz and its satellite party (the Christian-Democratic Party, led by Viktor Orbán) gained an overwhelming parliamentary majority, the National Assembly, with the votes of the governing party MPs, adopted a new constitution (the ‘Fundamental Law’). Since 2010, the ruling parties have made extensive use of their two-thirds parliamentary majority; in addition to unilateral constitution-making, they have transformed the entire legal system. As a result, law-making and other types of legal action have become primary

⁴Központi Statisztikai Hivatal [Central Statistical Office], 2020. https://www.ksh.hu/stadat_files/gsz/hu/gsz0069.html.

⁵<https://bgazrt.hu/magunkrol/>; see in detail <https://atlatszo.hu/kozadat/2021/09/20/a-fidesz-valasztasi-kampanyahoz-ha-sznelhatjak-fel-a-civil-alap-tamogatasait/>.

⁶Act XXXI of 1989.

tools of the government, and the governing parties have had every opportunity to realise their aspirations for social change through formal legal means. We have studied the nature of this governmental legal action many times and pointed out its abusive nature (Szente 2022b; Szente and Gárdos-Orosz 2019). The best example of this may be that an amendment to the Act on the Constitutional Court⁷ in 2019 gave public bodies the right to submit constitutional complaints in the case of the violation of their fundamental rights or curtailment of their powers, and in some cases the Constitutional Court admitted these complaints – for example, by the Hungarian National Bank⁸

Non-governmental organisations, including liberal human rights defenders and anti-corruption, rule of law institutions, which were mostly established in Hungary after the democratic transition, have often been affiliated with well-acknowledged, international non-governmental organisations such as the Helsinki Committee, Amnesty International and Transparency International (Mikecz 2023). These organisations have frequently engaged in legal mobilisation in the strict sense by promoting human rights strategic litigation, submitting *amicus curiae* to the Constitutional Court or commenting on legal acts. However, the opportunity for these activities has been significantly reduced since 2010, as the government has successfully taken control of the countervailing institutions and because of unfavourable changes in the legal and financial environments (Gerő et al 2022). After 2010, the government aimed to create legal structures, which significantly increased its scope of action compared to the previous ones and diminished the opportunity for independent NGOs to resort to the tools of legal mobilisation (strategic litigation, *amicus curiae*, expert support for legislative action etc.) (Thierse and Badanjak 2021, 47–74).

The government intervention, for example, is manifested in the fact that state subsidies for NGOs have essentially been allocated on a political basis. The political motivation of the populist government's support system is illustrated by the creation and operation of the Urban Civic Fund. In the past, the three EEA EFTA States (Iceland, Liechtenstein and Norway) provided substantial financial support to Hungarian civil society through the so-called Norway and EEA Funds. The subsidies were distributed by the Ökotárs Foundation, a Hungarian social organisation independent of the government. In 2014, however, the government launched a smear campaign against the Ökotárs Foundation, accusing it of distributing the funds according to political criteria and thereby supporting organisations hostile to the government. The conflict lasted for years, and several criminal and administrative investigations were launched against the NGOs that had received funds (Torma 2016). The government claimed that it would decide on the distribution of subsidies from the Norwegian Fund in the future. Although the government used administrative means to harass the Ökotárs Foundation (e.g. the police searched the organisation's offices and detained its manager), the Norwegian government did not agree to the Hungarian state taking control of the payments (Hungary Today 2021) but suspended the disbursement of further subsidies. To make up for these subsidies' being lost from the state budget, the government created the Urban Civic Fund. In 2022, according to investigative journalists who attempted to collect data on the direct and indirect affiliations of the latter (Zubor 2022), more than half of the organisations that won the largest amount of support were directly under the control of Fidesz politicians (indicators of this affiliation may differ: in some cases, there is a personal connection; in others, party members are office-holders, or the civil organisation belongs to the family of a politician and was founded by party politicians).⁹

Beyond this, the government has engaged in political attacks and campaigns, particularly against those civil organisations that deal with human rights and/or provide legal aid to refugees

⁷Art. 27, Act CLI of 2011 on the Constitutional Court.

⁸Decision 23/2018 (XII. 28.) of the Constitutional Court.

⁹Központi Statisztikai Hivatal [Central Statistical Office], 2021. KSH statinfo v39—A nonprofit szervezetek adatai [KSH statinfo v39—Nonprofit organizations' data]. <https://statinfo.ksh.hu/Statinfo/index.jsp>.

and other vulnerable groups. Thus, for example, Parliament adopted in 2017 an Act¹⁰ that required all associations and foundations that receive funding from foreign sources (individuals, foundations governments or agencies) of more than a specified amount in a tax year to notify the court in order to be registered as an ‘organization supported from abroad’. Beyond this stigmatisation, some other administrative measures were forced upon the affected NGOs, such as their obligation to publish on their own webpage and on a government webpage the fact that they are financed from abroad (Gerő et al 2020).¹¹

However, these adverse conditions for the civil organisations that were critical of the government (primarily because they deal with human rights, minority protection and environmental issues) put the right-wing nationalist NGOs that emphasise conservative values and support the government’s populist policy in a favourable situation. The latter organisations became the primary beneficiaries of the budgetary subsidies, and in addition, they obtained access to previously unimaginable wealth and real estate assets and can significantly influence public opinion through their ever-increasing media market share (see below) and through the public bodies captured by the governing parties.

4 Populist non-governmental organisations and their potential roles in political and legal mobilisation

In recent years, the Hungarian government has inspired or supported the creation of a number of NGOs that are politically loyal to it and/or that have similar goals to government policies or that have captured civil organisations that were already operating. Their activities cover the areas of the press (*Közép-Európai Sajtó és Média Alapítvány* [Central European Press and Media Foundation]),¹² political education and talent management (Matthias Corvinus Collegium),¹³ the scientific–research sphere (*Alapjogokért Központ*, *Századvég*, and *Professzorok Batthyányi Köre*),¹⁴ cultural life (*Magyar Teátrumi Társaság*),¹⁵ political mobilisation (*Civil Összefogás Fórum*)¹⁶ and other areas. Through these non-state organisations, the government has created a façade of social legitimacy for its activity.

As already claimed, the populist governing parties, with their majority in Parliament, have every legal means to achieve their political goals, and the Fidesz-KDNP coalition government has always tried to exhaust this possibility. However, when populist parties are not only in power but can also achieve their objectives without any political or constitutional/legal limitations, there is simply no need for legal mobilisation by populist non-state actors. In this context, populist NGOs may theoretically pursue one of three different strategies of legal mobilisation, depending on their relationship with the governing populists.

Some populist organisations – ‘dissident organisations’ – may oppose a right-wing populist government when, for example, left-wing populist movements also confront it. During conflicts among populists of different orientations, populist NGOs may conceivably use the means of legal

¹⁰Act LXXXVI of 2017.

¹¹See the situation of NGOs, in general, as assessed internationally by USAID and the International Center for Not-For-Profit Law Civil Society Organisation Sustainability Index: https://okotars.hu/sites/default/files/downloads/hungary_2021.pdf.

¹²The Foundation controls more than 400 press products that have been donated free of charge by businessmen loyal to the government. The government declared the merger of the press companies that unconditionally support the government’s policies to be of ‘national strategic importance’, precluding an investigation by any state body. Through the Foundation, the government operates a propaganda machine that covers a significant part of the press market.

¹³This foundation, funded by the government with hundreds of billions of forints of public money, is headed by the Prime Minister’s political director. The Collegium also publishes books that promote a right-wing conservative ideology.

¹⁴These are conservative think-tanks close to the government that are financed by the state budget.

¹⁵A conservative theatre federation.

¹⁶This “Forum” organises demonstrations in support of government policy, promotes the political campaigns of the governing parties and operates using budget allocations and subsidies from state companies.

mobilisation against the government to bring about specific social changes. Alternatively, populist NGOs may support the government but have autonomous policy-making aspirations and some autonomy from governmental influence. If this is the case, they might use similar means to exert (friendly) influence on government policy on a limited scale. In addition, legal mobilisation tools may be used precisely to test public (or even institutional) reactions to issues when it would be politically risky for the government itself to introduce the same initiatives. In theory, the third option is used when the government influences or controls the actions of government-friendly NGOs. This scenario presumes that the government uses such organisations for its own political purposes – e.g. that it outsources activities the political cost of which would be too great for the government if it implemented them directly.

Considering the latter options, what is the reality? In Hungary, there are more and more non-governmental populist civil organisations that are loyal to the government and engage in political mobilisation. However, these NGOs are reluctant to use legal tools to achieve policy objectives or, at most, prefer to use other tools to promote government policies. The main reason for abandoning the use of such tools is the legal omnipotence of the government. While the government formulates its opinions on the European level before the Court of Justice of the European Union and the European Court of Human Rights, populist NGOs do not engage in these discussions to support the government's position. It is not only the constitution-making majority in the National Assembly that makes it unnecessary to contribute to the legal process (as the government can easily get any law it desires through Parliament) but also the presence of the government at the international level and in EU institutions. For this reason, only liberal human rights organisations usually turn to European legal forums.

In parallel with the packing of the Constitutional Court a couple of years ago (Szente 2016), the judiciary was also captured partly by lowering the compulsory retirement age of judges, replacing judicial leaders and assigning people loyal to the government to the leadership of the *Kúria* (the Supreme Court). Furthermore, a quasi-precedent system was introduced in 2020, according to which each individual decision of the *Kúria* published in the Collection of Judicial Decisions (i.e. in the official gazette of the Supreme Court) is binding on all courts. This change introduced a top-down quasi-precedent system that tries to orient the case law of the ordinary courts. Due to the unbridled constitution- and law-making power of the governing parties, once lower courts are required to adhere to the rulings of the more influential supreme judicial body, the application of strategic litigation and other legal tools by populist NGOs is simply unnecessary, even for supporting government policy goals (Kazai and Kovács 2020). In addition, while constitutional complaint as a specific constitutional remedy against final judicial decisions was also available for a few years for public authorities, it was abolished in 2023 at the request of the European Union. Nevertheless, the individual constitutional complaint procedure may also serve the government's interests in other ways. When, for example, a constitutional complaint procedure was triggered against the general ban on demonstrations during the COVID-19 pandemic, the Constitutional Court legitimised the government policy, declaring the ban constitutional without attempting any type of balancing exercise.¹⁷

Moreover, the government, trusting in the loyalty of the institutions it has captured, uses specific legal mechanisms in a way that would normally be typical of the legal mobilisation of civil organisations. For instance, the government has used the Constitutional Court to declare the importance of protecting Hungary's constitutional identity to counteract EU policies (Szente 2022c; Várnay 2022). Therefore, it was unnecessary for their satellite NGOs to intervene in this matter. The Act on the Constitutional Court¹⁸ empowers the government to launch a constitutional review of any legal act and to develop an abstract constitutional interpretation of any constitutional provision. This opportunity has been widely used by the populist government

¹⁷Decision 23/2021. (VII. 13.) of the Constitutional Court.

¹⁸Act CLI of 2011.

since 2012, and the cooperation with the Constitutional Court has been smooth and conflict-free. In politically sensitive cases, the Constitutional Court's decisions have favoured the government's policy goals (Halmai 2014; Szente 2016).

Another means of legal mobilisation could influence legislation – the process of so-called 'public consultation' – but this instrument, even though it is provided for by the Act on Law-Making,¹⁹ is not widely used. Public consultation, which means the involvement of interested trade unions, civil organisations and other stakeholders in the law-making process, is mainly carried out by consulting with so-called public chambers, which exist in the grey zone between the public and the private sectors, as specific public tasks are conferred to them by law. Instead of populist NGOs, they participate in legislative preparatory work through their opinions (Kührner 2021).

Legal mobilisation could also take the form of submitting *amicus curiae* to the decision-making courts, a tool that, surprisingly, is sometimes used by the government itself to present the official position to the Constitutional Court or the European courts rather than by the populist NGOs, which do not engage in these discussions either on a domestic or on a European level (Bartkó 2022). The government's position in European legal discussions, before both the courts and EU institutions, is commonly opposed by the opinions of liberal human rights NGOs such as the Helsinki Committee, Amnesty International, the Society for Civil Liberties and Transparency International. These organisations often contribute to the work of the Venice Commission with *amicus curiae*, but they also provide information to the EU Fundamental Rights Agency, contribute to the work of the Venice Commission with *amicus curiae* and provide information to the EU Fundamental Rights Agency on which activities could be qualified as tools of legal mobilisation.²⁰ However, 'uncivil' civil society does not engage in similar procedures; instead, it just comments on them publicly on widely accessible Hungarian communication platforms.

In sum, the government's unlimited options for reforming the legal system and its unscrupulous use of doing so have left almost no room for populist NGOs to use those options. In this situation, pro-government NGOs use the toolbox of political rather than legal mobilisation in a specific way, given that their activities are not aimed at promoting specific social goals but at motivating and mobilising primarily pro-government voters and secondarily, the "independent" masses who do not have strong party preferences, all in support of government policies. The government continuously maintains firm control of these NGOs, whose functions are not only to promote government policies but also to counteract the alleged "leftist-liberal" predominance in various spheres of society. For this reason, it is questionable whether the former are real civil organisations and whether they could function without the state's financial or political support.

The situation differs for non-state actors and for stakeholders who are not politically linked to the government. Thus, human rights organisations, by their very nature, are generally independent of the government. Accordingly, such NGOs have long sharply criticised the dismantling of the rule of law (Havasi 2022).

5 How do populist NGOs work? case studies from a top-down civil society

Since the government's democratic backsliding imposes various challenges for civil society organisations, it is often assumed that this process represses civil society (Gerő and Kerényi 2020). However, a closer look reveals that even in countries where the government controls NGO's access to public funds and their framework of operations, the relationship between civil society and the state is more complex. Close partnerships between non-state actors and states are scarce in autocratic regimes, where their relationship ranges from their being hostile to each other to their

¹⁹Act CXXX of 2010.

²⁰The best example might be the *amicus curiae* on the Fundamental Law to the Venice Commission organised by the Institute Eötvös Károly: https://ekint.org/lib/documents/1479670012-amicus_cardinal_laws_magyar_final.pdf.

having varying forms and degrees of cooperation. The authors of the cited study argue that the government applies sector-specific strategies, ranging from exclusion to co-optation, to seize control of civil society (Gerő et al 2022). The following section provides some examples of how the pro-government, populist non-governmental organisations in Hungary operate, demonstrating the reluctance of these organisations to engage in legal mobilisation; it also highlights the other functions that these organisations fulfil in an authoritarian populist regime.

5.1 Building media dominance: the Central European Press and Media Foundation

A widespread view among political scientists and constitutional scholars is that one of the characteristics of modern authoritarian populist regimes is that they maintain the appearance of democracy and the rule of law, formally preserving democratic institutions and procedures but significantly transforming their functioning in order to consolidate their power (Levitsky and Way 2010; Scheppele 2018). They usually achieve their goals not through violence or outright repression but through formally democratic means or informal tools to maintain the appearance of legality. A good example is how successive Orbán governments have limited the freedom of the press, not radically through censorship or centralised control of the media, (as under the communist dictatorship before the regime change) but through market means, with the participation of non-governmental actors. Since 2010, the media market has been deeply transformed. The main trend has involved the acquisition of a significant part of the media market by businessmen close to the government who have accumulated much of their wealth through government contracts or centrally managed public procurements. The concentration and political control of the media market were formally achieved, paradoxically, in a market-driven way that was counter to the logic of the actual market.

In 2018, a number of media company owners offered more than 400 press products free of charge to the newly created Central European Press and Media Foundation (KESMA). As we have described in Part 1, a foundation as a legal entity is a civil, non-state construction that is independent of its founder and run by its managing board according to the act on civil society. The new media holding, which has acquired a significant share of the media market, has enabled the unified and centralised control of pro-government press products. Further, the government has supported the process by classifying KESMA as a 'strategically important' organisation, thus exempting it from investigation by the Hungarian Competition Authority. This decision was challenged before the Constitutional Court by opposition members of Parliament, who alleged that the government decree establishing the merger of a host of media companies violated the principle of fair economic competition and conflicted with the Fundamental Law because the government's arguments regarding the existence of public interest were unfounded and failed to satisfy the condition for the classification of national strategic importance. According to the petitioners, the merger violated the principle of the diversity of the press that was entrenched in the Fundamental Law, which stated that diversity contributes to the freedom of expression and the possibility of the formation of democratic public opinion.

The Constitutional Court, however, upheld the government's decree, which significantly concentrated the media market and exempted the conglomerate from the otherwise-mandatory inspections by the competent public authorities. In the decision of the Hungarian Constitutional Court,²¹ essentially two constitutional values were weighed: (1) the public interest serving as the basis for the classification of strategic importance and permitting an exemption from general competition law, as declared by the government, and (2) the constitutional interest related to the diversity of the press. In connection with the second value, the Constitutional Court stated that it

²¹Decision 16/2020. (VII. 8.) of the Constitutional Court. See also <https://hunconcourt.hu/announcement/the-government-decree-classifying-as-of-national-strategic-importance-the-intention-to-extend-the-central-european-press-and-media-foundation-is-not-in-conflict-with-the-fundamental-law>.

was beyond its competence to substantively evaluate what the government considers to be in the public interest based on the premises of national strategy: the Constitutional Court could review this only in extreme and borderline situations.

However, the present case could not be considered as such. In the course of weighing the diversity of the press as a constitutional value, the Constitutional Court found that the petition did not allege a fundamental restriction of this right – i.e. a violation of the subjective element of the fundamental right to the diversity of the press – but only protested the potential reduction in the level of objective institutional protection of the freedom of the press. According to Hungarian constitutional doctrine, the violation of the institutional guarantees concerning the diversity of the press being ensured by the state is less problematic than the violation of the freedom of the press. Therefore, the claim in the petition triggered only a lower level of constitutional protection: the petitioners had not referred to any other circumstance from which it would reasonably follow that the freedom and diversity of the press and the conditions of the free information and orientation necessary for the formation of democratic public opinion could not be ensured in Hungary in general. In view of all this, the Constitutional Court found that the contested section of the government decree was not unconstitutional. Therefore, it rejected the motion for posterior norm control.

In the aftermath of the case, KESMSA, a non-state organisation, became a key player in implementing the government's press policy and sought to acquire dominant influence over the Hungarian mass media. The non-governmental nature of KESMA was of great importance in this process, as the government had to intervene in the media market only to a limited extent by using administrative means to declare the merger of strategic importance and to exempt it from competition rules,²² although its main political objectives were to halt the alleged liberal dominance and to create a strong pro-government press (Polyák 2019). By supporting this transaction and creating this civil foundation, the diversity of the press was diminished significantly.

5.2 (Fake) legal expertise in service of political propaganda: the Centre for Fundamental Rights

According to its claims, the Centre for Fundamental Rights (*Alapjogokért Központ*) is a Budapest-based civil society organisation and a Hungarian think-tank that deals with political and legal analyses. Operational since 2013, the Centre is the main organiser of CPACHungary, the only American Conservative Political Action Conference on European soil. According to its webpage, the organisation's key mission is to galvanise the cooperation of conservatives worldwide. The Centre considers preserving national identity, sovereignty and Judeo-Christian social traditions to be its primary mission, especially amidst the 21st Century's heightened processes of globalisation, integration, geopolitical change and technological advancement. Additionally, it counters today's "human rights fundamentalism", which is excessive, according to the organisation, and it fights political correctness, which it claimed to have affected numerous aspects of the everyday life of society.²³

The Center focuses on researching a wide range of branches of law, from questions of classic constitutional law to electoral systems and EU law. This research does not meet acknowledged standards of scientific research (as described below) and, therefore, may be qualified as another type of research. As a result of the latter, the Centre claims that in contrast to Europe-wide accepted liberal constitutional values, a proper balance should be found between individual rights and the interests of society that are grounded in common sense.

²²Other means of gaining decisive control of the media (e.g. the closure or silencing of key opposition press products and the transformation of public media into government propaganda channels) have also been largely informal.

²³The Centre for Fundamental Rights' webpage: <https://alapjogokert.hu/en/>.

Scientific activity is also one of the Centre's goals, which involve fostering the development of individual talent.²⁴ In spite of the general perception of government-friendly media that the Centre is an NGO and part of civil society, regarding its legal form, *Alapjogokért Központ* is run by a nonprofit market organisation (Ltd) in which the financial liability of its members is limited. The Centre receives significant funding from the Prime Minister's Office through the Batthyányi Lajos Foundation. It may be noted that the head of the company operating the Centre (who is also the director of the Centre for Fundamental Rights) is the chairman of the managing board of the above-discussed KESMA Foundation.

Although the Centre emphasises so-called scientific research among its activities and although its leadership and professional staff consist of lawyers, in practice, they have produced no scientifically evaluable output. As a result of their 'research' activities, a number of short reports of a few pages have been presented that do not meet the standards of scientific research at all: they usually do not include footnotes, and their sources are not indicated. These short pamphlets are thematised according to the political communications of the Fidesz government, and their content supports the messages of the governing parties. They are usually written in an aggressive style and mainly attack opposition parties, politicians and current enemies targeted in government propaganda. 'The Hungarian secret service confirms that terror is a corollary of migration';²⁵ 'France in flames – the pro-immigration Soros network at the end of the detonating fuse';²⁶ 'More actions from the dollar-left in Brussels',²⁷ to mention just a few of them (although the English version of the Centre's webpage lacks these 'research results'). In short, the reality is that the Centre for Fundamental Rights, in contrast to its name and publicly proclaimed purpose, is a propaganda tool of the government that has an extremist tone.

Even if a form of legal mobilisation that used scientific, legal background research to back up and improve the legal justifications of policy goals could theoretically be possible, this is not the activity of the Centre – instead, it engages in political mobilisation. It does not contribute through concrete legal action to promoting the self-communicated, above-mentioned goals.

5.3 Educating and recruiting future conservative leaders: Matthias Corvinus Collegium

Regarding populist non-governmental legal mobilisation, the Matthias Corvinus Collegium (MCC) might also be considered a potential actor because the MCC is a captured institution: it has existed since 2006 as a simple foundation offering extra courses and accommodations to a talented few university students. According to its self-assessment, the MCC is now Hungary's largest private educational institution, offering high-level training in several disciplines and programs extending beyond those offered in the traditional school system. It was established in 1996 by private persons who donated significant sums of money to create the Tihanyi Foundation. Thus, it was an institution aimed at supporting and training highly talented young people who were committed to Hungary's prosperity. MCC's programs were initially aimed at high school and higher-education students.²⁸ At the beginning of the 2000s, the institution professionalised its operations – e.g. by opening a residential college and trying to increase the retention of students in its courses. It started to offer two-year diploma courses in law, economics, social sciences, international relations and communication for students who had completed their junior studies. It was also regarded as a talent pool for conservative political elites.

²⁴The Centre for Fundamental Rights' webpage: <https://alapjogokert.hu/en/>.

²⁵Centre for Fundamental Rights' webpage: <https://alapjogokert.hu/elemzesek/a-magyar-titkosszolgalat-is-igazolja-a-terror-a-migracio-kiserojelensege>.

²⁶Centre for Fundamental Rights' webpage: <https://alapjogokert.hu/elemzesek/langokban-franciaorszag-a-gyujtozsinor-vegen-a-bevandozlasparti-soros-halozat>.

²⁷Centre for Fundamental Rights' webpage: <https://alapjogokert.hu/elemzesek/ovabb-akciozik-a-dollarbaloldal-brusszelben>.

²⁸Matthias Corvinus Collegium's (MCC's) webpage: <https://mcc.hu/en/history>.

In the years after 2010, the talent programmes were opened up to Hungarian-speaking people from outside Hungary and to contestants in elementary school talent programmes. The Collegium proudly acknowledges that a specific postgraduate program was also introduced to qualify future Hungarian state leaders. In 2020, the MCC's formerly private foundation was transformed into a so-called foundation of public interest, which is a special legal status regulated by a legislative act that facilitates obtaining state funding from the central budget for foundations that take on state-recognised public tasks (in recent years, most public universities have been forced by informal means to operate in this legal form). In the past few years, MCC has opened some regional institutions, purchased a foreign private university (the Modul University of Vienna) and invited dozens of foreign conservative politicians, journalists and scholars to give guest lectures.²⁹

The claim of the exploitation of legal institutions and procedures may arise in connection with the MCC not only because its operation is financially (and by other means)³⁰ supported to an extraordinary extent by the government but also because the organisation's activities go far beyond the training of hopeful conservative politicians: in 2023, for example, the Matthias Corvinus Colleges bought the largest Hungarian publishing company and now releases the works of conservative political thinkers through its own publishing house; it also operates as a think-tank.

Sensitising the elites of young generations to the new constitutional values through education, teaching them legal techniques and equipping them intellectually may be good preparatory work for legal mobilisation. However, although the MCC has all the materials and human resources to play a kind of policy-advising role, including conducting legal mobilisation (due to its potential to influence legal policy), this does not occur. All indications are that its main objective is to provide the populist movement with a supply of personnel. Even if its activities are of incomparably higher quality and are more organised than those of the Centre for Fundamental Rights, its pro-government political orientation cannot be doubted. The themes of its events, the regular attendance of members of government, including senior government officials, and the list of guest lecturers from abroad (such as leading conservative American TV commentator Tucker Carlson and Austrian ex-PM Sebastian Kurz) are sufficient proof of their priorities. Indeed, the board of the Foundation is chaired by the prime minister's political director, a frontline political warrior. It is no coincidence that the MCC is considered by many to be a training school for the Fidesz cadre.

All this was made possible by very generous financial support from the government. In 2020, the MCC Foundation received 10 percent of each of the shares of two leading Hungarian companies, MOL Plc and Richter Gedeon Plc. It has also been granted free public assets in several parts of the country. In addition, the Collegium Foundation is supported by the central budget. This example of the MCC confirms how much more important political mobilisation is compared to legal mobilisation. It is also a good example of how a privately founded non-state organisation has become a pro-government, politically engaged civil organisation that fulfils a definite political mission: helping the government recruit new generations through targeted education and network building by attracting members of young generations.

5.4 Mobilising conservative voters: the Civil Union Forum

The Civil Union Forum (*Civil Összefogás Fórum, CÖF*) was established in 2009 as a genuinely populist, non-governmental organisation. At the same time, the CÖF's status as a genuine NGO can be questioned, partly because its activities are more akin to those of a ruling party movement and partly because it is economically dependent to a significant extent on the public sector and politically committed, right-wing businessmen. It is doubtful whether its existence would be viable under another government.

²⁹See the programmes of the MCC on its webpage: <https://mcc.hu/en/>.

³⁰From 2023 onwards, for example, those who have completed MCC courses may be awarded priority in university admission procedures.

As for its activity, the CÖF is known to the public mainly as a nationalist mass movement that has regularly organised mass demonstrations and so-called ‘marches for peace’ in support of consecutive Orbán governments. These mass events are always linked to the government’s current aspirations and propaganda. For example, in 2012, multiple ‘marches for peace’ were organised by the CÖF in response to international criticisms of the dismantling of rule of law in Hungary using slogans such as ‘We will not be a colony!’ and ‘Hungary protects Europe!’ Another demonstration was organised in 2022 in support of the government’s propaganda that called for an immediate end to the Russian–Ukrainian war. Prime Minister Viktor Orbán was the main speaker at several rallies. It is also widely believed that the demonstrations organised by the CÖF are used by Fidesz to show strength in periods of declining popularity and to demonstrate that the party has the support of the masses. Direct political involvement in the work of the NGO is shown by the fact that according to press reports, in several cases Fidesz party leaders did not allow planned and pre-announced ‘peace marches’ to take place when the political interests of the party would not have been well served (Czinkóczy 2021).

The CÖF was actively involved in political battles before the last general elections in 2022, organising smear campaigns against opposition politicians. In doing so, it took advantage of its NGO status because its expenditures were not included in the parties’ campaign funds. The Civil Union Forum is financed by its foundation of public interest. At the beginning of its existence, its work was financed by the party foundation of Fidesz; later, however, some large state-owned companies, such as the Hungarian Electricity Works Group and the Gambling Co., took over the lion’s share of the funding.

The CÖF also has strong political links, financial resources and social capital, and its demonstrations are firm, purposeful and highly politically committed. Notwithstanding, it has never used legal mobilisation, which would be a natural instrument of influence if the organisation had an independent existence and if its political aspirations were independent of the governing parties. In the absence of this independence, its activities are essentially limited to mobilising and retaining Fidesz voters and supporting government policy.

6 Conclusions

In this article, we have examined how populist non-state actors use the tools of legal mobilisation to achieve their specific goals. To this end, we first described the legal and political context in which NGOs operate in Hungary.

The use of legal instruments to pursue issues of general or even specific public interest is characteristic of the civil sphere. However, since 2010, a turning point in Hungary’s political and constitutional system, there have been significant changes in the system of civil interest representation. The new, populist government has sought to control a large part of the civil society sector, creating a legal environment that has hindered and marginalised liberal human rights and minority-protecting NGOs that were established in the 1990s after Hungary’s democratic transition and were portrayed as opposition-oriented organisations financed from abroad. At the same time, Hungary has used financial and political means to create new, formally non-state organisations or to take over pre-existing NGOs, which creates a kind of alternative civil sphere to support its own policies. Some of these NGOs, whose activities are not discussed in this article, are not primarily politically oriented but foster elite exchange in the cultural, scientific and artistic areas that the government wishes to influence, counterbalancing the supposed liberal predominance of the past.

In such a situation, we hypothesised that populist NGOs operating under populist governance may take one of three paths of legal mobilization: first, we presumed that civil society organisations from the opposition might criticise the government (e.g. leftist populist movements). Another possibility is for pro-government non-state actors with autonomous policy aspirations to try, to a certain extent, to exert influence on the government. Finally, we assumed a third possibility: that the

government may exercise direct control over populist non-state actors and outsource specific forms of political action.

In conclusion, however, we found that since 2010, populist non-state actors have not played a significant role in legal mobilisation in Hungary. The main reason is that the government has such an overwhelming parliamentary majority that it can make any constitutional change and get any legislation through Parliament. Furthermore, this supermajority has enabled the government to compel not only public authorities working on political basis but also all power institutions from Constitutional Court to Public Prosecution to capitulate to its desires. Thus, the toolbox of legal mobilisation is used almost exclusively by independent, liberal human rights organisations. However, state pressure, which is one of the characteristics of modern populism, has made their situation extremely difficult. The introduction of new populist legislation further radically reduces these organisations' chances of success because their activities are constantly being blocked by the government, resulting in the erosion of the civil sector. In addition, as we have explained, strategic litigation as a tool has become contextualised through the quasi-precedent, top-down legal unification system introduced at the end of 2019 and through other new instruments of the unification of legal interpretation in the hands of the supreme judicial body, the *Kúria*, and the Constitutional Court.

In such circumstances, the government, which has gained significant influence over the operation of the entire civil sector through its politically based policy of targeting its support the civil organisations, simply does not need even pro-government NGOs to use legal tools independently. Centralisation has occurred to such an extent that populist non-governmental actors do not have the opportunity – and probably do not even intend – to act on their own.

As illustrated by the case studies of the most influential populist non-state actors, populist NGOs are used in various forms and areas of political mobilisation. The case of KESMA illustrates the media concentration under the government's political direction. Other populist think-tanks – such as *Alapjogokért Központ* – intensively try to justify the legal measures of the government by providing political, moral or legal support for them. In addition, with generous budgetary support from the state, the Matthias Corvinus Collegium ensures the succession of politicians and civil servants whose outlook is in line with the government's political values and ideology. This new generation of politicians and lawyers might be able to effectively engage in legal mobilisation in the future, if necessary. The idea is to build a generation of lawyers who are skilled enough to use the classic methods of legal mobilisation to achieve populist legal goals at the EU, international and domestic levels. The CÖF is the most authentic populist movement, serving political goals in the most straightforward way.

This analysis shows how authoritarian populism perverts the civil sphere by exploiting its capacity to consolidate and strengthen its power and to exert its influence beyond politics. Furthermore, authoritarian populism obstructs or makes impossible the activities of the civil society organisations it considers to be oppositional or even merely nonconformist.

References

- Arato A and Cohen CL (2021) *Populism and Civil Society*. Oxford: Oxford University Press.
- Bartkó R (2022) Egy amicus curiae margójára. *Jog, Állam, Politika* 2, 79–86.
- Blokker P (2019) Populism as a constitutional project. *International Journal of Constitutional Law* 17, 536–553.
- Blokker P (2024) Using liberal-legal tools for illiberal gains: the European Court of Human Rights and legal mobilization by conservative right-wing actors. *International Journal of Law in Context*.
- Chronowski N (2021). The post-2010 'democratic rule of law' practice of the Hungarian Constitutional Court under a rule by law governance. *Hungarian Journal of Legal Studies* 61, 136–158.
- Corrias L (2016) Populism in a constitutional key: constituent power, popular sovereignty and constitutional identity. *European Constitutional Law Review* 12, 6–26.
- Czinkóczy S (2021) Ennél jóval több Békemenetet láthattunk volna, ha a Fidesz enged. 444 2021.10.23. <https://444.hu/2021/10/23/ennel-joval-tobb-bekemenet-lathattunk-olna-ha-a-fidesz-engedi>.

- Farkas L and Körtvélyesi Zs** (2022) Egyén és csoport, kisebbség és lehetőség. *Állam- és Jogtudomány* **63**, 24–45.
- Gerő M** (2018) Between Hopes and Reality: About Civil Society and Political Participation in Hungary Between 1990 and 2010. PhD Dissertation, Eötvös Loránd University, Budapest.
- Gerő M, Fejős A, Kerényi Sz and Szikra D** (2022) From exclusion to co-optation: political opportunity structures and civil society responses in de-democratising Hungary. *Politics and Governance* **11**, 16–27.
- Gerő M and Kerényi Sz** (2017) Anti-Soros rallies and blazing EU-flags. Civil society and social movements between populism and democracy in Central and Eastern Europe. *Socio.hu* **5**, 1–6.
- Gerő M and Kerényi Sz** (2020) A civil társadalom változó szerepei és a társadalmi integráció. In Kovács I (ed), *Integrációs folyamatok a magyar társadalomban*. Budapest: Argumentum, Társadalomtudományi Kutatóközpont, 195–230.
- Gerő M, Susánszky P, Kopper Á and Tóth G** (2020) Strategies for survival: human rights organizations' responses to the closing of political opportunity structures in Hungary. *Politologický časopis [Czech Journal of Political Science]* **27**, 119–139.
- Halmai G** (2014) In memoriam magyar alkotmánybíráskodás. A pártos alkotmánybíráskodás első éve. *Fundamentum* **18**, 36–64.
- Havasi V** (2022) Power and powerlessness of the civil society. *Politics in Central Europe* **18**, 499–529.
- Hilson C** (2002) New social movements: the role of legal opportunity. *Journal of European Public Policy* **2**, 238–255.
- Hungary Today** (2021) No deal reached on Norway grants worth EUR 215 million. webpage 2021.07.23. <https://hungarytoday.hu/eea-norway-grants-fidesz-govt-civil-funds-organization-ngo-orban-okotars/>.
- Kazai VZ and Kovács Á** (2020) The last days of the independent Supreme Court of Hungary? *Verfassungsblog* 2020.10.13. <https://verfassungsblog.de/the-last-days-of-the-independent-supreme-court-of-hungary/>.
- Kührner L** (2021) Hatástalan vizsgálatok, hatásos megoldások. *MTA Law Working Paper* **23**, 1–28.
- Levitsky S and Way LA** (2010) *Competitive Authoritarianism: Hybrid Regimes After the Cold War*. Cambridge: Cambridge University Press.
- McCann M** (2008) Litigation and legal mobilization. In Caldeira GA, Daniel Kelemen R and Whittington KE (eds), *The Oxford Handbook of Law and Politics*. Oxford: Oxford University Press, 522–540.
- Mikecz D** (2023) *Civil Movements in an Illiberal Regime*. Budapest: CEU Press.
- Mueller A** (2019) The meaning of 'populism'. *Philosophy and Social Criticism* **45**, 1025–1057.
- Müller JW** (2016) *What Is Populism?* Philadelphia: University of Pennsylvania Press.
- Polyák G** (2019) Media in Hungary: three pillars of an illiberal democracy. In Połońska E and Beckett C (eds), *Public Service Broadcasting and Media Systems in Troubled European Democracies*. London: Palgrave, 279–303.
- Rupnik J** (1989) *The Other Europe: the Rise and Fall of Communism in East-Central Europe*. New York: Pantheon Books.
- Scheppel KL** (2018) Autocratic legalism. *The University of Chicago Law Review* **85**, 545–583.
- Southworth A** (2024) US conservative legal advocacy networks and right-wing legal mobilization in Europe. *International Journal of Law in Context*.
- Szente Z** (2016) The political orientation of the members of the Constitutional Court between 2010 and 2014. *Constitutional Studies* **1**, 123–149.
- Szente Z** (2022a) Constitutional changes in populist times. *Review of Central and East European Law* **47**, 12–36.
- Szente Z** (2022b) Constitutional Law in Hungary. Alphen aan den Rijn: Wolters Kluwer.
- Szente Z** (2022c) The normative concept of the constitutional identity. *The Hungarian Journal of Legal Studies* **63**, 5–26.
- Szente Z and Gárdos-Orosz F** (2019) Hungary. In Szente Z and Gárdos-Orosz F (eds), *New Challenges to Constitutional Adjudication in Europe. A Comparative Perspective*. Abingdon, Oxfordshire: Routledge, 89–110.
- Thierse S and Badanjak S** (2021) *Opposition in the EU Multi-Level Politics*. London: Palgrave.
- Toepler S, Zimmer A, Fröhlich C and Obuch K** (2020) The changing space for NGOs: civil society in authoritarian and hybrid regimes. *VOLUNTAS: International Journal of Voluntary and Nonprofit Organizations* **31**, 649–662.
- Torma J** (2016) A norvég-ügy – Civil szervezetek elleni kormányzati támadássorozat Magyarországon (2013 és 2016). In Antal A (ed), *A civilek hatalma – A politikai tér visszafoglalása*. Budapest: Noran Libro, 266–282.
- Várnay E** (2022) The Hungarian sword of constitutional identity. *The Hungarian Journal of Legal Studies* **63**, 79–106.
- Zubor Z** (2022) Megint Fidesz-közel szervezetek nyerték a legnagyobb összegeket a kormány civil-támogató programján. *Átlátszó* 2022.05.05. <https://atlatzo.hu/kozpenz/2022/05/05/megint-fidesz-kozeli-szervezetek-nyertek-a-legnagyobb-osszeget-a-kormany-civil-tamogato-programjan/>.