
THE RULE OF LAW, LEGAL CONSCIOUSNESS AND COMPLIANCE

András Jakab and György Gajduschek

1. Erosion of the rule of law

The status of the rule of law (hereafter RoL) has been steadily deteriorating in Hungary. This has come about via a number of minor steps that demonstrate a clear downward trend.¹ The individual steps have been documented in detail not only in the legal literature (e.g. Jakab, 2011; Sonnevend et al., 2015), but also in the international press dealing with Hungary. However, the extent of the deterioration has often been unclear, with even experts sometimes disagreeing.²

This is due to a number of factors, the most important probably being that experts in the field are normally lawyers, who are usually untrained in quantitative methods. Traditional (qualitative) lawyerly methods are generally a reliable means of establishing whether a certain measure is in breach of the RoL. However, lawyers are not familiar with gauging the extent to which the RoL has deteriorated in a country. Another epistemological problem is that lawyers normally concentrate on the analysis of formal legal rules. But the nub of the problem in Hungary is precisely that the formal legal rules and the reality are increasingly growing apart, with changes taking place much more frequently in actual practices than in the formal legal rules (Jakab and Gajduschek, 2016).

Such a situation may be comprehensively summed up by so-called ‘RoL indices’ that capture various details in a single indicator; more importantly,

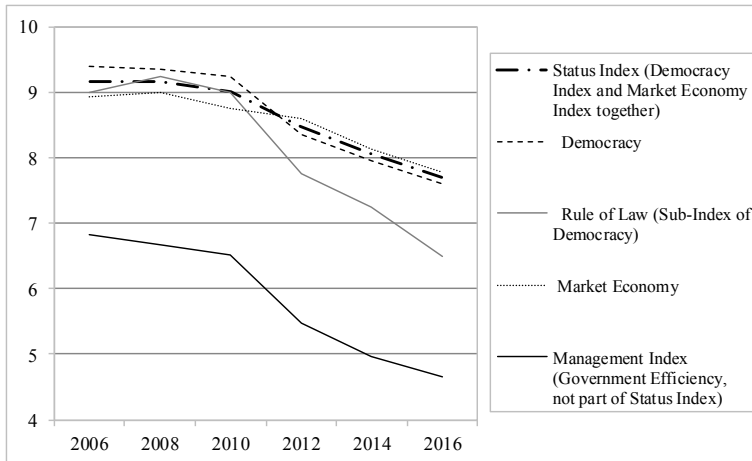
¹ Part 1 was written by András Jakab, Parts 2 and 3 were written by György Gajduschek. The present study is based on Jakab and Gajduschek (2016), Jakab (2018) and OTKA research No. 105552 by Gajduschek.

² This question became relevant again when the European Commission published its plan in May 2018 to make certain payments to Member States conditional on their record in the area of the RoL. See <https://www.bloomberg.com/view/articles/2018-05-03/eu-budget-plan-compels-members-to-respect-values-or-lose-funds>.

these give due consideration to actual practice.³ Such indices clearly reflect the erosion of the RoL in Hungary that has taken place in recent years and that (we have every reason to believe) will continue. In this chapter, we briefly present the values of two indices: (a) the RoL sub-index of the Bertelsmann Transformation Index and (b) the World Justice Project’s RoL Index.

Within the Bertelsmann Transformation Index, the so-called ‘status index’ is the average of the democracy index (which includes an RoL sub-index) and the market economy index. *Figure 1* clearly shows a gradual erosion of the RoL in Hungary. The management index, meanwhile, reflects the efficiency of government. It also shows a downward trend – that is, the erosion of the RoL has not boosted efficiency.

Figure 1 *The Bertelsmann Transformation Index, data for Hungary, 2006–18*



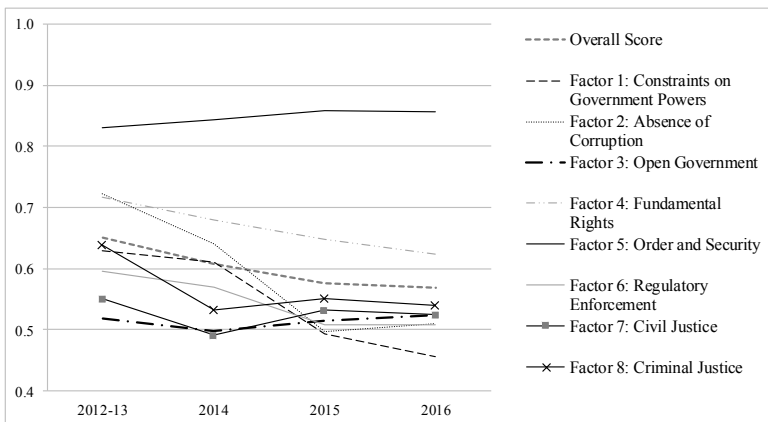
The explicit aim of the World Justice Project’s RoL Index is to measure elements of the RoL in operation, as experienced by individuals (in other words,

³ For methodological details of the mentioned (and further) RoL indices, see Jakab and Lőrincz (2017). The different RoL indices use different data sources, namely hard data (e.g. judicial budget), expert opinions (of constitutional lawyers) and public opinion polls (e.g. corruption perception). I am grateful to Viktor Olivér Lőrincz and Nerma Taletovic for preparation of the graphs. The use of these indices does not make traditional (doctrinal) legal analysis obsolete, but for situations with a large number of changes and for problems of growing discrepancy between facts and norms they are particularly useful (in expert opinions, traditional doctrinal opinions are anyway included).

it measures the actual practices – or perception of the actual practices – and not primarily the body of laws). On a conceptual and methodological level, this is probably the most refined RoL index in the world.

It reflects a gradual decline in the constraints on government power (separation of powers), absence of corruption, open government, fundamental rights, regulatory enforcement and criminal justice. The results for civil justice have remained largely the same, while the order and security indicator shows a slight improvement. However, the aggregate result of these changes shows a clear downward trend in *Figure 2* (we have no data for the period preceding 2012/13, since the project is relatively new).

Figure 2 *Data of the World Justice Project’s RoL Index for Hungary, 2012/13–18*



If we investigate the reasons for the deterioration, we find that changes to formal legal rules are responsible to only a relatively small (though not negligible) degree. Compared to the large volume of institutional change, changes made to formal rules have been relatively minor. A new Fundamental Law (2011) basically follows the regulatory system and text of the previous Constitution, with some codification upgrades and a few substantive positive changes, such as new provisions establishing a constitutional debt brake (Jakab, 2011; Sonnevend et al., 2015; Vincze, 2012; Vincze and Varju, 2012).⁴

⁴ On the one hand, this was favourable, as liberal democratic traditions (esp. case law) had a higher chance of survival. On the other hand, however, it was unfavourable, because superficial observers (i.e. those who only considered the legal norms, and not the actual practices and narratives) might gain a false impression that the changes were only minor.

Perhaps decision makers realized that it would be too risky to start experimenting, and thus abandoned the idea of introducing a semi-presidential or bicameral system (Hungary continues to have a unicameral parliamentary system). Adoption of the new Fundamental Law had a symbolic-political function, but beyond this the text was also scattered with ad hoc exceptions, and the drafters had tinkered with the rules on both state organization and fundamental rights in order to align them with their real (or perceived) daily party interests (see, in particular, the provisions governing the ordinary courts, the Constitutional Court and churches).

Today, only pressure from EU institutions and foreign actors (mainly the US and international financial markets) provides some restraint on government power (in April 2018, the governing parties regained a two-thirds majority, which enables them to change the constitution).⁵ This trend was already visible at the time of the 2010/11 process; it was particularly conspicuous with regard to the Fifth Amendment to the Fundamental Law, forced on the government by Brussels, the Venice Commission, Strasbourg and Luxembourg, which sought to remedy the gravest constitutional flaws affecting European norms.

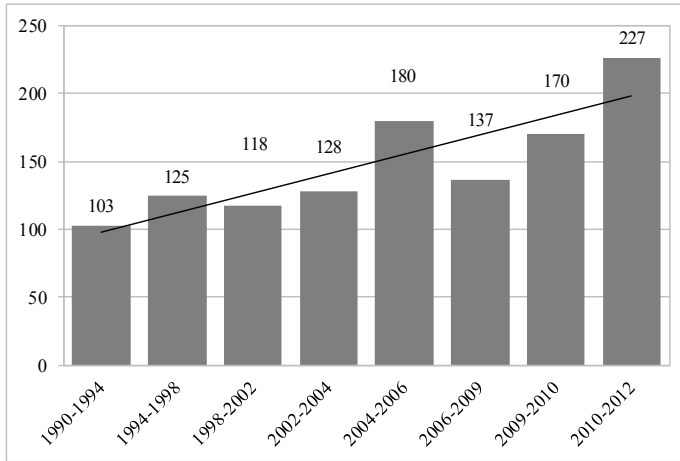
After 2010, there was a marked increase both in the ‘instrumentalization of legislation’ – that is, the use of law-making as a tool of power politics – and in unpredictability, which has an impact on legal certainty (see Tölgyessy, 2016; Szalai and Jakab, 2016; Gajdusчек, 2016; Nagy, 2016). Of course, from a constitutional perspective, the way in which laws are made is part of actual practice. Since 2010, the number of laws enacted each year has grown steadily, and the time spent on their consideration has steadily declined. Not only is this bad from the point of view of legal certainty,⁶ but it also has a negative impact on the quality of legislation. As a result, frequent amendments are necessary – which again has a particularly adverse effect on legal certainty.⁷ This is clearly reflected in *Figures 3 and 4*.

⁵ The 2018 elections were heavily criticized by the OSCE. See www.osce.org/odihr/elections/hungary/377410?download=true: ‘The 8 April parliamentary elections were characterized by a pervasive overlap between state and ruling party resources, undermining contestants’ ability to compete on an equal basis. Voters had a wide range of political options but intimidating and xenophobic rhetoric, media bias and opaque campaign financing constricted the space for genuine political debate, hindering voters’ ability to make a fully-informed choice.’

⁶ This is not a general tendency in the world, see e.g. the British data (Zander, 2004: 1).

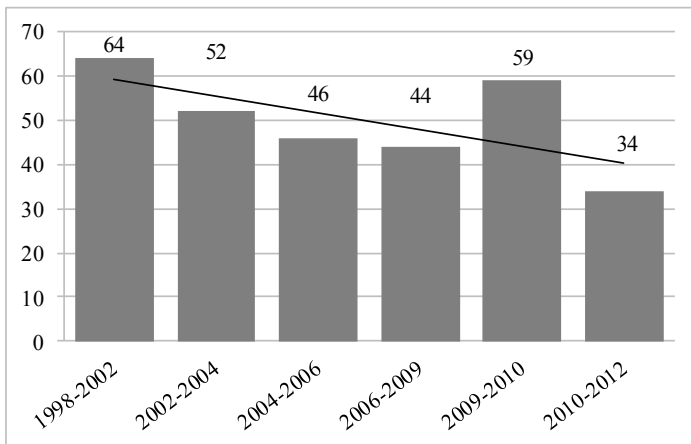
⁷ For the statistics on the modification of freshly adopted statutes, see Sebök et al. (2017), esp. pp. 300 and 304.

Figure 3 *The average number of laws adopted per year, per government (with trend line)*



Source: CRCB (2013), without trend line.

Figure 4 *The number of days elapsing between submission of the legislative bill and promulgation of the law (median)⁸*



Source: CRCB (2013), without trend line.

⁸ The median is more robust if there are outliers in the sample.

Actual practice, particularly in the field of constitutional law, is increasingly deviating from the guidelines set out in the formal rules. The deviation, however, is difficult to pin down using traditional legal methods.⁹

The deterioration in the RoL in Hungary is not limited to one or two unfortunate events: in fact, every component (except for order and security) shows a declining trend. The following list is not exhaustive, and provides only a few examples.

(1) While the Constitutional Court continues to display signs of life by ruling on non-priority or insignificant cases, it is clear now to lawyers (and even laypeople) that it is often reluctant (or simply afraid) to issue the rulings that the law requires. A vivid recent example is its use of (strictly speaking lawful, but hitherto never used) delay tactics in respect of the manifestly unconstitutional so-called *lex CEU*, involving the Central European University (the Constitutional Court has set up special analysis groups of law clerks to prepare a lengthy preliminary report on the case, while practically suspending the procedure).¹⁰ While no objection to this can be raised from a formal legal point of view, at the level of actual practice it clearly weakens the institution. It undermines confidence in the independence of the Constitutional Court (rightly so) and discredits the narrative of the separation of powers.¹¹

(2) Several credible accounts – some even reported in the media – of the selection of court officials (who play an important role in allocating cases within a court) demonstrate that in actual practice, a personal relationship with the head of the National Office for the Judiciary is more important than the criteria officially laid down (Bencze and Badó, 2016: 441).

(3) While formal rules on corruption have been maintained, the prosecuting services continue to operate without transparency or guarantees. Meanwhile,

⁹ The discrepancy is most likely programmed into the nature of the regime: if the formal rules (and in certain cases also the political rhetoric) more or less conform to the ideas of constitutionalism, then this lends legitimacy to the regime; therefore, the total disappearance of formal constitutional guarantees currently seems unlikely. In actual practice, we are finding more and more exceptions. The tension between formal and informal elements is therefore not a defect, but is quite logical from a practical political perspective in this regime.

¹⁰ These have been documented also on the website of the Constitutional Court. See <https://alkotmanybirosag.hu/kozlemeny/munkacsoport-allt-fel-az-alkotmanybirosagon-a-felsooktatasi-torveny-modositasanak-ugyeben/>; <https://alkotmanybirosag.hu/kozlemeny/az-alkotmanybirosag-kozlemeny-e-hianyoptlasi-felhivas-es-tisztazando-kerdesek-a-felsooktatasi-torveny-modositasanak-ugyeben/>. For an empirical analysis of government influence on the Hungarian Constitutional Court, see Szente (2015).

¹¹ For the latest move by the Constitutional Court, this time clearly also in breach of its own procedural rules, see Halmai (2018).

a string of unrefuted press reports indicates that the Chief Prosecutor's Office fails to take action (or else delays or spectacularly botches the indictment) if the person suspected of a crime is close to the government. Indeed, corruption in the broader sense may even appear at the level of legislation, as in the regulation of gambling and the sale of tobacco (for details, see Ligeti, 2016).

(4) Although formal legal provisions stipulate that one of the goals of the National Media and Infocommunications Authority and of the Media Council is to promote media pluralism, in practice those bodies visibly seek to shepherd the entire spectrum of the media into the government fold – partly through the incomplete application of legal rules, but also through the overt breach of those rules (as a number of court rulings make clear) (Polyák and Nagy, 2014).

2. Legal culture in Hungary and support for the RoL

Laws – or the legal system as such – may be changed rapidly (even overnight) in civil law systems. In the first (relatively brief) period of transition, between late 1989 and early 1991, a new legal system came into being that undoubtedly met the requirements of the RoL. In fact, this new legal system created particularly strong formal institutional guarantees of rights and liberties: an exceptionally strong Constitutional Court, three (later four) independent ombudsmen, institutions limiting the power – and thus the capacity – of the executive (e.g. various constitutional stipulations, powerful guarantees for citizens or other legal entities) under the Administrative Procedures Act), etc. There was a clear disparity between this sudden change in laws and the legal 'culture', which adapts very slowly (frequently over generations). In other words, the legal culture of the time was in keeping with either the previous socialist laws or the newly created system of RoL (or neither); but it certainly could not cope with both.

The potential misalignment between the legal culture and the legal system was not discussed much either in public or in academic debates for the first 15–20 years of transition. But that changed around 2010. Over the past decade, several professionally designed empirical research projects have addressed the issue and have been published, so far mostly in Hungarian (Gajduschek, 2017a). The issue became a hot topic in public debate when Fidesz came to power in 2010 and immediately started – as most legal scholars agree (see the first section of this chapter) – to dismantle the system of RoL both at the level of written law and particularly in legal and political practice.

This raises a question: why has there been no large-scale protest by citizens over the – frequently quite clear – destruction of legal institutions that guarantee human rights and liberties? In somewhat simplistic terms, there are two opposing narratives that may be identified in public discussions. The first (typically voiced by the opposition to the Orbán regime) cites the lack of historical experience of democracy and the RoL: people have not had a chance to learn about the functioning (and thus the advantages) of democracy and RoL, and that is the reason for the relatively low level of support for these institutions. If this were true, we might reasonably expect support for these institutions to be significantly higher among younger people, who have grown up and been socialized under the political and legal system established in 1990. Empirical evidence, however, does not support this hypothesis. In 1998, the World Value Survey (WVS) asked Hungarians how good it was to have a democratic political system, offering a four-level Likert scale from ‘very bad’ to ‘very good’. The mean value for the youngest generation (18–25) was 3.40, which hardly differed from the overall mean value of 3.39. The question was repeated in 2009, when the mean values for the three age groups were as follows: 18–29: 3.36; 30–49: 3.33; 50+: 3.34). That hardly offers convincing evidence for the ‘lack of historical experience’ argument.¹²

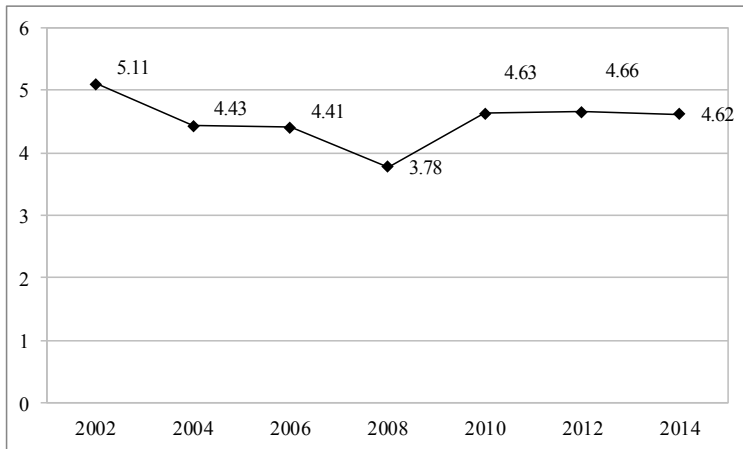
Indeed, it seems that certain elements of the new system rather alienated large segments of society, and even generated hostility at certain points. Several publications refer to the experience of privatization (Hunyady, 2015; Co-man and Tomini, 2014), the ‘primitive accumulation’ attended by unlawful acts that went unpunished, thus fuelling the impression (especially among the less privileged) that the transition was unjust and unfair (Vuković and Cvejić, 2014). The opinion came to be widely shared that those who regularly and ‘professionally’ break the law can systematically avoid sanctions, as legal guarantees protect them rather than ordinary, trustworthy citizens. This impression eroded trust in the new, RoL-based legal system among many citizens (Gajduschek, 2008; Sajó, 2008).

The other explanation for the absence of widespread protest – an explanation frequently offered by the Fidesz government and its media – focuses on the bad early experience of democracy. The confusing period of transition (so the argument goes) led to weak support for institutions of the RoL and actually justified actions that further weakened the RoL in Hungary. But empirical evidence does not support this claim, either. If it were true, then support for democracy and the RoL should have dropped radically between 1990 and 2010.

¹² This finding seems to be valid for the post-communist countries generally. See Klingeman et al. (2006: 6–7).

But there is no evidence of this in the WVS data presented above. Meanwhile research on the legal system actually contradicts the idea: the European Social Survey measures trust in the legal system since 2002 on a scale of 0–10, with higher values indicating higher trust. *Figure 5* reviews the available time series data. The figure is relatively high in 2002,¹³ but then it drops (presumably due to the political campaign launched by Fidesz against the government and because of the economic crises); after 2010, it basically stagnates at a level below that of 2002.

Figure 5 *Trust in the legal system*



Source: European Social Survey.

A third explanation for the lack of widespread opposition to the erosion of the RoL may have to do with legal culture, which changes only very slowly. However, a supportive legal culture is a *sine qua non* for the effective functioning of the RoL, just as political culture is vital for democracy (Klingemann et al., 2006). So how has the relationship between the legal culture and the legal system been shaped in Hungary? This is a crucial question for both public and scholarly discussion, but it has no clear-cut answer. On the one hand, the content of the RoL is not universally agreed. On the other hand, there is no single, relatively widely accepted, validated set of indicators to assess support for the

¹³ In an international comparison, this value is still much lower than in established western democracies.

RoL and/or its various elements. Furthermore, legal culture is strongly inter-related with other cultural elements, especially political culture. And the role of general moral values is obvious, too. Still, there are some cultural variables that could reasonably be considered to be indicators of attitudes to the RoL.

Research on these areas in Hungary reveals a widely held attitude that society is unfair and that breaking the moral and legal rules is necessary for success. This belief largely undermines not only the political and legal systems, but also the capitalist economic system (Keller, 2009; Tóth, 2009; 2017). Recent studies have focused on ‘system justification’ – a relatively new concept in political psychology that relies on people accepting the existing social system as ultimately just. It seems that system justification is much weaker in Hungary (Berkics, 2015) and generally in the region (Kurkchian, 2003) than in western democracies.

While people distrust the government, they nevertheless expect it (rather than themselves) to solve major problems and difficulties in their lives (paternalist mentality) (Sajó, 2008). While people trust legal institutions (e.g. the ‘legal system’, ‘the court’) somewhat more than political-governmental institutions (e.g. ‘the Parliament’, the ‘Cabinet’), this trust depends on their politics: those who favour the ruling party systematically and significantly trust the legal institutions more when the party is in power (and less when it is not). This indicates that most people do not understand (or do not believe in) the politically neutral legal system, and most importantly the judiciary (Boda and Medve-Bálint, 2015; Tóth, 2017).

Another feature of Hungarian legal culture is the inconsistency of values. An individual may voice totally contradictory values without realizing it. Berkics (2015), for instance, found that 75 per cent of respondents agreed with both of the following statements: ‘Rights should be afforded only to those who fulfil their obligations’ and ‘Certain rights cannot be denied to anyone’. This inconsistency was present among respondents irrespective of their level of education: 74 per cent of those with a BA degree (or higher) also agreed with both statements. In another study, Krekó (2015) differentiates between two typical attitudes towards the legal system. One is ‘trust and support for the RoL’ whereas the other (somewhat difficult to translate) refers to the traditional Hungarian suspicion of law and government, since historically it was manifested in alien powers (Turks, Habsburgs, Russians). Surprisingly, Krekó found that most of the respondents scored relatively high on both – evidently contradictory – attitudes.¹⁴

¹⁴ Gajduschek (2017b) argues that in people’s minds these inconsistencies are overlapping footprints of previous regimes. Each successive regime based its legitimacy on ideology (rather

Below we review answers to some additional questions, testing various aspects of the support for the RoL, obtained in our cross-country research project.¹⁵ Our comparative study indicates that support for the RoL is lowest in Hungary. For instance, on a scale of 1–5 (where 5 indicates complete agreement) the statement that ‘My interests are rarely represented in law; usually law reflects the views of those who want to control me’ was supported significantly more by Hungarian (mean value of 2.99) than by Serbian (2.46) or (especially) Dutch (2.24) respondents. Another survey item asked what people should do if Parliament passed a law that they felt was unfair or unjust. *Table 1* shows the distribution of answers to this question. The proportion of Hungarians answering that they should look for loopholes and try to bend the rules is especially high in international terms; meanwhile fewer Hungarians mentioned protest as a major reaction. Our questionnaire contained a question on whether the respondent had ever attended a public demonstration. Some 18 per cent of the Serbian sample and 22 per cent of the Dutch answered in the affirmative – but only 7 per cent of Hungarians.

Table 1 *Distribution of answers to the question: ‘Suppose Parliament passed a law that some people felt was really unfair and unjust. What should these people do?’*

Proportion of answers (percentages)	Serbia	Hungary	Netherlands
Obey the law	26.4	23.3	14.0
Ignore or evade the law (including bribing officials)	4.7	13.9	2.5
Protest against the law	56.9	54.0	77.5
Do not know; Do not answer	11.9	9.0	6.0

Source: own research (see footnote 15).

A simple question that turned out to be quite crucial in assessing general attitudes towards the law asked if respondents would turn to the law (e.g. a court)

than the welfare of people), which was aggressively disseminated by the education system and the media, both of which were controlled by the typically authoritarian regime. However, a cornerstone of each of these ideologies was the total rejection of the *foregoing* regime and its ideology (values). This latter attribute is valid for the democratic regime established in 1990 and then the new hybrid regime built from 2010. Thus, layers of contradictory ideological indoctrination may co-exist in citizens’ minds without them necessarily being aware of the fact; which value is called forth is highly context dependent.

¹⁵ Within the frame of the OTKA No. 105552 project, three questionnaire surveys were carried out on representative samples of the adult population (3,080 persons) in Hungary in December 2015 and a few months later in Serbia and the Netherlands. Questions addressed the perception of, and beliefs and attitudes towards, the law.

in case of serious conflict with someone. Only about half of the Hungarian and Serbian sample answered ‘yes’, in sharp contrast to 90 per cent of Dutch citizens. Another question was raised originally by András Sajó in a survey in 1986, still during the socialist regime: ‘In a situation where someone has dealings with an official, and where they think they are in the right, what in your opinion is more effective: if (1) they act humble and refer to their difficult situation, or (2) act assertively and tell the official what the law says?’ The answers in the three countries are shown in *Table 2*.

Table 2 Answers to the question about ‘effective’ behaviour toward public officials

	Hungary		Serbia	Netherlands
	1986	2015	2016	2016
Act humble, and refer to their difficult situation	31.4	32.1	15.1	7.5
Act assertively, warn official what the law says	60.2	59.8	67.8	75.1
Do not know/no answer	8.4	8.1	17.2	17.5

Source: Sajó (1988) and own research; see footnote 15.

These data suggest that so-called ‘rights consciousness’ is much weaker in Hungary than in the Netherlands or even Serbia. Note the astonishing similarity between the Hungarian data for 1986 and 2015. One may argue that this could be chance. But others might claim that it is an indication of a highly stable legal culture that has persisted over the various regime changes.

3. Compliance and law enforcement

Compliance refers to how legal norms are followed in everyday practice and how effective these norms are. The level of compliance depends on two main factors: the functioning legal system and the legal culture. In a society where the legal system is appreciated by most citizens, the compliance level might be expected to be high. Nevertheless, the weak law-enforcement capacity of the government may undermine compliance levels, whereas strict but fair enforcement may increase them (Becker et al., 2011). In other words, a low compliance level may be a result of a legal culture that is not supportive of the RoL, or a commonly perceived inability of the government to enforce laws, or both. Moreover, the two tendencies readily reinforce one another, potentially generating a vicious circle.

The formation in 1990 of a legal system that provided a very high level of legal guarantees for citizens was, as mentioned above, a challenge to the legal

culture; but it was also a challenge to those government organizations that are supposed to apply and enforce the law – above all, judges and members of the civil and uniformed services. The newly established legal system was designed from scratch and was based on – frequently idealized – foreign systems; indeed, the guarantees of rights and liberties that were provided were stronger than anything the well-established democracies offered. Some researchers reasonably called this system a ‘super-RoL’ (Sárközy, 2012). This super-RoL was to be applied by organizations that were accustomed to and socialized in the communist system, where the enforcement of government requirements (whether or not laid down in law) called for different, largely informal or semi-formal methods. Besides the formal governmental institutions (Parliament, Cabinet, ministries and agencies), there existed a parallel, well-established institutional system – the Communist Party, with units at all territorial (central, regional and local) levels and in all fields, and with a relatively large professional apparatus. Everyone knew that at any given level, the wishes of the party leader trumped those of the government official. Furthermore, the government was the owner of almost every property; the economy was controlled by the government – not primarily as a law-maker, but as an owner and employer. Almost everyone was employed by the government. Thus, the government could decide to hire or fire anyone. Those fired were unlikely to be employed elsewhere, while unemployment was treated as a crime. Such ‘human resources management’ tools – including decisions about wages and promotion (always with the involvement of the Party) – were effective in controlling citizens’ behaviour. The law could be applied selectively. Since laws were drafted in such a way that it was scarcely possible to adhere to them, everyone broke them. But it depended on the authorities who was penalized (Kulcsár, 2001).

When it comes to applying or enforcing the law, a system of RoL does not permit – in fact, it severely sanctions – such practices. It even insists on a heavy – sometime unrealistic – burden of proof for the authorities and the justice system. In the first decade or so of the transition, certain decisions intended to strengthen the RoL practically jeopardized effective enforcement in several fields, including taxation. The decision of the Constitutional Court that prohibited the linkage of administrative databases (e.g. tax, real estate) without explicit statutory authorization requiring complete restructuring of thousands of administrative acts, decrees and resolutions was one of many such decisions. Others were embedded in the Administrative Procedures Act, which was formulated in such a way that essentially no official could enter premises without the owner’s explicit authorization, even if there were reasonable grounds for suspicion that illegal activities were taking place there.

In the judiciary, these excessive guarantees led to difficulties in proving even the most self-evident facts. Furthermore, they led to unacceptably long proceedings (Czoboly, 2016). Both of these things were viewed in a negative light by large sections of society. Generally, law enforcement – judicial and administrative, civil and uniformed – largely failed to ensure compliance by those who knew they could get away with systematically breaking the law. By the early 2000s, gradual fine-tuning of the regulations to take account of the social realities behind the legal ideals meant that things had become a little better. The learning process in the judiciary and in public administration resulted in the adoption of new and effective methods, which at the same time met the requirements of the RoL. Nevertheless, the government's inability to counter the flagrant infringement of laws generated distrust in the legal system and the RoL. By 2010, then, this provided useful cover for the new Fidesz government to launch an attack on some – and later on most – institutions of the RoL.

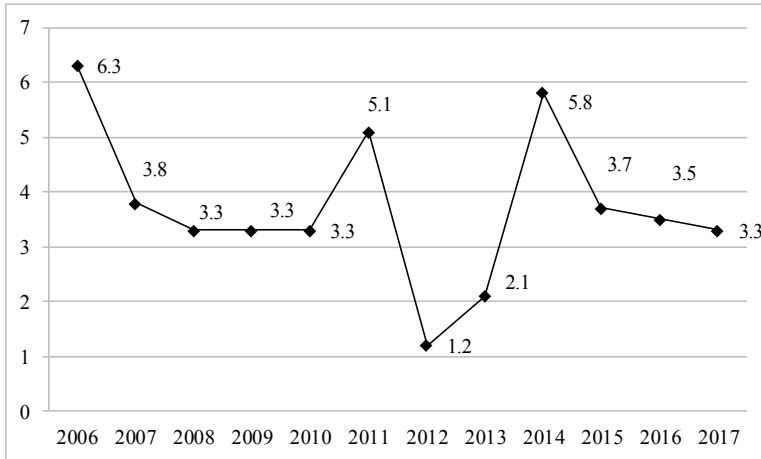
The available data regarding the effectiveness of the government's application and enforcement of law are limited in both scope and validity. The regulatory enforcement indicator of the World Justice Project's RoL Index (see *Figure 2*) has significantly increased between 2012 and 2018, suggesting a positive change in this regard. However, the Bertelsmann management index dropped dramatically between 2010 and 2012, and has since declined still further.

The government has introduced several major judicial reforms since 2010. These steps have been severely criticized both at home and by influential international organizations. The main argument behind the reforms was that the changes would increase the efficiency of the judiciary. But this argument is not proven by the available Hungarian data sources. A highly contentious yet still widely applied indicator of the judiciary's performance is the proportion of cases not completed within two years. *Figure 6* shows the trend in this regard for civil law. The proportions are identical for 2017 and 2008/09, while the number of cases has decreased somewhat. Nor do more sophisticated empirical analyses find any evidence of systematic improvement in judicial effectiveness (Bencze and Badó, 2016; Czoboly, 2016).

Statistics on administrative procedures have been compiled for at least half a century in Hungary. But since 2010, these statistics have been published in such a way that they cannot be systematically analysed. It is also impossible to conduct interviews with public managers or civil servants at all. Accordingly, any analysis is condemned to rely on informal discussions and expert judgements. The tendencies within the administration – especially in the civil

service system¹⁶ (Meyer-Sahling and Jáger, 2012) – and the extreme rate of change in administrative laws suggest that improved effectiveness in this field is hardly to be expected.

Figure 6 *Proportion of civil law cases not finished within two years, per cent*



Source: Data of the Statistics of Judiciary Administration.

In sum, there is no convincing evidence that the reduction in civil liberties or in their legal guarantees has resulted in increased efficiency of regulatory enforcement or of judicial functioning.

4. Summary

This chapter discusses three questions related to the Hungarian legal system: the decline in the Rule of Law; the state of legal consciousness; and compliance with legal rules. As the first section shows, there has been a steady decline over the past couple of years in the Rule of Law, and there is no reason to believe that this tendency will cease any time soon. First, the decline is demonstrated in a quantitative manner, using the Bertelsmann Transformation Index and the World Justice Project's Rule of Law Index. This is followed by

¹⁶ Most importantly: preference for political loyalty over merit in all HR decisions, including selection and promotion; relatively high turnover, with the related loss of experience and knowledge.

a brief qualitative analysis, which among other things reveals a weakening of the independence of the courts, violations of fundamental rights, centralized and professional corruption over both EU funds and Hungarian resources, and a systematic stifling of media pluralism.

The second section addresses support for the RoL as a crucial element of legal culture. It raises the question of why destruction of the RoL after 2010 has not generated widespread protest. We show that this has less to do with the typical explanations – ‘a lack of historical experience’ or the ‘confusing period of transition, resulting in weak support for the institutions’ – and is actually a question of legal culture, which changes very slowly (unlike the legal system of the Rule of Law, which was created literally within a few months). Empirical research also suggests that the Rule of Law, especially in the form experienced by Hungarian citizens in the 1990s, seemed somewhat alien to the Hungarian legal culture.

The last part of the chapter analyses compliance problems in everyday practice, together with the inability of the government to enforce laws. The legal system that was established in 1989/90 required a difficult, decade-long adaptation process by the judiciary and the public administration. Ineffective law enforcement and the alienated legal culture together resulted in weak legal compliance rates, especially in the higher social strata, resulting in a further deterioration in compliance and – more generally – increased anomic tendencies in society. However, according to the data available, the gradual elimination of the Rule of Law has not brought about any better law enforcement or increased compliance rates.

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