

# CHARACTERISTICS OF HUNGARIAN PARLIAMENTARISM

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It is not easy to delineate solid legal categories and unequivocal constitutional answers to remedy the functional disorders of parliamentarism at a time of political tensions, when debates on public law are overpoliticized. It is regarded as a general rule that political and social conflicts have to be settled through reliance on law and the institutional system. It is impossible to define parliamentarism in terms of institutional and legal categories alone because the analyst must also bear in mind the political divisions between the parties (government parties as opposed to the opposition parties), yet without the institutional separation of powers, parliamentarism as a system of government would be inoperational.<sup>1</sup> Unlike the classical two-party system of British parliamentarism, Hungary shows the features of continental parliamentarism, which involves coalitions of parties. I will only point out special Hungarian characteristics that strongly influence the functionality of the system of government.<sup>2</sup>

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<sup>1</sup> See János SÁRI: *A hatalommegosztás történelmi dimenziói és mai értelme, avagy az alkotmányos rendszerek belső logikája*. Osiris Kiadó, Budapest, 1995, pp. 218 and 224.

<sup>2</sup> A systematic comparative analysis and exploration of every component of the Hungarian governmental system would go beyond the scope of this essay. For further aspects of these issues, see also: Antal ÁDÁM: A kormányzati szervek alkotmányi szabályozásáról, *Magyar Jog*, 1995, no. 3; Péter SCHMIDT: A magyar kormányzati rendszer közjogi buktatói, *Jogtudományi Közlöny*, 2007, no. 6; Mihály BIHARI: A parlamentarizmus történeti funkcióváltásai, in: Mihály BIHARI – Béla POKOL: *Politológia*, Budapest, 1992, pp. 327-342; János SÁRI: Elméleti megfontolások a kormány alkotmányos helyzetének szabályozásához, in: *Szentpéteri-emlékkönyv*, Szeged, 1996, pp. 535-544; Márta DEZSŐ – István KUKORELLI – János SÁRI – István SOMOGYVÁRI: A magyar parlamenti jog-de lege ferenda, in: *Emlékkönyv Ádám Antal egyetemi tanár születésének 70. évfordulójára*, ed. József Petrétei, Budapest-Pécs, 2000 Dialóg-Campus Kiadó, pp. 37-65; Béla POKOL: *A magyar parlamentarizmus*, Budapest, 1994, Cserépfalvi Kiadó; Kabinet kérdés – a kormány lemondási kötelezettsége a bizalom megvonása esetén, *Magyar Jog*, 2004; Gábor HALMAI: A négyesög háromszögesítése, *Társadalmi Szemle*, 1993, no. 11; András KÖRÖSÉNYI: *A magyar politikai rendszer*, Budapest, 1998, Osiris; József PETRÉTEI: A parlamenti kontroll sajátosságairól, in: András Bragyova (ed.) *Ünnepi tanulmányok Holló András 60. születésnapjára*, Miskolc, 2003, Bíbor Kiadó; Károly TÓTH: A parlament, az államfő, és a kormány sajátosságai Közép- és Kelet-Európa új alkotmányában, in: *Alkotmány és jogtudomány*, Szeged, 1996, pp.

The legislature and the executive have a peculiar relationship in the Hungarian legal system.<sup>3</sup> Article 18 of the Constitution defines the competence of the Parliament. Its first paragraph, which describes the character of that organ, is silent about its legislative role even though that is the Parliament's pre-eminent function.<sup>4</sup> Although the definition of the character of the Parliament is not really apt and seems to be "inherited" from the previous version of the Constitution – "Parliament is the supreme body of State power and popular representation in the Republic of Hungary" – overall, it is certain that the Constitution vests the right to enact legislation and even to draft a new constitution in the Parliament.<sup>5</sup> Before defining the Parliament's most important functions, Article 19 (2) of the Constitution empowers it to exercise the rights that follow from popular sovereignty.<sup>6</sup>

The Parliament exercises its legislative functions within the framework of the Constitution. The general constitutional limits on legislative action are the basic contents of fundamental rights,<sup>7</sup> international treaties, and adherence to the universally recognized rules of international law.<sup>8</sup> Specific restrictions are the President of the Republic's so-called political or constitutional veto,<sup>9</sup> and the powerful right of the Constitutional Court vis-à-vis the Parliament, that is, the right to abolish an act of Parliament if its unconstitutionality is established.<sup>10</sup>

We have to mention two additional important limitations on the legislative power of the Parliament, which later became constitutional rules and which affect rights that follow from sovereignty. The first one is a reference in the Constitution to national referendums and popular initiatives, which was incor-

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147-166; Zoltán SZENTE: *Bevezetés a parlamenti jogba*, Budapest, 1998, Atlantisz Kiadó; György SZOBOSZLAI: *Parlamentáris kormányzás a rendszerváltás után*, in: *Politika és társadalom*, Budapest, 1999, pp. 31-63; György WIENER: *A parlamentáris kormányzati rendszer jogintézményei alkotmányos fejlődésünkben*, in: Ilona Görgényi – Tamás M. Horváth – Béla Szabó – Ernő Várnay (eds.) *Collectio Iuridica Universitatis Debrecenensis* no. VI, 2006, pp. 287-328.

<sup>3</sup> See János SÁRI: *A hatalommegosztás*, *supra* 1, pp. 218-219, on the limitations on legislative work in British and French-continental parliamentarism.

<sup>4</sup> For an explanation of how that Article of the Constitution evolved, see: Zsolt BALOGH – András HOLLÓ – István KUKORELLI – János SÁRI: *Az Alkotmány magyarázata*, KJK-KERSZÖV Jogi és Üzleti Kiadó Kft., Budapest, 2002, p. 299.

<sup>5</sup> For provisions with such an effect, see Articles 19 (3) (a) and (b), 24 (3), and 25 (2)

<sup>6</sup> Article 19 (2): Exercising its rights based on the sovereignty of the people, Parliament shall ensure the constitutional order of society and define the organization, orientation and conditions of government.

<sup>7</sup> Article 8 (2) of the Constitution

<sup>8</sup> Articles 7 (1) and 8 (1) of the Constitution; Decisions of the Constitutional Court 53/1993 (X.13.) and 4/1997 (I.22.)

<sup>9</sup> Article 26 (2) and (4) of the Constitution; Decision of the Constitutional Court 62/2003 (XII. 15.)

<sup>10</sup> Article 32/A (2) of the Constitution

porated into the Constitution – amending the chapter that defines the functions of the Parliament – during its amendment in 1997.<sup>11</sup> The other restriction is the clause concerning Hungary’s accession to the European Union. It was enacted prior to Hungary’s joining the EU in 2004, allowing the Member State’s rights and duties to be enforced, including the opening of the Hungarian legal system to Community law and permitting the restriction of the Parliament’s legislative power by Community law.<sup>12</sup>

Thus, the Parliament may adopt laws about any issue as long as it acts within the framework (restrictions) of the Constitution; this also affects the functions of the executive, that is, the legislative competence of the Government. The National Electoral Committee (NEC) and the Constitutional Court often arrive at different interpretations as to whether or not an issue belongs to the competence of the Parliament in case a referendum is held or a popular initiative put forward. This is how the controversy over the Parliament’s competence arose: with reference to a case that was regulated by a government decree, the NEC refused to attest the validity of sample copies of the list of petitioners’ signatures on the grounds that only issues that belong to the Parliament’s competence may be the object of a popular initiative or a referendum.

In the past, the Constitutional Court took a different approach to this problem. Indeed, it adopted two decisions that contradicted each other. A Decision of the Constitutional Court in 2001 took the position that the Parliament’s legislative competence is all-inclusive; it also covers legal issues that in the past had been regulated by decrees. Thus, decree-level regulation does not rule out the possibility that, later on, the same issue would be re-regulated by an act of Parliament. In other words, the Parliament’s competence towards the Government is open-ended.<sup>13</sup> In 2004 the Constitutional Court issued a Decision with a contrary effect. It held that the issue of raising the minimum amount of pensions may not be the object of a referendum on the grounds that the issue does not belong to the Parliament’s competence because an act of Parliament had authorized the Government to take further measures. No referendum may be held about issues that belong to the Government’s competence.<sup>14</sup>

In 2006 the Constitutional Court issued a decision about a popular initiative that sought to abolish speed limits on motorways. With that Decision, it returned to its original position. Treating the issue as a question of principle,

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<sup>11</sup> Articles 28/B, 28/C, 28/D and 28/E of the Constitution. We will return to these questions below.

<sup>12</sup> Article 2 of the Constitution; see also János SÁRI: *Rekviem a magyar alkotmányért*, *Magyar Jog*, 2005; Márta DEZSŐ – Attila VINCZE: *Magyar alkotmányosság az európai integrációban*, HVG-ORAC Lap és Könyvkiadó Kft., Budapest, 2006

<sup>13</sup> Decision of the Constitutional Court 53/2001 (XI. 29.)

<sup>14</sup> Decision of the Constitutional Court 59/2004 (XII. 14.)

the Constitutional Court ruled that the Parliament's legislative competence was full and unlimited within the framework of the Constitution. By contrast, the Constitution considerably restricts the Government's powers to formulate decrees. Independent of whether the Government adopts a decree in its original legislative capacity or under authorization by an act of Parliament, it does not possess exclusive legislative powers that could not be appropriated from it by the Parliament. Indeed, the Parliament may take into its hands the regulation of any social relation and it may recover powers that it formerly delegated to the Government.<sup>15</sup>

As for the relationship between the functions of the legislature and those of the executive and as for the interpretation of the unrestricted character of the Parliament's competence, it follows from the aforesaid Decisions that, first, the Parliament may not do whatever it wishes: there are constitutional restrictions on the exercise of its powers and, second, the Parliament may interfere in the workings of the executive almost without restriction.

A dissenting opinion attached to the above Decision of the Constitutional Court represents a different view, supported by a remarkable argument.<sup>16</sup> Apart from issues that may only be regulated by acts of Parliament (issues that demand legislative action) it is in the Parliament's discretion to decide whether or not it intends to regulate an issue with a law (with regard to issues where legislative action is optional). The optional competence is conditional; it only belongs to the Parliament as long as it exercises it; otherwise it belongs to the Government's competence. The second argument that András Bragyova put forward in his dissenting opinion was the primacy of representative democracy. The Parliament may determine whether or not it wishes to exercise its optional competence, that is, whether or not it retains that for itself.

Accepting that train of thought, two conclusions can be drawn. One of them affects the division of powers between the legislature and the executive, and concerns the Government's independent powers that may not be appropriated. However, Hungary's present legal system does not justify that conclusion. The other conclusion affects the restriction of direct democracy because the popular initiative and referendum could only operate in the sphere that is under the Parliament's control. The relevant statutes could contain rules to this effect – but that is not the case. The Parliament's powers are not closed-ended vis-à-vis the Government.

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<sup>15</sup> Decision of the Constitutional Court 46/2006 (X. 5.). See the alternative reasoning by Justice Mihály Bihari about referendums that may be initiated about issues that potentially belong to the Parliament's competence.

<sup>16</sup> Dissenting opinion by Justice András Bragyova, attached to the Decision of the Constitutional Court 46/2006 (X. 5.)

I challenge, furthermore, that the argument that an interpretation of the primacy of representative democracy can only support such a conclusion. I concede that it is within the Parliament's discretion to decide whether or not it intends to exercise some of its optional powers. However, in the absence of any statute that would prohibit it, the Parliament may also resolve that, although as of yet it has neither exercised nor delegated those powers, it intends to exercise them in the future. Hungary's current laws and regulations justify such a conclusion.

In addition to the fact that the Parliament's legislative competence is rather open-ended towards the Government, the considerable number of laws that require two-thirds supermajority – a number that has grown further as a consequence of Hungary's accession to the European Union – exert an important influence on the way the governmental system is run.<sup>17</sup> The ruling parties of the time always say that there are too many laws that require two-thirds supermajority and complain that they impede normal governance (those laws have a direct impact on governability, and their passage "overrules" the division between the government parties and the opposition); by contrast, the parties of the opposition of the time do not seek to have the areas covered by those laws narrowed. Those laws increase their parliamentary weight and enhance their role in the legislature.

It would be an unrealistic expectation – and incompatible with the nature of parliamentarism – if there were continuous consensus between the governing parties and the opposition parties for the benefit of a stable government (just as it is unrealistic if those parties cannot reach consensus over any of the issues). When there are a large number of laws that require two-thirds supermajority, governance may only be effective if the ruling party or governing coalition possesses such a supermajority. Then, however, the opposition would not have a role in reaching consensus; indeed, there would not even be a need for consensus; and a shadow of doubt would fall on legislative objectives that require two-thirds supermajority.<sup>18</sup>

In the light of the above considerations it is fully understandable that during successive terms of the Parliament the ruling parties of the time sought a radical reduction of laws that require two-thirds supermajority: in 1990 that was accomplished by signing a political pact, in 1995-96 by amending the Consti-

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<sup>17</sup> See Article 2/A (2) of the Constitution, where a two-thirds supermajority is required for the amendment of the Constitution; Articles 35/A (1); 71 (3) and (4); Act on Election for the European Parliament; Act on the Election for the Minority Self-government.

<sup>18</sup> The coalition government of the Hungarian Socialist Party and the Alliance of Free Democrats had in excess of two-thirds supermajority in Parliament between 1994 and 1998 but they resolved that a four-fifths supermajority was needed for the amendment of the Constitution.

tution, and in 1999 through a programme of modernising legislative work.<sup>19</sup> Alas, to eradicate the laws that require two-thirds supermajority, they would have needed at least a supermajority of two thirds!

Effective governance as well as the importance and guarantees of fundamental rights justify the examination of supermajority requirements.<sup>20</sup> If sensible efforts to reduce the number of laws that require two-thirds supermajority succeed, constitutional guarantees need to be found to ensure the enforcement of fundamental rights.

On the basis of what has been said so far, the reader can draw the conclusion that in Hungary government is by the Parliament.<sup>21</sup> The legislature may interfere in the workings of the executive without restriction; even though the Government has original legislative powers, the Parliament may appropriate them at any time. The absence of autonomy makes it questionable whether or not political responsibility is appropriately honoured.<sup>22</sup> In today's Hungary the Parliament does not have "excessive power" in two fields. Actually, in those fields we can discern a "power deficit". One of those aspects is a consequence of Hungary's accession to the European Union because that has changed the relationship between the Parliament and the Government. In the course of the Community decision-making process, the Government may diverge from the course set out by the Parliament, even in connection with decisions that require a supermajority. In that field the Government enjoys a sort of autonomy.<sup>23</sup>

<sup>19</sup> – in 1990 Act XL of 1990, which was adopted as a result of a pact between the Hungarian Democratic Forum and the Alliance of Free Democrats, reduced the number of laws that require two-thirds supermajority;

– in 1995 a working paper of the Ministry of Justice, entitled: "A Plan to Regulate the Constitution of the Republic of Hungary" and

– in 1996 Parliamentary Resolution 119/1996 (XII. 21.) on the Principles of the Regulation of the Constitution of the Republic of Hungary recommended to reduce considerably the number of laws that require two-thirds supermajority;

– in 1999 the Government adopted a draft plan to streamline the rules of legislative work, in which the sphere of laws that require two-thirds supermajority would have been reduced to the definition of those institutions that ensure the key guarantees for constitutional order and those directly related to the regulation of the branches of state power.

<sup>20</sup> See József PETRÉTEI: Törvények minősített többséggel, *Fundamentum*, 1999, no. 3, pp. 109-115; Imre PAPP: Kétharmaddal vagy anélkül?, *Fundamentum*, 1999, no. 3, pp. 116-124; Decision of the Constitutional Court 4/1993 (II. 12.) and the dissenting opinion of Justice Péter Schmidt; István KUKORELLI: A parlament négy éve, *Társadalmi Szemle*, 1994, no. 8-9, p. 17.

<sup>21</sup> "Parliament's weight in governing the country is excessive," writes Péter SCHMIDT, *A magyar kormányzati rendszer közjogi buktatói*, p. 262.

<sup>22</sup> "[I]n France during the Third and Fourth Republic Parliament sought to govern on its own; it granted hardly any autonomy for the government." János SÁRI: *A hatalommegosztás*, *supra* 1, p. 219.

<sup>23</sup> See Márta DEZSŐ – Attila VINCZE: *Magyar alkotmányosság*, *supra* 12, pp. 29-36 and 189-203.

The other area is a provision in the Constitution about referendums that considerably restricts the Parliament's legislative powers. The amendment of the Constitution in 1997, and Decision of the Constitutional Court 52/1997 (X. 14.), which was based on it and indeed actively developed it further, has almost managed to upset the system of Hungarian parliamentarism, which has been beset by uncertainties anyway. There is no other country in Europe with long-standing democratic traditions – with the exception of Switzerland where the time-honoured institution of direct democracy is still in operation, even though with a growing number of restrictions – that would have run the risk of introducing a system like that of Hungary. That is probably because none of the other countries intended to replace parliamentarism with a system in which the people exercise their power directly. Although it is never easy to find out what exactly was on the minds of the drafters of that constitutional amendment, we seriously doubt that this situation comports with the original purpose. Neither do we think that this is what the Constitutional Court originally meant to happen.<sup>24</sup> In a Decision issued two years later the Constitutional Court returned to its earlier position of granting primacy to representative democracy.<sup>25</sup> However, the subsequent referendum initiatives open the doors for ever newer interpretations of the constitutional rules...<sup>26</sup>

We can safely declare that in Hungary a referendum regulation and practice that is compatible with the parliamentary system of government has failed to evolve during the past 19 years. An act of Parliament on referendums adopted

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<sup>24</sup> In its Decision of 52/1997 (X.14.) about a concrete issue, the land question, the Constitutional Court examined the relationship between the so-called binding referendum, which requires 200 000 voter signatures and the so-called non-binding referendum, which may be initiated by the Government, the President of the Republic, or 100 000 voters. The Constitutional Court held that a binding referendum has primacy over a non-binding one; this means the Government may not pre-empt or obstruct with its own referendum initiative a referendum that is initiated by the citizenry. There can be no doubt to the correctness of that interpretation; it is also true in this connection, even though the wording is not especially felicitous, that "as far as the given referendum issue is concerned, Parliament assumes the role of the executive". However, the reasoning, conclusions, and guidance issued with subsequent referendums in mind steered the institution of referendum to a "dogmatic dead end". As is well known, it is difficult to make a U-turn in a dead end. To get out from a dead end, the driver normally has to reverse the vehicle. That is exactly what the Constitutional Court did two years later: it returned to its position of 1993, when it had acknowledged the primacy of representative democracy.

<sup>25</sup> Decision of the Constitutional Court 25/1999 (VII. 7.)

<sup>26</sup> A favourable consequence of the numerous referendum initiatives – some of which have even questioned the seriousness and viability of that institution – and of the related Decisions of the Constitutional Court has been that they have prepared the ground for the evolution of referendum dogmatics. See for instance, Decision of the Constitutional Court 26/2007 (IV. 25.), Decision of the Constitutional Court 27/2007 (V. 17.), and Máté Dániel SZABÓ: A népszavazásra szánt kérdés egyértelműsége, in: *A magyar jogrendszer átalakulása 1985/1990-2005*, Gondolat-ELTE AJTK, Budapest, 2007.

prior to the thorough amendment of the Constitution in 1989 opened wide the gates for direct democracy; it granted a broad scope for referendum initiatives in an unconstitutional manner; with confused and imprecise rules it made it impossible for referendums to operate adequately in the governmental system. The amendment of the Constitution in 1997 and Act III of 1998 on National Referendums and Popular Initiatives failed to rectify the earlier situation. Rules of procedure were made more exact and some guarantees were incorporated into the system (for instance, the period when petitioners' signatures can be collected was restricted, and the issue a referendum concerns has to pass the test of legality and constitutionality, etc.) yet problems related to substantive law and content have remained unsolved.

The regulation of referendums (which had suffered from conceptional problems to start with) was elevated to a constitutional level in an uncritical way. That has not helped to clarify the constitutional position and role of referendums. The new regulation of referendums has failed to make the function of referendums unequivocal; neither has it clarified the relation between representative democracy and direct democracy in the Hungarian constitutional system.

The shortcomings of the regulation of referendums – including the Parliament's unconstitutional act, which manifested itself as an omission in that it failed to coordinate with the Constitution the act of Parliament on referendums – and the referendum initiatives, most of which failed, granted the Constitutional Court the opportunity to issue decisions that have shaped the institution of referendums. It can be stated on the basis of instances of prior review by the Constitutional Court and Decisions of the Constitutional Court brought in the course of remedial procedures that, when the Parliament faces a binding referendum, the Constitutional Court grants constitutional protection to it in its capacity as a constituent assembly; however, it does not deserve that protection as a representative and legislative body. Hence, a binding referendum initiated by the citizenry may not aim to amend the Constitution even if the object of the referendum cannot be found on the list of issues that the Constitution explicitly excludes.<sup>27</sup> Acting on the basis of the Constitution, the Constitutional Court defends the coherence of Hungary's constitutional system as a whole because any modification of one constitutional institution would also involve modification of all the others, as none of the components can be treated or modified arbitrarily in isolation.

It goes without saying that, if the Parliament so resolves, a referendum may be called to win support for an amendment of the Constitution (revision of the Constitution); there is no rule prohibiting that. It would be worthwhile to con-

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<sup>27</sup> See Decision of the Constitutional Court 25/1999 (VII. 7.)

sider introducing a constitutional provision that would require that a referendum be called to confirm whenever the Parliament makes a constitutional amendment of major importance. That could become a fundamental function of referendums, especially in view of the fact that, by applying a single rule of procedure (using the votes of two-thirds of all members of Parliament), the Parliament may function as a constituent assembly, which, if a party controls a governmental supermajority, cannot rule out drafting or amending the Constitution by just a single party. In practice, political causes make it difficult to muster two thirds of the votes of all members of Parliament, yet the two-thirds rule provides precious little legal safeguard for protection of the Constitution.

There are further known ways to establish an instrumentality that may draft or amend the Constitution (for instance, a special, independent body can be set up for the purpose or it may operate as an adjunct to the Parliament; or the amendment of the Constitution may be adopted by two Parliaments of different make-ups by interposing parliamentary elections, etc.) However it is not alien to the parliamentary form of governance to call a referendum to confirm the amendment of the Constitution by a representative body. Such a referendum would either finalize the amendment of the Constitution or reject it. In the latter case the Constitution would retain its provisions in force, which means the referendum would operate as a conservative instrument; yet it would remain in the Parliament's competence to offer later a new recommendation about the amendment of the Constitution.

The function of binding referendums that are initiated by the voters can be defined by applying the above logic. In order to ensure substantive and effective referendum outcomes that are compatible with the parliamentary form of governance, there is a need for regulations that transform this type of referendum into a popular (or citizens') veto. As a precondition, there must be a parliamentary decision prior to every binding referendum, because it is the very object of the referendum to keep in effect or reject a law that has been adopted by the Parliament.<sup>28</sup> In case the majority of voters cast their ballot to invalidate an act of Parliament, the Parliament still has the right to adopt another law to replace the rejected one in its own competence.

Such a system would clarify the relationship between representative democracy and direct democracy; it would make the roles in decision-making proceedings; and it would resolve the controversial situation affecting the rights of members of Parliament, the controversy having been caused by the Decision of the Constitutional Court concerning the Parliament assuming the role of the executive. In case there is a popular veto, the Parliament's role as an executive power

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<sup>28</sup> This binding form of a referendum, which can be initiated by the voters, must not be confused with the type of referendum that may be called to confirm an act of Parliament.

would mean that a new statute would have to be created to replace the statute that had been annulled, perhaps by choosing an option from several constitutional alternatives. After both of those substantial changes are effected the referendum can become a viable and effective institution of the constitutional system, one that is compatible with the parliamentary form of government. As a result, on the one hand, the community of voters, the electorate, would become part of the institution that drafts and shapes the Constitution and, on the other hand, the popular veto would make it possible for the citizenry to supervise, and occasionally even to correct, the work of the legislature.<sup>29</sup>

## SUMMARY

### **Characteristics of Hungarian Parliamentarism**

MÁRTA DEZSŐ

For nearly two decades Hungary has been showing the features of continental parliamentarism, which involves coalitions of parties. The essay examines several aspects of the operation of the Hungarian parliamentary government system. The relationship of the legislature and the executive is analysed against the background of the controversial practice of the Constitutional Court. The Parliament's legislative competence towards the Government is open-ended; however the wide range of laws that require a two-thirds supermajority exerts a powerful influence on the operation of the government system. The Parliament's authority to interfere in the affairs of the executive is unrestricted. Although the Government possesses original legislative capacity, under the present rules the Parliament may overrule that any time. The absence of the Government's autonomy questions its political responsibility. The massive quantity of laws that require supermajority is controversial as it weakens the efficiency of the Government's activities. Moreover, they need to be examined from the point of view of the importance and guarantees of the fundamental rights. The Parliament does not have "excessive power" in two fields. Actually, in those fields we can discern a "power deficit". One of those aspects is a consequence of Hungary's accession to the European Union because that has changed the relationship between the Parliament and the Government. In the

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<sup>29</sup> In that case, there would be an external political counterbalance to the representative body. See János SÁRI: *A hatalommegosztás*, *supra* 1, pp. 231-233.

course of the Community decision-making process, the Government may diverge from the course set out by the Parliament, even in connection with decisions that require a supermajority. The other field is a constitutional provision on binding referendums that have to be called: it substantially curtails the Parliament's legislative power. The amendment of the Constitution in 1997, and Decision of the Constitutional Court 52/1997 (X. 14.), which was based on it and indeed actively developed it further, has almost managed to upset the system of Hungarian parliamentarism, which has been beset by uncertainties anyway. The author of the essay states that the issues that need clarification in the future include the relation between representative democracy and direct democracy and the function of referendums; the roles in decision-making processes have not been clearly delineated, and rules of referendums that are compatible with parliamentary government systems have yet to be established.

## RESÜMEE

### **Besonderheiten des ungarischen Parlamentarismus**

MÁRTA DEZSŐ

In Ungarn ist seit beinahe zwei Jahrzehnten ein Regieren in Koalition zu beobachten, das ein Zeichen des kontinentalen Parlamentarismus ist. Die Studie untersucht die Handlungsfähigkeit des ungarischen parlamentarischen Regierungssystems aus mehreren Aspekten. Die Verfasserin analysiert das Verhältnis zwischen der Gesetzgebungs- und Vollstreckungsfunktion im Lichte der widersprüchlichen Praxis des Verfassungsgerichts. Sie stellt fest, dass neben der Offenheit der Gesetzgebungskompetenz des Parlaments in Richtung der Regierung der breite Kreis der Gesetze, die einer Zweidrittelmehrheit bedürfen, eine bedeutende Wirkung auf die Handlungsfähigkeit des Regierungssystems hat. Das bedeutet, dass sich die Gesetzgebung uneingeschränkt in die Angelegenheiten der Vollstreckung einmischen kann; die Regierung hat zwar eine ursprüngliche Gesetzgebungskompetenz, aber dieser kann ihr gemäß den derzeitigen Vorschriften jederzeit vom Parlament entzogen werden. Der Mangel an Autonomie stellt in Frage, ob die politische Verantwortung geltend gemacht werden kann. Die große Zahl an Gesetzen mit qualifizierter Mehrheit wiederum erscheint nicht nur aus der Sicht der Effizienz der Regierungstätigkeit als fraglich, sondern ist auch aus dem Aspekt der Bedeutung der Grundrechte und der Garantien dieser zu untersuchen. Die „Übermacht“ des Parlaments, die

als allgemein verbreitet bezeichnet werden kann, kommt in zwei Belangen nicht zur Geltung – auf diesen beiden Gebieten ist sogar ein „Defizit“ festzustellen. Ein Aspekt ist eine Folge des Beitritts zur Europäischen Union, bei dem sich das Verhältnis zwischen Parlament und Regierung verändert hat. Die Regierung kann im Gemeinschafts-Entscheidungsverfahren von den Stellungnahmen des Parlaments abweichen, sogar im Falle von Entscheidungen, die einer qualifizierten Mehrheit bedürfen. Das andere Gebiet ist eine verfassungsmäßige Regelung, die sich auf den verbindlichen Volksentscheid bezieht. Diese Regelung bedeutet eine wesentliche Einschränkung der Macht des Parlaments. Mit der Verfassungsänderung im Jahre 1997, bzw. dem auf dieser aufbauenden und diese aktiv weiterentwickelnden Beschluss Nr. 52/1997 (X. 14.) des Verfassungsgerichts ist es beinahe gelungen, das System des ungarischen Parlamentarismus, das ohnehin mit Gleichgewichtsstörungen zu kämpfen hat, zu brechen. Den Feststellungen der Studie zufolge sind das Verhältnis zwischen der Repräsentationsdemokratie und der direkten Demokratie und die Funktion des Referendums nicht geklärt, die Rollen in den Entscheidungsverfahren nicht eindeutig, und es ist keine Regelung des Volksentscheids entstanden, die dem parlamentarischen Regierungssystem entsprechen würde.