The Parliament

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A. Historical Background

The main characteristic of the Hungarian political development during the 100-150 years preceding the democratic transformation was a weak democratic but strong parliamentary tradition. This thesis can be explained with Hungary’s history. Since the 16th century, Hungary had always been under the influence (and often under the occupation) of foreign forces. Therefore, in the early 19th century (the so-called Reform Ages), when Habsburg monarchs ruled over Hungary, the Hungarian politics attempted to strengthen the national parliament, in order to create the boundaries of the powers of the foreign king.

The so-called April laws, adopted in 1848, were important elements of this process. These statutes aimed at national self-determination and the implementation of human (mostly political) rights. They established a British-type parliamentary system with full parliamentary sovereignty; it is the model that has returned with all the waves of democratisation that have happened ever since. However, the defeat at the Freedom Fight of 1848-49 hindered the national self-determination for decades,

2 This historical context explains why the Standing Orders are traditionally adopted in a parliamentary decision instead of a statute in the Hungarian constitutional law. Deputies refused the form of a statute because it would have needed the promulgation of the Hapsburg king, but they intended to adopt the regulations on their functioning in their own exclusive competence. As a result of this tradition the Standing Orders are still a parliamentary decision up to this very day, having said that though, recently the possibility of adopting them in a statute has also emerged.
and the parliament began to strengthen only after the Austro-Hungarian compromise of 1867.

Eighty years thereafter, Act I of 1946 introduced significant changes in the Hungarian state organisation. It proclaimed the republic and delegated the executive branch practically to the Government, being responsible to the Parliament. However, the republican form and parliamentarism did not last long; upon Soviet pressure Hungary was formed to be a people’s republic in 1949.

Like other Central-Eastern European states, Hungary’s constitution of 1949 was also created upon the Marxist concept. According to the original text of the Constitution, the Parliament exercised all rights deriving from the sovereignty of the people [Article 10 paragraph (2)]; with which the Constitution established a “superpower” whose competences were well beyond the classical function of legislation. On the other hand, the legislative power was not the Parliament in practice but a collective presidential organ, the Presidential Council of the People’s Republic. This Council adopted statutory decrees that could derogate and amend the statutes of the Parliament. Up till 1988, the Council’s legislative power was practically unlimited, with the sole exception that it could not amend the Constitution. This was changed by the Act on Legislation that defined the issues which can only be regulated by statutes.

B. The Parliament’s position at the political transition

Only in Hungary was the parliament a central locus in the transition process allowing for something resembling a “negotiated revolution”. In contrast, in Poland, East Germany, Czechoslovakia and Yugoslavia transition was largely a non-parliamentary or extra-parliamentary process. In Hungary, the most basic purpose of the roundtable negotiations was the establishment of the free parliamentary elections. Although there were other important parts of the negotiations (like the Constitutional Court), they were rather “collateral” results of the Roundtable. The Opposition defined as the condition of the negotiations that the old (Communist) Parliament debated no amendments to the Constitution; the legal transition would be the task of the freely elected Parliament. They did not want the legislation to overtake the political negotiations; they feared that the Parliament would neglect and overrule the results of the roundtable talks.

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At the roundtable talks the Opposition aimed at strengthening the role of the Parliament. During the transition the adoption of the Polish scenario seemed to be a real option, according to which the communist party may delegate the president “in exchange” for the free elections. Several provisions of the Constitution can only be interpreted in this light. The Constitution sets very strict conditions for the Parliament’s dissolution by the president or the adjournment of the Parliament’s sittings. The president’s role in special legal order is also very restricted. The reason for all of this seems to be that during the negotiations the Opposition aimed the Parliament to be an actor of the state that is impossible to disregard.

During the political transition, the opposition found it obvious to create a formally new constitution after the free elections. However, the political atmosphere was against a new constitution; the parties could not come to an agreement on the new basis of society. Therefore, the adoption of the new constitution was temporarily removed from the agenda and the Government also withdrew the bills with the content covered in the course of the trilateral negotiations. Such circumstances explain that Article 19 paragraph (3) item a) of the Constitution authorises the Parliament to adopt a new constitution. Such a provision is rather unusual; constitutions hardly give authorisation for their own derogation, as constitutions are typically adopted upon original constituent acts and not upon the authorisation of the previous constitution. Nevertheless, this provision received new content in 1989 with the fact that the Constitution declares itself as interim in its preamble and refers to the adoption of a new one.

The Basic Law repeats this provision [Article 2 paragraph (2) item a)], which seems to be rather useless.

Strong parliaments and weak governments can result in an unstable, chaotic transition process. The example of Germany after World War II suggests that a strong government is needed for political transition. Realising this, after the first free elections the biggest governing party (the conservative MDF) and the biggest party in opposition (the liberal SZDSZ) agreed on the amendment of the Constitution making governance stable. As a result, they significantly reduced the numbers of statutes of qualified majority, furthermore, they introduced the institution of constructive motion of no-confidence.

Consequently, the established model of state organisation introduced a strong parliament, whose dual tasks are legislation and the political control of the government. One might see that in the last twenty years, despite the three mid-term government changes each parliament has fulfilled its four-year-term of office, which is a major achievement in the traditions of Hungarian parliamentarism.

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9 Ágh, op. cit. p. 71.
Having general competence in the field of legislation gives the Parliament an even more significant character. Within the framework of the Constitution, with regard to the obligations towards international law and EU law, the Parliament may adopt statutes on any issue in any detail. Unlike the French system where the constitution specifies the issues that are to be regulated by statutes (and consequently everything else is to be regulated by decrees), the Hungarian model significantly reduces the importance of issuing decrees. In Hungary, the legislator may interfere with the executive without restriction; although the Government has original legislative powers, the Parliament may appropriate them at any time.

It is also noteworthy that in Hungary the constituent and the legislative power are not separated. The Hungarian Parliament, by the two-thirds majority of its members, can adopt and amend the constitution without the contribution of other organs. Referendum and other organs do not participate in the constituent power, neither does the Constitution contain eternal provisions that cannot be amended. These features maintain the illusion of the sovereignty of the parliament and historical constitution.

C. The Parliament in the New Basic Law

Although the new Hungarian constitution was debated throughout Europe, the regulations on the Parliament were out of focus. The new Basic Law maintains the parliamentary form of government, and establishes a state organisation based on principles of rule of law and separation of powers. In the framework of this constitutional system the Parliament’s positions have not changed significantly. However, it also needs mentioning that during the constitutionalisation, the possibility of a bicameral parliamentary model emerged. However, this option was refused later on.

At first sight, the chapter of Parliament is surprisingly short in the Basic Law. Nevertheless, there are other parts of the Basic Law that also pertain to the Parliament; such as the provisions concerning referenda [Article 8], the issues of economic constitution in the chapter of “Finances” [Article 36] or the regulations concerning special legal order [Articles 48 to 54].

13 See further details at Smuk op. cit.
16 Smuk, op. cit.
1. Legislation

The chapter on the Parliament concerns mainly the most important questions of legislation. Amongst, *ex ante* law review needs special mentioning. During the constitutionalisation, the questions regarding constitutional adjudication were debated the most. It was not clear in which part of the legislation process should the Constitutional Court get involved, or should it be involved in the process at all. During the elaboration of the new constitution, putting the *ex ante* review into the forefront seems to be a political target. This is justified by the legal policy objective requiring the legislator to be convinced, even prior to adopting a statute, about the constitutionality of the draft, facilitating the aim of adopting less unconstitutional statutory regulations. This implied the endeavours aimed at the closer inclusion of the Constitutional Court in the legislative process.

In general, the *ex ante* review is not an alternative of the *posterior* one. *Ex ante* review in itself cannot guarantee the sufficient protection of fundamental rights.\(^\text{17}\) *Ex ante* law review is a political competence upon which the Constitutional Court has to decide on norms having no practical application. Realising this, the Basic Law maintained the *ex ante* review as an exceptional competence. On the other hand, it detailed the relevant regulations and set tight deadlines to the Constitutional Court’s procedure.\(^\text{18}\)

The Basic Law makes two forms of *ex ante* reviews possible. Firstly, Article 6 paragraph (4) maintains the former regulation that makes it possible for the president to refer the adopted statute to the Constitutional Court (constitutional veto). Secondly, the Basic Law ensures the parliamentary majority to initiate the review of a statute [Article 6 paragraph (2)]. In such cases the Constitutional Court reviews the statute subsequent to the adoption but prior to the Speaker’s signature. In both cases the statute can be promulgated only if the Constitutional Court finds no violence of the Basic Law.

Besides, the Basic Law maintains the president’s right to political veto, too. The president may refer back the adopted statute to the Parliament for reconsideration if he/she does not agree with it. However, this right can be exercised only once with the same statute. On the other hand, the Basic Law has altered the constitutional adjudication that excluded the parallel application of the two kinds of vetoes (*i.e.* the constitutional and the political). In certain cases the Basic Law makes it possible for the president to turn to the Constitutional Court even if he/she has already exercised his/her right of political veto [Article 6 paragraph (9)].

Another difference between the Constitution and the Basic Law concerns referenda. The Basic Law has terminated the consultative referendum, as the institution had not had any importance in praxis. It has a major significance that the Basic Law

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\(^{17}\) This became one of the conclusions of the international conference on the constitutionalisation, organised by the Constitutional Court and the Academy of Sciences (Budapest, 4 March 2011).

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has initiated a validity limit; in the future referenda will only be valid if more than half of all voters participate. Taking it into consideration that the previous regulation contained no validity limit, (it only demands that more than one-quarter of all voters vote for the same answer) it would be much more difficult to get across a referendum.

In general terms, referenda limit the Parliament; the results of successful referenda are binding for the Parliament. Limiting referenda results in the strengthening of the Parliament. Therefore, one might state that the Basic Law stresses the representation instead of direct democracy.

2. Financial issues concerning the Parliament

The phrase of “economic constitution” evaluated in Germany just after World War I (Wirtschaftsverfassung). This means that the constitutional provisions on the relation of the state and economy and the most basic regulations on the economic actors.19

Regulating financial and economic issues on a constitutional level seems to be one of the most important novelties in the Basic Law. Accordingly, the Basic Law defines the Parliament’s role in finances. Article 36 paragraphs (4)-(5) state:

“(4) The Parliament shall not adopt such an Act on the central budget which would result in a public debt exceeding the half of the gross domestic product.

(5) As long as the public debt exceeds the half of the gross domestic product, the Parliament shall only adopt the Act on the central budget which includes the reduction of the state debt in proportion to the gross domestic product.”

A further noteworthy element of the sections seems to be that the application of these sections is reviewed by a relatively new organ, the Budget Council.20 The Basic Law delegates strong competences to this organ; the draft of the central budget needs the prior approval of the Budget Council [Article 44 paragraph (3)]. Article 3 paragraph (3) item b) strengthens this competence, as the president is entitled to dissolve the Parliament if the latter does not approve the central budget until 31 March of the current year.

Implicitly, the adoption of the Act on the state budget is a vote of confidence. In constitutional terms, neither the government nor the Parliament questions the confidence but politically the issue is so essential to the government that it would be unable to govern any longer.21 However, concerning the possibility of the dissolution of the Parliament, one should also consider the regulation of the aforementioned Article 44 paragraph (3). As a result, the Budget Council has the right to veto

20 The Budget Council was set up in 2009 by an Act, but only the Basic Law raised it to constitutional level.
concerning the Act on the state budget. Consequently, the Budget Council will be able to force the Parliament’s dissolution if it continuously refuses the draft budgets.

3. Further changes

It seems to be a symbolic action that the Basic Law overruled the Constitution concerning the definition of the Parliament; the Parliament is not declared as the “supreme state organ” any longer. Such a definition is hardly compatible with the principle of separation of powers. In the Constitution this definition was not really apt and seems to be “inherited” from the former version of the Constitution.  

Electorating state officers is a classic function of the Parliament. In this field, the Parliament’s competence enlarged with the election of the president of the Constitutional Court (formerly the president of the Constitutional Court was elected by the justices from themselves). The Venice Commission reckoned that electing the president by a political actor is a widely accepted phenomenon; nonetheless, it is a regression in the independence of the Constitutional Court.

4. Parliamentary elections

Concerning electoral rights and the system of elections, the Constitution was rather brief. It only declared the principles of the elections (universal and equal suffrage, direct and secret ballot), defined who had the right to vote and to be elected, and left all other issues to statutes.

Enacting a statute on parliamentary elections has always been a slippery task. The parties were afraid of losing their influence in the electorates and they could not agree how to change the system and on the particular method of the parliamentary elections. As a result, parliamentary elections are still regulated by an Act that was adopted in 1989. This Act was prepared for the first free elections and by the time of its adoption hardly anyone thought that the statute would regulate half a dozen general elections. Although the Parliament adopted an Act on the procedural rules of the elections in 1997, the base of parliamentary elections was still the Act of 1989.

However, according to some aspects the modification of the electoral system seemed to be essential. Firstly, the Hungarian Parliament is too large comparing to other parliaments. In Hungary, the Parliament consists of 386 members, and nearly everybody agrees that approximately half of this number would suit the country’s population and territory. However, the method of reduction was a hard way to go.

22 Dezső, op. cit. p. 154.
23 Opinion 621/2011 of the Venice Commission, CDL-AD(2011)016. Item 94. Having said that though, upon the new regulation the Parliament re-elected Péter Paczolay, who was previously elected by the justices.
Secondly, the Constitution defined the scope of the voters contrary to the European Convention on Human Rights, as – among others – it gave no suffrage for those who are under guardianship. The European Court of Human Rights declared that Hungary violated the Convention as it did not grant the right to vote for citizens whose capacity is limited. In the case of Alajos Kiss v. Hungary²⁴ the Court says that it "cannot accept, however, that an absolute bar on voting by any person under partial guardianship, irrespective of his or her actual faculties, falls within an acceptable margin of appreciation".

Thirdly, another important question arose in Hungarian political life; namely, the right to vote of trans-border Hungarians. According to the Constitution, only those Hungarian citizens are entitled to participate in parliamentary elections who have a registered domicile in the territory of Hungary. Some were concerned that such a condition limited the rights of Hungarian citizens residing outside Hungary.

Considering the aspect mentioned above, the Basic Law introduced significant changes in parliamentary elections.

The Basic Law itself does not define the number of MPs but it is not likely to exceed 200. This makes the transformation of the electoral system necessary. As for today, the system of parliamentary elections is a mixed one; nearly half of the MPs are elected in the electorates according to the principle of majority, some others are elected in the counties (Hungary consists of 20 counties including the capital) in a proportional system and there are still some “compensation mandates”. As a result of the recent system, the party that wins the elections becomes overrepresented in the Parliament; in order to stabilise the governance.

At the moment we know very little about the modification of the electoral system. It is likely that the majority system gains an even more important role; however, some MPs will still be elected in a proportional system. Consequently, upon the new regulation the winner will be even more overrepresented.

The Basic Law, respecting the judgments of ECHR, rephrased the right to vote. Article XXIII paragraph (1) declares that all Hungarian citizens above the legal age have the right to vote and paragraph (6) sets the limitation of the suffrage:

“The right to vote shall not be granted to persons who have been deprived of their suffrage by court on the grounds of having committed a crime or due to their limited capacity. Citizens of other Member States of the European Union who have a domicile in the territory of Hungary shall not have the right to be elected in case they were deprived of such right by the laws of the country of their citizenship, or by a decision of court, or by other public authorities.”

As it can be seen, no one shall be deprived of their suffrage ipso iure, only on the ground that his/her capacity is limited or he/she committed a crime. In each and every case the court has to make a particular decision on the deprivation of the suffrage. Such a solution seems to meet the criteria of the ECHR.

The Basic Law ensures the right to vote for all adult Hungarian citizens. Consequently, Hungarian citizens living outside the country are also entitled to vote.

²⁴ ECHR 38832/06, 20 May 2010.
However, Article XXIII paragraph (4) distinguishes “Hungarians in Hungary” and trans-border Hungarians, while stating: “Cardinal statutes may connect the right to vote or its completeness to Hungarian domicile and the right to be elected may be bound to further conditions”. Legally, the suffrage of trans-border Hungarians remains an open question, as cardinal statutes may decide whether to grant this right or not. The term “completeness” seems interesting in the quoted section. Accordingly, it seems an option that trans-border Hungarians can vote for the party-lists but not for the individual candidates, i.e. no foreign electorates will be created.

Conclusions

In every country, the exercise of political power can be described by the relations of the Parliament, the Government and the president. On the one hand, the Basic Law has not made any changes to this relationship; the parliamentary form of government remained unaltered. On the other hand, the Basic Law has introduced small modifications; it intended to apply the experience gained over the last twenty years.

The most significant changes seem to concern the economic constitution; the Basic Law limits the manoeuvres of state organs (including the Parliament) in certain provisions, especially in questions of state debt. Several criticisms arose stating that the Parliament would not be efficient in forming economic relations and would not be flexible enough to follow the changing needs of the society. I presume it can hardly be evaluated whether the freezing of the basic rules of finances into the constitution binds the Parliament, or conversely, it stabilises the finances of the country. This question can only be answered later on with regard to the fiscal affairs and to the application of the Basic Law in praxis.