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Hungarian understanding of the division of powers

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Summary

Hungarian constitutional system has a number of characteristics, including division of power. This is a result atypical evolution of the political system in Hungary after 1989. Most of the countries of Central and Eastern made a thorough reconstruction of the political system in the nineties of the twentieth century, many constitutions were adopted in 1991–1994. Otherwise had done Hungarians, making a 1989 amendment to the Constitution of 1949. and the adoption of a new constitution putting off indefinitely. Completely new Fundamental Law was adopted only in 2011., in force since 1 January 2012. It introduced in the Hungarian constitutional system significant changes, modifying the way the principle the division of powers. The changes seem to be rational, and therefore to be expected that the Hungarian model finds followers.

Streszczenie

Węgierskie rozumienie podziału władzy

System konstytucyjny Węgier posiada szereg cech charakterystycznych, także jeśli chodzi o podział władzy. Jest to skutkiem nietypowego przebiegu ewolucji ustroju, jaką prze-

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chodziły Węgry po 1989 r. Większość państw Europy Środkowo-wschodniej dokonało gruntownej przebudowy systemu politycznego w latach dziewięćdziesiątych XX w., liczne konstytucje były uchwalane w latach 1991–1994. Inaczej postąpili Węgrzy, dokonując w 1989 nowelizacji Konstytucji z 1949 r., a uchwalenie nowej konstytucji odkładając na bliżej nieokreśloną przyszłość. Zupełnie nowa Ustawa Zasadnicza została uchwalona dopiero w 2011 r., obowiązuje od 1 stycznia 2012 r. Wprowadziła ona w węgierskim systemie konstytucyjnym istotne zmiany, modyfikując także sposób realizacji zasady podziału władz. Przeprowadzone zmiany wydają się jednak racjonalne, a zatem należy się spodziewać, że model węgierski znajdzie naśladowców.

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I.

The history of the division of powers and liberal Parliamentary system in Hungary dates back to 1848. At that time, under the influence of the March events, the pre-revolutionary Parliament (elected in 1847) adopted a number of laws that dramatically changed the Constitutional order of the State. The Government was obliged to report to the Parliament, which was to be elected in free elections. The new electoral system was based on a majority system and single-mandate constituencies and voting was limited to one round. However, the State still remained a monarchy, and even after the Habsburgs were dethroned in April 1849, there was no proclamation of republic. After the defeat of the revolution, the neo-absolutism period was on, and the Parliamentary life was resumed only in 1860. In the Austro-Hungarian Monarchy, the bicameral Parliament played a significant role in the functioning of the State and became a symbol of the Hungarian liberalism. Although the then political system created a legal regime close to the modern Parliamentary monarchy, but at the same time, the ruler – as the head of the State – had far wider rights and political opportunities than in our times[3].

After the fall of the Habsburg State in 1918, two revolutions and one counter-revolution took place, and the functioning of the Parliament was suspend-

[3] *Magyar alkotmánytörténet*, ed. B. Mezey, Budapest, 1996, p. 223.

ed. The National Assembly was convened again at the beginning of 1920[4]. This body played an important role in the process of conservative consolidation. Hungary remained a monarchy, but without a king – Admiral Miklós Horthy was at the head of the State as its administrator or regent. His position corresponded to the position of a strong president, but it was the Prime Minister who ruled day by day. In the interwar period, the authoritarian and dynastic tendencies would be constantly strengthening, though the Parliament (since 1927 bicameral again) worked until 1944. In the then Hungarian system, there was no specialized authority to safeguard the Constitutionality of the law, such as a Constitutional court, and the supreme court authority – at the head of the judiciary – were Kuriae (the historical name of the Supreme Court) and the Supreme Administrative Court[5].

Defeated in the war – Hungary was involved on the side of the so-called Axis countries – and following the fall of the old political system at the turn of 1944 and 1945, there occurred a dramatical Constitutional transformation[6]. The National Assembly, which again became unicameral in 1946, obtained the right to elect the President of the Republic of Hungary. The Prime Minister had still the right to rule the executive. The new people's democratic Constitution adopted in 1949, inspired by Stalin's Constitution of 1936, rejected the principle of tripartite division of powers, recognizing the principle of power unity[7]. The original text of this act made the Parliament the supreme authority of the State bodies. Act I of 1972, which amended the entire Constitution completed this definition, indicating that the Parliament is the highest representative authority. In the 1949 Constitution, it was clearly articulated that the Parliament exercises all rights, arising from the sovereignty of the people. It meant a completely different concept than that which had functioned in the Hungarian doctrine of State and law before 1944.

[4] In the Hungarian legal terminology, the notion of "general assembly" (*nemzetgyűlés*) is used to define Parliament elected in breakthrough or crisis circumstances for instance in 1920, 1944 and also in 1947. In other cases the name of "seym" (*országgyűlés*) is used.

[5] This authority came into being in 1896 and was dissolved in 1949.

[6] Its most important legal act was *Act I of 1946 on Proclamation of the Republic* which functioned as the so-called small transitory constitution.

[7] Z. Szente, A. Jakab, A. Patyi, G. Sulyok, *Országgyűlés*, [In:] *Az Alkotmány kommentárja* I, Budapest, 2009, p. 535.

II.

In the period of political transformations, Hungarian legislator did not formally adopt a new Constitution, but still in the autumn of 1989, they completely changed the legal text from 1949. The changes were so vast, that – in the material terms – it was equal to the introduction of a new Constitution, although its structure still resembled its people's democratic predecessor. Perhaps this can explain why in the text of the Constitution as amended in 1989, relics of the earlier era are preserved. The characteristic feature of the text of the Constitution, subject to analysis, was the fact that although it contained the principle of the people's sovereignty, it did not delimitate the principles of power division. After the changes of 1989, the Constitution declared in the first two subparagraphs of Article 19 that the supreme authority of the State power and, at the same time, the highest representative body is the Parliament that, exercising its rights, arising from the principle of the people's sovereignty, guarantees Constitutional order in the community and establishes the organization of authorities, its directions and implementation modalities. However, contrary to the original text of the Constitution, there was no Statement, saying that the Parliament exercises all the rights, deriving from the sovereignty of the people. The fact that the Parliament was defined as a body of State power meant, however, that it exercises the public authority[8].

A key element of the text of Constitution revised in 1989 was to define the Parliament as a "supreme representative body of State power". This definition had its roots in the pre-1989 Constitutional and legal relations and ideological concepts. The amended Constitution – though not fully declaratively – confirmed the principle of division of powers, which defined the relationship of the individual bodies in the country. Paragraph 2 of the Constitution declared the rule of law, from which specialized literature, and – above all – the Constitutional Court implied the need to divide and mutually control the powers[9].

[8] Ibidem, pp. 540–541.

[9] Compare the decisions of the Hungarian Constitutional Court 38/1993. (VI. 11.) AB hat., ABH 1993, 256, 261; 41/1993. (VI.30.) ABH 1993, 292, 294; 28/1995. (V.19.) AB hat., ABH 1995, 138, 142. Attention shall be drawn to the decision Pl. 2/2002. (I.25.) AB határozat, ABH 2002, 41, 50–51.

Given this approach, the relationship between the main bodies of State power was not seen hierarchically. Hence, the Parliament was not subordinated to any other authority. Its primacy came mainly from the direct legitimation, which up to now has assured it the will of the voters expressed in the elections. In addition, the Parliament has been the only legislative body in Hungary. These data allow to present the interpretation, according to which, it is reasonable to use the term "the highest body of State power" in relation to the Parliament. The term "the supreme representative body" means, in turn, that it is a body, representing the whole nation, and not some of its parts, which are separated geographically or in any other manner[10].

The above-mentioned terminological relics of the former Constitution were repealed by the new Constitution of Hungary, which the President of the Republic signed on 25th April 2011. It entered into force on 1st January 2012. Up to now, it has been amended five times, but the structure of the State power has not been clearly changed. The most important change, from the point of view of the issues discussed may have been the unequivocal declaration that the Hungarian State functions with the division of powers taken into account[11]. Such a declaration is at the beginning of the 2011 Constitution, directly after the preamble, in the part which defines the basic principles of the State and the community. The idea of division of powers, formulated in art. C of the general provisions of the Constitution has been specified in later sections on the individual elements of State powers.

The chapter on Parliament, in the Constitution part called the State, right at the beginning of subparagraph 1 of Article 1 claims expressly that the Parliament is the highest representative body in Hungary. We are, therefore, faced with a significantly less complicated and shorter definition than that expressed in the repealed Constitution. According to Art. 9 subparagraph 1, the President of the Republic is the head of the State, which symbolizes the unity of the nation, and at the same time, is to watch over democratic functioning of the State.

The provisions of Art.15 to Art. 22 of the Constitution deal with the issues related to the functioning of the Government. It results from Article 165 sub-

[10] Z. Szente, A. Jakab, A. Patyi, G. Sulyok, *Országgyűlés,* op.cit., p. 544.

[11] A. Jakab, *Az új Alaptörvény keletkezése és gyakorlati következményei,* Budapest 2011, p. 187.

paragraph 1 that the Government is the main executive authority, whose tasks and competences cover all areas of action, which are not reserved for other authorities by the Constitution or other legal norms. The Government is the main public administration body and in the light of law, it is to create public administration bodies. This way of defining the nature and position of the Government is a novelty in the Hungarian Constitutional order and in many directions, it strengthens the position of the body which is already relatively strong. The Government is accountable to the Parliament.

At this point, the structure of the Constitution devoted to State bodies shall be recalled. In the first place, the legislature deals with issues related to the Parliament, then, the institution of the people's vote, further articles relate to the President, the Government and independent regulators. These are followed by chapters on the Constitutional Court, the general judiciary, prosecution, Ombudsman and local self-government. This part of the 2011 Constitution is also devoted to the rules of public finances, military, police, security services, as well as extraordinary situations, which, however, from the point of view of the issues in question do not seem to be relevant[12]. It should be underlined that the legislator has regulated the position of the Hungarian National Bank, the State Clearing Chamber and the Budget Council in the provisions on public finances.

It results from the above description, that the regulations concerning the position of the Government have been placed before the norms concerning the Constitutional Court and other law enforcement bodies. Such a system seems logical, the more so that the Parliament in Art. 24 of the Constitution in its part on the State, stipulated that the Constitutional Court is the main body to safeguard the Constitution.

Article 25 is devoted to the general jurisdiction, whose highest authority is Kuria, or else the Supreme Court[13]. Despite of numerous discussions on this

[12] The sequence in the Constitution which had been in force up to 2011 was as follows: the Parliament, the President, the Constitutional Court, the Ombudsmen (at that time they were numerous), State Clearing Chamber and National Bank, Government, armed forces and the police, territorial self-government, Judiciary and Prosecutors' Offices.

[13] In this field, the legislator returned to the terminology from before 1945 – at that time this body was also called *Kúria*. More: I. Halász, *Volebné súdnictvo a nová volebná legislatíva v Maďarsku,* [In:] *Aktuálne problémy volebného a práva a volebného súdnictva v Slovenskej republike – II. ústavné dni,* eds. L. Orosz, T. Majerčák, Košice 2014, pp. 58–67.

matter, no separate Supreme Administrative Court was set up, although its tradition dated back to pre-communist Hungary. The independent constitutional position of the prosecutor's office has not changed, either. The Constitution, however, changed drastically the position of ombudsman – the office of independent ombudsman for the protection of personal data was abolished, and in its place a separate autonomous body with similar powers was created. Two ombudsmen, earlier functioning as autonomous (to protect the rights of minorities; to protect the rights of future generations) have been subordinated – despite the fact that they are directly elected by the Parliament – to the general ombudsman.

This change was probably related to the general centralizing trend, occurring after 2010, which can be noticed mainly in the regulations on local self-governments that after 1989 benefited of high-degree autonomy. In terms of local self-governments, the Constitution is much more laconic than its predecessor. The Constitution stipulates that the task of the local self-government is to handle public matters and to exercise local public authority. Previous constitutional regulations in this field were broader and more precise. Art. 42 of the Constitution after the changes of 1989 stipulated that it relates to democratic and independent handling of public matters and that local public authorities must act in the interest of citizens. Such a clarification is lacking in the current Constitution. The repealed Constitution also mentioned the right of local communities to appoint self-governments, of which the current Constitution says nothing, nor does it use the term of "fundamental rights of local self-governments," which – according to the Constitution after the changes of 1989 were to be equal. These differences have it that from the point of view of local Government, the Constitution of 2011 means a definite step backwards, without prospects for the future.

The position of the political system and the competences of the main constitutional authorities and other bodies in the country is governed, in addition to the Constitution, by Organic Laws which – unlike laws and their amendments – are adopted by a two-thirds majority of members present at the assembly. It is a legal act which, from the point of view of legal force, is placed somewhere between the Constitution and the law. Organic Acts in accordance with the Constitution are applicable only in the case of the President of the Republic, the Constitutional Court, the ombuds-

man, the Parliament, the electoral law, local Governments, the Hungarian National Bank (MNB), the Budget Council. In most cases, such laws were adopted between 2011 and 2012, and thus just after the adoption of the new Constitution.

III.

In the Hungarian political and Constitutional system, as formed in the regime transition period between 1989 and 1990, a clear dominance of Parliament can be discerned along with a really strong position of the Government, particularly the Prime Minister, responsible to the Parliament. The Prime Minister, who plays a key role in the executive power and generally in the whole political system, is elected by the Parliament by a majority of votes cast by all members of Parliament at the request of the president, and the president does not appoint them only files the request for their appointment. The president does not have the right to file in the Parliament a request to dismiss the Prime Minister. Ministers are appointed by the President at the request of the Prime Minister. The Parliament can give a vote of no-confidence to the Government only with reference to the prime minister – thus, in Hungary no-confidence vote cannot be cast to individual ministers. In addition, the request for no-confidence vote to the prime minister must also contain the indication of a candidate, who, in case the vote of no-confidence is adopted will automatically take the vacated position, so we deal with the constructive vote of no-confidence. Generally, in 1990, Hungary took over a number of German chancellor system elements, which did not change, either, in the process of creating the 2011 Constitution. On the contrary, the position of prime minister was in fact – though not formally – strengthened. A key figure in the Government is the prime minister, the cabinet collapses therewith, and the composition of the Council of Ministers cannot be changed without the decision of the prime minister[14].

The Hungarian Parliament appoints candidates to all crucial functions in the State – the President of the Republic (for 5 years), the judges of the Constitutional Court (for 12 years), the President of the Kuria (for 9 years), the

[14] A. Körösényi, *A magyar politikai rendszer,* Budapest 1998, pp. 218–219.

chairperson of the National Judicial Office (for 9 years), the General Prosecutor (for 9 years), the ombudsman and its two deputies (for 6 years). The abovementioned persons – besides the judges of the Constitutional Court – are elected by the Parliament at the request of the President who, however, has no right to appoint them. As to the President, they appoint the President and Vice President of the Hungarian National Bank and the President of the Budget Council, earlier elected by the Parliament. The President appoints persons to a function or entrusts its fulfilling also at the request of other bodies, but this is not the subject of the paper[15]. The President also appoints judges to judicial posts at the request of the Chairperson of the National Judicial Office or the President of the Kuria.

IV.

As Hungary has never been a federal state[16], the division of power between the centre and the entities of the federation has no application, on the other hand, between 1990 and 2010, a relatively intensive State decentralization took place along with a significant autonomy of local self-governments, and it is interesting that, primarily, communal self-government and not district one. In the 1990s in Hungary, important public corporation authorities also acted as so-called functional self-governments before 1998 which controlled the system of retirement schedule and health schedule. They came into being after 1990 as a result of decentralization trends when the idea of self-government and autonomy was popular. After 2010, this trend was reversed and centralizing trend was strengthened which is still in existence. At the local level, the issue of management was of crucial importance and new districts

[15] For instance at the request of the ministers responsible for education, professors are appointed or Chancellors entrusted with the management of universities etc.

[16] At this point it needs reminding that the former Hungary existed between 1867 and 1918 within dual Austro-Hungarian monarchy which acted as the Real Union with the joint ruler and three mutual ministries of defense, finances and foreign policy. Apart from that, within the then Hungary, Croatia had a large autonomy with its own Parliament (Sabor) and head (Ban). Compare: *Magyar alkotmánytörténet,* ed. B. Mezey, Budapest 1996, p. 222, A. Csizmadia, K. Kovács, L. Asztalos, *Magyar állam – és jogtörténet. Tankönyvkiadó*, Budapest 1990, pp. 378–380.

were created for this purpose which made up the lowest level of Government administration.

Currently, apart from always weakening local and territorial self-governments, directly elected national self-governments at the level of communes districts and country can be also mentioned as public self-government bodies. Thirteen nationalities have also the right – in case of unsuccessful elections to the Parliament – to delegate there their spokesmen. Although, they have no right to vote, but their position is close to that which is taken by the members of Parliament – they have the right to take chair in the Parliament on issues related to the national minorities.

Since 1st May 2004, Hungary has been the European Union Member State which has an impact on its position and potential. Most financial resources, which the State is capable of investing into its rebuilding and development, comes from the EU budget. The impact of this supra-national organization, which seems to be the largest and the most integrated community of democratic States in the world, is significant, however, with the sovereignty of the associated States being maintained. An impact of EU may be also noticed while creating the Constitution and at the process of adopting some organic laws. The authorities of EU and of other pan-European organizations, first of all of Venice Commission, acting at the Council of Europe – watched very thoroughly constitutional changes in Hungary introduced after 2010. Their interest must have had quite a few reasons, amongst which, the most important must have been the fact that besides the Constitution of Finland of 1999 the Hungarian Constitution was the only one voted by the European Union Member State. Theoretically, such a membership should not have any impact on the national process of Constitution creation, but as it turned out, in reality, such an impact – although limited – existed, however[17]. Ideological differences within EU had crucial importance along with the compromise course of the whole process of Constitution drawing up in Hungary. Most doubtful were the issues related to the regulation of media operation together with the fourth amendment to the Constitution which modified very deeply the functioning of the Judiciary in Hungary.

[17] N. Chronowski, *Az Alaptörvény a többszintű európai alkotmányosság hálójában,* [In:] *Alkotmányozás és alkotmányjogi változások Európában és Magyarországon,* eds. F. Gárdos-Orosz, Z. Szente, Budapest 2014, pp. 109–130.

In the 1990s, the Parliamentary system with elements of chancellor model was shaped in Hungary. The dominance of the Parliament in the system corresponded both to the then trends in Europe, as well as, to Hungarian public law traditions. The post transformation Hungarian model created at the time had a few specific features and strong and stable position of the Government[18] was the most distinct. Theoretically, it facilitated efficient governing, but in the case of organic laws – requiring the majority of two thirds of votes to be adopted – it gave relatively strong position to the opposition. Furthermore, the Prime Minister had no right to submit a request for the Parliament to be dissolved.

In turn, the political system was characterized by large fragmentation of political forces. Although, apparently it seemed not to be as strong as in other States of the Visehrad Group, there occurred a strong polarization of the political scene, according to specialized politological literature on mutual relationship between the law-making and executive authorities, Hungary was between two models and they were closer to dualism. There occurred a structure mainly dualistic but generally speaking, the State was for an intermediary model[19]. Thus, the gradual transfer towards the majority model, currently in force, did not start in 2010, but many years earlier.

It needs mentioning that the President of the Republic plays an insignificant role as the executive authority in Hungary. Generally speaking, they have much fewer powers than the Presidents of other States (at least within the Visehrad Group), as well as nearly all presidents of the neighbouring countries. Thus, in practice, they have a very insignificant influence on the works of the executive authorities.

We have mentioned earlier the tasks and positions of the Parliament, the Government and the president within the Hungarian Constitutional system. Hungary is also characterized by the lacking balance between individual authorities which results primarily from the dominating position of the Parlia-

[18] In the period after the transformation the Hungarian opposition did not succeed in causing the collapse of the then Government or any change of the Government – it happened only within movements inside government coalition as a consequence of death or renouncement of the Prime Minister.

[19] A. Körösényi, *A magyar politikai* op.cit., p. 368.

ment which the President cannot compensate or balance. The latter obtains their power in consequence of election by the Parliament.

If a party which creates the Government or coalition has a decisive majority in the Parliament and can discipline its members of Parliament then, the Prime Minister and their Government rules the entirety of matters in the State through the intermediary of the Parliament.

Although all judges of the Constitutional Court are still elected by the Parliament without a cooperation of the remaining Constitutional authorities, but in 1990s the only real counterweight for the strong Parliament was the Constitutional Court. The authority which came into being in 1989 and started its works in the following year operated very actively, mainly in the first ten years of the Hungarian transformation, whereby in the later period it also maintained its strength and prestige[20].

After 2010, a gradual process of weakening the position of the Constitutional Court was initiated. First, it lost its competence in financial and budget matters, and then, the principles for the election of judges were changed. Earlier, a special Parliamentary group suggested candidates for Constitutional Court judges, and according to the parity established, the Government and opposition were represented. After the Constitutional changes, the composition of the group is not made according to the parity, but each fraction is represented in proportion to its political force. As a result since 2010, the Government coalition – which up to 2015 had had also Constitutional majority – need not seek a consensus or at least agreement with the opposition on distribution of places in the Constitutional Court. Besides, the judges receive their mandate for 12 years without any right to reelect them. Before the Constitutional changes, the president of the Constitutional Court was elected by judges from amongst them, currently they are elected by the Parliament. The adoption of the new Constitution and the Law on the competences of the Constitutional Court meant a further narrowing this authority. As an instance, we can indicate the abolition of the right to use generally available *actio popularis* and constitutional complaints became the main object of interest of the Court.

[20] More on its functioning compare: I. Halász, *Maďarský ústavný súd a jeho metamorfózy po roku 1989,* "Právník" 2015, No. 7, pp. 560–570.

V.

The executive power in Hungary is formally and actually in the hands of the Government. After 2010, the number of ministries was reduced, currently, there are eight ministries in the State, some of which have the nature of the so-called superministries. The Cabinet of the Prime Minister is also incorporated into the Government whose head has had the function of a minister since 2014. Large ministries mostly integrate few classical ministries – for instance the competence of the ministry of human resources incorporates education, culture, social matters, sports, etc. Individual Government departments are ruled by secretaries of State, who have also deputies. Never before have there been in Hungary so few ministries compared to the high number of secretaries of States as today. Ministries and secretaries of State may be members of Parliament, but there is no such requirement.

VI.

The lawmaking authority and system-making authority in Hungary belongs to the competence of Parliament which is traditionally named the National Assembly. Since 2014, following the new legal provisions, Hungarian Parliament has had 199 members[21], which compared to the former number of members of Parliament (i.e. 386) makes up a significant reduction. Furthermore, in the Parliament, 13 representatives of national minorities have the right to sit, although without the right to vote. The National Assembly has the right to dissolve itself and in two cases it may be dissolved by the President of the Republic[22]. In both cases, the President must at the same time call new elections whereby, before their calling the President is obliged to get the opinion of the Prime Minister, the Chairperson of the Parliament and chairpersons of the individual political fractions, however, this opinion is not binding thereto.

[21] 106 deputies are elected to the Parliament in one round in single mandate constituencies on a majority principle. There are also 93 deputies elected from party lists of candidates who are elected by proportional system voting.

[22] This may take place when the Parliament has not elected the candidate suggested within 40 days from the request being submitted and when the Parliament is not capable to approve the state budget for the year up to 31st March of a given budget year.

In Hungary, the President has the right of the law-making initiative along with the Government, a Parliamentary group or individual Members of Parliament whereby, it refers also to the request for the adoption of a New Constitution or its amendment.

VII.

The manner of appointing the Constitutional Court has been mentioned earlier. Currently, it counts 15 members who are selected by the National Assembly for 12 years at the request of a special parliamentary group by the majority of two-thirds of votes of all Members of Parliament. Hungarian Constitutional Court had large competences from the moment of its creation which since 2010 have been partially limited. For instance, the abstractive control of norms may be initiated exclusively by the Government, one fourth of the Members of Parliament, the chairperson of the Kúria, General Prosecutor or Ombudsman. The *actio popularis* which existed earlier was cancelled. Nationals or other entities can address the Court with the request to review given norms within the constitutional complaint, however, they must prove their factual interest or justify in another way the engagement in a given matter. The Constitutional Court has also the right of cassation i.e. may quash a legal norm contradictory to the Constitution.

The judicial system in Hungary is composed of district courts, administrative courts and labour courts (in the first instance), general courts, regional appeal courts. The highest judicial authority is Kúria. The judges are appointed by the President of the Republic, whereby a person who, apart from fulfilment of other requirements, is 30 years old – may become a judge. The first appointment takes place for 3 year period, the subsequent ones for an indefinite period of time. The competition proceedings related to judge positions are drawn up pursuant to the Law No. CLXII of 2011 on the position and remuneration terms for judges by the chairperson of the National Judicial Office or by the Chairperson of the Kúria, when speaking of the judges. In both cases, the recruitment commission of a given court draws up a list of given candidates, whereby the Chairpersons have the right to change the sequence of candidates on a given list, which in turn, requires the consent of the National Judicial Office.

At this point, it needs underlining, that as a result of adopting a new Constitution, the system of management of the judiciary went through the largest change, besides the terminology. After 2011, the all-State Council of the Judiciary which safeguard the self-governments ceased to exist and the earlier mentioned National Office of Judicial System was appointed, whose task was to manage the administration of the system of justice through the intermediary of the chairperson. This process is supervised by the National Judicial Council composed of the chairperson (who is *ex officio* the President of Kuria) and 14 elected judges. The Parliament, at the request of the President of the Republic, elects the Chairperson of the National Office of Judicial System – similarly as in the case of Kuria, by a majority of two-thirds of all votes for a period of nine years. It is a relatively long mandate as it covers over two tenures of office of the National Assembly. The Chairperson of the Office in the case of the first appointment indicates to the judges the place of their work and has the right to decide on their shifting, being guided by the necessity to equalize the burden of work between individual courts. Pursuant to the fourth amendment to the Constitution, the head of the office had also the right to transfer cases to other competent courts, but the Parliament repealed this right among other things, under the impact of pressure of international and European authorities – in the fifth amendment to the Constitution. The post of the Chairperson of the National Office of Judicial System has thus large significance in the realities of Hungarian Judiciary.

Despite of the fact, that this issue has been considered many times – up till now – after 2011, no separated Supreme Administrative Court has been created. The Administrative Judiciary of first instance, related to the Labour Court, functions at the level of district. The appellate court is in this case the General Court with no separate administrative judiciary but a special administrative colleges for a given case. It appears similar in the case of Kuria, where three person self-government adjudicating panel acts which reviews the decisions issued by the self Government. This process is similar to the control of the Constitutionality, of legal norms being in conformance, which is performed by the Constitutional Court. To end this issue, it needs adding that in Hungary, even during recent Constitutional changes, the subordination of the Prosecutor's Office and to the Government was not decided and the Prosecutor General functions as an independent authority representing public

prosecution in penal cases. The Prosecutor General is elected for 9 years and the election takes place from amongst prosecutors by the National Assembly by a majority of two-thirds of votes.

VIII.

The highest Supervising Office in Hungary is the Highest Clearing Chamber. The Constitution defines it as a financial and economic authority of the Parliament as it supervises the implementation of the central budget adopted by the Parliament, the entire management in the State, trading in the national property and the use of resources coming into the state budget. The operation of the Chamber consists in controlling the legality, efficiency and purposefulness of administrative operations and it informs the Parliament about the outcomes in annual reports. The Chairperson of the Chamber is elected by the Parliament by a majority of two thirds of votes for a period of 12 years.

A relatively new authority shall be also mentioned. As a result of the recent Constitutional change and the global economic and financial crisis, it gained a completely new importance. The Budget Council, in its original form, was created in 2008[23]. It was appointed as a consultation body which could issue opinions which were not binding for the National Assembly. The situation has radically changed after the new Constitution was voted which in the part related to the public finances introduced the notion of State indebtedness threshold. In the light of subparagraph 4 of Article 36, the Parliament must not approve such a Budget Bill which in its outcome would cause the State indebtedness to exceed one half of the whole national product. As long as the value of the indebtedness exceeds the mentioned border, only such Budget Bill which intends to reduce the indebtedness may be voted.

Fulfilling of these provisions is to be guaranteed by the Budget Council, equipped in new rights which is defined by the 2011 Constitution as an authority to support the lawmaking activity of the Parliament and to control the legitimacy of the central budget. Currently, it has at its disposal the right of veto – or speaking more precisely – an initial consent in the process of adopt-

[23] Compare the law No. LXXV of 2008 on thrifty national economy and budget responsibility.

ing Budget Bill. These issues have a crucial importance for the functioning of the political system and, according to some Constitution experts, this possibility is controversial as if no budget is approved by 31st March of the budget year, the President of the Republic may dissolve the Parliament. Thus, the Budget Council may have an important impact on the exercising of the people's sovereignty principle. This authority in the current shape has been functioning pursuant to the Constitution and law No. CXCIV of 2011 on the economic stability of Hungary. It is composed of the chairperson appointed for 6 years by the President of the Republic and chairpersons of the Hungarian National Bank and the Highest Clearance Chamber.

IX.

The Hungarian National Bank (MNB) is the central bank of the State, responsible for the monetary policy and supervising the whole financial system. That is why the State financial supervision over banks and other financial entities has been integrated with the structure of MNB. The President and Vice President of MNB are appointed by the President of the Republic for 6 years. The President is obliged to file in the Parliament the annual report. The request for appointing together with candidates for the President and Vice Presidents of the central bank is transferred by the Prime Minister to the President. The function of the President or Vice President of MNB may be fulfilled at a maximum of two tenures of office.

X.

To sum up, it needs claiming, that adopting the new Constitution did not mean a formal change of the State regime. No semi-presidential system was produced, which was suggested by the critics, while working on the new Constitution, but on principle, the hitherto division of powers in the State was maintained. The most important change was probably the strengthening of the position of the Budget Council. The regime position of crucial Constitutional authorities was not changed. Before 2011, the strongest counterweight

for the Government – which however, had the support of the Parliament majority – was the strong Constitutional Court. It was partially, but not excessively weakened and modified by its personal composition. The fact of limiting a few competences of a very strong Constitutional Court would not mean a breach in the balance of the Constitutional regime, if we omitted the fact, that it had been until then, the only counterweight for the Parliament. By the same, we can assume that this change together with other partial regime modifications – explicitly interfered into the system of division of powers in the negative sense. Paradoxically, this happened, when in the Constitution – otherwise than before 2010 – the principle of division of powers was openly declared[24].

Within the judiciary, the most important change was the creation of the National Judicial Office equipped with crucial competences. The autonomy of local self-governments was significantly narrowed and the State administration strengthened. The mutual relations between the Parliament, the Government and the President did not change in an important manner, but we may presume, that the trend of strengthening the position of the Prime Minister is still being continued, among other things, by the introduction of the constructive non-confidence vote and the prevailing position of the Government. The ministers are closely related to the Government as their fate is, first of all, in the hands of the Government and not the Parliament. Besides, as András Szalai claimed, after 2010, the phenomenon of actual although not formal gradual Parliament transfer under the control of the Government can be noticed[25].

The largest changes from the point of view of power philosophy took place in the period from 1990 to 2011. According to a well known Hungarian political scientist András Körösényi, who claimed that already in 2006 tiny changes were transformed into a trend. As the matter of fact, these changes were not direct but they always indicated their direction: the aspect of power division was gradually losing its impetus and the aspects of active management[26]

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[24] A. Szalai, *A hatalommegosztás átalakulása 2010 után,* [In:] *Alkotmányozás és alkotmányjogi változások Európában és Magyarországon*, eds. F. Gárdos-Orosz, Z. Szente, Budapest 2014, p. 281.

[25] A. Szalai, *A hatalommegosztás,* op.cit., p. 267.

[26] A. Körösényi, *Mozgékony patthelyzet,* [In:] Túlterhelt demokrácia. *Alkotmányos és demokratikus alapszerkezetünk,* Budapest 2006, p. 20.

were at the top as the most important, which in the political practice meant a strengthening of the Government to the detriment of the Parliament.

It is evident, that the changes which took place are also related to changes within the party system and the management of political parties. They became more professional but, at the same time, more centralized and strong leaders appeared at their head. The trend which was initiated on the turn of millennia and ended after 2010 is called by the political science the process of policy presidentialization, however within the Constitutional law in Hungary, this notion shall not be treated verbally, but as a metaphor or possibly analogy.

According to Körösényi, already cited, presidentialization means a change in the accented power systems and in the style of policy or a change in the logic of competition in the political scene. Changes took part in three spheres. First, the executive power was strengthened together with the position of the Prime Minister. The process of slow increase in the importance of Prime Minister was started gradually and the Prime Minister got separated from its party background which guarantees them the Parliamentary majority. The so called party power is gradually replaced by the power of the Prime Minister who to a lesser and lesser degree is a prisoner of the party oligarchy. The third change is the personalization and Americanization of the political scene competition[27].

The changes mentioned were initiated on the turn of millennia and they were, first of all, in the political plane, not in the constitutional legal plane, which does not reduce their importance. The election success of the coalition of FIDESZ parties and Christian Democrats by a majority of two thirds in 2010 when the winners were given the chance to introduce the Constitutional changes according to a model accepted thereby, only strengthened and made more real this trend. In the Government appointed since that time, there are fewer and fewer party activists and the experts start to prevail, mainly related directly to the Prime Minister. The communication got much more significance in the policy which is more personalized than in the past. The natural position of the Prime Minister – who at the same time is the President of the strongest party – is supported not only by his fraction in the Parliament but also by the exceptional discipline in this fraction whose maintenance has

[27] Ibidem, s. 26–27.

a key significance for the functioning of the current system. This means that as far as the successful party under the leadership of the Prime Minister has the support of the majority of the Parliament and the Prime Minister within his camp can keep up effective discipline, in the current power exercise system being in force a strong politician has no need to introduce a semi-presidential system nor any other which would formally strengthen the executive power.

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