Checks and Balances?
2010 - The Year of Power Concentration
by Gergely Bárándy, JD.

After they gained a ⅔ electoral majority, today's governing parties truly held themselves to the words of the Prime Minister uttered during his campaign: "Small victory small changes, big victory big changes". Almost immediately after his inauguration, the Prime Minister declared that the voting booth revolution authorized the majority to draft a new constitution. Nearly simultaneously, he asked a seven member committee to work out the constitution's guiding principles. At that time, no questions were answered about the legal status of this body, and what its area of involvement and operational structure will be like. Once the announcement was made, people started second-guessing. What kind of changes were in the plans? Most in the media spoke of power concentration, more specifically, the establishment of an Eastern style presidential form of government while they also voiced their fears about the employment of an overly prominent or entirely too dominant Christian conservative value system.

The National Assembly voted on setting up the Constitutional Preparatory Select Committee on June 28, 2010. The committee held its constitutive session on July 20. Thus, the official constitutional process began. The Preparatory Commission approved the "Principles of Regulation of the Hungarian Constitution" on December 20, 2010, and proceeded to present it to the National Assembly[1]. The body began the debate over the document in February. However, on Fidesz's request and contrary to initial plans, the concept turned out to be not a description of constitutional principles, but a piece serving undefinable functions; a secondary material simply applicable for facilitation of constitutional legislation. Going against original intentions and the governing laws at the time, the government failed to propose a normative text. They asked the National Assembly's groups of representatives to do this, and to do so by a March 15 deadline. Due to partly similar and partly different reasons, a single opposition group has yet to comply with this request. According to announcements, Fidesz's plan for a constitution was worked out by three politicians, and according to the news, the preamble (the "National Creed") was written by the Prime Minister's PR team. Beside the fact that even based on principle it is impossible to agree with this solution, because the job of the politicians was to outline the principles and not to codify them, the alteration sheds light on an obvious political motive. According to these plans, by mashing competing sample texts it would have been possible to declare the birth of a consensual constitution, because even after abandoning opposition concerns the parts on which all parties agreed upon could have been added from their proposals. For example, the right to life and human dignity could have been one of the passages adopted from an opposition party's proposal. By current notions, the self-mandated constitutional national assembly will accept Hungary's new Constitution on April 18.

Creating a new constitution could have presented an opportunity for the National Assembly to make a decision, after broad social and professional debates, regarding Hungary's new

[1] National Assembly Proposal H/2057

common law configuration. But we must recognize that the codification affecting concrete positions of power happened parallel and not within the framework of the process of constitutionalization. Thus it is my purpose to shed light on how, besides this publicly and professionally relatively visible procedure of drafting a constitution, lawmaking and the practices of appointment often enabled through it have changed the Hungarian system of checks and balances via nine constitutional amendments. To put it differently, I wish to examine the tools the government used to concentrate its power during its base law drafting operations, well before the new Constitution could take effect.

The simplest, but undoubtedly most powerful method of power concentration for the executive is the reduction of the numbers or jurisdiction of other branches of power, government-monitoring organizations and independent constitutional authorities, or placing persons at the top of these institutions whose loyalty to the government is unquestionable, but at the very least plausible. If the latter option is not possible, the executive makes it so via legislation. Though in the cases of the Constitutional Court and the Fiscal Council we have seen precedents for this as well, abolishing or marginalizing independent branches of power is a fairly difficult endeavor in the case of an European Union member state. This member status proved to be a fortunate substitute for self-control on several occasions in Europe. However, with a two thirds parliamentary majority, the government has ample opportunity to appoint loyal leaders. Part of this technique, perhaps undisputed by all, is the marginalization of the promoted, reliable leader's operational control, and the widening of his or her sphere of interest, especially with regards to human resource decisions. The loyalty of an institution can be stabilized by staffing it adequately, all the while placing the leader's executive status on an even firmer base. At the same time it makes the faithful leader's job easier if the legal constraints on laying off the employees of a controlled organization are removed. These instruments are usually paired with techniques which can hardly be qualified as legal, but are difficult to detect. The analysis of these would go beyond the scope of this article. All of these statements are ones which should not deserve to be a part of a work intended as professional. But as a reminder, they are not useless to mention because the said legislative products, may those be constitutional or simpler law-related modifications, can be traced back to this very line of thinking. In addition, we can identify one more practice. The governing parties take - I could say handpick - parts of certain European countries' public law solutions, ones which best suits their needs in the current political situation, and they channel these into the Hungarian constitution. To use a metaphor, they promote a pawn on the chessboard to whatever other piece they would prefer under the given circumstances. When they have to defend themselves in the face of criticism, they respond by stating the measures employed were modeled after ones used in several European countries. We could witness this, for example, during the restructuring of the National Electoral Committee (OVB), or the Monetary Council of the Hungarian National Bank.

The purpose of this essay is not the complete analysis of the mentioned legislative proposals. This is not simply so because the title and topic of this study refers to something else. In a complete analysis the point would be lost, and I could not achieve my goal. In the last three quarters of a year, it could be understood as a conscious - and quite frankly professional - tech-

nique of the introducers (or in many cases, of the government behind the introducers) of proposals to hide the aim of their legislative suggestions. On several occasions, even seasoned lawmaking experts were not able to instantly put the big picture together from the numerous mosaics of laws and bylaws which were accepted at different times often in different legal fields. There are many examples to illustrate this, and I would mention one preliminarily: The removal of the Fiscal Council president before the expiration of his mandate was made possible by the acceptance of a pre-final vote amendment proposal to a healthcare bill.

To simultaneously express and support my opinion, utilizing the National Assembly's debates, I simply gathered and organized the legislative proposals which altered or brought up the notion of checks and balances. I did this in a manner which places the initiatives dealing with the same areas besides one another. Even though I myself was an active participant of these discussions, it is quite possible there will be elements which escaped my attention, though they would have been useful to include. With that said, I am certain this compilation will justify my conclusions.

The Politics of Human Resources and Executive Appointments

1. The Legal Status of Government Officials

It is only natural that every government tries to appoint leaders who share its system of values. The matter in question is the degree and form of this initiative. After the elections, one of the new majority's first measures was the introduction of a bill dealing with the legal status of government officers.[2] For the purposes of this discussion, the most important aspect of the proposal which since became a law, was that those civil servants, who were now to be transformed into government officials, could be laid off without justification following a two month suspension period.[3] The proposal was an independent initiative by a representative, so its introduction was not preceded by any consultation with advocacy groups. Despite this, many of them criticized the planned legislation during the long, six day Parliament debate.[4] The legislative amendment was made possible by a constitutional amendment, which was also introduced independently by MPs (the same representatives, the designated ministers of public affairs and justice, and two of their soon-to-be secretaries) who were responsible for the very bill concerning the legal status of government officials. According to this, "the legal status and payment of persons employed by organizations under the ministries and the government are subject to a sepa-

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[2] Legislative Proposal T/45

[3] 2010 LVIII. law 7th-10th § regarding the legal status of government officials

[4] e.g. see statements by Judit Bárdos SYG (Union of Domestic and Law Enforcement Workers), József Fehér SYG (Union of Hungarian Public Officers, Civil Servants and Civil Employees) and Géza Agg president (Alliance of Civil Service Unions): the minutes of the Committee on Employment and Work of the National Assembly: May 26, 2010. Also József Fehér SYG.'s (Union of Hungarian Public Officers, Civil Servants and Civil Employees) statement: the minutes of the Committee on Employment and Work of the National Assembly June 21, 2010 (as part of procedure due to presidential veto)

rate law."[5] There were no discussions on this amendment proposal during the parliamentary debate. There were two reasons for this. On one hand, little was visible of the plans with regards to content. On the other, the National Assembly negotiated it along with the legislative proposals about a 200 member Parliament, the listing of the ministries, the central public sector bodies, and the legal status of the government's members and secretaries of state.[6]

The amendment justifies the alteration of the previous, more worker-friendly law on the legal standing of government officials in three points. Firstly, it mentions the country's unfavorable economic situation which mandates the "creation of more flexible and efficient conditions for employment - especially with regards to the discontinuation of their legal status". Secondly, according to the proposer, "there is no constitutional, expedient, or ethical basis for offering special protection - especially from the state - to civil servants vis-a-vis other employees and for them to become de facto impossible to acquit while attending matters of the state. In fact, the current level of high protection is partially responsible for the ineffectiveness and unpopularity of the Hungarian public sector." Finally, and stemming from this, is the "fair solution, that the state - in this admittedly constitutionally stronger position - shall be empowered with the right, to discontinue the legal status the same way the government official could: without notice and with a two month suspension period". However, besides this very mention, the proposer does not provide a reason for the abandonment of the state's responsibility to justify relieving someone from his or her duties. Furthermore, this is not referred to neither in the general, nor in the detailed justification.[7] Besides the explanation provided in the legislative plan's appendix, the representative from the party proposing the bill and addressing the Parliament's plenary session did not offer further information on the subject.[8] On the other hand, he did manage to cast doubts over the careers of civil servants and government officials with the following statement: "However, on its own, to suppose that there are people who have dedicated their lives to public service, is not a realistic assessment."[9] I would like to note, that besides its absurdity, it is worthwhile to compare this sentence with a statement made not even five months later by the same ministry's other secretary of state: "It is true that we are also planning the introduction of the government official's career model."[10] Politicians of the government party mainly voiced their opinions in the debates of one of the committees, where their purpose was to highlight the two thirds majority's authority and also to point out, while citing their own local government experiences, that it is desirable for

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[5] 1949 XX. Law 40. § paragraph (3) from the Constitution of the Hungarian Republic, as well as Legislative Proposal T/9

[6] Legislative Proposals T/9, T11, T17, also minutes of the plenary session of the National Assembly: May 5, 2010 (2nd day of session) statements 1-95

[7] see justification of legislative proposal T/45

[8] statement by Róbert Répássy (Fidesz): minutes of the plenary session of the National Assembly: May 25, 2010 (6th day of session) statement 43

[9] statement by Róbert Répássy (Fidesz): minutes of the Committee on Constitution, Justice, and Orders of Business of the National Assembly: May 26, 2010

[10] statement by Erika Szabó, secretary of state: minutes of the plenary session of the National Assembly: October 12, 2010 (34th day of session) statement 64

the government to receive the right to restructure the public sector. They assured the attendees that the government would certainly not abuse this privilege.[11]

During the debate, in addition to questioning the proposal's fairness, the opposition parties raised two concerns about the study. First, - and perhaps this was pointed out by all opposition politicians without exception - that the plan's real raison d'être was not included in the document itself, because the law was meant as a tool for the government to remove unfavorable public servants who might be "disloyal" to the current administration immediately and without much burden to the nation's budget. Secondly, the opposition representatives debated the constitutionality and international legal compatibility of the proposal.[12] The representatives referred to a violation of the Constitution's 70/A §, as well as of the 57th §. They also raised the point that the suspension of the state's duty of justification is not in accordance with Article 30 of the Charter of Fundamental Rights of the European Union[13] and Article 24 subsection "A" of the European Council's European Social Charter.[14] One of the opposition parties' speakers ended his remarks about the regulation regarding the layoffs by stating, "this is the very manifestation of nepotism".[15]

The law, approved on June 8, 2010, was sent back to the National Assembly by the President - then László Sólyom - for reconsideration. The President shared the opinion, that the law violated the 30th article of the Charter of Fundamental Rights of the European Union. He added that the section of the law referring to the discontinuation of employment is not consistent with article 6 paragraph 1 of the treaty concerning the European Union, which declares that the Charter yields the same legal power as the establishing treaties. He highlighted that he disagrees with the law also because it provides "less protection for government officials than the Employment Code offers to other employees", removes a legal relationship from the world of employment, completely neglects a systematic point of view, and ignores the special aspects of public service legislation. Here, I would like to note that this point also came up in the parliamentary debate.[16]

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[11] e.g. see: statements by Ernő Kovács (Fidesz), Szabolcs Czira (Fidesz), László Karakó (Fidesz): minutes of the Committee on Employment and Work of the National Assembly: May 25, 2010

[12] e. g. see: Proposal Amendments T45/7, T45/8, T45/12, T45/14, Pre-Final Vote Amendment Proposal T/24, also statement by Nándor Gúr (MSZP) (Statement 49), statement by Mónika Lamperth (MSZP) (Statement 53), statement by Gábor Staudt (Jobbik) (Statement 57), Péter Szilágyi (LMP) (Statement 59): minutes of the plenary session of the National Assembly, May 25, 2010 (6th day of session), statement by Mónika Lamperth (MSZP): minutes of the Committee on Constitution, Justice, and Orders of Business of the National Assembly: May 25, 2010, statement by Nándor Gúr (MSZP): minutes of Committee on Employment and Work of the National Assembly: May 25, 2010.

[13] "Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices." http://www.europarl.europa.eu/charter/pdf/text_en.pdf

[14] "The Parties recognize the workers' right to not have their employment status terminated without factual reasons…" 2009 law VI. regarding the announcement of the Modified European Social Charter

[15] statement by Gábor Staudt (Jobbik): minutes of the plenary session of the National Assembly: May 25, 2010 (6th day of session) Statement 57

[16] statement by Nándor Gúr (MSZP): minutes of the plenary session of the National Assembly: May 25, 2010 (6th day of session) Statement 73

Another comment relating to the part of the legislation on the possibility of unjustified suspension: "In this manner, political neutrality and the possibility of professional and legal objections to political motivations is endangered."[17] Again, I would mention that this concern was voiced more aggressively by an opposition politician during the parliamentary debate: "they want party servants without their professional criticism, not public servants who are loyal to the state".[18] During the debate repeated due to the presidential veto - in which the opposition basically revamped their previous concerns[19] - the National Assembly accepted the decree of unjustified, two month suspensions unaltered. The conflict was resolved by the Constitutional Court, which unanimously declared the legislation to be unconstitutional, and ordered it to be abandoned by May 31.[20] However, the government's intention was not hindered, because the approximately one year between the acceptance and abolishment of the law provided plenty of opportunities to facilitate the desired personnel changes.

Besides the above mentioned problems, it is worthwhile to mention that according to some new legal provisions, important human resources decisions at all important public affairs bodies require the signature of the Ministry of Public Affairs and Justice's secretary of state.[21] Without the approval of the secretary of state of the ministry led by the minister responsible for the quality of public affairs politics and personnel politics, not a single deputy secretary of state, ministry department leader, head of department or central office head can be appointed or paid. And this, even according to the legislation proposal, is ordered without any sort of professional reasoning, in fact, there is no substantive reasoning presented whatsoever.[22] Of course, it would be difficult to believe, that this person is more qualified in matters ranging from sewage management, through agricultural questions, to international private law than the direct superior who wishes to make the appointment in the first place. However, he or she can surely judge the loyalty of the person to be appointed. Anyone who knows the person fulfilling this office, may probably agree.

From this we can infer several things, but we must focus on two facts. The first, is that the law, while it did not ease the duties of government officials - their right to strike or their financial and disciplinary responsibilities -, it made layoffs much simpler to execute, and it gave basically unlimited freedom in human resource decisions to the government through government leaders. The government workers who were able to keep or acquire their jobs were placed in a

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[17] Document T/45/28, according to KEH inventory: II-1/01948-4/2010

[18] statement by Monika Lamperth (MSZP): minutes of the plenary session of the National Assembly: May 25, 2010 (6th day of session) Statement 73

[19] minutes of the plenary session of the National Assembly: June 21, 2010 (16th day of session) Statements 210-220

[20] Constitutional Court Resolution ABH 1068/B/2010

[21] 2010 XLIII. law regarding the central bodies of state affairs, and the members of Government and the legal statuses of secretaries of state 67th §, 73rd §, and 2010 LVIII. law regarding the legal status of government officials 47. §.

[22] see justifications of proposals T/17 and T/45

considerably more dependent position. The other, is the practice of dismissing great numbers of newly-made government officials who worked under the previous administration shortly after the law took effect.[23] Finally, to facilitate the selection of loyal successors, the practice of selecting the heads of central public affairs institutions through a process of application was abandoned.[24]

2. Taylor-Made Legislation

Over the past year, personally tailored legislation was surely visible on four instances. This is a very destructive process on its own, but with regards to our discussion it validates that if an appointment or promotion initiated by the head of the government should run into any obstacles, it can be systematically observed, that these can be removed by legislative tools. This was obvious in the case of two politicians. In the third person's case the decision demonstrates it is worthwhile to remain a loyal leader. In the fourth's, they ensured that the person will be able to keep his other position.

a) Zsolt Borkai, a National Assembly representative from Fidesz, is the mayor of Győr, a city which enjoys the same rights as a county. Barely three months before the municipal elections, the leader of Fidesz's parliamentary group and the president of the National Assembly's Committee on National Defense and Police proposed an amendment to the Hungarian Constitution which would outlaw the members of the uniformed services to run for public office during their service and five years after the termination of it.[25] Many believed this was introduced to eradicate the possibility of competition for a significant amount of members of the radical right wing party.[26] The National Assembly's Committee on National Defense and Police discussed the legislative proposal on July 12.[27] During this session, after receiving an answer to one of his inquiries, Zsolt Borkai realized the matter affects him as well asked the committee's chair for a break, and he agreed wholeheartedly. After a brief consultation with his fellow party members, the representative left the room. After the pause, the chair, who was one of the persons introducing the bill and arguing for it, called for objectivity. The committee's members decided the matter was fit for a general debate, and at the same time, they handed in an amendment which re-

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[23] e,g, see: http://www.origo.hu/itthon/20110215-alkotmanybirosag-alkotmanyellenes-a-kormanytisztviselok-indoklas-nelkuli-kirugasa.html this internet forum mentions nearly 800 people

[24] in the case of civil servants: see legislative proposal T/17, after announcement: 2010 XLIII. law regarding the central bodies of state affairs, and the members of Government and the legal statuses of secretaries of state. The law's 78th § modified the 10th § of the 1992 XXIII. law regarding the legal status of civil servants. In the case of government officials, this responsibility was not included in the 2010 LVIII. law regarding the legal status of government official.

[25] legislative proposal T/649

[26] e.g. see: statement by Andras Schiffer: minutes of the plenary session of the National Assembly: July 13, 2010 (15th day of session) Statement 181

[27] minutes of the National Assembly's Committee on National Defense and Police: July 12, 2010

duced the five year limit to three.[28] This was discussed by the committee not even 24 hours later.[29] This new version did not influence Zsolt Borkai's candidacy. It is interesting to note, that the explanations for the two initiatives were identical besides the altered time constraint. To conclude, I would like to note that after Pál Schmitt was elected to be the Republic's President, Zsolt Borkai took his seat as the Hungarian Olympic Committee's president.

b) The Prime Minister wanted to promote György Szapáry, the Prime Minister's senior economic advisor, who while in opposition provided considerable help to him as the vice president of the Hungarian National Bank, to the post of ambassador to the United States. The only problem was that Mr. Szapáry was 72 years old, and the law about the legal status of a government officials caps off their age limit at 70.[30] This time, the solution was thought up by the Christian democratic Imre Vejkey, who offered a new passage in his amendment to the law saying: " With regards to the legal status of government officials, the law's 15th § point e) should be applied with the modification that the age limit mentioned there could be waived by the Prime Minister, if the government official's appointment relates to leading a group of foreign service representatives."[31] Naturally, the government supported the proposal. In the course of the debates during the plenary session, every opposition party pointed out that the sole purpose of the amendment was to legitimize Szapáry's promotion. The representative from the governing parties and the secretary of state, of course, voiced general justifications.[32] During the committee discussions, I inquired, also testing the professional integrity of the deputy secretary of state, if the modification could be seen as a "comprehensive, principle-related alteration which is not meant for György Szapáry's promotion, but as one which has other governmental considerations". He circumvented a specific answer, saying "the change is comparable to international practice, and is in accordance with it, other nations provide frequent precedents for similar cases."[33] Besides the above mentioned facts, what also weakens the government position's integrity is that the law regarding government officials and the constitutional amendment proposal which made it possible - incidentally up for amendment before Szapáry's appointment - was introduced a few months before as an independent proposal by a representative (the then designated minister of domestic affairs and justice) and accepted by the National Assembly six days later.[34] How come the matter did not come up then?

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[28] legislative proposal T/676

[29] minutes of the National Assembly's Committee on National Defense and Police: July 13, 2010

[30] 2010 LVIII. law

[31] legislative proposal T/1731

[32] minutes of the plenary session of the National Assembly: November 22, 2010 (50th day of session) Statements 194-204

[33] minutes of the Committee on Constitution, Justice, and Orders of Business of the National Assembly: November 24, 2010

[34] legislative proposals T/9 and T/45

c) Károly Szász was the head of the State Authority on Financial Institutions (PSZAF) during the first Orbán administration, and he is fulfilling that same position once again. As a result of the large body of legislative work related to the controversial severance payments of government officials (which they ensured would only be retroactive after the first Orbán government's mandate expired), it came to light that Károly Szász, because of a dragged out judicial procedure concerning his payment would also be negatively affected by the law. [35] So, the PSZAF's ex-president would also have to return 98% of his nearly 100 million forint severance check. However, the problem was solved by Fidesz's representative group's leader. He introduced a proposal, according to which the payments after January 1, 2005 would retain their taxed status, but - and this is the amendment - not including "the sums declared in judicial resolutions which deem a discontinuation of the legal status prior to January 1, 2005 unlawful…"[36] One cannot find a single supporting claim for this in the proposal's justification, let that be substantive or one explaining the kind of legal incoherence this is meant to avoid. After lengthy research, I could not find another government official besides Károly Szász who was affected by the decree.

d) The majority wished to elect András Koltay - the governing parties' previously successful delegate to the Advisory Board of the Hungarian Television Foundation's executive body - to the newly established Media Council. Koltay is the editor of a college newspaper. Though rules concerning conflicts of interest still state that the Council cannot include persons who are " senior officials, members of the executive bodies, or members of oversight committees of news or media outlets, program distribution units, advertising agencies, entrepreneurial organizations for media product distribution and/or publishing",[37] the legislator calmly settled the conflict when it was recorded, that the "membership in the Media Council does not create a conflict of interest in the case of establishing employment or other legal relationship with the publisher or founder of a media product created to publish academic activities and academic results, or for the purposes of education". Thus, András Koltay can still operate as the paper's editor while surely ensuring its lawful operation. And it is necessary to note, that the conflict of interest amendment's codifier was none other than András Koltay himself, or at least, he was the visible author of the document sent to representative Gergely Karácsony via email.[38]

It has come up in numerous cases, that some financial legislations include clauses for exception because of businesses related to the governing parties' sphere of interest (e.g. the ex-finance minister's - who is also the current president of the Hungarian National Bank's Council for Oversight and Expenditure - insurance company, or a largely Hungarian owned grocery store chain). These accusations, however, are very difficult to prove, so I will not discuss them in this study.

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[35] pre-final vote legislative proposal T/1447/23

[36] 2010 CLXXXV Law 118th § paragraph (1) point d.), and 127th §

[37] 2010 CLXXXV Law 118th § paragraph (1) point d.), and 127th §

[38] statement by Gergely Karacsony (LMP): minutes of the plenary session of the National Assembly: December 1, 2010 (56th day of session) Statement 18

3. Promotions and the Practice of Appointing Officials

It is certainly worthwhile, by noting a few outstanding examples, to direct our attention to those who obtained positions in independent constitutional and oversight bodies after the present government took office. The current President of the Hungarian Republic and the president of the State Audit Office were lifted directly form Fidesz's parliamentary members. The state prosecutor is the same one from the first Orbán administration. His neutrality was questioned by many even then, because previously he was a candidate for parliamentary representative of the current larger governing party. The media authority's president was not simply a candidate, but an actual representative. Of the two newly elected constitutional judges, one was the chancellor minister to the current head of government. The elected president of the Independent Police Complaint Institution was the onetime deputy secretary of state for domestic affairs. The Hungarian National Bank's Oversight Committee's president - a few months later, simultaneously the president of the freshly transformed Budget Council - became minister of finance. And, unfortunately, there are plenty of senior and middle level officials (I'd like to emphasize) in non-political positions. Just to mention one concrete example: one of the members of the National Electoral Committee thought it to be important to emphasize in his resume presented to the National Assembly that his son is a longtime Fidesz member.

The Constitutional Court

1. The Nomination of the Constitutional Judges

a) On June 7, 2010, a representative from the governing party, Márta Mátrai, came up with the idea, that since "the currently applicable regulations for appointment do not ensure the continuous and undisturbed operation of the institution". It was time to change the procedure.[39] In previous practice, the government could only appoint constitutional judges through consensus with the opposition. Each representative group delegated one member to an appointment committee which came to its decision by a simple majority. The purpose of this method, which was agreed upon during the National Roundtable talks, was to reduce political influence on the Constitutional Court. The appointment procedure prevented the confirmation of a judge nominee who was thought to have ties with one of the parties through a governing party or opposition veto. Surely, one can always criticize the system, since nomination did involve some sort of a political deal, and it did in fact result in multiple unsuccessful procedures which lasted years. So it is not with completely malicious intent, that a two thirds majority government would try to bring about change in this field. The problem, however, is once again the proposal is aimed at concentrating power. According to the proposal, an eight member - later amended to be 9-15 member - appointment committee, which features a composition proportional to the Parliament's, the current governing parties are once again allowed to make decisions without the

[39] legislative proposal T/189, and its amendment legislative proposal T/190

opposition.[40] After the law took effect, they utilized it immediately. During the selection of the constitutional court nominees - to prove their democratic sentiment - the governing parties approved the candidacy of each parties' selections, and then proceeded to confirm, in the course of the July 22, 2010 plenary session of the National Assembly, the two they put forward.[41] This power technique is the one many call cynicism. If one were to take just a small amount of time to think about this, it becomes obvious that the legislative modification was not necessary to prevent the nomination of persons supported by the opposition, but to nominate the governing parties' preferred candidates without the opposition's approval. The election of strictly governing party candidates also leaves few doubts about the real intentions behind the government's amendment proposal.

Then President László Sólyom returned the legislation to the National Assembly for reconsideration. His most important critical concern, similarly to many opposition ones, was that the law eliminates the necessity of compromise, thus further damaging an already ill-functioning system. The legislation "cannot fulfill its guarantee-providing role neither based on form-related, nor substantial reasons". He proceeded to criticize the law's editorial, grammatical, and substantive shortcomings, and offers the recommendation that the nomination procedure should be changed in a manner in which one or more constitutional body or bodies would participate in it[42] - similarly to the practices of several other European countries. During the repeated debate, the proposer only considered the President's remarks about expanding the proposal to the composition of the appointing committee.[43] One opposition party made the argument that the nomination procedure should include other constitutional bodies as well.[44] The representative repeated their previous arguments in the second debate as they interpreted the President's transcription.[45]

b) We cannot ignore the fact, that this legislative proposal - we almost have to say, incidentally - discards the Constitution's 24th §, paragraph (5). This passage, which was added during the Horn government, the constitutional concepts can only be introduced to the National Assembly by a Constitutional Preparatory Committee's ⅘ majority, that is to say besides the ⅔ majority, the support of another opposition party is necessary for the motion. "Incidentally" refers to the fact that the proposal's explanation does not contain a single letter justifying the abandonment. During the parliamentary debate, despite many of our questions,[46] the proposer failed to

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[40] similar statements by representatives: Előd Novák (Jobbik) Statement 264 and Péter Szilágyi (LMP) Statement 266

[41] National Assembly resolution proposal H/814

[42] document T/189/5, in KEH's inventory: II-1/02151-2/2010

[43] pre-final vote proposal T/189/6

[44] pre final vote proposal T/189/7

[45] minutes of the plenary session of the National Assembly: June 28, 2010 (18th day of session) Statements 223-261

[46] e.g. see minutes of the plenary session of the National Assembly: June 8, 2010 (13th day of session) Statements 57 and 59

provide justification for his proposition even in speech. We can thus conclude - and this was the opinion of the opposition parties as well[47] - that the decree was to be pushed through without this being visible. In the end, unfortunately without the participation of the proposer, we were able to have a debate about whether the decree to be discarded was still in effect at all.[48] I will admit that this was a legitimate debate. But if we were to examine the intentions of the government, we must say that this legal discussion did not have a serious influence. It became obvious, that the government did not intend to sustain or establish the ⅘ rule - as this was the question of the legal analysis above. The government coalition intended to remove the obstacle of consensus with the opposition. An interesting fact is that even the radical right declared Gyula Horn, the socialist ex-Prime Minister, to having been more democratic: "We must say, that the Horn government was more serious about national cooperation than the current governing parties, because during their period of having a ⅔ majority, they were the ones who introduced the constitutional decree which you intend to remove."[49]

With the acceptance of Márta Mátrai's independent representative initiative, another hurdle in the way of the governmental majority's decision-making was overcome.

2. The Reduction of the Constitutional Court's Powers

On October 26, 2010, the Constitutional Court declared the law[50] about the retroactive taxation of liquidated severance payments in the public sphere made possible by "the creation and modification of some financial and fiscal laws" to be unconstitutional, and subsequently destroyed it.[51] For the governing parties it was a question of prestige to push the law through, because during their campaign they promised they would take back the "audacious severance payments".[52] After the discarding a law which was of symbolic relevance to them, this was the first event since the election in which an institution stood in the way of the government's will in a manner in which it basically agreed with the opposition. The opposition parties vehemently argued, that the law's retroactive property will be deemed unconstitutional. The same day the

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[47] e.g. see: explanation of amendment proposal T/189/1, statement by Katalin Szili (MSZP) (Statement 262.) statement by Előd Novák (Jobbik) (Statement 264), statement by Tamás Gaudi-Nagy (Jobbik) (Statement 276): minutes of the plenary session of the National Assembly: June 7 2010 (12th day of session), statement by Tamás Gaudi-Nagy (Jobbik) (Statement 53), statement by Mónika Lamperth (MSZP) (Statement 55), statement by Dávid Dorosz (Statement 61): minutes of the plenary session of the National Assembly: June 8 2010 (13th day of session)

[48] for the debate, e.g. see: statements by Előd Novák (Jobbik) (Statement 264), Tamás Hegedűs (Jobbik) (Statement 268), Gergely Gulyás (Fidesz) (Statements 270 and 274): minutes of the plenary session of the National Assembly: June 7 2010 (12th day of session), statement by László Salamon (KDNP) (Statement 65): minutes of the plenary session of the National Assembly: June 8 2010 (13th day of session), : minutes of the plenary session of the National Assembly: June 28 2010 (18th day of session) Statements 240-252

[49] statement by Előd Novák (Jobbik): minutes of the plenary session of the National Assembly: June 8 2010 (13th day of session)

[50] Constitutional Court Resolution ABH 184/2010 (X.28)

[51] legislative proposal T/581, after approval 2010 XC. Law

[52] e.g. see: statement by Péter Szijjártó (Fidesz): minutes of the plenary session of the National Assembly: November 2, 2010 (41st day of session) Statement 207.

Court threw out the law, Fidesz's parliamentary group leader handed in an independent representative initiative with near identical content to the discarded legislation. The only difference between that and the original was that now the retroactive clause extended to five years instead of one. Additionally, he attempted to protect this new proposal by reducing the Court's powers through a proposed constitutional amendment and an amendment of the law concerning the Constitutional Court.[53] The point of the modifying proposals was to discard the possibility of a referendum on "budget, the execution of the budget, the forms of central taxation, on dues and aids, duties, and the laws regarding the conditions of local taxes". Additionally, the possibility of the Constitutional Court's review of laws which cannot be decided through referendums was also discarded. As an explanation, the proposer, besides a three-line summary of the Constitutional Court, only provided that "with the strengthened rule of law, such broad powers are unjustified for the Constitutional Court".[54] Thus, in these fields the control over the legislative has vanished. The public response was enormous. Not only left, but even right wing public personalities calling for moderation voiced their sharp criticisms.[55]

The National Assembly discussed the two initiatives in a single debate. In his expose, the parliamentary group's leader did not utter a single sentence about the two proposals, he only spoke of the moral justification for taxing severance payments.[56] However, these were not the subjects of the proposals.[57] This kind of behavior on their part can be interpreted as digressive. This is not a desirable option, but it is far better than the other possibility. According to this, one can conclude, the governing side believes its projected goals can be achieved through any and all means. The electorate's wishes, which are holy, will authorize them to overwrite all legal principles and norms, including the rules of coexistence previously in effect. It would have been interesting to receive an explanation for why the proposal's justification differs from the proposer's exposé. At least this one thing was made clear by the address. Furthermore, it would have been good to know why the written reason was not included in the preparatory process for the constitution. It is obvious, that the real reason was brought forth in the proposer's exposé. What comes from this is quite sad: the initiator wrote an untruthful justification for a proposed constitutional amendment.

To end visibly an understandably unpleasant debate, the majority decided to use a technique they have previously utilized during the alteration of the OVB's sphere of influence. Instead of closing it with an order of business recommendation, they chose to boycott it. They did not participate during the general debate besides presenting the proposer's exposé and the main

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[53] legislative proposals T/1446 and T/1446

[54] legislative proposals T/1446 and T/1446

[55] e.g. see: István Stumpf (Heti Válasz October 29, 2010), István Elek: Open Letter to Fidesz's Majority Leader (hvg.hu November 4, 2010), Ákos Péter Bod (nol.hu November 2, 2010, glamus.hu November 5, 2010) Tölgyessy on Limiting the Constitutional Court (Zipp.hu November 2, 2010)

[56] statement by János Lázár (Fidesz): minutes of the plenary session of the National Assembly, November 2, 2010 (41st day of session) Statement 199

[57] statement by Péter Szijjártó (Fidesz): minutes of the plenary session of the National Assembly, November 2, 2010 (41st day of session) Statement 207

orator's address. The smaller governing party did not even appoint a main speaker. Only two orators made a barely six minute appearance in the course of the four hour debate, but they did not comment on the legislative proposal either. The government also neglected to voice its opinion. It was visible that the government will wait for the public and international reactions. The parliamentary group's leader stated his openness to benevolent amendment proposals.[58]

The opposition parties shared roughly the same point of view. The representatives who chose to address the Assembly highlighted, within the democratic framework, a two thirds majority does not provide for absolute power, and neither did the "voting booth revolution" mandate anything of the sort. The proposal was described as a governmental show of force, and the government's behavior was recognized to be punitive towards the Constitutional Court, instead of accepting its verdict. Many stated, that it was never for the common good, when a power started to make interpreting laws as relative while using justice as an excuse. It was during this time the government's plans about the collectivization of private pension funds became public. Many shared the idea that the government limited the Court's authority to push through this budget initiative. Simultaneously, it was noted in the same circles, that the government also wished to protect this coming legislation from a referendum. Some stated that the proposal's justification did not contain its real intent, that the proposer did not talk about the real subject of the document in his address, and that the governing parties' representatives did not participate in the debate. In his response, the proposer failed to respond substantively to these concerns.[59]

In the detailed final debate about the proposal, the group's leader declared he will consult the civilian sphere, and on their request will accept two amendment proposals. According to one these, the Constitutional Court's powers will not be tied together with the banned subjects of referendums. We must note here, that this does not result in any substantive change, it only harmonizes the law concerning the Constitutional Court with the constitutional amendment. Based on this, the Court's power to review financial laws is not completely curtailed, it can proceed with these motions in case a legislation should threaten the rights to human dignity, the protection of private information, the freedom of thought, consciousness, and religion, or the basic rights of Hungarian citizenship.[60] Many evaluated this as a positive course of events. However, this tactic cannot be described as anything else than trickery. Two steps forward, and seemingly one step backward. They presented a perceivably controversial proposal, then pretended to scale it down for the public opinion so some sort of democratic sentiment could be observed. In reality, there was none. This technique was not invented recently, and it works great. The only problem with it is that it's not the tool of democratic systems of government. The right to private property is not subject to judicial review. In the corresponding committee's debate, the secretary of state from the Ministry of Public Affairs and Justice basically stated, that the possibility to review the

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[58] minutes of the plenary session of the National Assembly: November 2, 2010 (41st day of session) Statements 198-328

[59] due to the similar base of concerns, all the opposition addresses are referenced: minutes of the plenary session of the National Assembly: November 2, 2010 (41st day of session) Statements 209-328

[60] amendment proposals T/1445/5 and T/1446/4

right to private property was not included, because the tax laws would surely violate it.[61] Interesting reasoning. If the Constitutional Court cannot review finance laws based on the right to private property, it is almost as if it could not do that at all. I would be curious to see, what would happen if the Court would rule a tax law unconstitutional based on its violation of the right to freedom of consciousness. Even if the justification is consensually considered stupid (even on purpose), the decision is still unappealable. However, it would be tragic if Hungary would disintegrate to the point where bodies of government openly compete with one another. The only thing more tragic would be if the Constitutional Court would finally give in to the wishes of the government.

In the closing debate, the first contributor on the government's behalf was the minister of public affairs and justice. His arguments were comparable to the proposer's. He highlighted that because of the authority the public empowered them with, the government cannot be tacit when it comes to getting back the outrageous severance payments. At least his address made it clear on the day of the voting, that the government formally supports the proposals.[62] The proposer's closing remarks also emphasized this same point, but affixed them by stating that he was open to public consultation.[63]

Perhaps it is worthwhile to add, that two possibilities came up in the process of drafting a constitution. The first was that in case of a bicameral parliamentary system, the upper house would retain the majority of the Constitutional Court's rights. The other was the body's integration into the judicial system through the framework of the proposed "Kúria" (an allusion to the historic, presently defunct institution of the Court of Nobles). Out of the two concepts, only one was ruled out as a possibility.

The National Electoral Committee

Veszprém County's representative Zsolt Horváth, handed in his independent representative proposal to amend the law concerning the electoral system on June 14, 2010.[64] "The National Electoral Committee shall be renewed for every general election: after setting the date of each National Assembly or European Parliament general election, a new National Electoral Committee must be elected. This solution is known in international practice, and provides an opportunity for the National Assembly to recognize the differing qualities of several types of election when electing members to the National Electoral Committee." This is the complete, word-for-word justification for the proposal which initiates the complete overhaul of the Republic of Hungary's electoral system. It must be emphasized, that the OBV's members were elected by the previous National Assembly on February 15, 2010. Their mandates would have lasted

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[61] minutes of the Committee on Constitution, Justice, and Orders of Business of the National Assembly: November 16, 2010

[62] statement by minister of public affairs and justice Tibor Navracsics: minutes of the plenary session of the National Assembly: November 16, 2010 (47th days of session) Statement 49

[63] statement by János Lázár: minutes of the plenary session of the National Assembly: November 16, 2010 (47th days of session) Statemenst 57-69

[64] legislative proposal T/371

until the next general election of the National Assembly. The point, that Veszprém representative Zsolt Horváth probably did not awake to the idea of introducing an internationally utilized method according to which the OVB members should be selected, but has taken upon himself to do the will of the government just like so many of his fellow representatives did. Zsolt Horváth's proposal was discussed on the day it was turned in, and the debate was finalized at that point as well. During the course of the session each opposition party expressed its doubts about the described legislative intent and warned that the government's real aim was to remove yet another check from the system.[65] This was not even surprising, because (aside from what could be concluded from the circumstances), in his exposé the proposer himself has stated the third reason for his initiative was the body's refusal of Fidesz's 2006 referendum, which, since it was overruled by the Constitutional Court, signaled the flawed operation of the institution. Thus, "it is time for Hungary to have a functioning institution in this field as well."[66] This reasoning pertains to nothing less than the majority power's ability and wish, even through legislation, to sweep away members of independent institutions who act "unfavorably". But if the proposer's words would not have been clear enough, the larger governing party's acting vice president's remarks truly did not demand any further explanation. He discussed the incompetency of the current OVB members in a speech which lasted over ten minutes. To quote him, "even now, my dear fellow representatives, they are not examining the fact that they presented a betli (a term from the Hungarian card game "Ulti", in a betli the calling player wins the round if he looses all tricks - *the trans.*), thus this composition of the OVB is completely unqualified to present a democratic check, because its operation was flawed..."[67] Next to the factual legislative intent, many called attention to the idea that the government's purpose with the legislative revision was to make the possibility of a referendum (an institution which could be used to override their legislative attempts) less likely through an OVB filled with members loyal to the government.[68] Around midnight, on the majority leader's request, the Speaker closed the debate with several addresses still on the agenda. This has not happened in Hungary for many years.

The National Assembly elected the new members of the National Electoral Committee on July 22, 2010. The body, which is made of five permanent and one substitute member only features one opposition member - recommended by the smallest opposition party. In the end, to demonstrate the spirit of the era, it is worth mentioning, that the nominee thought it to be impor-

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[65] minutes of the plenary session of the National Assembly: June 14, 2010 (14th day of session) Statements 338-396, e.g. more specifically, statement by representative Előd Novák (Jobbik) (Statements 341), or statement by Gergely Bárándy (MSZP) (Statement 345 and 361)

[66] statement by Zsolt Horváth (Fidesz): minutes of the plenary session of the National Assembly: June 14 2010 (14th day of session) Statement 339

[67] statement by Lajos Kósa (Fidesz): minutes of the plenary session of the National Assembly: June 14 2010 (14th day of session) Statement 353

[68] e.g. see statement by representative Előd Novák (Jobbik): minutes of the plenary session of the National Assembly: June 14 2010 (14th day of session) Statement 341

tant to mention in his resume, attached to the National Assembly's resolution proposal, that his "son… has been a FIDESZ member for years."[69]

The Budget Council

The Budget Council, supported by the current government while it was in opposition, has been practically abolished. What is even sadder than this fact, is the motivation for this course of action. It bears an uncanny resemblance to the one prompting the constitutional amendment concerning the Constitutional Court. Once again, the government demonstrated the kind of fate that awaits those who dare criticize it. The council's president, cynically, was de facto stripped of his position.

The Budget Council was founded in February, 2009, after the National Assembly elected the three-member executive board of the Budget Council. The law's[70] original instructions elected the Budget Council for nine years. The President of the Republic, the president of the Hungarian National Bank, and the president of the State Audit Office appointed one member each to the Council. The Council is an institution designed to aid the National Assembly's legislative functions. It cannot be ordered, it is only under the regulation of the law. The original provisions provided for broad responsibilities and sphere of influence. The council was to prepare macro-economic reports, to project budget-related macro-economic technical data, to create methodological projections about budgetary planning, predictions, and effectiveness, to prepare reports about all the budgetary consequences of laws discussed by the National Assembly (with the exception of the budget law itself), and about the budgetary effects of all proposals. The Budget Council provided opinions on legislative proposals regarding budget accounting as well.[71] The Budget Council gave an annual report to the National Assembly about its activities and experiences.

In several of its analyses and during the parliamentary debate of the budget, the Budget Council stated its sharp criticism concerning the government's plans. I will summarize their concerns according to the minutes[72] of the National Assembly's session.

Though in the case of the 2011 budget plan - due to the collections the state received from the private pension funds and supertaxes - the risks were considerably smaller than usual, the budget was not sustainable in the long run. The budget strategy's main pillars were employment and the increase of productivity. The planned growth was 3% annually. The signs of moti-

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[69] National Assembly resolution proposal H/764 concerning the election of the members of the National Electoral Committee

[70] 2008 LXXV. law

[71] 2008 LXXV. law 7th § paragraph (1)

[72] minutes of the debate about legislative proposal T/1498 concerning the Republic of Hungary's 2011 Budget, commence on November 15, 2010.

vating programs for job creation necessary for this were not yet visible. The expected growth of employment in the next few years was not completely impossible, but was not probable to the said degree. Without the reduction of state expenditure, the tax cuts will result in a budget deficit in the coming years. Instead of the 400,000 new jobs projected by the government by 2014, only 100,000 will be available. In the event of the absence of the planned employment hike, the numbers point to a budget balance which will fall short of government predictions by 500 billion forints. The document handed in by the government was not transparent and it did not include risk assessment. The fiscal policy described in the budget law proposal was a hazardous plan, and in case of its failure the damages could be considerable. In contrast with promises, the tax system will continue to include austerity measures.

Ten days after the criticism, due to parliamentary representative Antal Rogán's budgetary amendment proposals,[73] the Budget Council's secretariat's 2011 budget was cut in its entirety. Then, with a committee proposal to amend the legislative proposal to modify some of the laws upon which the Republic of Hungary's 2011 budget was based, and later, by a pre-final vote amendment proposal, the Budget Council's secretariat was disintegrated and the Council's responsibilities and composition were altered.[74] According to the new regulations, the Budget Council's members are the president of the National Bank, the president of the State Audit Office, and an extraordinarily qualified economist appointed for six years by the President of the Republic. The head of the State Audit Office, however, could not have participated in the Council's work due to a conflict of interest, because he exchanged his mandate as a (Fidesz) representative for his current position. The solution to this conflict generated yet another legislative amendment.[75] The National Assembly lost its decision-making right. Considering the fact that for "complete renewal" and to provide coherency it was essential to remove the Council's president (who was elected for 9 years) through a pre-final vote amendment proposal attached to a "law medley" aimed to amend a set of health care laws.[76] I would like to note, that this clashed with house rules, as a pre-final vote amendment proposal can only resolve incoherence relating to the original law. The President of the Republic, the larger governing party's ex-vice president, utilized his new right and appointed Zsigmond Járai, the first Orbán administration's minister of finance and the National Bank Oversight Committee's president as the head of the Budget Council. With that, the loyalty of the majority of the Council members was ensured. It is only a bonus, that many consider Járai's two positions - not baselessly, I believe - to present a conflict of interest on its own.[77] To justify the disbanding of the Council's secretariat, the governing parties cited that because the organ's expenses were too high considering the infrastructure behind it, it

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[73] attached amendment proposals T/1498/514 and T1498/505

[74] committee amendment proposal T/1665/97 and pre-final vote amendment proposal T/1665/103

[75] committee amendment proposal T/1665/97 and pre-final vote amendment proposal T/1665/103

[76] pre-final vote amendment T/1668/73

[77] e.g. see press conference by István Józsa (MSZP):
http://nol.hu/belfold/_jarainak_tavoznia_kell_az_mnb_felugyelobizottsagabol (accessed February 23, 2010)

was unnecessary as an independent body. To speed up the process, the Employment Code was altered to eliminate the rules for group layoffs.[78]

During the parliamentary debate, we could not really get to know the governing party's reasoning. However, we were able to do so from the statements of the minister of public affairs and justice: "Today, and even in 2006, Fidesz believed that there must be a strong Budget Council, without bureaucracy… we must decide, what makes an institution stronger. Is it a larger budget, or a stronger sphere of influence?"[79] But were things really the way the minister put them? According to the Budget Council's ex-president, they were not. He agreed up until the point where the minister said "the key question is what the Council's tasks are". But in György Kopits's opinion because of the legislative amendment the council not only has "no right to veto, but it's set of duties was also dramatically reduced.[80] In a letter written to the President, the Budget Council's members detail the modification as such:

"The attached law would modify the budget responsibility act in a manner which would make it impossible for the Budget Council to follow, and thus to predict the budgetary effects of the laws in the field. It is the definite opinion of the Budget Council, that this will significantly decrease the transparency of public finances and the credibility of economic policy.

Because one of the most important tasks of the current Budget Council is to monitor the sustainability of budgetary processes, it would be a severe blow to the government's institutional guarantees, if according to the accepted law, the future council's list of duties for the evaluation of the annual budget law would shrink.

Naturally, a three-member institution on its own cannot complete - instead of the proposer who is actually bound by law to do this - the accurate assessment of how each parliamentary decision will affect the sustainability of the budget. The only way it can fulfill this task is if it can rely on the work of a research body specifically meant for this purpose. With the exception of the Budgetary Council's Secretariat, there are no public, private, or international centers for analysis with the necessary expertise, perspective, and access to information. The deposition of the established institutional and political background would mean the conscious destruction of intellectual resources serving the public - the citizens and the parliamentary representatives.

The planned restructuring of the Budget Council will mean a return to the same legal situation which resulted in the irresponsible, nontransparent fiscal politics that demolished the country's domestic and external credibility prior to the acceptance of the budget responsibility act. According to the new law, the future institution's only right would be to submit its opinion on the budget one time, in case it finds the Government's plan to be inadequate before that organ

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[78] pre-final vote amendment proposal T/1665/103

[79] statement by Minister of Public Affairs and Justice Tibor Navracsics
http://hvg.hu/itthon/20101206_kopits_kt_koltsegvetes

[80] Kopits György: : tetszik vagy nem, újra kell gombolni a kabátot.
http://hvg.hu/gazdasag/20110113_heti_valasz_kopits

sends it to the Parliament. In the second plan, even this right is rescinded, and the Council's opinion would only appear on the National Assembly's web page."[81]

I believe my introductory thoughts concerning the Budget Council are obvious enough with evaluating the above mentioned facts.

The Justice System

1. The Courts

There has been no decision about the courts, that is to say, about the justice system. This is not surprising because the Supreme Court's chief justice has mandate for another five years, and the judges are the most independent "government officials" from the leadership of their own organization. Offending the justice system's integrity is also one of the touchiest subjects. However, we must realize that during the process of drafting a new constitution, the question of a separate president for the National Judicial Council (OIT) and Chief Justice for the Supreme Court has not been decided upon yet. At the same time, the OIT's president received new independent rights, mainly in the field of personnel decisions.[82] And if the OIT president is exclusively entitled to decide the identity of the county chief justices and heads of colleges, he gains an important role in evaluating and disciplining. This can have a serious impact on judicial activities and judicial impartiality. It prompts further questions if one considers the other option: separating these positions, and having the current National Assembly electing someone for, say, nine years.

The law concerning "the amendment of certain laws to ensure the efficient operation of courts, the expediency of the legal system"[83] (which will regulate the OIT president's sphere of influence as well), introduced by the new government, will make the minister responsible for the budget a member of the OIT, effectively ending a ⅔ judicial majority in the body. In the course of the constitutional preparations, the checks and regulations supported by everyone did not make it to the final constitution concept document, thus the governmental plans for this branch of power remain unknown.

2. The Prosecutor's Office

In a process parallel to drafting a constitution, the government introduced and the National Assembly accepted a legislative proposal on the "Prosecutor's terms of service and the

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[81] The Budget Council's Letter to the President of the Republic. http://galamus.hu/index.php?option=com_content&view=article&id=43088:a-koeltsegvetesi-tanacs-tagjainak-levele-a-koeztarsasagi-elnoekhoez&catid=79:kiemelt-hirek&Itemid=115

[82] 2010 CLXXXIII. law concerning "the amendment of certain laws to ensure the efficient operation of courts and the expediency of judicial proceedings" 22nd §, 27th §, 29th §, 38th §, 55th §, 64th §, 81st §

[83] 2010 CLXXXIII. law

proposal to amend the 1994 LXXX. law concerning prosecutorial data management".[84] In this it was written that the Chief Prosecutor's mandate's length was to be extended from six to nine years, he can only be selected from amongst prosecutors by a ⅔ majority of the National Assembly, he can no longer be interpellated, and he received the right to relieve prosecutors above 65 of their duties. If the Parliament cannot elect a new Chief Prosecutor after his mandate expires, the former's term extends even if he is above 70 years. The basis for these conditions was established by a legislative proposal.[85] An added condition was the necessity of a ⅔ approval of representatives attending the session for the law concerning the Prosecutor's Office and establishing the prosecutors' terms of service. The roughly one page explanation for the initiative, though reservedly professional, lists arguments of fairness and constitutionality. In constitution-themed parliamentary committee and plenary discussions, the secretary of state for public affairs and justice came forth with debatable, but undoubtedly logical and factually supported points about disallowing the interpellation of the Chief Prosecutor, and named the institution's public law position as a reason for the application of the ⅔ rule. In the proposal he highlighted that it corresponds to the wishes of the Chief Prosecutor.[86] At the close of the debate, the secretary repeated his arguments in reaction to the debate.[87] However, in the talks about the law on the prosecutor's terms of service, the representative from the government's side simply referred to the act's provisions.[88] Fidesz's chief orator - though I would like to note an address he made during a committee meeting in which he spoke about the history of an '89 regulation[89] - László Salamon has not contributed a single new element to the secretary of state's argument, and this is true for his fellow party members as well.[90] Though the constitutional amendment proposal's exposé was refreshing in the sense it provided a truly professional reasoning for the legislation, I am not convinced about the truthfulness of intents in the legislator's oral and written justifications.

But before presenting support for my last sentence, let us look at the main elements of the opposition's critique. The opposition representatives protested that this (seventh) constitutional amendment should be discussed outside of the drafting procedure instead of parallel to it. They

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[84] legislative proposal T/1380, after acceptance: 2010 CXXI. law

[85] legislative proposal T/1247, after acceptance: 2010 CIII. law

[86] statement by secretary of state Róbert Répássy: minutes of the Committee on Constitution, Justice, and Orders of Business of the National Assembly: October 11, 2010, and: minutes of the plenary session of the National Assembly November 12, 2010 (34th day of session) Statement 18

[87] statement by secretary of state Róbert Répássy: minutes of the plenary session of the National Assembly: October 19 2010 (36th day of session) Statement 148

[88] statement by secretary of state Róbert Répássy: minutes of the plenary session of the National Assembly: October 27 2010 (40h day of session) Statement 116, minutes of the Committee on Constitution, Justice, and Orders of Business of the National Assembly: October 25, 2010

[89] minutes of the Committee on Constitution, Justice, and Orders of Business of the National Assembly: October 11, 2010

[90] statement by István Varga: minutes of the plenary session of the National Assembly, October 12, 2010 (34th day of session) and minutes of the plenary session of the National Assembly, October 27, 2010 (40th day of session) Statement 126

also put special emphasis on the invisibility of political motivation behind the prosecutorial provisions. All three opposition parties criticized the abolishment of interpellation, the extension of the Chief Justice of the Supreme Court's term to nine years and his right for premature retirement, which they believed was another tool for power concentration through the appointment of a new, loyal officer.[91]

As far as appearances go, a ⅔ approval certainly makes the rule of law appear to be stronger. However, if a single coalition possesses such a majority it bears considerably less of a significance. The idea presents itself: of course, the government is not simply motivated by the goals of today's politics. But let us examine this proposal more closely. The nine year mandate of the next elected Chief Justice only truly expires if a Parliament is able to elect a new one. To put it differently, that Chief Justice can stay in office until the current majority wishes him to if it is able to retain a third of parliamentary seats. The characteristics of constitutional amendment make it impossible to override this rule with a simple majority.

The Chief Prosecutor's instructing capability, intra-organizational ability for promotion, and power to relieve others of their duties was practically unhindered in the past as well. Now, he received the right to relieve prosecutors above 65. You do not have think too hard about how this act could be utilized to remove senior prosecutors under the guise of the rule of law. It is only the proposal explanation's incoherence, that the proposer argues for the use of this technique with - in addition to the need to provide honorable retirement possibilities for elderly prosecutors - the concern that some prosecutors cannot fulfill their duties because of their age. At the same time, in the case of the Chief Prosecutor, he makes it possible to hold the office past the age of 70 if the Parliament is unable to appoint a replacement.

But so all the methods listed in the introduction can be be accounted for, including reducing the powers of a "trustworthy" leader, the proposal abolished the Chief Prosecutor's interpellation. There are arguments to be made for this, I cannot contest that. For example, the Constitutional Court spoke out in favor of it. On the other hand, during the constitutionalizing process, the governing party's representatives shared the view that in case the Prosecutor's Office is not subordinated to the government by the constitution, the National Assembly's control over it must be strengthened. And if the possibility for interpellation is discarded and no other action is taken simultaneously, the ability to check the organ does not increase. In fact, it decreases. The parliamentary debate shed light on the pointlessness of interpellation, because while the voting on the response to the interpellation would imply political responsibility on the part of the representatives, the Chief Prosecutor - according to a Constitutional Court resolution - remains unburdened by this. Thus, a rejective vote does not affect the interpellation. This makes interpellation in practice nothing more than an inquiry, even if it is an urgent one. This is only partly true. However, it should become part of the public practice, that if a Chief Prosecutor's response to the interpellation is not accepted on several occasions, he resigns his position. There is a tangible

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[91] minutes of the plenary session of the National Assembly October 12, 2010 (34th day of session) Statements 17-41, October 19, 2010 (36th day of session) Statements 142, 144 and 146, October 27, 2010 (40th day of session) Statements 118, 120, 128, 132, 134, 150, and minutes of the Committee on Constitution, Justice, and Orders of Business of the National Assembly: October 25, 2010, November 16, 2010, and minutes of the National Assembly's Committee on Human Rights, Minorities, Civilian and Religious Matters: November 11, 2010

difference between the inquiry and interpellation, namely that while the notion of the first is concluded by an answer, the latter, should its response fail to satisfy, is discussed without a defined timeframe by a committee including the Chief Prosecutor, and is voted upon by the National Assembly. The key factor, however, is the discussion without the timeframe. The transcript for this is public and accessible. It can be concluded, the interpellation was a much more refined tool for control than the institution of the inquiry.

In connection with this I must note, that the governmental subordination of the Office of the Prosecutor did not occur strictly because of the fear its control might be automatically lost in the event of an electoral defeat. On the other hand, if loyalty is not dependent on individuals but on systematic factors, the transitional period is much slower. Then, action in this field must not be initiated at this time. I would like to conclude this segment by repeating what the smallest opposition party's chief orator opened his address with: "This legislative proposal is nothing else, but the triumph of cynicism and the lack of principle."[92]

Municipal Governments

1. The Governmental Control of Municipal Governments

The government organized the management and control of the municipalities based on a completely different philosophy from the ones previously utilized. Regulation consists of two parts. The details of the system are outlined in the act concerning the governmental office which was to create a new public policy authority, however it required a constitutional amendment to make it possible for the government to appoint its leaders. The two legislative proposals were discussed separately, however the pros and cons were very similar in both. First, let us mention the constitutional amendment which made it possible for parliamentary representatives to lead the government offices which oversee the activities of the municipal governments. The legislative proposal's explanation is once again vague: "Pertaining to its fulfilled role and situation in the government's institutional system, a new relating legal institution was necessary in the Constitution regarding the creation of a constitutional basis through alteration of the rules of conflicts of interest, legal relationships with the government, and payment for the representatives of the National Assembly."[93] This rationale would also have been simpler and more truthful if the proposer would have said: "it is so just because I want it". However, the secretary of state made the proposal's goal clear in his address. He thought county civil offices should be filled with political leaders because the government needs local governments to operate in a unified, harmonized manner under strong leadership. He emphasized, in professional leadership, high level work is ensured by the director general and his or her deputy.[94] The opposition interpreted this by condemning pluralism, and by implying the government is attempting to place commissars in county

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[92] statement by András Schiffer (LMP): minutes of the plenary session of the National Assembly: October 12, 2010 (34th day of session) Statement 32

[93] detailed explanation for legislative proposal T/1247 8th §

[94] statement by secretary of state Róbert Répássy: minutes of the plenary session of the National Assembly: October 12, 2010 (34th day of session) Statement 18

seats. A strong leader is not the same as a party politician, and the proposal completely overrides Fidesz's intention to establish public service bureaucracy without politics. The government offices need leaders who are civil servants loyal to the *institution* of government, and not party soldiers. Additionally, the role and status of the political leader is not completely worked out.[95] It is indubitably so, that the predecessors of government offices, the civil service offices, were headed by civil servants, whose role was not the execution of the central government's will but the maintenance of the lawful operation of local governments. The change signals an important shift in perspective. It expressed the central authority's wish to demand a much larger role than it previously had in the local sphere. This appears in the justification for the local government office act[96]: "The proposal regulates the government office's legal status as the [central - *trans.*] government's generally authorized, local body. This simultaneously means fulfilling, directing and monitoring the tasks of administration, and participating in the government's governmental tasks. To ensure the government's oversight over the complete local administration through the county government offices, the authority of those will extend to the institutions left unintegrated. Besides the regulation of this framework, the proposal provides a legal framework for the possibility of governmental decision-making about minor questions relating to the creation and operation of government offices through decrees."[97] The government offices' responsibilities are described by the proposer - without explanation for the necessity of change - in terms of regulatory activity, the oversight of local governments, and participation in the functional tasks of local public administration and in participation in governance's local tasks.[98] The arguments were expanded upon during a committee discussion, where government-side representatives stated that the government offices' structure does not differ from the offices of county administration, but simply due to the integration - which was attempted by every government until now - it changes only in its quantitative scale. The appointment of political leaders is not synonymous with professional distortion, but rather it aims to distinguish between positions which became increasingly indistinct.[99] One deputy secretary of state - as an independent government official - is deduced the proposal's aim from the program of national cooperation.[100] The secretary of state for public affairs holding the address, did not explain why this system will be better than the previ-

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[95] e.g. see amendment proposals T/1247/7 and T/1247/15, statement by Mónika Lamperth: minutes of the plenary session of the National Assembly: October 12, 2010 (34th day of session) Statement 28

[96] legislative proposal T/1248, after approval: 2010 CXXVI. law regarding "the capital and county government offices, and the establishment and local integration of capital and county government offices"

[97] general justification for legislative proposal T/1248

[98] 2010 CXXVI. law 1st-13th §s, and the general justification for legislative proposal T/1248

[99] statement by deputy secretary of state Rudolf Virág: minutes of the National Assembly's Committee on Consumer Protection: October 5, 2010

[100] statement by deputy secretary Ernő Csonka: minutes of the National Assembly's Agricultural Committee: October 5, 2010

ous one besides stating the benefits of "single stop service" in bureaucratic administration. He simply said the previous construction did not work, but this will.[101]

Government representatives emphasized the structure is good because the citizens will demand accountability from politicians in case local administrations function poorly. This way, the politician will be held responsible and not the top level bureaucratic administrator. The system proposed will be simpler, customer-friendly, and cheaper. They cited the desire to eliminate duplication of efforts, and stated that it is not true the European Union expects regionalism, which would be a poor choice for our country anyway.[102] In fact, one EU official even "rooted" for the government's successful establishment of a more effective system.[103]

Opposition parties criticized the proposal's poor quality, the lack of public consultation and impact studies, and the mixing of political influence and professional matters. They referred negatively to the political concentration inferred from the proposal. They did not share the government's opinion regarding the effectiveness of the government's plan for elimination of duplication, and believed the system will result in quite the opposite.[104] They criticized the absence of regionalism and stated that this is not the path advocated by the European Union, but one which strengthens the county system.[105] Some voiced their discontent with the idea of appointing political leaders (commissars) to civil offices once more, stating this will lead to the political elite's

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[101] statement by secretary of state Erika Szabó: minutes of the plenary session of the National Assembly: October 12, 2010 (34th day of session) Statement 42

[102] statements by Endre Spaller (Fidesz) and Zsolt Horváth (Fidesz): minutes of the National Assembly's Committee on Consumer Protection: October 5, 2010, statements by Zsolt Horváth (Fidesz) (Statement 58) and János Hargitai (KDNP) (Statement 62): minutes of the plenary session of the National Assembly: October 12, 2010 (34th day of session), statements by Péter Kozma (Fidesz) (Statement 86) and Zsolt Horváth (Fidesz) (Statement 104): minutes of the plenary session of the National Assembly: October 19, 2010 (36th day of session)

[103] statement by Andor Nagy (Fidesz): minutes of the National Assembly's Committee on Sustainable Development: October 6, 2010

[104] statement by Gábor Simon (MSZP): minutes of the National Assembly's Committee on Consumer Protection: October 5, 2010, statement by Zoltán Gőgös (MSZP): minutes of the National Assembly's Agricultural Committee: October 5, 2010, statements by Gábor Simon (MSZP) (Statements 50 and 60), statement by Ádám Ficsor (MSZP) (Statement 56), statement by István Apáti (Jobbik) (Statement 64): minutes of the plenary session of the National Assembly: October 12, 2010 (34th day of session), Mónika Lamperth (MSZP) (Statement 80) István Kolber (MSZP) (Statement 110: minutes of the plenary session of the National Assembly: October 19, 2010 (36th day of session), amendment proposal T/1248/12

[105] statement by Pál Steiner (MSZP): minutes of the Committee on Constitution, Justice, and Orders of Business of the National Assembly: October 11, 2010

further exclusivity while increasing its salary. They denounced a political leader's approval as a precondition for each promotion.[106]

In his statement at the end of the debate, the secretary of state argued in favor of "customer friendly" action, and justified the promotion of a government-appointed official by stating it creates the opportunity to avoid political decision-making by civil servants. On the other hand, the government will be able to exercise its will through them on the county level.[107]

I would try to avoid taking a position in whether the previous model or this current one is better, more effective. Which one is more consumer-friendly, cheaper, and professional? Is it better, to approach cases according to the regulations of the office or the chronology of the cases? There are numerous studies on this subject. I would simply like to factually observe, compared to the previous model, this one admittedly aims for the complete control of the local administrations. In addition - and naturally this can be concluded from the government's altered perspective - breaks with the tradition of heading an administration by a professional civil servant. It places a party politician, whose role is truly questionable and whose aim is to protect government interest, above the public administration official who swore an oath to the institution of government.

2. Changing the Regulations of Local Elections

The governmental majority changed the regulations of local elections roughly four months prior to the elections.[108] With regards to this being only partially related to our topic, I will only provide a brief analysis. However, I think it is necessary to touch upon this, because through these modifications the government ensured victory by a larger margin than it would have been possible with the previous configuration. The list based electoral system always favors smaller, while the individual electoral district system benefits larger parties.[109] In local elec-

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[106] statement by Dániel Z. Kárpát (Jobbik): minutes of the National Assembly's Committee on Consumer Protection: October 5, 2010, statement by Tamás Gaudi-Nagy (Jobbik): minutes of the Committee on Constitution, Justice, and Orders of Business of the National Assembly: October 11, 2010, István Apáti (Jobbik) (Statement 64), Péter Szilágyi (LMP) (Statement 66): minutes of the plenary session of the National Assembly: October 12, 2010 (34th day of session), statements by Mónika Lamperth (MSZP) (Statements 84, 88, and 92: minutes of the plenary session of the National Assembly: October 19, 2010 (36th day of session), statements by Péter Szilágyi (LMP) (Statement 265) and Mónika Lamperth (MSZP) (Statements 269 and 273): minutes of the plenary session of the National Assembly: October 25, 2010 (38th day of session), statement by Mónika Lamperth (MSZP): minutes of the plenary session of the National Assembly: November 16, 2010 (47th day of session) Statement 110, amendment proposals T/1248/2, 8, 9, 17, 21, and 24

[107] statement by secretary of state Erika Szabó: minutes of the plenary session of the National Assembly: October 19, 2010 (36th day of session) Statement 114, and minutes of the plenary session of the National Assembly: October 25, 2010 (38th day of session) Statement 281

[108] legislate proposal T/32, after approval: 2010 L. law concerning the election of local government representatives and mayors

[109] e.g. see: Átalakuló választási rendszer - 1. rész - Az önkormányzati választás új szabályairól (http://www.jogiforum.hu/hirek/23259 - date accessed: January 31, 2010)

tions, individual mandate is won by the person receiving the most votes.[110] While campaigning, the governing parties promised to decrease the number of local representative bodies. Because of this they changed the electoral system in a manner which allowed more individual candidates to gain seats than list candidates. This resulted in further distortion of the electoral system, and widened the gap between the mandates won at the local elections and the actual numbers of votes the parties received. The election's results also illustrated this.[111] Thanks to the new electoral law, the largest opposition party could not form delegations in places where their support was over 20% - like in the capital's XIV. District. In many of these, only the Fidesz-KDNP coalition remained. This was another proposal opposed by all the other parties with the same argument: these were undemocratic tools meant to stabilize and monopolize power.[112]

The Media Authority - Controlling the Media

The most controversial legislation in Hungary and the European Union was the revised media regulation. Some spoke of the end of freedom of speech and press, while others saw the resulting scandal as the unnecessary, treasonous, and sensationalist behavior of leftist liberal intellectuals. The unprepared commentators and the complicated set of rules did not help the situation. What's certain, is that the European Union forced the Hungarian government to change the law to provide coherence with European community law. By summarizing the legislation, I believe I will be able to illustrate that even if we are not talking about the abolishment of basic freedoms, we can still see the government's increased ability to sanction, control, and strictly monitor the world and content of media.

1. The New Structure

a) The restructuring of media regulation commenced under the government parties' exclusive decision-making competency's[113] aegis, on May 14, 2010.[114] The topic deserves extensive mention because the creation of this system of rules was the result of a very complex, multi-amendment process.

The structural concentration began by unification of an institution handling broadcasting regulation and another monitoring content. The former was the National Radio and Television Commission (ORTT) and the latter was the National Communications Authority. As the legal successor of the National Media Authority and the Media Supervisory Board, the National Media

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[110] 2010 L. law 14th §

[111] e.g. see: http://www.valasztas.hu/dyn/ov10/outroot/onkdin/topsfpb4.htm - date accessed: January 31, 2010

[112] minutes of the plenary session of the National Assembly: May 20, 2010 (4th day of session) statements 12-27, May 26, 2010 (7th day of session) statements 333-347, June 8, 2010 (13th day of session) statements 41-47

[113] statement by Ildikó Lendvai (MSZP): minutes of the plenary session of the National Assembly: June 14, 2010 (14th day of session) Statement 305

[114] 2010 LXXXII. law

and Communications Authority (NMHH) was established to create the framework for power concentration. Even though the NMHH is "an autonomic civil public service branch which cannot be instructed by the government, [and] its public law status is independent",[115] the body's president is appointed by the Prime Minister for nine years. This mandate, presumably for stability, can be renewed indefinitely.

The direct personal subordination is visible in other independent organizations as well. Operating as the Media Council's official body, the National Media and Communication Authority's Office (NMHH's Office) is headed by a director directly appointed and supervised by the NMHH's president. Before the final vote on the legislative amendment, one of the outstanding amendment proposals meant to resolve any incoherence - and clearly not for the more effective concentration of power - stated that the Public Service Frequency Authority, operating under the supervision of the director and inside the NMHH's Office's institutional structure, will have its head appointed by the NMHH's president on the recommendation of the director general.

In the case of the National Communications and Information Technology Council (NHIT), ordered to aid the government in its communications and IT needs, the direct governmental influence is not surprising. However, the establishment of the NHIT's Office as an institutional unit of the NMHH is more thought-provoking. The NMHH is an autonomic public service organ, subordinated strictly to the law - that is to say, it is not subordinated to the government.[116]

With the establishment of ORTT's replacement, the five member NMHH Media Council (from hereon: Media Council), the structural frame of centralized control was established. The the NMHH's supposedly autonomic body, the members of the Media Council (strictly only subordinated to law, it cannot be instructed in its own sphere of activity[117]) were selected exclusively at the pleasure of the governing parties.[118] The NMHH's president, once appointed by the Prime Minister, simultaneously becomes the nominee for the Media Council's presidency. He or she can then proceed to attempt the obtainment of ⅔ of the National Assembly's support. Following the path outlined by the regulation, the Media Council's president, appointed by "broad parliamentary consensus, and a ⅔ majority"[119] for nine years, is Annamária Szalai. It's members are János Auer, Tamás Kollarik, András Koltay, and Ágnes Vass.[120] The system's built-in guarantees regarding the nomination and election process are as follows: The discarded ORTT's was oper-

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[115] general justification for legislative proposal T/360

[116] 2010 CLXXXV. law regarding media services and mass communication 122nd § paragraph (2)

[117] 2010 LXXXII law regarding the amendment of certain laws regulating media and broadcasting 16th §

[118] statement by Ildikó Lendvai (MSZP): minutes of the National Assembly's Committee on Human Rights, Minorities, Civilian and Religious Matter: June 14, 2010

[119] justification for legislative proposal T/360 16th §

[120] National Assembly Resolution 95/200 (X.15.)

ated based on parity, its president was nominated by the Prime Minister and the President of the Republic. With the new laws, the right to appoint the Media Council's president is possessed solely by the Prime Minister. At the same time, the member nominating, ad-hoc committee[121] requires a directly mandate-proportional agreement or a ⅔ majority decision. It employed the latter tactic as it had to nominate the Council's members five days after its own birth.[122]

In the course of establishing government control over the media, the regulation of public service media was structured upon a new base. The norm's "reforms" can be placed in two categories. The first group includes the centralized, structural reformation aimed to create dependence. The second ensures the obtainment of the first: the withdrawal of financial resources.

With the restructuring of the Hungarian Television Foundation and the dissolving of the Hungarian Radio Foundation and the Hungária Television Foundation, the Public Service Foundation (from hereon: the Foundation) was created.[123] The Foundation's supervisory body is the Executive Board whose members are elected on an individual basis by the National Assembly's ⅔ majority for a period of nine years. It is composed of six members (half of them recommended by the government, half of them recommended by the opposition), a president delegated by law and designated by the appropriate body, and an extra member appointed by the president. To correct personal independence and to democratically reflect the parliamentary proportions of representation,[124] the Executive Body's president and one more of its members are delegated by the Media Council for nine years.[125] Thus, the government's wishes are reflected in the Executive Board's composition. To enable the operation of an incomplete Executive Board, the regulation states, that the establishment of the board is not hindered if the government or opposition parties fail to recommend a nominee. In this case the board's operation requires only three members.

The selection processes for leadership position in the joint stock companies operated by the Board's members, as well as in the Hungarian Office of Correspondence (MTI) follow the now familiar exclusionary scheme. The Media Council's president recommends two CEOs to the Council for each company. If the Council uniformly approves the two candidates, the personnel recommendation is presented to the Executive Body for a compound vote to select one - the first round must be won by a ⅔ while the second by a simple majority. The CEOs operate under the contracts approved simultaneously with their positions and serve under the Executive Body.

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[121] National Assembly Resolution 81/2010 (IX. 15.)

[122] National Assembly Resolution 92/2010 (X. 08.) The chairs was András Cser-Palkovics, the deputy was Attila Mesterházy. The members were István Pálffy, Sándor Pörzse, and Gergely Karácsony.

[123] for further information, consult National Assembly resolution 80/2010 (IX. 15)

[124] statement by László L. Simon (Fidesz): minutes of the National Assembly's Committee on Culture and Press: June 17, 2010

[125] 2010 LXXXII. law

Withdrawing the resources, archives[126] and real estates[127] (their two exact commodities) of the Public Service Foundation, the Hungarian Radio, Ltd., the Hungarian Television, Ltd., the Duna Television, Ltd., and - now, the sole national news agency - the Hungarian Office of Correspondence, Ltd., completes a process of "economic colonization".[128] The main rule, to ensure the "public service mediums' predictable operation"[129], came to be state ownership. This happened through the "free of charge" nationalization of the organizations and their resources, which will now be handled by the Broadcasting Support and Property Management Fund, controlled by the Media Council. The necessary funding for creating and editing content remaining with each individual corporation will be estimated and proposed by their CEOs - appointed by the Council's president and voted on by the Executive Body - and approved by the Foundation.[130] Thus, the proposal to the Foundation is made by someone elected by the Foundation. The funds' application and their management were also brought under central control. This makes the use of funds completely untraceable.[131] The accepted bill was sent by the Speaker to the President of the Republic without an emergency request. On August 6, 2010, the President deemed the law constitutional and provided his signature for it.

b) The constitutional amendment procedures executed under the aegis of media regulation reform nearly placed the fundamental rights of communication on new pillars through a constitutional amendment proposal[132] - simply because the proposer found the old law's language to be too archaic to apply to modern media market procedures. It signals the proposers' expertise in constitutional law and projects the professional quality of the coming base law, that in an effort to "return to Hungarian historic traditions"[133] the right for freedom of thought was exchanged for the right to freedom of speech, as they did not see a difference between the two fundamental rights.[134] Thus, the proposers placed these fundamental rights on new bases without the under-

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[126] point 4 of National Assembly resolution 109/2010 (X.28.)

[127] point 6 of National Assembly resolution 109/2010 (X.28.)

[128] statement by László Mandur (MSZP): minutes of the plenary session of the National Assembly: October 11, 2010 (33rd day of session) Statement 334

[129] statement by László L. Simon (Fidesz): minutes of the plenary session of the National Assembly: October 11, 2010 (33rd day of session) Statement 332

[130] point 2 of National Assembly resolution 109/2010 (X.28.) regarding the transfer of the defined properties of Public Service Foundation, the Hungarian Radio, Ltd., the Hungarian Television, Ltd., the Duna Television, Ltd., and the Hungarian Office of Correspondence, Ltd. to the Broadcasting Support and Property Management Fund

[131] statement by László Mandur (MSZP): minutes of the plenary session of the National Assembly: October 11, 2010 (33rd day of session) Statement 338

[132] legislative proposal T/359 amending the Constitution of the Republic of Hungary, accepted on June 28, 2010

[133] justification for legislative proposal T/359 1st §

[134] statement by Máriusz Révész (Fidesz): minutes of the National Assembly's Committee on Human Rights, Minorities, Civilian and Religious Matters: June 15, 2010

standing that they are decreasing the degree of liberty of a democratic society by limiting freedom of expression to only its verbal manifestations. Only after significant battles with opposition representatives[135] and multiple amendment proposals[136] did the proposer accept the reality, that there is in fact a difference between the two expressions. It is not secondary, that the necessity and explanation of the distinction, which states that freedom of speech results from freedom of thought (thus the latter is a more limited fundamental right), was met with almost near indifference. When this was discussed, the few attending representatives from the government parties preferred to watch a soccer match.[137] Finally, after "careful consideration"[138] during a session of the National Assembly's Committee on Human Rights, Minorities, Civilian and Religious Matters, they deemed the opposition's unanimous opinions acceptable. However, for historic reasons, the freedom of speech remains a specially treated element.[139]

Disregarding the fact that the Constitution's abstractive degree will be damaged[140] by the introduction of the institutional protection responsibility, to avoid conflict between the Constitution and the media regulation, the base law was modified concerning the civil services as well.[141] Unfortunately, the largest opposition party's June 14 amendment proposal[142] aimed at the inclusion of a basic principle of civil service[143] - according to which in order to provide for diverse and democratic content it is the distinguished task of public service media to present balanced, credible, and proportionate information[144] - did not make it into the constitutional amendment. To demand information of this quality would ensure excessive democratic control over the centralized mediums.[145]

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[135] e.g. see: statement by András Schiffer (LMP): minutes of the plenary session of the National Assembly: June 14, 2010 (14th day of session) Statement 295

[136] attached amendment proposals T/359/13 and T/359/14

[137] minutes of the plenary session of the National Assembly: June 14, 2010 (14th day of session)

[138] statement by János Kővári (Fidesz): minutes of the plenary session of the National Assembly: June 15, 2010 (15th day of session) Statement 170

[139] text of the Constitutional amendment accepted on June 28

[140] statement by András Schiffer (LMP): minutes of the plenary session of the National Assembly: June 14, 2010 (14th day of session) Statement 295

[141] 1949 XX. law concerning the Constitution of the Hungarian Republic 61st § paragraph (4)

[142] amendment proposal T/359/8 supported by LMP's attached amendment proposal T/359/16

[143] statement by Ildikó Lendvai (MSZP): minutes of the National Assembly's Committee on Human Rights, Minorities, Civilian and Religious Matters: June 15, 2010

[144] statement by Ildikó Lendvai (MSZP): minutes of the plenary session of the National Assembly: June 15, 2010 (15th day of session) Statement 166

[145] statement by Ildikó Lendvai (MSZP): minutes of the National Assembly's Committee on Human Rights, Minorities, Civilian and Religious Matters: June 14, 2010

c) The poorly thought through, take-no-prisoners legislation which was discussed largely in the proposer's absence turned out to be a disappointment. Not even three months after its acceptance, it became obvious that it would have to be amended. The lack of precision in the commenced process of concentration and the previous act's missing points enabled the introduction of further personal and unilateral institutional guarantees.[146] The law practically places the resources of the robbed public service mediums in the hands of persons and institutions burdened by central influence.[147] This is illustrated excellently by the amendment concerning the Executive Body's members, whose election, based on the vague memory of the parity system, on its own cannot constitute the birth of the body. Only if its president and one additional member are delegated by the Media Council can the Board be considered as a functioning entity.

2. The Media Constitution

The law dubbed as the Media Constitution - which after the systematic "reform" will include points relating to content as well - is interesting for various reasons. Primarily because this was the first legislative proposal which was surrounded by professional debate.[148] It is not accidental that professional consultation occurred only in the case of the Media Constitution, because it "simply" records general declarations and does not deal with structural and substantive questions subordinated to the central governance. The only problem with the consultation was its coincidence with the parliamentary debate.[149]

The functionally overburdened regulation was extended to all forms of media - going against the specific EU guiding principles intended for this matter, also to the internet - and led to the governmental control of everything from blogs to commercial channels.[150] Because the act's language[151] deems a news portal indistinguishable from a blog, the obligation for registration became possible[152] and the media authority's substantive and personal control over internet sites created for the expression of opinions by private persons became complete.[153] The legisla-

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[146] 2010 CIII. law concerning the amendment of certain laws regulating media and broadcasting, accepted on October 25, 2010, and introduced with proposal T/168

[147] statement by László Mandur (MSZP): minutes of the National Assembly's Committee on Culture and Press: October 6, 2010

[148] minutes of the National Assembly's Committee on Culture and Press: October 6, 2010

[149] statement by László Mandur (MSZP): minutes of the National Assembly's Committee on Culture and Press: June 17, 2010

[150] statement by László Mandur (MSZP): minutes of the plenary session of the National Assembly: July 19, 2010 (26th day of session) Statement 204

[151] 2010 CIV. law concerning the freedom of press and basic rules of media contents 1st § points 1 and 6

[152] 2010 CIV. law concerning the freedom of press and basic rules of media contents 5th § paragraph (1)

[153] statement by Ildikó Lendvai (MSZP): minutes of the plenary session of the National Assembly: July 21, 2010 (27th day of session) Statement 180

tion's extraterritorial clause (which deals with cases of pressing public interest or the insurance of the media's diversity) opened the doors for the regulation of content from abroad.

The information obligation[154], extended to all content providers, was instituted as the audience's right on one hand, and as the press' duty on the other. The argument[155], according to which content segmentation and general differentiation is desirable because commercial media cannot be expected to provide coverage of all the loosely defined "subjects of public interest" though the publicly funded public service media's primary duty is to provide balanced and multi-perspective content, was met with disinterest.[156] The blurring of the two types of content providers does not need too much analysis: the violation of the obligation is sanctioned by the media authority. Regardless of whether the affected party proceeds with the approved form of appeal or not, the fines are imposed preliminarily at the very least. Naturally, each medium will cover an event with this in mind, or consider it unworthy of public attention.

3. The Media Law

a) In the spirit of exercising complete control over any and all fields, the structural preconditions have to be exploited in a manner which will allow for both economic and personnel-related powers. In the case of the Media Law, the independent representative proposal signaling the final stages of power concentration culminated and completed the regulations previously established. The legislation was created without the aid of an impact study, consultation with the professional organizations, and public debate, but it was passed after it was thoroughly discussed "with many people" and with the pacifying blessing of the NMHH.[157] The introduction of proposer Erzsébet Menczer's address[158] summarizes the cynicism which was the essence of this legislation in a single sentence. According to this, "the coming law's democratic quality, insurance of personal freedoms, and the ability to serve private and public interests depend on the wisdom and self-moderation of parliamentary representatives." The parliamentary representatives either did not practice self-moderation, or the regulation's democratic spirit was not even dependent on this. One thing is for certain: the law adequately serves the private interest of a select few.

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[154] 2010 CIV. law concerning the freedom of press and basic rules of media contents 10th and 13th §

[155] statement by Ildikó Lendvai (MSZP): minutes of the National Assembly's Committee on Human Rights, Minorities, Civilian and Religious Matters: June 14, 2010

[156] statement by Gergely Karácsony: minutes of the plenary session of the National Assembly: July 21, 2010 (27th day of session) Statement 76

[157] statement by Erzsébet Menczer (Fidesz): minutes of the National Assembly's Committee on Culture and Press: November 24, 2010

[158] exposé by Erzsébet Menczer (Fidesz): minutes of the plenary session of the National Assembly: December 1, 2010 (56th day of session) Statement 2

In the course of exercising complete economic authority, the law basically introduced a new form of taxation[159]. With regards to very influential media content providers, the NMHH opened the doors for its own influence in the markets by introducing a 3% supertax.[160] The financing of public service media also became exclusively centralized. Previously, public service mediums received their operational funding according to percentages devised by law. In the new regulation, the novel method for determining these budgets is through the work of the seven member Public Service Budget Council, a body which operates with discretionary authority.[161] Four of the influential body's members are nominated by the CEOs of the individual government corporations, while three are appointed by the State Audit Office. The Council's president is none other, than the director of the Broadcasting Support and Property Management Fund, appointed by Annamária Szalai. The resources of the public service mediums were previously put in the hands of the Fund. The fears of the opposition parties came true no matter how hard the government parties' representatives protested them: public media's real estates and archives do not constitute unalienable goods. These can now be sold and taxed freely.

To correct the danger of having more than one coverage with differing tones of the same event in public media, the definition names the Hungarian Office of Correspondence as the national news agency,[162] and is the sole producer of public news services and editor of news portals[163]. This entity is independent from the state but very dependent on the governing parties.

The Media Council exercises complete authority; it became a "superauthority". It has an inventory, collects data, authorizes, creates order, and penalizes TV and radio stations, printed press, and internet sites. The freedom of primarily the printed and electronic media to settle problematic affairs through the courts has been discarded. Today, the media authority's executive procedures fulfill this role.[164] The content provider facing a penalty (millions of forints) or suspension of service can appeal, but I personally see little possibility for surviving the verdict without winding up. According to one of the most extreme normative declarations of the Media Council's power - purposefully broadly defined -, in order to ensure the execution of public duty, it can authorize a company to provide media content without the application of a call for tender.[165] The first organization to hand in a submission receives the contract - presumably a

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[159] 2010 CLXXXV Law Chapter V.

[160] statement by László Mandur (MSZP): minutes of the National Assembly's Committee on Culture and Press: November 24, 2010

[161] 2010 CLXXXV Law 108th §

[162] 2010 CLXXXV Law 101st §

[163] statement by László Mandur (MSZP): : minutes of the plenary session of the National Assembly: December 1, 2010 (56th day of session) Statement 8

[164] leading statement by László Mandur (MSZP): : minutes of the plenary session of the National Assembly: December 1, 2010 (56th day of session) Statement 12

[165] 2010 CLXXXV Law 48th § paragraph (6)

company close to the Media Council and notified in advance. The counter arguments[166] for these initiatives were dispelled by Bence Bodnár, a department head from the National Ministry for Development. He stated the Media Council will address these questions very precisely through soon to be issued guidelines.[167]

b) By December 2010, after the approval of the Media Constitution and the Media Law, the NMHH did not possess the ability to regulate only a single field of media. This was legislation. Because legislative power must be recorded in the Constitution, the task was the creation of this ability for a body which is mainly a tool subordinated to the executive. To satisfy the Media Authority's preconditions for independence and autonomy,[168] the NMHH and its president rose to Constitutional ranks. In accordance with this, the latter received appropriate legislative powers as well. The sharpest critic of this was probably the Ministry of Public Affairs and Justice's secretary of state, Róbert Répássy. While arguing against the proposal, he stated that since the NMHH's sphere of influence does not include anything which could not be resolved by other bodies, empowering the organ with legislative powers is completely unnecessary.[169] However, the constitutional authorization necessitated by a single person made possible the regulation of questions of freedom of the press by the legal hierarchy's lowest possible norm.

c) It is ironic, that during the drafting of the media regulation the chief argument for the ⅔ authorization was that the Hungarian regulation must comply with the expectations and spirit of the European Union.[170] However, the legislation drawn up by three government party representatives not only did not meet the EU's standards, but it put the Republic of Hungary in an extremely uncomfortable situation in the course of its EU presidency. After passing the laws, international medias declared that the freedom of the press was abolished in our country. After the Union's hearing, the Prime Minister responded to criticism by stating that he will not let other nations treat Hungary as if she was a doormat. After increasing pressure, the government agreed to amendment the regulations. On February 23, 2011, a seven page amendment proposal[171] aimed to supplement the Media Constitution and the Media Law arrived to the National Assembly. This was constructed without the consultation of opposition parties and it included only su-

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[166] statement by Ildikó Lendvai (MSZP): minutes of the National Assembly's Committee on Human Rights, Minorities, Civilian and Religious Matters: December 6, 2010

[167] statement by department chief Bence Bodnar: minutes of the National Assembly's Committee on Human Rights, Minorities, Civilian and Religious Matters: December 6, 2010

[168] general justification for legislative proposal T/1940

[169] statement by Róbert Répássy (Fidesz): minutes of the Committee on Constitution, Justice, and Orders of Business of the National Assembly: December 13, 2010

[170] e.g. see: exposé by Erzsébet Menczer (Fidesz): minutes of the plenary session of the National Assembly: December 1, 2010 (56th day of session) Statement 2

[171] legislative proposal T/2471

perficial solutions. The amendment did not change neither the structure, nor the spirit of the original law.

After briefly summarizing the (otherwise quite expandable) complicated, new structure, the picture becomes clear. The Prime Minister, through the appointment of the media authority's loyal premier, exercises direct influence on the world of media. Not only the system, but the appointments made possible through it serve this very purpose as well. The media authority's legal authority create the opportunity to keep the media on a tight leash. It must be admitted, that there was a serious legal effort put behind these legislations. The result, however, is simple and saddening. Besides facilitating government propaganda through formally legal tools, censorship is once again part of public media - in reversed form. They do not forbid presentation or publication, they simply impose serious sanctions on content deemed unfavorable by the administration.

Secret Collection of Information

It contributes significantly to the strength of government if it removes as many of the hinderances built into the system for regulations pertaining to secret collection of information as possible. According to new rules, it gives more of these rights to leaders of bodies whose loyalty to the government is certain or probable. We can list here the Chief Prosecutor or the previous head of the Prime Minister's security detail, the current the director of the Center for Counterterrorism.

In democratic states operating under the rule of law, secret information gathering can only be a tool utilized under strict constitutional and legal guidelines. Due to the process' violation of the personal sphere, it should only be applied to precisely specified targets and according to strong, predefined rules. But in an effort to make the courts' operation more effective, the use of covert information gathering as evidence in both criminal and noncriminal investigations was radically altered by a legislative amendment.

Prior the law in effect January 1, 2011, the usage of information collected secretly for the purposes of law enforcement was only possible to use in a trial if the criminal act provided the preconditions for it. The law determined the appropriateness of the strategy considering the above mentioned principles. It allowed the use of secretly gathered information not only on the crime it was primarily aimed to aid in investigation, but also on any other crime which the perpetrator committed, given those also provided preconditions for the application of the technique. Additionally, the information collected could be used against all perpetrators mentioned in the authorization within the context of the crime mentioned in the authorization. The results of covert information gathering in noncriminal cases could only be utilized according to the law on penal procedure's corresponding parts, and strictly only against the person named in the authorization.[172]

The government originally intended to change this regulation so the use of information gathered secretly in criminal investigations would be applicable even against persons and crimes not mentioned in the authorization, while in noncriminal investigations the information could be

[172] 1998 XIX law on the penal procedure 206/A. § (in effect prior to January 1, 2011)

applied against persons not included in the permission as well.[173] According to the minister's justification, the proposal would have ended the practice of an unnecessary regulation.[174] However, all of this would not have meant anything other than the complete removal of all legal regulations regarding secret information collection. Opposition representatives stated that the notion of a distinct aim is now completely absent, the permission would now simply become a "blank check", it would loose all of its purposes as such, and would make the legality and monitoring of these covert operations more than questionable. In their opinion, this regulation would provide for a laissez faire approach towards the practice and would result in serious infringements. Basically, it allows for the routine collection of data - even through the violation of the victim's personal space and his or her human dignity - which could be used at any time.[175] The secretary of state addressing the Parliament naturally relied on crime combating claims. He justified the deregulation by stating that obviously the authorities cannot ask the defendant to repeat a claim warranting a criminal investigation after they get the authorization.[176] Of course, for laymen these arguments might seem attractive and logical. But these regulations are the ones which make up the rule of law, even if they are counterproductive sometimes. This principle is surely as important as crime fighting. Finally, the government accepted parts of the opposition's arguments, and thus thanks to a supported and approved amendment proposal the gathered information only becomes available if the courts permit their usage.[177] This is surely positive, however, it is indubitably a step back compared to the previous regulations.

We must mention, that in this same period the government proposed to expand the list of crimes - e.g. bribing, damaging the environment, pollution, violation of freedom of conscience and religion - which could mandate secret information collection.[178] Today, the prosecutor, the police - including the Center for Counterterrorism and the National Defense Service -, the National Office for Tax and Duty, and the secret service agencies are allowed to pursue the secret collection of information. Thus, the list of parties authorized to conduct such activities also grew.[179]

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[173] legislative proposal T/1864 146th §

[174] detailed justification for legislative proposal T/1864 146th §

[175] statements by Dávid Dorosz (LMP) (Statements 369, 387, 391), statements by Tamás Harangozó (MSZP) (Statements 405, 415, and 423), statement by Tamás Gaudi-Nagy (Jobbik) (Statement 411), and statements by Gergely Bárándy (MSZP) (Statements 419 and 425): minutes of the plenary session of the National Assembly: December 14, 2010 (60th day of session)

[176] statement by secretary of state Róbert Répássy: minutes of the plenary session of the National Assembly: December 14, 2010 (60th day of session) Statements 385 and 421

[177] pre-final vote amendment proposal T/1864/53 point 17

[178] legislative proposal T/1426 25th § paragraph (2), after approval 2010 CXLVII. law concerning the amendment of certain policing and related laws, legislative proposal T/1673 32nd §, after approval 2010 CLXI. law concerning the amendment of certain penal laws

[179] legislative proposal T/1426 13th § paragraph (2), after approval 2010 CXLVII. law concerning the amendment of certain policing and related laws

It is not even worth it to argue against the notion of promoting the Prime Minister's former bodyguard to the Center for Counterterrorism's directorial position. But we must understand, that there is more to this than personnel overlap. The public law status of new organizations created by restructuring the police is also worrisome, and all opposition parties spoke out against this. Both the counterterrorism body and the organization dealing with crime prevention and investigation (the National Defense Agency) operate according to incomplete regulations. The National Assembly's control is also not guaranteed, as there is no decree concerning the appearances of appointed directors-general before a professional committee prior to promotion. There is also no information obligation on the part organizations authorized to use intelligence methods. Additionally, the Center for Counterterroism which otherwise fulfills heterogeneous tasks - besides combatting terrorism, it protects the Prime Minister and the President - is allowed to conduct secret information collection operations in locations implied in and against persons suspected of terrorist activities without judicial approval.[180]

Based on a government initiative, the Chief Prosecutor's Office received the authorization to use these techniques in crime prevention and investigation scenarios in addition to previously permitted instances.[181] As the opposition parties stated in Parliament, the body's public law position and role in the penal procedures certainly do not mandate this.[182]

"Knowledge and information are power" is a commonplace. But it is also true. It is apparent, that the altered legal regulations expanded the authorities of organizations headed by leaders loyal to the government, it broke down the legal barriers retarding the process of secret information gathering, and made the information more available for judicial proceedings. As lawyers, we cannot be as naive as to dismiss the importance of information obtained by the government within legal bounds. This is easily made possible by an after-the-fact judicial permission.

Legislation

The Constitutional Court declared the law concerning legislation as unconstitutional and placed it out of effect by December 31, 2010.[183] The government submitted the proposal for this bill due to the constitutional changes, the duties stemming from membership in the European Union, the formed practice of drafting laws, and the legal dogmatism of legislation. The regulation is contained in three sources of law: the questions pertaining to sources of law are to be de-

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[180] statement by Tamás Harangozó (MSZP) (Statement 28), statement by Dávid Dorosz (LMP) (Statement 32), statement by Tamás Gaudi-Nagy (Jobbik) (Statement 154): minutes of the plenary session of the National Assembly: November 3, 2010 (42nd day of session), legislative proposal T/1426 11-13 §, after approval 2010 CXLVII. law concerning the amendment of certain policing and related laws

[181] T/1673 64th-65th §, after approval 2010 CLXI. law concerning the amendment of certain penal laws

[182] minutes of the plenary session of the National Assembly: November 23, 2010 (51st day of session) Statements 17-83

[183] Constitutional Court Resolution ABH 121/2009 (XII. 17.)

cided by the Constitution[184], additionally, a separate law[185] records the procedural details of preparing a legislation, and yet another law[186] navigates the rules of public participation in legislation. According to the proposer's exposé, the aim was to create quality legislation for a "good state" and "good legislation", and the widespread insurance of public participation in the course of legislation.[187]

The described legislative intention was undoubtedly supportable, as was the unavoidable task of creating a new law concerning legislation which avoids careless constitutional violations. At the same time, the governmental majority used this opportunity to create a legislative process which posed the least amount of difficulty for the execution of their will.

All opposition parties criticized the wide gap between words and actions, thus the legislative aim expanded upon in the proposal was questionable. They brought up the fact that the proposed procedure was not even a distant relative of the government's legislative practice, especially since they tended to favor the technique of submitting independent representative proposals, widely considered to be a shortcut to avoid the mandatory process of consultation.[188] These criticisms seem especially justified considering the general debate for these proposals took place the day after Fidesz's group leader handed in the second proposal about supertaxes mentioned in the *"The Reduction of the Constitutional Court's Power"* section. They did not respond substantively to the opposition's concerns. They read their prewritten speeches (which were barely more than dry recitations of the law's text) as if nothing had happened on the previous day.[189] "As we know, sometimes the National Assembly makes the mistake of neglecting to notice this"[190], said the governmental delegation's chief orator, referring to the retroactive clause. The only substantive response to concerns raised during the debate was given by a secretary of state. "since the formation of the new National Assembly […] these laws were created according to the legal regulation of the constitution in all instances."[191] Of course, the secretary's arrogance can be an-

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[184] legislative proposal T/1247, after approval 2010 CXIII. law concerning the amendment of the 1949 XX. law concerning the Constitution of the Republic of Hungary

[185] legislative proposal T/1381, after approval 2010 CXXX. law concerning legislation

[186] legislative proposal T/1382, after approval 2010 CXXXI. law concerning public participation in the preparation of laws

[187] see: secretary of state Róbert Répássy's exposé (Statement 46), and secretary of state Bence Rétvári's exposé (Statement 48), minutes of the plenary session of the National Assembly: October 27, 2010 (40th day of session)

[188] e.g. see: statement by Tamás Sós (MSZP) (Statement 60), statement by Szilvia Bertha (Jobbik) (Statement 64), statement by András Schiffer (LMP) (Statement 68), minutes of the plenary session of the National Assembly: October 27, 2010 (40th day of session)

[189] e.g. see: statement by Imre Vejkey (KDNP) (Statement 62), statement by János Kerényi (Fidesz) (Statement 70), minutes of the plenary session of the National Assembly: October 27, 2010 (40th day of session)

[190] see: statement by Imre Szakács (Fidesz): minutes of the plenary session of the National Assembly: October 27, 2010 (40th day of session) Statement 56

[191] statement by secretary of state Róbert Répássy: minutes of the plenary session of the National Assembly: October 27, 2010 (40th day of session) Statement 114

swered by cynicism. He is right. As long as the constitutional framework can be adjusted to suit current needs. As long as the Constitutional Court determines something to be unconstitutional and then in response the governmental majority can - and more importantly will - alter the Court's sphere of influence, the above transcribed statements will be formally correct.

The new regulation still allows for the avoidance of public consultation, as it only requires such a process if a proposal is introduced through the government. The "escape route" of independent proposals by representatives, committees, or the President remains. Opposition parties voiced their desire to extend coordination requirements.[192] The government representative did not support these initiatives because he believed this would make the the opposition's work more difficult.[193] It is my belief, that in the case of independent representative proposals - and other proposals as well - the process of coordination would be manageable and desirable. During the debate, it was stated that the government takes care of these tasks through the well-established and already broken in infrastructure.[194] Surely, the acceptance of these proposals would have made it more difficult to go around consultation.

It is interesting to see the comments of one of the secretaries of state's in the proposing exposé, according to which "the government obviously writes regulations primarily for itself."[195] This is a fascinating half of a sentence. If it isn't a slip-up, it is certainly another sign of how the government thinks about the National Assembly. It is commonly known, that whether we are talking about a proposal by a parliamentary representative, Assembly committees, or the President himself, we are still discussing parliamentary legislation. Legislation is created by the National Assembly, not the government's executive body. If the previous comment was made consciously and was not simply a badly worded utterance, it reflects the view held by many. That is, that the Prime Minister sees the National Assembly as a body without preferences, meant to serve the government. Unfortunately, I have to say these statements are not entirely baseless.

The law allows for several ways around the obligation of public consultation, and it also states subjects excluded from it. Societal consultation is not necessary in the cases of proposals regarding payment obligations, government subsidies, the budget, the execution of the budget, EU and international subsidies, international treaties, and the establishment of organizations or institutions. Proposals also do not have to be considered for coordination if their acceptance is a matter of pressing public interest. The dialogue is also not part of the procedure when that per-

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[192] e.g. see: amendment proposals T/1382/24, T/1382/34, T/1382/46. note: the secretary of state appearing instead of the proposer in the professional committee debates and a government party representative joining in the discussion both thought the argument for the expansion of public consultation to be worthwhile: minutes of the National Assembly's Committee on Human Rights, Minorities, Civilian and Religious Matters: November 3, 2010

[193] statement by secretary of state Róbert Répássy: minutes of the plenary session of the National Assembly: October 27, 2010 (40th day of session) Statement 114

[194] statement by Ildikó Lendvai (MSZP): minutes of the National Assembly's Committee on Human Rights, Minorities, Civilian and Religious Matter: November 3, 2010

[195] secretary of state Bence Rétvári's exposé, minutes of the plenary session of the National Assembly: October 27, 2010 (40th day of session) Statement 48

tains to the fields of national defense, national security, finance, foreign affairs, environmental protection, resource protection, or historic sight protection.[196]

There was a consensus amongst opposition parties about the troubling nature of these exclusions. Beside the independent representative proposals, now initiatives prepared by ministers could also avoid consultation. Who decides what is considered to be pressing public interest? The law, its justification, or its parliamentary discussion provided no guidance in this matter. It does not bring us closer to the solution to state "these terms are already present and well-functioning terms from the body of law". Everything will only depend on justification. On top of everything, not only does this allow to avoid public consultation of, say, a tax law, but with the application of so-called "law medleys", clauses and acts pertaining to just about anything can be hidden in legislative packages. And the hidden decrees will not be subject to the Constitutional Court, because the power of that institution would already be curtailed to exclude it. Naturally, the opposition argued against these motions and issued several amendment proposals. The government parties remained unconcerned.[197]

A further problem is the selection of strategic partners during the course of public consultation. According to the new legal regulation, the government contracts certain social and professional organizations to provide consulting and strategic partnership for developing legislation. The decision-making powers about which entities will receive these contracts rest solely within the discretionary authority of the minister preparing the legislation. Albeit there is a possibility to include others in the consultation besides the strategic partners, but even in that situation every outcome is but a function of the minister's sovereign authority.[198] The minister's unlimited decision-making prerogative could have been minimally counterbalanced by the minister providing the opportunity for an organization wishing to participate for consultation, or by recognizing the strategic partnership of certain organizations which have "previously made a remarkable contribution"[199] as a given. On the other hand, the partner's hands can be tied even after being selected for a strategic partnership. The law does not deal with this subject. It is even possible that the law allows for the exclusion of partners who do not agree with the minister in fundamental questions.[200] At the same time, it obligates the strategic partner organizations to the execution of a disproportional, near-impossible duty by ordering them to also voice the opinions of organizations without partner statuses.[201]

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[196] 2010 CXXXI. law concerning public participation in the preparation of laws 5th § paragraphs (3)-(5)

[197] e.g. see: statement by Szilvia Bertha (Jobbik) (Statement 64), statement by András Schiffer (LMP) (Statement 68: minutes of the plenary session of the National Assembly: October 27, 2010 (40th day of session), statements by Gergely Bárándy (MSZP) (Statements 350 and 370), statement by István Apáti (Jobbik) (Statement 376), response by secretary of state Bence Rétvári (Statement 386), minutes of the plenary session of the National Assembly: November 8, 2010 (43rd day of session), and amendment proposals T/1382/14, T/1382/31, and T/1382/58

[198] 2010 CXXXI. law concerning public participation in the preparation of laws 13th-14th §

[199] amendment proposals T/1382/7 and T/1382/31

[200] amendment proposal T/1382/22

[201] amendment proposal T/1382/8

The rules limiting the government's authority in these transactions are absent, as are the legal consequences relating to the duties in the regulation. It might be an adequate response to say that one cannot generalize "adequate time", because that is different for each legislative plan. How would stating that the deadline for consulting cannot be, for example, 15 days less than the "adequate time" hinder the parties' ability to provide sufficient flexibility within the timeframe? This remains unjustified.[202] As to the sanctions relating to neglect of the consultation obligation, the proposer expressed his concern about providing the right for a veto for someone not authorized with legislative power. I cannot evaluate this sentence. The subject is not the veto rights of public organizations, but the attachment of legal consequences to the failure to consult with the public, for example, common law nullity. At any rate, this would surely aid the legislation's application.[203]

Predictably the government would partner with the most aggressively critical public and professional organizations, though there certainly will be some - e.g. the professional institutions - which will be difficult to leave out. And if the partners should act so recklessly as to neglect the program of national cooperation, their contract can be eliminated. This system is good for government, as it allows them to create their own public and professional critics - based on the historically functional model of the "own opposition". It will be good for organizations who get more powerful, whose influence, lobbying capabilities, and prestige will increase. They, in sharp contrast with the others, will be part of the legislative process. But who else will this system benefit? The new system nationalizes even the public and professional spheres. Maybe, it will be unnecessary to bother with the process of selection, because public consultation can be avoided indefinitely. The government will surely throw a bone to the contracted partners, but in the most important instances it is not outrageous to assume, that considering the current practices, the government will utilize its legally mandated opportunities to exclude consultation. Thus, the normal way to legislate will remain the extraordinary method. As such, the laws and regulations intended to protect democracy and rule of law will become nothing else but symbolic sets of guidelines. However, symbolically sonorous legislation is not a quality of democratic rule of law.

The National Assembly

The order of discussion above provides a clear view into the relationship between the Prime Minister and the National Assembly. Every government aims to have its initiatives unaltered by the National Assembly. The degree to which this is possible is determined by the political currents. But it can be soundly stated, that the current Prime Minister views the Parliament as a necessary prop for the rule of law, but its practical role is viewed simply as a retarding factor to the process of executing government concepts. Because of this, the government uses all tools to shorten the path of legislation. In the case of a ⅔ majority, there can be no practical counter-

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[202] amendment proposals T/1382/3, T/1382/33, and T/1382/52

[203] see: statement by András Schiffer (LMP): minutes of the plenary session of the National Assembly: October 27, 2010 (40th day of session) Statement 68

balancing of this besides verbal opposition. The Prime Minister declared it right at the onset of entering into office: there will "balance" and not "counterbalance". The only thing left would be the governmental parties' delegations. By nature these are loyal, but they still provide a counterbalance through its own motivations, and its presence was felt in the past twenty years from time to time. It is clearly visible, this is not the case today. However, to shed light on the reason for that, we must make a short digression. When we speak about a counterbalance to the head of government, we generally fail to recognize the influence the governing party's fundamental regulations have on this. The Prime Minister, in most scenarios, is the head of the governing party. The PM's real control is his own party's delegation and elite, while the elite's control is the party base which is enchanted or repelled by the leader's charisma. Without disregarding intra-party informal influences and the significance of personal charisma, I believe a party constitution which provides the party leader with the exclusive ability to appoint for the most important operative positions and to select the party's candidates for public offices makes intra-delegation governmental control impossible. In my opinion, the ⅔ majority is not the only enabler of the Prime Minister's ability to reduce the National Assembly to a formality. The inner dynamics of the governing party are also equally responsible.

To better support these claims, it is important to mention the order of discussion of parliamentary proposals. This can be characterized by near weekend submissions of amendment proposals generally through independent representative proposals to bypass public and portfolio consultation. A few weekdays later the Committee on Constitution, Justice, and Orders of Business of the National Assembly discusses these. The same day the general plenary debates are conducted, thus ending the timeframe for introducing amendment proposals. During the following week, the detailed debate takes place, and the next week the House votes on the proposal. The process is often shortened through the discussions of items not on the official agenda and the deviation from House rules. This enables, for example, to have the general and the detailed debate on the same day. On more than one instances, however, we cannot speak about debate at all. Opposition leaders criticize for hours, and the government parties make no comments. If they do decide to address the Parliament, they often lack substantive responses, they simply highlight the mistakes of the previous government. If they do not have a counter-plan, they speak about the extraordinary social empowerment which authorizes them to make sweeping changes. Indubitably, these are central, expected panels of discussion. We have seen instances in which a debate dragged on too long and the governing parties decided to close it with a procedural motion. To add insult to injury, on one occasion this happened while the Parliament was discussing a proposal handed in that very day. On another instance, after a long silence by government party representatives despite the opposition's urging for discussion, I myself - mainly provocatively - brought up the idea that their group leader must have ordered a ban on commenting. To this, János Lázár shouted, "that's right! I forbade them". At first, perhaps anyone might list the comment as a cynical expression of how idiotic the delegation chief thought the claim to be. But let us add, that in this debate, in which the Constitutional Court's limitations were discussed along with the provisions relating to the independent representative propositions, out of the 262 representatives from the governing parties, four made statements (including the proposer and Fidesz's head speaker) during the four hour debate. The genre preferred was "2 minute addresses" and

the government refused to signal whether it supports the proposal or not. But if we believe in the credibility of the rumors in which the governing party representatives state "we'd like to speak, but we have order and discipline", then the group leader's words must be interpreted literally. It is also characteristically true, that they hastily hand in pre-final vote amendment proposals in the last minute, in best case scenarios to correct any incoherences but not to substantially alter content, and in worst case scenarios these relate to completely different fields. The Committee on Constitution, Justice, and Orders of Business of the National Assembly mechanically qualifies these as compliant with House rules. It happened on several occasions that the representatives had to vote on amendment proposals handed out on site, and before some of them could receive copies. This legislative technique violates the principles of rule of law on its own.

New Perspective

It is both interesting and sad to see, the way the above described governmental politics transform the representatives' way of thinking. I would like to mention three examples to support this claim.

a) Fidesz introduced flat rate tax. They promised no one would suffer because of this, no one will earn less money than they did previously. This statement could be refuted in advance by the application of the simplest rules of logic. The president of the National Alliance of Entrepreneurs and Employers stated that the idea "that this tax system will benefit everybody never had a professional, but maybe a political basis"[204] Amongst the lower socio-economic spectrum, the previous tax system allowed for less taxation, so here net pay decreased. Thus, the government initiated a plan for salary compensation. It can follow through with this in the public sphere, but not in the private sector. A non-state economic institution cannot be ordered to raise its paychecks. To resolve this conflict, they created a "Committee for Monitoring Salaries and Taxes" composed entirely of governmental party representatives. This was described on Fidesz's website as an effort by the Fidesz-KDNP coalition to "exhort pressure on the private sphere as well to fulfill the salary compensation plans outlined in the recommendation."[205] The committees' president emphasized the entrepreneurs' moral obligation to raise pay in a radio interview.[206] This perspective can be summarized as follows: if the private sector violates the spirit of the program of national cooperation, the government will retaliate. Here, the government interferes with the private sector beyond its own legal boundaries.

b) The nullity law submitted pertaining to the 2006 riot control incidents[207] compelled the courts to void legally binding verdicts based solely on police testimonies. The proposal did not punish responsible political or police leaders, but along with its justification it qualified the ac-

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[204] http://gazdasagiradio.hu/cikk/60215 date accessed: February 23, 2010

[205] http://www.fidesz.hu/nyomtathato.php?Cikk=158966 date accessed: February 23, 2010

[206] http://gazdasagiradio.hu/cikk/60207 date accessed: February 23, 2010

[207] legislative proposal T/2227

tivities of judges, prosecutors, and policemen as unprofessional. In addition to the opposition, the Supreme Court's Chief Justice, András Baka also condemned the initiative as a motion incompatible with the rule of law and the fundamental constitutional principles of the European community.[208]

c) The law ensuring the expediency of judicial procedures practically blames lawyers for dragging out cases, and as a result it considers their absence from court more severely[209] than it does in the cases of other professional or nonprofessional participants. Beside my belief in this being a professionally incorrect approach which violates many constitutional rights, it bears further significance pertaining to this study. Procedure limitations and the lawyers "hung up" on these are undesirable in all totalitarian states because they decrease efficiency and expediency, call attention to and search for shortcomings and violations. Thus, they make the executive's work more difficult. It is unfortunate, if this perspective thrives within a framework for the rule of law.

These three examples illustrate the governmental majority's complete disregard for limits on their power not only in the fields of constitutional institutions but also in life and legislation. These shortcomings result in the violation of basic principles of rule of law, checks and balances, and the separation of powers.

Conclusions

For now, the establishment of a presidential system will have to wait. But the informal and very formal concentration of power happened, and the process is far from over.

As an example, let us take a look at the first part of the continuation, a proposal submitted on January 13. On one of the first National Assembly sessions in 2011, the body decided on the transformation of the Monetary Council of the Hungarian National Bank. The attempts to remove the president - through political pressure - were largely unsuccessful, partly because of the president's resistance and partly due to EU sentiment. I would like to note, the president himself publicly stated that a high ranking government official told him to prepare for battle if he fails to resign.[210] And so, the deconstruction of the institution began. As I previously mentioned, the Prime Minister's confidante became the oversight committee's president, and the government made sure the rules of electing the body's members ensured the majority of those loyal to the

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[208] http://nol.hu/belfold/baka__a_jogeros_iteletet_mindenkinek_tiszteletben_kell_tartania date accessed: February 17, 2010

[209] 2010 CLXXXIII. law concerning "the amendment of certain laws to ensure the efficient operation of courts and the expediency of judicial proceedings" 128th § and 29th §

[210] e.g. see: www.fn.hu/belfold/20110307/simor_mnb_elnoket_nem , www.nepszava.hu/articles/article.php?id=401758, www.vg.hu/gazdasag/gazdasagpolitika/simor-kozoltek-hogy-keszuljek-a-harcra-ha-nem-mondok-le-342801, date accessed: March 12, 2011

government. The previously seven member body which included the president and two vice presidents of the Hungarian National Bank, two members delegated by the Prime Minister and another two by the president of the Central Bank. The nominees were promoted by the President of the Republic.[211] The new law placed the right for appointment with the National Assembly's Economic and Information Technology Council (not the State Audit and Budgetary Council, because that has traditionally been chaired by opposition parties), and thus ensured the election of loyal members into the Monetary Council.[212]

I am certain many of the above described techniques were present among other governments' tools as well. Some decrees on its own even serve good purposes. However, the consciously and systematically unidirectional and single purpose series of constitutional amendments, other legal acts, and the governmental decisions made possible through these in the past roughly half a year completely and qualitatively differentiate between this government and governments of the past. The ⅔ majority is not the cause for questions of legitimacy, but the apparent political regime change it fosters. The opposition will have to soon decide whether it wants to be the opponent for the government or the system. One who tries to prove his own sobriety is usually least sober. It seems this is true for the often mentioned System of National Cooperation. Regrettably, we are closer to having an Eastern style government or one akin to our administration between the two World Wars than to a European style configuration.

As far as the future goes, I believe the Constitution will point towards the neglect of limits of power and multiple ⅔ majority regulations. It will not serve the high minded goals presented to the public, but rather the avoidance of important but controversial subjects such as abortion, the voting rights of extraterritorial Hungarians, and same sex marriages; just the same way the government chose to avoid concerns with the attributes of a democratic institutional system. On the one hand, dealing with these would surely reduce the favorable societal reception, but more importantly, this method will provide for the gradual and quiet acceptance of these points by the National Assembly. In most cases, the current constitution provides clear and abundant guidance over these questions. The governing parties' constitutional plan choses not to include these, or it deals with them in overly broad terms. However it is currently visible, that the constitution proposal - which does not recognize the precedence of our current Constitution and aims to nullify that - will stabilize the government's centralized system of power. In certain instances it will even expand upon it, as in the case of the limitation of the Constitutional Court. Let us stop at this point, because any conclusions after this point would simply be educated guesses. The goal of my work was to prove my points through the recording of factual evidence.

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[211] 2001 LVIII. law concerning the Hungarian National Bank 49th § paragraph (4)

[212] legislative proposal T/2158 1st §