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The Twilight of Parliament – Parliamentary law and practice in Hungary in populist times[**]

Abstract

This study is based on the assumption that if there has been really an authoritarian transition in Hungary since 2010, this should have had a significant impact on Parliament as well. The article reviews changes in parliamentary law and practice, examining whether they have indeed aimed at concentrating power and instrumentalizing legislature. In doing so, it analyzes the key organizational and operational reforms of the National Assembly. The final conclusion of the study is that 2010 is an important milestone in the very recent history of Parliament, and it evaluates some changes unconstitutional, while it also argues that some new trends in parliamentary law and practice have destroyed the quality of the activities of the Parliament. As a consequence, the Parliament only formally performs its constitutional functions, and plays a marginal role in the constitutional system, having a number of institutional and operational features that are incompatible with the standards of modern constitutional democracies.

Keywords: Hungarian Parliament; populism; parliamentary procedure; law-making activity; legislative process; marginal Parliament

Introduction

There is a broad consensus in the academic literature that since 2010 an authoritarian transformation of the country's political and legal system has developed in Hungary, during which populist governance has undermined the most important guarantees of the rule of law and the system of checks and balances.[1] In December 2018, the European Union launched a

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[1] See e.g. Landau, David (2013). Abusive Constitutionalism. *UC Davis Law Review* (47) (1) p. 191.; Halmai, Gábor (2018). A Coup Against Constitutional Democracy. The Case of Hungary. In: M. A. Graber, S. Levinson and M. Tushnet, eds. *Constitutional Democracy in Crisis?* New York: Oxford University Press, pp. 243–256.; Bugarič, Bojan (2019). Central Europe's descent into autocracy: A constitutional analysis of authoritarian populism. *International Journal of Constitutional Law* 17 (2) pp. 598–608.; Walker, Neil (2019). Populism and constitutional tension. *International Journal of Constitutional Law* (17) 2 pp. 521, 524.; Fournier, Théo (2019).

procedure under Article 7 of the Treaty on European Union to examine whether the rule of law in this Member State was indeed under a systemic threat.[2]

If nationalist populism is really in power in Hungary which has had a constitution-making parliamentary majority since 2010 (except between 2015 and 2018), then it is a plausible presumption that the authoritarian transition should have affected the institution of the Parliament too. The government majority adopted so comprehensive constitutional and legal reforms that would have been unthinkable without the involvement of the National Assembly (*Országgyűlés*). Therefore, it can be assumed that significant changes have taken place in the functioning of the Parliament in the last decade, in line with the concentration of power in the consecutive governments of Viktor Orbán, reducing the role of the legislature in the power-sharing system. In this study, I will discuss only the most important changes in the parliamentary law and practice, i.e. the analysis will not be exhaustive, but it is not necessary, anyway; a review of basic organizational and operational characteristics is sufficient to confirm or refute this hypothesis.

It is to be noted that the right-wing government coalition gained on overwhelming majority in all three parliamentary elections held since 2010, and unscrupulously exploited its unlimited power. During 2011, it amended the previous Constitution a total of 12 times, then adopted a new Fundamental Law in the same year (which it has changed eight times since then) and essentially restructured the entire legal system.

1. Organisational changes

1.1. The plenum

The National Assembly remained a unicameral parliament despite raising the idea of establishing a corporatist-type second chamber on several occasions, and the 2011 Fundamental Law was significantly influenced by the nostalgy for the so-called ‘historical constitution’ being in effect before the end of the World War II, which would also have led to the restoration of a bicameral parliament. In the end, the rejection of bicameralism was probably driven by political considerations.

The number of Members of Parliament decreased from 386 to 199 from the beginning of the parliamentary term in 2014. This was not only a symbolic step (symbolizing that the state was saving on itself) rationalising also parliamentary debates, but could also result in political gains, as it was obviously a popular measure, and more importantly, it made it easier to maintain discipline for smaller parliamentary groups. Nonetheless, while the committees’ membership has not changed significantly, the reduction in the overall number of MPs has not in itself increased the efficiency of parliamentary work.

From rhetoric to action, a constitutional analysis of populism. *German Law Journal* 20 (3) pp. 363-381.; Blombäck Sofie (2020). Populism as a Challenge to Liberal Democracy in Europe. In: A. Bakardjieva, E. N. Bremberg, A. Michalski, L. Oxelheim, eds., *The European Union in a Changing World Order. Interdisciplinary European Studies.* Cham: Palgrave Macmillan, p. 237.

[2] European Parliament resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL).

The changes of the electoral system were more significant in their effects, the analysis of which, however, would go far beyond the scope of this study. Yet, it is important to highlight that the anomalies related to the fairness of the general elections[3] could contribute to the presumed decrease in the legitimacy of the Parliament, and the blatant disproportionality of the electoral system significantly distorted the representative nature of the Hungarian legislature. The preferential parliamentary representation of nationalities was introduced in 2011, but only in 2018 was a nationality able to take advantage of this opportunity, when a German nationality representative came into the Parliament, who is, in reality, a loyal supporter of the governing parties.

Although the plenary session of the deputies should be the decision-making body of the Parliament, it plays merely a formal role in Hungary; in the legislative process, due to special procedural rules some of which are unusual in constitutional democracies, it does not have the opportunity to have a substantial influence on the content of laws, but in fact, it automatically adopts bills submitted by the Government or pro-government deputies, while opposition-initiated proposals are usually ignored.

Owing to the traditionally highly centralized and disciplined parliamentary faction of the leading ruling party, Fidesz, and the divided and opportunistic opposition, Parliament does not exercise its oversight function over the Executive power at all. Perhaps the most striking example of this is the emergency situation introduced in March 2020, when the Parliament, in a seriously unconstitutional manner,[4] simply resigned its constitutional obligation to continuously monitor the emergency decrees of the Government throughout the special legal order.

The plenary of the National Assembly is also very poorly able to fulfill its function of being a forum for discussing public affairs. This is significantly hampered by the limited publicity of the parliamentary work, the pro-government propaganda in the public media and the hostility between government and opposition MPs, which has a very negative effect on the quality of parliamentary speech.

It is a special feature of the plenary session of the Hungarian Parliament that its competence is not exclusive. However, since the Parliament, according to its constitutional status, is a collegial body of the legislature, whose members individually do not have any powers, it upsets the internal logic of parliamentary law if any body of the National Assembly itself exercises any kind of legislative powers. The legislature power is indivisible in a unitary state, and, due to the principle of the separation of powers, the Parliament may not be authorized to exercise executive powers. However, according to an act of Parliament, its standing committees may have the powers specified in the Fundamental Law or or an act, as was the case when in 2012 the Parliament authorized the Economic Committee (until 2017) to select private companies to sell the so-called 'settlement bonds'. The activities of this committee, due to its intransparent operation, were surrounded by suspicions of corruption, which obviously did not increase the prestige of the Parliament.

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[3] See in details, Hungary parliamentary elections 6 April 2014 OSCE/ODIHR Limited Election Observation Mission Final Report, OSCE Office for Democratic Institutions and Human Rights, Warszaw, 11 July 2014.; Hungary parliamentary elections 8 April 2018 OSCE/ODIHR Limited Election Observation Mission Final Report, OSCE Office for Democratic Institutions and Human Rights, Warszaw, 27 June 2018.

[4] See Zoltán Szente (2020). A 2020. március 11-én kihirdetett veszélyhelyzet alkotmányossági problémái. *Állam- és Jogtudomány* LXI (3). pp. 115−139.

Overall, it is not surprising that the Hungarian National Assembly is often seen in constitutional scholarship as a “rubber-stamp” parliament.[5]

1.2. The parliamentary committees

1.2.1. The Legislative Committee as an essentially anti-parliamentary body

Since 2010, significant changes have taken place in the committee system of the National Assembly. One of the most important organisational changes was the establishment of the Legislative Committee, which became a key player in the legislative process. This in itself can be seen merely as a technical change (there are similar committees of major importance in other countries too), but this committee playes a role in law-making that is unparalleled in constitutional democracies. In essence, it is not a technical body or the guardian of constitutionality of legislation, as in some northern European countries, but a watchdog of the parliamentary majority that plays an effective political filtering role in the whole process. Although the regular committee stage is already suitable for eliminating bills or amendments that are undesirable for the government majority, this body acts as a kind of legislative supercommittee, which may supersede even the majority opinion of the competent standing committee, and it prepares a single package of all preferred amending motions as well as the consolidated text of the bill (combined with the supported modifications). In practice, the Legislative Committee makes the involvement of the plenary in the legislative process almost entirely formal. In fact, this committee is a kind of “small parliament” that usually performs the tasks of a plenary session behind closed doors; decide on amendments to the original bills and the final text of the law to be passed. The plenary has no opportunity to discuss in detail the package of modifications and the bill presented to it by this committee; it may adopt or reject only in their entirety, whatever they contain.

1.2.2. The non-existent committees of inquiry

In Hungary, the committees of inquiry have never performed the function for which this institution was originally established, i.e. to oversight the activity of Executive power by examining specific cases within the scope of the Government’s accountability. So far, there has been no real benefit from the work of any committee of inquiry, and their operation has generally been part of political struggles. Between 1990 and 2010, the establishment of a committee of inquiry was initiated more than a hundred times in the Parliament, but only 25 were set up, more than half of which closed their work without making a final report, and only six of the committee’s reports were adopted by the National Assembly. It occured for the first time during the first Orbán Government (1998-2002), that Parliament established only committees of inquiry proposed by the government majority. The same was the permanent practice after 2010, and since then all committees of inquiry have been used as an instrument of political campaigns against the opposition.

1.2.3. The standing committees as the instruments of the government majority

In principle, the role of the standing committees has increased, as since 2014 the second reading of bills has been carried out not by the plenary session of the Parliament, but by the appointed committee. However, as we have seen, the Legislative Committee has full control

[5] See e.g. Scheppele, Kim Lane (2018). Autocratic Legalism. *The University of Chicago Law Review* 85 (2) p. 552.

over the whole procedure, so in reality the new role of standing committees does not serve to improve the quality of legislation but to diminish the influence of the plenary. But often the committees do not function properly as well. A good example of this is the activity of the ad-hoc committee nominating the members of the Constitutional Court. One of the first acts of the new government majority in 2010 was to replace the previous nomination system of constitutional judges based on the compromise between the government majority and the opposition with a new selection method in which the relevant parliamentary committee is composed in proportion to the members of the parties represented in Parliament, ensuring that the government party MPs can nominate alone, without the approval of the opposition deputies, which made the membership of the Court a part of political spoil system. Accordingly, the renewed nomination committee has performed only administrative tasks, making the whole process a partisan selection procedure.

1.3. The officials of the National Assembly

In Hungary, the position of the Speaker of the Parliament is a part of the political spoils system, and so far, a leading politician of the major government party has always been appointed for this office. Nevertheless, according to the Rules of Procedure, the Speaker is obliged to chair plenary sessions impartially, and in this position he or she does not represent his/her own party, but the entire legislature. However, the current Speaker, who has held this position since 2010, has repeatedly made extremist and abusive statements about the parliamentary opposition, often chairing parliamentary sittings in a manifestly biased manner, such as applying parliamentary disciplinary sanctions almost exclusively to opposition members.

Other parliamentary officials have only insignificant practical role, such as the so-called "first officer of the National Assembly" which position had existed in the interwar period, and was restored in 2013 without exact function.

1.4. Restricting the opposition rights – changes of the MPs' legal status

Since 2010, the changes of the legal status of MPs has mainly aimed at limiting opposition rights, such as the new disciplinary rules. The modernization of parliamentary disciplinary law has long been necessary because previous rules were incomplete and contingent. These rules have introduced certain new disciplinary sanctions like fines, the suspension of MPs' rights and the expulsion from the sitting day. Among them, the more severe disciplinary sanctions were used as political weapons against opposition MPs, such as fines or exclusion from the sitting day.

In 2014, an amendment to the Act on National Assembly introduced a rule prohibiting deputies from "holding a demonstration by material, image or sound media" in plenary or committee sittings of the Parliament. This regulation, as well as the parliamentary usage developed within its framework, is clearly in conflict with the case law of the European Court of Human Rights.[6]

[6] ECtHR, Case of *Karácsony and Others v. Hungary* (Application no. 42461/13 and 44357/13); ECtHR, Case of *Szél and Others v. Hungary* (Application no. 44357/13); ECtHR, Case of *Szanyi v. Hungary* (Application no. 35493/13).

The restrictions of access to public interest data (by imposing fees for data provision and extending its deadline) as well as the restriction of the right of the MPs to enter public institutions have also resulted in the limitation of the opposition rights. From 2020, MPs can request information only from the heads of public bodies in a "pre-agreed manner", but these requests recently have often been rejected. The antecedent of these restrictions was that some opposition MPs wanted to make a statement on public television in December 2018 on the new amendment to the Labor Code. However, several of them were forcibly removed from the building by the security guards next morning, and several other members were prevented from entering the building late at night. Nevertheless, despite the obvious and serious violation of MP's rights, the Prosecutor's Office not only rejected the complaint made by the MPs concerned, but launched a criminal proceeding against them. In doing so, the Prosecutor's Office openly made a stand for the offenders, as several video and audio recordings were published that the security guards of the public TV's headquarters used violance against several Members of Parliament, albeit their rights to enter into, stay in, and on-site inspection of the public institutions were provided by the Act on the National Assembly. Despite all these events, the Parliament did not investigate the case, but instead it restricted the rights of its own members in the manner mentioned above. The ex-post restriction on access to public institutions was a tacit acknowledgment that there had been no legal basis for action against the MPs.

At the end of 2019, the National Assembly tightened also the regulations of parliamentary factions. The right of deputies to join parliamentary groups has been restricted since the democratic transition, even though it is a clear violation of the principle of free mandate. In the early 1990s, it could be argued that such a restriction was necessary for stabilizing the party system that was undeveloped at the very beginning of the democratization process. However, the maintenance of these restrictions today serves only current political interests that break the logic of parliamentarism. This regulation has become even more restrictive by prohibiting an MP who has left his or her political group from joining another parliamentary faction during his or her term of office, presumably in order to prevent a possible merger of opposition parties.

2. Changes in the Rules of Procedure of the Parliament

2.1. Renewing standing orders

In 2012, the Parliament renounced the unbroken tradition since 1848, according to which it adopts its standing rules in the form of a parliamentary resolution. The legal nature of standing rules is not a matter of principle, still, it is striking that the governing parties that are so eager to invoke respect for the historical constitution did not preserve even the few public law traditions that survived after 1945.

Since 2012, the procedural rules of the Parliament have been contained in two sources of law of different levels and nature: on the one hand, the Cardinal Act[7] on the National Assembly,[8] and on the other hand a parliamentary resolution on standing orders.[9] The reason for the

[7] Cardinals act is a form of acts of Parliament to be adopted by a two-thirds majority.

[8] Act XXXVI of 2012.

[9] Parliamentary Resolution 10/2014. (II. 24.).

splitting of the operating rules was that the standing orders should comprise provisions which concern not only the rules of procedures of the legislature, but also provisions which may affect the rights of others (as the quasi-police power of the Speaker over the visitors of plenary sittings) or other special legal relations (such as the use of the name and symbol of the National Assembly), which therefore require legal regulation, while the classical (internal) organizational and operational rules can still be laid down in a parliamentary resolution. Yet the distribution of standing orders failed in a consistent manner; the Act contains a number of provisions regulating the internal organization and procedures of the Parliament.

2.2. Formalizing legislative process

2.2.1. General frameworks

Constitutional standards for law-making have been significantly abated since 2010, but in reality they have never been too strict. While in the euphoria of its formative years, the Constitutional Court declared emphatically that "procedural guarantees derive from the principles of the rule of law and legal certainty" and that "valid legislation can only be created by following the rules of formal procedure"[10] and, a couple of years later it also stated that "a formally erroneous legislative procedure – on the basis of an appropriate motion – will in future give rise to its retroactive annulment on the day the law is promulgated",[11] these principles have never been fully applied in practice. The Constitutional Court very early started to consider it permissible if certain procedural rules were not complied with by the Parliament during the legislative process, even if the statutory rules required them (such as the involvement of the stakeholders in the law-making) and later, by creating the concept of "invalidity under public law", it declared in principle that only "a serious procedural irregularity" may lead to unconstitutionality, that is those procedural errors "which cannot be remedied otherwise than by the annulment of the law".[12] In fact, the Court has always declared the legislative procedure unconstitutional only if it violated a procedural rule directly prescribed by the Constitution.[13] Overall, this practice of the Constitutional Court has lessened the constitutional requirements of law-making process, and has remained unbroken to this day.[14]

After such prehistory, it was not surprising that since 2010 the legislative process has become more and more informal, the fulfillment of legislative requirements has become more flexible, although in principle the legislative omnipotence of the constitution-making majority would have justified stricter compliance with these requirements.

2.2.2. The transfer of second reading of the bills from the plenary to committees

Among the parliaments of European countries, Hungary is the only one where the main decision-making body of the legislature, the plenary sitting of MPs does not have the

[10] Decision 11/1992. (III. 5.) of the Constitutional Court.

[11] Decision 29/1997. (IV. 29.) of the Constitutional Court.

[12] Decisions 3/1997. (I. 22.), 29/1997. (IV. 29.), 52/1997. (X. 14.) of the Constitutional Court.

[13] Decision 39/1999. (XII. 21.) of the Constitutional Court.

[14] See e.g. Decisions 109/2008. (IX. 26.), 164/2011. (XII. 20.), 15/2019. (IV. 17.) of the Constitutional Court.

opportunity for a second reading of legislative proposals.[15] In other words, Parliament does not have the power to discuss in detail the bills submitted to it, which means that it may not debate the individual motions. According to the procedural rules, the second reading of bills is carried out only by the standing committee appointed for that purpose. The Parliament can only discuss the compiled, unified proposal of amendments supported by the Legislative Committee. In this respect, the standing committees are no longer advisory bodies of the plenary, but substitute it. This set of rules essentially has made the National Assembly a rubber-stamp parliament, which has, in legal terms, the weakest legislative power in Europe.

Without any knowledge about the political context, it would be incomprehensible how a parliament could have accepted such a curtailment of its own prerogatives. When Parliament debated the proposals of the new standing orders in 2014, pro-government MPs argued that experience had shown that plenary debates were useless, ineffective and of low quality, and they gave way to fruitless political debates. No doubt, this was a very surprising argument in the national body of people's representation, whose main functions are to discuss public affairs and to display different political opinions.[16] As a matter of fact, if this argument were to be upheld, it would call into question the whole institution of parliament requiring that law-making should be a purely professional technical-administrative process. By contrast, the deprivation of the plenary of the second reading of bills seriously damages publicity of legislative activity. In addition, it seems to be unconstitutional if the Parliament has to decide on bills that could not be discussed in detail, even though the Fundamental Law confers the whole and undivided legislative power to the Parliament specifying the plenary sitting of MPs as its decision-making body. Parliamentary committees themselves are not representative bodies, and therefore they cannot replace the Parliament – their proper function is only to prepare the plenary debates.[17]

It is a necessary but not sufficient condition for the legitimacy of parliamentary laws that they be passed by democratically elected representatives of the people. An equally important requirement is that they must be the results of free deliberation reflecting the will of these representatives. However, if the National Assembly can discuss only the necessity and principles of bills in one reading without the opportunity to debate their specific provisons and amending motions submitted to them, this condition is hardly met.

2.2.3. Block voting

The so-called block vote, which is the method of voting of bills logically fits to the exclusion of the second plenary reading. This voting method, which is mostly unknown among modern democracies or used only exceptionally, was introduced in 2014. Accordingly, the National Assembly may not vote on individual amendments submitted to bills, but may only adopt or

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[15] In other parliamentary systems, it is exceptionally possible not to hold a plenary debate before the committee stage of the legislative process. But usually, the bill shuttles between the plenary and the appointed committee. De Winter, Lieven, Government Declarations and Law Production (2004). In: H. Döring and M. Hallerberg, eds., *Patterns of Parliamentary Behaviour. Passage of Legislation Across Western Europe*. Farnham: Ashgate, p. 45.

[16] Proksch, Sven-Oliver and Slapin, Jonathan B. (2015). *The Politics of Parliamentary Debate. Parties, Rebels, and Representation.* Cambridge: Cambridge University Press, p. 17.

[17] Ismayr, Wolfgang (2008). Gesetzgebung in den Staaten der Europäischen Union im Vergleich (2008). In: W. Ismayr, ed., *Gesetzgebung in Westeuropa. EU-Staaten und Europäische Union*. Wiesbaden: VS Verlag für Sozialwissenscheften, p. 33.

reject a single package containing all the amendments supported by the Legislative Committee. The same is true of the legislative text, because Parliament can only vote *en bloc* on the whole text of the consolidated bill (i.e. completed by the supported amendments).

As I have pointed out, this voting method is applied very rarely in modern legislatures, and is used exceptionally in only a few countries, such as France (*vote bloqué*),[18] although its application tends to lead to heated political debates even there. There are two main reasons for not voting in this way in parliamentary procedures. First, this method is less democratic inasmuch as it prevents Parliament from controlling the whole legislative process (e.g. deciding on the amending motions). Since Parliament may approve or reject the whole text of the bills, it plays only a formal role that can hardly be considered a real legislative activity. The other reason is that the block vote greatly reduces the efficiency of the legislature, as the Parliament is unable to pass the legislative law in the form it considers the best one.

If MPs can only vote on the whole proposal, they will not be able to enforce their real preferences, but they are forced to cast a so-called strategic vote, avoiding the worst decision (e.g., the rejection of Government bills for government party MPs), rather than passing the best text of the law.[19] In such a procedure, it may even be the case that Parliament adopts such variation of the text (a combination of the original proposal and the amendments) which would not otherwise be adopted by any MP without the constraint of a strategic vote.

I think that both the deprivation of the decision-making body of the National Assembly to discuss the bills in detail, and the block voting of the bills are unconstitutional. According to the practice of the Constitutional Court, "the democratic rule of law" presupposed "democratically adopted procedural rules and decision-making in accordance with them",[20] and "the discussion of bills (including the deputies' freedom of speech)" was "highly important".[21] Even in 2011, the Court repealed an act of Parliament, because some of its provisions were enacted after the conclusion of the detailed debate, on the grounds that the Parliament thus had no opportunity to discuss the proposal on the merits.[22] In comparison, since 2014, all laws passed by the Parliament have been adopted in a procedure in which the Parliament did not have the opportunity to discuss their specific rules or to decide on them.

If the constitutional standards of legislative process that prevailed until 2011 were still applicable today, we would have to consider every pieces of parliamentary legislation adopted since 2014 unconstitutional.

3. Assessing the law-making activity of the Parliament since 2010

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[18] Gicquel, Pierre AVRIL (2004). *Droit parlementaire.* 3e, Paris: Montchrestien, pp. 177–178.

[19] Rasch, Bjørn Erik (2000). Parliamentary Floor Voting Procedures and Agenda Setting in Europe. *Legislative Studies Quarterly* 25 (1) p. 6.

[20] Decision 62/2003. (XII. 15.) of the Constitutional Court.

[21] Decision 12/2006. (IV. 24.) of the Constitutional Court.

[22] Decision 164/2011. (XII. 20.) of the Constitutional Court.

Due to the high number of laws passed by it, the Hungarian Parliament is often referred to as a "law factory" type parliament (in which legislative activity dominates over the political debates and control of the Executive).

The in-depth transformation of the Hungarian legal system after 2010 was accomplished by a significant increase of the number of the laws passed by the Parliament; while a total of 589 laws were adopted in the 2006-2010 parliamentary term, 859 laws were passed during the next one (from 2010 to 2014), and then 730 between 2014 and 2018.

However, general experience shows that the quality of legislation has steadily deteriorated, as proved by the indicators used to measure it. Thus, for example, the proportion of amending laws adopted exponentially increased to 62.6% in the 2010-2014 cycle, compared to the otherwise unhealthily high rate of 55.3% during the previous Parliament. Although this was partly due to the comprehensive transformation of the previous legal system, if we take a look at the legislative performance of the three successive Orbán governments, we can observe that the new laws were increasingly aimed at changing the laws already adopted after 2010: in the term of 2014–2018, almost 70% of all laws were not new, but amendments to an earlier law. Overall, after 2010, far more laws were enacted in much less time (albeit to a lesser extent, this is also true of the "revolutionary" legislation for the 2010-2014 cycle).

The accelerated law-making was also facilitated by the exceptional and urgent procedures applied to the bills important to the Government, notably the merging of these two forms of procedures in 2012 (which, however, ceased in the next legislative term), which also allowed the final vote on a bill just after the day it was submitted to Parliament.

Beyond the increase in the number of laws, the preparatory (pre-parliamentary) phase of law-making process has often been significantly shortened. From 2010, the Government devoted far less energy than before to the preliminary consultation with the sakeholders and the social organisations on the Government bills, and often completely ignored it. It was a well-known technique that the deputies of the government parties submitted the bills to Parliament that otherwise had been prepared by the ministries or other central government agencies in order to circumvent the procedural requirements of the law-making process of Government bills. While in the parliamentary term of 2006-2010 80.64% of all adopted laws were submitted by the Government, approaching the 80-90 per cent that is usual in Western European parliaments,[23] and only eight per cent of them were proposed by MPs, during the term of office of the second Orbán government (between 2010 and 2014) only 66% of the adopted laws were submitted by the Government. Yet we do not have to infer the legislative failure of the Government, because 31% of the successful bills were proposed by government party deputies, who apparently submitted legislative proposals to the Parliament prepared by the Government. Nonetheless, it seems that this assistance of individual MPs was no longer needed between 2014 and 2018, when 77.4 per cent of successful bills came formally from the Government, but pro-government deputies still submitted no less then almost 20 per cent of the adopted laws.

It is worth noting that after 2010, the opposition has not had any influence over the legislative process: between 2010 and 2014, only three laws, whereas from 2014 to 2018, only one act

[23] Olson, David M. (1994) *Democratic Legislative Institutions. A Comparative View*. Armonk–New York–London: p. 84.; Brunner, Martin (2013). *Parliaments and Legislative Activity Motivations for Bill Introduction.* Wiesbaden: Springer, p. 9.

were passed by the Parliament proposed by opposition MPs (as opposed to the 15 such laws adopted in the previous parliamentary term).

The quality of parliamentary law-making can be evaluated, nevertheless, not only indirectly based on quantitative data, but also through qualitative indicators.

Since 2010, for example, the number of so-called omnibus (in Hungarian terminology: "salad") laws has sharply increased. The codification technique, by which several laws on very different topics are modified by a single act of Parliament, is also known in other countries, and Hungary has had a tradition since the democratic transition. The Constitutional Court considered this kind of legislative solution permissible in 1995 only as an "inevitable exception".[24] The constitutional standards were later ligthened in this respect as well, however, the law-making method by which several laws had been amended by the Budget Act was declared unconstitutional. According to the Court, the Budget Act has a special constitutional status, and stated that the Parliament has to decide on the annual state budget in a single act in a manner separate from other laws.[25]

However, the requirement of legal certainty in Hungary has never been so important or strong as to impose a constitutional barrier to a practice that has satisfied different legislative needs by a single law, hiding certain unpopular or controversial provisions in such a composite statute, and making it difficult to keep up with legislative changes. A single piece of law in 2012, for example, amended 45 previous acts of Parliament having different subjects.[26] Another one, adopted in 2019, modified 78 statutes.[27] While a significant portion of these amendments were aimed at minor amendments to sectoral laws, this ominbus legislation actually included a partial judicial reform, which should obviously have been adopted in a separate law. The act on the consequences of the state of danger, declared following the coronavirus pandemic in 2020, was a real legislative monster consisting more than 400 articles: beyond the provisions that has perpetuated several transitional rules of the emergency situation, it has extended the powers of the Government.[28]

The significant decrease of the quality of law-making can also be illustrated by the statutes with different temporal effects; the provisions of a 2014 law, for instance, entered into force on nine different dates.[29]

The frequent adoption of "personalized laws", that is statutes tailored to individuals also seriously violates the integrity of law-making and the legal nature of the acts of Parliament. By its nature, a law is a normative act, that is, it is not a legal instrument for deciding a specific case. This is not only an analytical aspect of legal theory, but also an important constitutional requirement, as on the one hand, it clearly violates the principle of separation of powers if Parliament decides individual matters by law, and on the other hand, this practice

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[24] Decision 42/1995. (VI. 30.) of the Constitutional Court.

[25] Decision 4/2006. (II. 15.) of the Constitutional Court.

[26] Act CCVIII of 2012.

[27] Act CXXVII of 2019.

[28] Act LVIII of 2020.

[29] Act XVI of 2014.

excludes the effective judicial protection of those who are affected by that law.[30] Accordingly, in the past, the Constitutional Court has in some cases annulled a legal norm that was enacted to decide individual cases, [31] but this practice was very inconsistent and has now been completely forgotten. In spite of these well-known concerns, this legislative tool has now become quite often, especially in the form of laws tailored to specific individuals to provide them with special exemptions and benefits. Although such laws never name the beneficiary, laws granting individual privileges can be easily identified not only by the political context in which they are adopted, but also by their occasional, unreasonable or discriminatory nature and the precise identification of their individual addressees. These laws often serve to remove legal obstacles to the appointment of government party trustees to public office, to extend their term of office, or to provide them with material benefits. In some cases, however, this method was also used against certain individuals (such as a 2011 law that allowed a former communist party leader to be prosecuted).

It belongs to the dark side of parliamentary law-making that a number of statutes intervene in economic competition without real public interest, but serving private interests, usually based on political considerations to build clientelism, or just to prefer oligarchs loyal to the government. In the last ten years, there were many examples of this, from the re-regulation of tobacco retail to the redistribution of the gambling market, preferring specific economic activities – such as tourism or elite sports – and interest groups at the expense of certain sectors like the environment protection or the exploration of archaeological values. These trends show the instrumentalisation of parliamentary legislation for the sake of political and private gains. For example, after that a law passed in 2012 put the tobacco retail into state monopoly, retail licenses to sell tobacco products were redistributed through concession contracts. The Constitutional Court found this legislation constitutional.[32] In contrast, the European Court of Human Rights stated that the withdrawal of retail rights by an act of Parliament without any compensation was a violation of property rights contrary to Article 1 (protecting the right to property) of the First Additional Protocol to the European Convention on Human Rights.[33]

In another case, the Parliament first increased the tax payable on slot machines placed in gaming-rooms fivefold, introduced a new gambling tax, and imposed a new, costly server-based gambling obligation for gambling industry. After a year, however, another law, adopted in a special (urgent) procedure, banned the operation of slot machines, withdrawing the licenses previously issued for operating such machines with immediate effect. In this way, the organization of gambling also became a state monopoly, but the rights of operating casinos were redistributed by the Governments among private enterprises by concession contracts. However, according to the judgment of the Court of Justice of the European Union on a reference for a preliminary ruling, a fivefold tax imposed "without a transitional period" infringes the freedom of enterprise and gives rise to a claim for damages, which must be decided by national courts.[34]

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[30] Decision 5/2007. (II. 27.) of the Constitutional Court.

[31] Decisions 6/1994. (II. 18.) and 45/1997. (IX. 19.) of the Constitutional Court.

[32] Decision 3194/2014. (VII. 15.) of the Constitutional Court.

[33] *Vékony v Hungary*, Judgement of 13 January 2015, no. 65681/13.

[34] See C 98/14. sz. *Berlington Hungary Tanácsadó és Szolgáltató Kft. és társai kontra Magyar Állam* ügyet.

Finally, constitutional concerns of parliamentary law-making must also be mentioned, even if, according to the standards of the Constitutional Court which consists exclusively of members elected by Government party MPs, the situation has not worsened significantly in this respect compared to the past. In any case, some pieces of the new legislation would not have met the previous constitutional standards. The prohibition of retroactive legislation or the protection of acquired rights are much less stringent requirements in Hungary today than they were before 2010.[35]

4. Conclusions: the Parliament in the system of the separation of powers since 2010

As I have already pointed out, the constitutional status of the Parliament was only slightly affected by the changes after 2010, and, in a broader context, one could conclude that the role of Parliament has not changed much. Some tendencies seemed to strengthen, others to weaken the position of the Parliament in the constitutional and political system. The legislative power could have been extended by the fact that the core function of the Constitutional Court was biased from the control of the legislature to the constitutional oversight of the Judiciary. The Court was not only packed, but its powers were harshly curtailed, as it may not review the public finance legislation anymore, the access to the Court was seriosly restricted abolishing the *actio popularis*, and all its decisions had been made before 2012 were repealed. Similarly, the power of the Parliament could have increased as a result of subjugating every other independent bodies acting as a counterweight to the legislative power, such as the National Electoral Commission, the State Audit Office, the Commissioner for Fundamental Rights, the National Judicial Office, the Prosecutor General's Office, the National Media and Communications Authority, the National Authority for Data Protection and Freedom of Information, as these organs were also packed by the Government parties, becoming parts of the political spoils system. The position of Parliament could also have been strengthened by the fact that after 2010 the conditions of national referendums became stricter, as the turnout required for validity has been raised from 25% to 50% of voters. In addition, the National Electoral Commission has pursued an extremely rigorous practice, and with the exception of the Government-initiated (and otherwise manifestly unconstitutional) 2016 referendum,[36] it did not allow any national referendums to be held.

Nonetheless, several previously unknown limits of the legislative power appeared after 2010, such as the reorganization of the institution of the Budget Council, which gave this body a veto power over the adoption of the annual budget. The requirement of the approval of a non-elected body to budgetary power of Parliament (the lack of which could lead to the dissolution of the legislature) is unprecedented in constitutional democracies. It might be another restriction of the legislative power that any parliamentary legislation on certain policy areas needs two-thirds majority vote, which can always obstacle law-making when the government parties do not have such a majority.

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[35] See e.g. Zoltán Szente (2013). Breaking and Making Constitutional Rules: The Constitutional Effects of the Financial Crisis in Hungary. In: X. Contiades, ed., *Constitutions in the Globsl Financial Crisis – A Comparative Analyis,* Farnham: Ashgate, pp. 253–258.

[36] Zoltán Szente, The Controversial Anti-Migrant Referendum in Hungary is Invalid, https://www.constitutional-change.com/tag/anti-migrant-referendum/, October 11 2016, accessed: 09.11.2020.

But the almost insignificant role of the Hungarian Parliament in public policy decision-making is not primarily an outcome of these reasons; it is the consequence, on the one hand, of the extremely strong political control over the Parliament by the Government, and, on the other hand, the weakness of the parliamentary opposition. Fidesz is a traditionally centralized party with very strong factional discipline. Based on the experience of recent years, the Government, relying on its parliamentary majority, is able to get any decision through the Parliament without any difficulties. In contrast, the parliamentary opposition has been fragmented since 2010, and they have not been able to show resistance to the will of the Government majority. Indeed, the parliamentary opposition is an accessory of the contemporary Hungarian pseudo-parliamentarism, in which, in the current circumstances, there is little chance of defeating the governing coalition in general elections. Although the opposition parties are loud and confrontational in their communication, basically they behave as a more or less loyal parliamentary actors, whose parliamentary presence was a source of legitimacy of the deep transformation of the political and legal system in the last decade.

In sum, the quality level of Hungarian parliamentary law and the legislative activity of the National Assembly has significantly diminished since 2010, both in terms of professional and constitutional standards. All this took place in a substantially unchanged parliamentary organizational structure, while in terms of procedural rules, the balance between the majority principle and the protection of parliamentary minorities was upset in favor of the former.

It should also be noted, then, that this process did not begin in 2010 but much earlier. Yet the change of government in 2010 was a real milestone not only in political terms but also in the development of parliamentary law, which was due to the fact that all effective counterbalances against the will of the Government majority were removed. As a result, applying a classical labelling of parliaments in political science, the Hungarian Parliament belongs to the legislature of “minimal” or “marginal” significance[37] having a number of institutional and (formal and informal) operational characteristics that are foreign to the usual forms and practices of modern constitutional democracies.

[37] See Mezey, Michael (1990). Classifying Legislatures. In: Ph. Norton, ed., *Legislatures,* New York–Oxford: Oxford University Press pp. 151–157.