MARGINALISING THE PARLIAMENT – (ANTI-)PARLIAMENTARY REFORMS IN HUNGARY

AFTER 2010

Introduction

Nowadays, it is almost a commonplace in the European political discourse that the quality of constitutional democracy has significantly declined in Hungary in the recent years. The packing almost all power institutions by the Government parties, the curtailment of the power of the Constitutional Court, the restrictions on certain fundamental rights, especially the freedom of speech and the freedom of religion are the well-known symptoms or signs of the authoritarian tendencies in this country.

However, one cannot hear much about the institution of Parliament, though we could think that if the level of constitutional democracy is really sinking, this tendency must affect also the role of the legislature.

So in my presentation, I will analyse the major institutional changes and the tendencies that have taken place in the last couple of years seeking answer the question whether or not the negative political and constitutional trends affect the legal status and the real position of the National Assembly of Hungary.

Main characteristics of the Hungarian legislative power

In Hungary, the legislative power is exercised by the unicameral National Assembly. It has 199 members. At first glance, both its structure and political character are very typical
compared to other European legislatures; its major functions are the law-making and the control of the executive power.

The Parliament holds sessions in a beautiful neo-gothic palace in the bank of the Danube. Its members are elected to a four-year term voting directly by secret ballot based on universal and equal suffrage.

The National Assembly has the power as usual in other EU Member States; apart from the constitution-making, legislation and the control of the executive power, it adopts the state budget, decides on war and peace, and special legal order, may grant public pardon, etc.

The Parliament performs well, if take a look at its legislative work. In the recent years, it adopted more than 200 laws every year (except the election year in 2014), 230 in 2015, 252 in 2013, and 223 in 2013.

Its work is assisted standing committees (14 at the moment), and it may set up committees of inquiry for investigating any affair falling within the scope of responsibility of Government.

At the moment, there are four party factions, one for the Government, three for the opposition parties. The Government has a political responsibility to the Parliament, which may overthrow it by a so-called constructive non-confidence vote.

The chamber is the scene of heated debates on the bills, interpellations and questions or, simply on day-by-day political issues. The standing orders are dispersed in a law on Parliament and in a parliamentary decree on the rules of procedure. These rules are in most part as usual in any European constitutional democracy.

However, the practice and performance of this legislature is significantly different from other national parliaments in Europe.

Political background

Since 2010 massive parliamentary reforms have been achieved in Hungary. They have affected both the place of the National Assembly in the system of separation of powers, and its organisation and working method.
For understanding all these changes and the trends that have existed since their introduction, it is important to know that the whole parliamentary reform since 2010 has been accomplished one-sidedly by the government parties which enjoyed a constitution-making, two-thirds majority in Parliament between 2010 and 2015. Although this embodies an extraordinary electoral mandate and provides a strong political legitimacy for the Government’s policy, it is to be noted that 44 percent of votes with which the government parties won the last general election was transformed into almost 67% of parliamentary seats. This was a result of an extremely disproportional electoral system, and a widely practised gerrymandering still before the elections. As a matter of fact, the delegation of the Organization for Security and Co-operation in Europe found a number of anomalies during the voting.

As a result of this electoral empowerment, the Government coalition vehemently started to transform the parliamentary law.

**Abolishment of the second reading of legislative bills**

One of the most unique changes was the abolishment of the second reading of legislative bills. This stage of parliamentary procedure traditionally served for the discussion of details of the bills, from article to article, if necessary, and the debate on the amendment proposals. As far as I know, the Hungarian Parliament is the only legislature in Europe that has been blocked or prohibited to process a debate on the details of bills. In each case, a designated standing committee discusses the bills, and the powerful Committee on Legislation compiles a summary of the proposed amendments and then submits a report to the plenary session for approval. The plenary sitting of the National Assembly then decides on the summary of proposed amendments. The Committee on Legislation has decision-making powers, as it has the authority to decide which of the proposed amendments will come before the National Assembly for a vote.

In fact, after the exile of the second reading to the committees, the publicity has been gravely restrained (as the committee debates are not open to public), but the plenary session, as the decision-making body of the National Assembly, may not discuss any details of the bills. This produces also a constitutional problem too; since the legislative power is conferred on the plenary session of the National Assembly, the Parliament must vote in every case on the final version of the bills which it never discussed earlier. The legitimacy of all parliamentary laws
derives from the free and democratic debate and a lawful majority decision of Parliament as the representative body of the people. If Parliament may discuss only the necessity and the major principles of the bills, it cannot carry out its basic function.

The block vote

Another significant measure was the introduction of the so-called block vote in 2014. This means that the Parliament may not vote on the modifying proposals, or choose of them, but is obliged to vote *en block* on the whole summary, and then, the last version of every bill prepared by the Committee on Legislation. Although the block vote is not unknown in the European parliamentary tradition, it is used only in some countries and very rarely (see the French *vote bloqué*). So parliament may only adopt or refuse the whole decision, but it does not have power to change or perfect it. This kind of parliamentary voting is quite irrational and undemocratic. It is irrational for the impossibility of improvement, and undemocratic, because it can lead to the adoption of such version of law which has not originally been preferred by any MP at all. If Parliament may say only “yes” or “no”, the parliamentarians are interested only in minimising the damages or losses in the final version, rather than in making the best legislation.

Speed-up of parliamentary procedure

The speed-up of parliamentary procedure can be a legitimate goal of any parliamentary reform. However, in Hungary, these changes aimed at reducing the opportunities of any change or resistance of MPs. The Standing Orders contain special provisions on the so-called “urgent debate”, where the whole process takes only a few days, and the “extraordinary process” which enables the parliamentary majority to adopt a whole law during one and a half day (except certain laws, like constitutional amendments, or budget law). In practice, the opposition MPs often do not have enough time to read the whole text of the bill.

All these procedures reflect the approach of the Government parties which does not see Parliament as a real contributor in the legislative process. In fact, its role has been reduced to be a voting machine.
These procedures exclude any careful preparation of the bills and can easily result in low-quality law-making which serves only for short-term political interests.

Parliamentary practice under the new rules of procedure

The extravagant procedural rules have often been completed by curious practice by the parliamentary majority.

One of these special features is the frequently used technique of omnibus legislation. It means that a law covers a number of diverse and unrelated legal provisions, often amending a lot of other laws. Many times these laws are large size legal packages combining highly different subjects, which make intransparent and difficult the whole legislative process. A law of 2012, for example, was itself a legal compilation modifying no less than 46 other laws by a single vote. This codification method is often used for hiding controversial provisions, and eliminating a heavy debate on them.

The principle of legal security has declined in the last years, as Parliament have ignored some well-established principles of legislation: sometimes it adopted laws with retroactive effect; it has obliterated the vested rights and has not respected the principle of legitimate expectations. In fact, the quality of codification is extremely low; it is demonstrated by the high proportion of the laws amending other laws adopted just in the few past years.

Another special characteristic of today’s legislative practice is the personalized law-making. These laws provide privileges, exemptions or special entitlements for certain persons (usually politicians) giving loopholes and exceptions to the general rules. Whereas these parliamentary acts offer special advantages, reliefs or rewards for selected people on political basis, they offend the normative character of law. This legislative device is used when the desired goal cannot be reached in the normal way (e.g. by individual administrative act) but only by the intervention of the Parliament.

Standing orders were completed in 2012 with detailed disciplinary rules. It was a necessary change, as only some sketchy rules were laid down beforehand. However, the financial penalty, one of the recently introduced sanctions has been imposed only on opposition MPs so far. In practice, it is an instrument of the restriction of opposition rights.
Finally, the work of Hungarian legislature is permeated by an anti-parliamentary spirit; the speaker of Parliament once said from its pulpit that it is a moral scandal that the Socialist opposition MPs can sit in the National Assembly; the government majority outvotes all procedures or bodies initiated by the opposition, even if these (like the committees of inquiry or holding extraordinary sitting) are guaranteed by the formal rules; a great part of interpellations are submitted by government party MPs, although the interpellation procedure is a traditional weapon of the opposition of the day, etc.

A balance

After all, Hungarian parliamentarianism has sinister perspectives. As far as the law and practice of Parliament is concerned, appearances are deceptive. Nothing is what it looks like. While the legislature produces a lot of new and modified laws as a law-factory, its real role in legislative process is highly insignificant. Although the Government is accountable to the Parliament, many controversial bills have been submitted by individual MPs (in order to avoid the binding coordination procedures of law-making process). Whereas the establishment of committees of inquiry or holding extraordinary sessions are well-entrenched minority rights, no such committees have been set up, and no such sessions have been held since 2010, even if the necessary MPs initiated them. Even though MPs must declare regularly their growth of wealth as an anti-corruption device, nobody controls these declarations, and they are not sanctioned at all. And so on.

Today, Parliament is a rubber stamp without any real policymaking role. All parliamentary reforms which have been introduced since 2010, have aimed to open the way for the unbridled and unlimited political decision-making of the Government, and to secure the power of the governing parties.

The future of parliamentary democracy is also gloomy because no European or any other supranational mechanisms are available to counterbalance or reverse the authoritarian tendencies and the decline of Parliament in a country where the government is formally legitimate, as it is able to maintain, this or that way, its electoral support and parliamentary majority.

As a matter of fact, Mr Viktor Orbán, Prime Minister of Hungary since 2010, announced openly still in 2009 that the strategic goal of the conservative parties is to the establishment of
a “central political force field” where they can be able to remain in power for a long time. After the deep transformation of the constitutional system of the country, these parties have a good chance to accomplish this political master plan.