NÉZŐPONT INTÉZET

Two Years of a Two-Thirds Majority

16/05/2012

Summary

In the 2010 parliamentary elections Fidesz-KDNP were granted exceptional and clear authorization by the voters and, therefore, halfway through their mandate it is useful to review how the governing party alliance has applied their two-thirds majority. The two-thirds majority provides a serious opportunity and responsibility for the governing parties to find an effective remedy to the systemic problems of the past twenty-two years. According to Nézőpont Intézet, if the Fundamental Law and the cardinal Acts are implemented consistently, in the future the State may function on a more stable foundation and citizens may enjoy more robust legal protection. Although the pace and urgency imposed some risks on the predictability of legislation, by giving consideration to reasonable and objective criticism, reassuring answers can be adopted to justified criticisms. Without an opposition capable of blocking the Government's intentions, only the European Union has formed a barrier to the two-thirds majority and managed to persuade the Government to alter some of its decisions.

The Hungarian and international public repeatedly expressed criticism of the 'overall image' of the cardinal Acts associated with the Fundamental Law, though the majority of that criticism is unjustified when the detailed contents of the acts are examined. Most of the criticism was aimed at the changes in personnel. There is a good chance that in the future there will be fewer conflicts in the operation of the State and, in contrast to earlier fears, Fidesz has not "radically destroyed" the constitutional balance in the public institutions.

Nonetheless, it is up to the voters to pronounce judgement on the changes, and the parliamentary elections in 2014 may reveal whether society legitimises the restructuring of the public institutions. If citizens meet a better organised and more effective operation of the State in their everyday lives, voter confidence can be retained and the arguments that structural changes were made for political purposes and to gain power may be pushed into the background. However, if the main objectives of restructuring are not achieved in practice, voters may easily decide to cast protest votes in fear of 'abuse of power'.

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Introduction

Active Two-thirds

The main principle of the Fundamental Law approved on 18 April, 2011 is to offset the errors arising from the political practices of the public institutions during the preceding twenty-two years. Critics referring to the two-thirds majority from the outset as dangerous and excessive power were afraid that Fidesz wished to introduce a semi-presidential system, to eliminate the checks and balances on government power and to introduce an election system that would make it impossible to remove the governing party from power. However, in our view, the Fundamental Law and cardinal Acts have not transformed the public institutions completely but have made significant corrections. The establishment of the cardinal Acts was a key issue following the approval of the Fundamental Law. The entry into force of the Fundamental Law on 1 January dictated a very intense pace because legislators were compelled to draft bills on numerous subjects requiring a two-thirds majority vote to be passed in a period of just a few months. Reforms were introduced in relation to the judiciary and the protection of fundamental rights, public finances, the local government sector and the election system. A separate legal regulation was adopted on the legal status and remuneration of the Head of State and on numerous other symbolic issues (churches, families, nationalities, national symbols) and cardinal Acts were also passed on law enforcement and national security. On major issues, regulations on regular Parliamentary sessions, the legal status of Members of Parliament and on party financing were postponed until this year.

Lack of a Compelling Consensus

In the past, two-thirds parliamentary decisions were considered indications of multi-party consensus. Over the past twenty-two years, qualified majority decisions on numerous issues were only implemented when the governing majority was able to enforce its legislative intentions by gaining the support of the opposition. However, this practice led to the failure to implement or to the postponement of the required reforms. Former governments were unable to gain the support of the opposition for the transformation of the sub-systems of the Government sector which had been long overdue, or reforms were removed from the agenda due to other political circumstances. However, after 2010, the opposition did not hold veto power or the potential to apply blackmail during the process of the adoption of the cardinal Acts or in regard to issues of personnel. In the future though, the compelling consensus could return to the political system again at any time.

Local Government Reform

Due to the continuous postponement of the reform of local government, by 2010 the system had practically exhausted its resources, local authorities were heavily in debt, and central and local government functions had begun to overlap.

The purpose of the cardinal Act on local government is to divide responsibilities and tasks among central government, county and local authorities more clearly and effectively. New administrative units called "járás" (district) could also be created by the middle of the year or, at latest, at the beginning of 2013, to complete the long awaited reform of Hungarian public administration. In addition to the rethinking of the autonomy of local government on the basis of practical considerations, effective operation and a balance of tasks and resources are also important points of the reform. The restructuring will result in centralisation because the reform will clearly separate the public administration and local community tasks for the benefit of the State, while achieving the overall objective of improving efficiency. Contrary to the practices of the preceding twenty-two years, local government cannot be allowed to represent interests contrary to the operation of the State while, naturally, the State will continue to respect the reasonable autonomy of local government. Nevertheless, the legal supervisory competence of the regional government offices will ensure that local authorities which do not fulfil their statutory obligations will be kept under control. It is also an important direction of progress that in the future, proportionate budget and asset assistance must be provided for the tasks defined in the Fundamental Law, therefore assisting local authorities to avoid the excessive burden that was typically unilaterally imposed on them by the State over the past twenty-two years. However, the transformation of the local government system can only be fully understood and judged through the implementation of changes in public law and the simultaneous implementation of sectoral reforms (education, health, social services) and following a reassuring settlement of overall local authority debt.

New Election System

While the reform of the election system, which has been on the agenda for a long time, will create a smaller Parliament, with which Fidesz will deliver one of its most important

election promises, it will not embed the power of the currently governing parties. If power relations change, the practical results of the new system cannot be predicted and voters must also learn how the new system works. If, however, the voters intend to call the current Government to account because they think that its politics did not change the country affairs positively, they will be able to replace the Government in office with a new, strong government. The main purpose of the system is to help to form stable governments, reducing the possibility of the establishment of any parliament majority in the future stumbling because of blocking minority and coalition bargaining. A strong majority government could also be more successful in crisis management compared to coalition governments troubled with internal disputes. As the new Act assists more than ever the acquisition of a two-thirds majority, a majority government generally supported by society could even restructure the public institutions established in 2011.

The change cannot be described as a 'systemic transformation', only as reorganisation, because the next election will also take place based on principles similar to the currently prevailing principles. The modifications will shift the stress within the system though: the number of mandates in individual electoral districts will increase from 46 per cent to 53 per cent within the total number of mandates, and as it will be a single-round system, there will be no withdrawals, which in the past could have led to surprise coalitions.

The accusation of politically motivated appointment of individual electoral districts, driven by self-interests, is often included in the criticism of the election reform. The 2010 elections clearly showed that a right-wing candidate could win or increase support even in a district won by a left-wing candidate in previous elections, while the 1994 overwhelming socialist victory would have resulted in a stable left-wing governing majority in any electoral system. For that matter, without understanding the power positions of the parties in 2014, it cannot be declared that the Government in office cannot be replaced at the next elections because of the drawing-up of electoral districts.

Irrespective of the principle upon which a political decision-maker draws the boundaries of constituencies, those decisions will bear an unknown risk in the future. It is not certain that existing voting blocs will also be formed in subsequent elections or that at the next election they will vote for the same party. If, e.g., before 2010 the left-wing parties would have been able to form left-leaning constituencies based on only the previous election results, they would have experienced an unexpected surprise in 2010 because in northern Hungary, which was represented mainly by left-wing MPs in the past, a new party, Jobbik, gained support to the detriment of MSZP.

Economic Constitutionalism

A new chapter has been added to the Hungarian constitutional principles in the Fundamental Law and through the cardinal Acts on economic issues associated with certain provisions of the Fundamental Law. The purpose of the provisions, mainly governing public finances, is to ensure that the current Government pursues a fiscal policy in line with deficit reduction, which is demanded by the European Union.

However, the personal income tax system, regulated in the Stability Act, could lead to conflict. Without the two-thirds parliamentary majority, required for the amendment of the Act, the Government in office, in order to deliver on their own political promises, may be forced to avoid the applicable provisions of the legal regulations by altering other tax regulations that can be modified with a simple majority. However, the determination of the controlling role of the Fiscal Council is an important result of the two-thirds Stability Act: the Council can prevent the approval of any bill by Parliament which might attempt to ease the responsible budget planning rules established in the Fundamental Law, or would act contrary to the brake on national debt. Consequently, the power of Governments in office could be curtailed primarily by a compelling need for disciplined budget planning. The State Audit Office expressed criticism during the course of planning the 2011 budget by pointing out several problems in planning, despite the fact that the party political history of the President of the State Audit Office is linked to the current governing parties.

Of the cardinal Acts dedicated to economic issues, the Act on the Central Bank generated a huge amount of criticism. However, the Act, analysed also by the European Central Bank, still guarantees the independence of the central bank as the new Act, just like its predecessor, states that the independence of the central bank cannot be infringed by the Government or any other public institution. Presumably, the criticism focused rather on the Government's measures concerning the Governor of the Central Bank rather than specific provisions of the Act.

In the future, national assets will be heavily protected as, in line with the Fundamental Law, the new cardinal Act makes it clear that an active and strong State pursues effective asset management. Action against so-called offshore companies was one of the key issues of the 2010 election campaign. The new Act on National Assets was adopted in the spirit of the Fundamental Law and states that any contract for the transfer and utilisation of national assets may be established only with organisations in which the ownership structure, organisation and activities are transparent.

Symbolic Value Protection

Specific parts of the cardinal Acts, due to their symbolic characteristics, are suitable for initiating disputes on values among the participants in public life. However, such legal regulations represent clear values for the whole nation: protection of the family and national symbols, and respect for them. In relation to the Act on Churches that contains symbolic and fundamental rights, values and norms, it is important to highlight the aspects of predictable legislation. In December the Constitutional Court annulled the Act on Churches, referring to its invalidity in terms of public law. As the proposed modification prior to the final vote involved a relevant amendment to the Bill, the Constitutional Court declared its annulment under public law due to the abandonment of prudent and high-quality legislation (there is no doubt that as yet the Constitutional Court has not analysed the contents of the legal act). In the consolidation period envisaged for 2012 this resolution could carry an important message; encouraging the governing party to consider more thoroughly its various legislative proposals. It is also clear though that the decision of the Constitutional Court strongly refuted the criticism, according to which the Government has eliminated the checks and balances to its power in the public law.

Stronger Legal Protection

Numerous actions were taken last year to reinforce the independence of the judiciary system and to increase its efficiency. The contents of principles laying down procedural guarantees of the courts and in judiciary proceedings will not change in the future either, despite the rapid progress of transformation. However, by establishing administrative and labour courts to judge legal disputes related to administrative decisions, Parliament has 'paid off' a significant debt. Other significant progress was the elimination of the corporative-type judicial self-administration system and the referral of administrative tasks to the competence of an independent, autonomous office. The professional activities of courts will be controlled by the highest judiciary institution called the Curia (the Supreme Court) and the office, responsible for administration, will have no opportunity to intervene in professional issues. In our opinion, the criticism of the legislation is primarily based on matters of personnel.

In response to the criticism of the European Commission and the Venice Commission, the Government proved its willingness to reach a compromise not only in relation to the Act on the Central Bank and the Data Protection Act, but also in relation to the Act on the Judiciary System. In consequence, the powers of the National Judiciary Council, elected

by the judges to control the National Office for the Judiciary, will be increased as a result of the amendment of the Act.

The acceleration of court procedures was an important election promise of the governing party in 2010. The issue of the redistribution of lawsuits between courts was raised because of the outstanding differences in the number of cases handled by the central region and the counties. However, the cases are not redistributed arbitrarily, infringing procedural guarantees, because the transfers can be requested by the court 'hindered' in its proceedings due to a large caseload, or by the General Prosecutor, and the exact data underpinning the workload must be disclosed. In relation to the transfer of certain cases, pursuant to a legal amendment submitted to Parliament, the President of the National Office for the Judiciary will also have to take into account the principles expressed by the National Judiciary Council.

Applications for judicial positions are not assessed arbitrarily either, because they are reviewed by 8-15-member judiciary councils on the basis of objective criteria and professional aspects. According to another proposed amendment submitted for approval, the President of the National Office for the Judiciary may opt for persons other than those recommended for appointment by the Judiciary Council only with the consent of the National Judiciary Council, i.e., it is not true that the appointment of judges depends on the exclusive decision of one individual. It is an important guarantee that the National Judiciary Council, elected by the judges, does not consist of members appointed by the presidents of the National Office for the Judiciary. The law defines the composition of the Council and ensures that members appointed by the President can never be in majority, as the President can appoint only heads of courts and courts of appeal, chairmen of local courts are appointed by court chairmen, while the President of the Curia is elected by the Parliament.

In relation to the Prosecutor's Office, the public law status of the prosecution has not been changed by law (even though there were legitimate constitutional arguments for that), the prosecution has not been placed under government control. The law clearly states that the prosecution is an independent constitutional organisation subject only to the law.

The Constitutional Court reform and the reform of legal protection by the ombudsmen, parallel with the restructuring of the judiciary system, also put practice-oriented, strong legal protection into the focus of institutional restructuring. In the future, the Constitutional Court can analyse not only legal regulations, but also the constitutional compliance of the decisions of judges. Although several new constitutional judges were elected, the Constitutional Court continues to be an effective counterbalance in legisla-

tion, because it annulled several disputed acts (certain provisions of the Media Act, Act on Churches) in December 2011.

Apart from the traditional legal protection by the ombudsmen, the Commissioner of Fundamental Rights will also be responsible for filtering the flood of many meaningless and unfounded applications submitted directly to the Constitutional Court in the past, hindering the conduct of its practical work. In the course of restructuring the ombudsman system, Parliament particularly considered the remarks of the Commissioners, i.e., the criticism of the arbitrary formulation of institutions stem from objections to changes in personnel, just as in the case of the judiciary reform. Contrary to the criticism, among others the norm control proposing competence of the Commissioner is aimed at strengthening the institution instead of weakening it. Within the framework of the newly established regulatory legal protection (permitting also fines and penalties), the tasks performed by the former Data Protection Commissioner will form a more stable foundation for the protection of the information rights of citizens, specifically because of the conceptual and contextual nature of regulatory legal protection.

Consequently, the opposition criticism of the transformation of the judiciary, Constitutional Court and ombudsman system stemmed primarily from personnel issues instead of specific legal provisions. Nonetheless, it is an absolute prerequisite for the success of the new judicial and fundamental right protection institutions that the governing party should find leaders with professionally indisputable qualities who are motivated to implement the change and can actively participate in the reorganisation process. The independence of the leaders of the institutions is guaranteed by their undisputed professional qualities, and constant public attention. It is another legitimate principle of constitutional law that the leaders of institutions, or constitutional judges, can remain in office until Parliament elects their successors. That can prevent the institutional paralysis experienced over the past twenty-two years, and the risks imposed on the operation of such bodies caused by the 'sticks and carrots' policy observed during the election of constitutional judges. The unfounded questioning of the independence of the parties involved in the judiciary system, the Constitutional Court or in the ombudsman system is also harmful because it may further erode the already fragile confidence of the citizenry in the democratic rule of law.

Summary Table of the Cardinal Acts

JUDICIARY SYSTEM, FUNDAMENTAL RIGHT PROTECTION
Act CLXI. of 2011 on the Organisation and Administration of Courts
Act CLXII of 2011 on the Legal Status and Remuneration of Judges
Act CLXIII of 2011 on the Prosecution
Act CLXIV of 2011 on the Legal Status and Prosecution Career of the Prosecutor General, Prosecutors and Other Prosecution Employees[1]
Act CLI of 2011 on the Constitutional Court
Act CXII of 2011 on Information, Self-determination and Freedom of Information[2]
PUBLIC FINANCES
Act CXCVI of 2011 on National Assets
Act CXCIV of 2011 on Hungary's Economic Stability
Act CCVIII of 2011 on the National Bank of Hungary
Act LXVI of 2011 on the State Audit Office
LOCAL GOVERNMENT REFORM
Act CLXXXIX of 2011 on the Local Governments of Hungary
ELECTORAL REFORM

Act CCIII of 2011 on the Election of Members of Parliament
HEAD OF STATE
Act CX of 2011 on the Legal Status and Remuneration of the President of the Republic
CHURCHES, FAMILY PROTECTION, NATIONALITIES, NATIONAL SYMBOLS
Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and on the Legal Status of Churches, Religious Denominations and Religious Communities
Act CCIX of 2011 on the Protection of Families
Act CLXXIX of 2011 on the Rights of Nationalities
Act CCII of 2011 on the Use of the Coat of Arms and Flag of Hungary and on State Awards
HOME DEFENCE, SECURITY
Act CXII of 2011 on Home Defence and the Hungarian Army and on Measures that may be Introduced in a Special Legal System[3]
Act CLXXI of 2011 on the Amendment of Act CXXV of 1995 on National Security Services Concerning the Consolidation of Military National Security Services and Related Further Amendments of Law[4]
Act CCVII of 2011 on the Amendment of Certain Acts on Security and on Other Related Amendments of Law[5]
Act CLXXVII of 2011 on the Performance of Certain Home Defence Obligations: on Related Military Administration Tasks, on Data Supplies for Keeping Records of Individuals Eligible for National Military Service and for Economic and Material Services and on the Management of Data Related to Certificates Used in Home Defence[6]
Act CXXVIII of 2011 on Disaster Prevention and Elimination and on the Amendment of Certain Related Acts[7]
Act CXI of 2011 on the Commissioner of Fundamental Rights[8]

CARDINAL ACTS TO BE PROMULGATED
T/6391. on Parliament[9]

SUBJECTS TO BE REGULATED IN CARDINAL ACTS ALREADY SUBMITTED AND BEING DISCUSSED
T/3479. on the initiation of referenda[10]
T/3549. on the amendment of Act CLVIII of 2010 on the Hungarian Financial Supervisory Authority[11]

SUBJECTS REGULATED IN CARDINAL ACTS WHICH HAVE NOT BEEN SUBMITTED TO PARLIAMENT[12]
On the Detailed Rules of Operation and Financial Management of Parties
On the Election of Local Government Officials and Mayors
On the Mandate of Elected Local Government Officials and Mayors

NOTES
[1] Chapter I., Chapters III-XIII., Articles 151-152., 154-157., 158.(2), and Annexes 1-3. and 7.

[2] Chapter V.

[3] Chapters I-V. and VII-X.

[4] Articles 1-3.

[5] Articles 1-2., 4., 4/A. (1)-(2), 5-6., 7-74., 92-101.

[6] Articles 17-20.

[7] Articles 52-66., 67-70., 71-72., 90-97., and 174. (1), and Subtitles 20-24.

[8] Articles 47. and 49.

[9] Approved by Parliament on 16 April 2012.

[10] Article 75., to be disputed in detail

[11] Articles 1-4., 7., 13-35., 78-82., 113-115., and Article 117. waiting for a resolution on the proposed amendments

[12] Following the elections in 2010, several legal acts were amended with a two-thirds majority on citizenship and media and the election of local government officials and mayors, and therefore we do not think that those topics need to be covered here.