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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

OPINION

**ON THE REGULATORY CONCEPT
OF THE CONSTITUTION OF THE REPUBLIC OF HUNGARY**

CHAPTER V

PARLIAMENT AND THE LEGISLATIVE PROCESS

CHAPTER X

EMERGENCY SITUATIONS

by

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Comments on the Regulatory Concept of the Constitution of the Republic of Hungary : Parliament and the Legislative Process

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Parliament

1. The Hungarian Parliament is set up according to the model of classical parliamentary government, where the government is politically responsible to Parliament.

2. As to the method of election of deputies, I doubt that it is a good idea to freeze the election system in the constitution. The constitution should limit itself to stating such general principles as universal and equal vote, direct and secret ballot, etc. However, the legislature should retain some flexibility to change the electoral system by way of ordinary legislation if such need arises. Consistently with other constitutional provisions on "organic laws," the adoption and amendment of electoral laws may require a qualified majority (but not one as strict as in the process of constitutional amendment) The proposed provision to the effect that a new act on elections passed in the year of general elections or the preceding year would take effect only after elections is a very useful one to prevent the manipulation of electoral laws in order to give an undue advantage to the present majority party (or parties).

The present Hungarian electoral system, somewhat inspired by the German model, seems to function quite satisfactorily. It is a good compromise between the needs of proportionality and of governability. I believe the 4 percent national threshold should be maintained.

3b. The proposed provision that parliamentary immunity should extend to the right to refuse to give evidence regarding facts which the deputy has learned in connection with his office is a positive novelty. So is the proposal that absence from parliamentary duties would entail a loss of salary but not the loss of office (3d).

4b. Although it is a good idea to introduce a new method of parliamentary control called "a day of political debate" (which, I presume, would be more effective than questions but less effective than interpellations) there is need for clarification here. Instead of using the vague term "minority party", a certain percentage of deputies (e.g., one-third) should be able to initiate a political debate.

4c. I agree that the right of the Parliament to dissolve itself should be retained. I see no incompatibility between this and genuine parliamentarism. I also agree that the right of the president or the executive to dissolve the parliament should be somewhat broadened. The suggested solution on the mechanism of dissolution seems reasonable. The alternative proposal to the effect that in the event of dissolution the new parliament should last only until the end of the mandate of the dissolved parliament does not seem to make much sense. Finally, the provision that no dissolution should take place during a state of emergency is a useful and reasonable one.

5. I agree that in the Hungarian case, there is no need for a second chamber.

The Legislative Process

1. Since the concept favors a unicameral system, it is not clear what is meant by the phrase "each legislative organ."

2a. It is a commendable idea to state the hierarchy of legal rules in the Constitution.

2b. I believe in the usefulness of requiring a stronger than ordinary majority for the adoption or modification of organic laws. If this qualified majority is too stringent, however, it may deprive the system of necessary flexibility. Therefore, between the two proposals, I tend to favor the second one (i.e., affirmative votes by more than half of all parliamentary representatives).

2c. I agree that the law-making powers of parliament and the executive should be made more balanced. The solution suggested by the Regulatory Concept seems quite reasonable.

2d. The introduction of "act-substituting decrees" within the limits foreseen in the Concept would be a positive innovation for the more efficient functioning of the system. Alternatively, a system can be envisaged whereby such decrees become immediately effective in urgent cases, subject of course to rejection or amendment by Parliament.

2f. The suggestion is entirely reasonable.

3a. I agree that the President or the parliamentary commissions should not have the right to initiate acts. I also agree with the Concept that to broaden this right to include other bodies is against the principles of parliamentary government, in addition to its being problematic in practice (i.e., on which basis would such bodies be selected). On the other hand, the introduction of popular initiative in law-making is in conformity with the modern trends in constitutionalism.

3b. With regard to the rights of the parliamentary minority in the legislative process, the constitution may state that all parliamentary groups represented in parliament shall participate in all kinds of legislative activities in proportion to their percentage of seats (e.g. in parliamentary commissions and the chairmanship council).

3c. Both the "exceptional procedure" and the "simplified procedure" would be highly useful in increasing the efficiency of the legislative process.

4. The hierarchical system proposed by the Concept is quite reasonable.

5. The entire section is very sensible. I agree with the Concept that no minimum period should be stated in the Constitution for legal rules to enter into effect. This should be left to each act (or other legal rule).

6. The essentials of referenda should be regulated in the Constitution along the lines suggested by the Concept. The role envisaged for the Constitutional Court is an important guarantee for maintaining the supremacy of the Constitution. Likewise, the suggested validity threshold should be maintained.

General remarks: The sections examined display a high degree of legal scholarship and of common sense. It is a praiseworthy effort to combine strict adherence to the rule of law, the supremacy of the constitution, and the essentials of parliamentary system with a concern for making the government more efficient and effective.

Comments on the Regulatory Concept of the Constitution of the Republic of Hungary: Emergency Situations

The Regulatory Concept devotes an entire section (section X) to the exceptional situations. In line with the trend in many modern constitutions, the Concept adopts a graduated approach and distinguishes among four types of exceptional situations (defence situations, emergency situations, state of disaster, and situations of economic emergency) depending upon the nature of the threat and commensurate to its gravity. It appears that the Concept does not envisage a "state of siege" or "martial law."

The Concept envisages a number of constitutional guarantees presumably covering all exceptional situations, including the gravest one (i.e., defence situations):

a) Deviations from the normal rules should be proportional to the gravity of the threat (the principle of proportionality).

b) The act regulating the exceptional situations is to be adopted by a qualified majority (i.e., it must be an organic act). Likewise, the parliamentary resolution declaring a state of armed defence or a state of emergency requires a two-thirds majority. It is not clear whether such majority is required only in the declaration of a state of armed defence (i.e., in case of foreign threat), or in emergency situations arising out of domestic threats to constitutional and public order as well. In any case, while it is desirable that the response to such grave threats be based on as broad a consensus as possible, the requirement of a two-thirds majority may conceivably impede or delay decision-making precisely at a time when quick action is indispensable. Nor is it clear whether the parliament takes such resolutions upon its own initiative or upon the proposal of the government or the president.

c) The application of the Constitution may not be suspended, and the functioning of the Constitutional Court may not be restricted. Does this mean that the emergency decrees may contain no provisions against the Constitution or may not suspend any of the constitutional

guarantees? If so, the government may not have sufficient powers to deal with the emergency. It seems more reasonable to me either to state in the Constitution which constitutional rights and guarantees can be restricted or suspended during an emergency, or alternatively to delineate a "core area" of constitutional rights that cannot be restricted or suspended even in an emergency (parallel to Article 15 of the European Convention of Human Rights) thereby implying that the rest may be subject to restriction or suspension, observing of course the principle of proportionality.

d) In a state of emergency Parliament may not dissolve itself or may not be dissolved by the executive.

Although these safeguards are highly commendable to maintain the supremacy of the constitution and the functioning of the democratic state, it would be useful to state explicitly that emergency decrees and other acts and actions of the emergency authorities shall remain subject to judicial review. Also, while it is stated in the Concept that Parliament has the power to declare or terminate a state of defence or a state of emergency, the Constitution should provide a parliamentary review process at regular intervals (e.g. every two or three months) whereby the Parliament may decide to prolong or terminate the state of emergency.

Emergency rule may sometimes involve changes in the distribution of powers among organs of the State or shifts in the competences of such organs. A typical and quite ingenious example is provided by the present Hungarian Constitution, and it is maintained, with some modifications, by the Regulatory Concept. The system involves the transfer of the powers of the Parliament, the Government, and the President of the Republic to the "Defence Commission." The Commission would be composed of the Speaker of Parliament, the Prime Minister, the leaders of the party groups in Parliament, the Ministers of Interior, Defence, and Finance, the minister in charge of the intelligence services, and the commander of the Hungarian Armed Forces, under the chairmanship of the President of the Republic. Thus, the system ensures an effective concentration of governmental authority to deal with the crisis, while at the same time providing for a kind of constitutionally designed national unity government. A

national unity government may well be the most suitable model of government in times of grave crises, provided that there are no profound differences among political parties on matters of defence policy. The Regulatory Concept envisages two relatively minor changes with regard to the Defence Commission. One is to reduce its membership; the other is that the commission would work in peace time too, without however having any decision making powers. Both proposals are quite reasonable.