

On the incompatibility and accountability in the Hungarian constitutional development

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As a result of the political changes in 1989/90, the Central – Eastern European countries returned to the classical European constitutional development and adopted its values. This process can be considered to be the third great milestone of the European constitutional history following on from those after the two World Wars. In each country the main content of the changes was expressed by rejecting the institutions and solutions typical of the former political system, by returning to the regulatory principles and institutions of modern civil society.

Now there is a possibility to analyze the characteristic of the transformation process of the constitutional order I should like to underline the peaceful character of the Hungarian transition only. The great majority of the players in the transformation process considered this peaceful way to be the most important requirement and this peaceful character prevailed in each essential momentum of the political transition which took place on the basis of the principle of legality, within the framework of the rule of law.

Revival of parliamentarism in Hungary has placed in the limelight legal regulations concerning incompatibility, accountability and transparency of the MPs. These rules result in the very important guarantees for delimitation of powers. They also provided credibility through legal means for public policy.

Hungarian legal tradition is indeed very rich in this field. The first law was adapted at the end of the 19th century and this process continued in the 20th century.

After World War II, in the Soviet-type political and constitutional structure this issue lost its importance. The radical changes in property relations, the concentration of the powers generated the fusion of several kinds of functions, the executive and legislative powers were amalgamated into the state-machinery. Until the change in political regime in 1990, sadly these issues could not take precedence in the same way as they would in a democratic state.

Only after the change in the political regime did the regulation of this problem gain new importance and cause a long-term impact on the whole development of Hungarian parliamentarism. In my contribution I should like to focus on the same feature of the present Hungarian situation. We should take into consideration that Hungarian development in some peculiar respect differs from the general tendencies which characterized the American and British practice. These differences came from the various historical and political background and form the different legal bases of regulations.

Parliamentary recruitment: After the first free elections the majority of new members of parliament were from the intellectuals. The process of privatization of state-property was not completed. New owners shied away from open political activity. The first new law and amended constitution in 1990 failed to regulate cases of economic and financial incompatibility and was therefore deficient.

Hungarian legislation tried to solve this problem in 1997. That was the first step towards comprehensive regulation but the new act also focused on incompatibility in political and official fields. The basic regulation was amended in 2001 providing an obligation on MPs and their near family members to declare financial, income and business interests. The MP's declaration is open to the public unlike the declaration of the spouse, partner and children is not. Anyone may initiate proceedings against the MP. In such cases, the Speaker of the Assembly refers the case to the Committee on Immunities and Incompatibility. The declaration is given each year, thus making any possible increase in wealth traceable.

There is an essential difference in the Hungarian regulations as opposed to the British and American ones, namely the lack of regulations concerning lobbying. Interestingly enough, this is looked upon in Hungary as something suspicious and close to corruption. This has a negative impact on democratic and professional decision making particularly after Hungary's accession to the European Union. Consequently, personal networks of the MP remains veiled. This needs to be changed in the near future in order to complete the constitutional decision-making mechanisms with legal and open method for lobbying.

Providing financial independence for MPs is problematic both in Hungary and in the new democracies of Central- and Eastern Europe. The Hungarian Parliament following the first free elections works continuously in a professional way. Apart from their salary, MPs may need to take up professions yielding additional income which could result in conflicts of interest. Remarkably, in spite of this there have been only two MPs under criminal investigation for corruption since 1990.

When looking at political and public incompatibility, it is interesting to examine the situation of mayors and local senior officials. Between 1990 and 1994, mayors were barred from holding office as an MP. Since 1994 however, this is no longer the case and so more than one third of the 386 Hungarian MPs holds a senior office in a local government. This has far-reaching influence on the legislation and the functioning of the entire political system. This is mainly expressed in the strong representation of local interests.

A general characteristic of the Hungarian regulation concerning incompatibility is that it is very detailed and exhaustive. Consequences can be determined in a thoroughly regulated process. Incompatibility of interests is screened by the declaration of financial interests, enforcing the consequences is done with the help of public morals and public scrutiny. The tendencies in our regulation differs from the Anglo-Saxon practice. A closed and exhaustive system is which statutory law has primacy. Parliamentary customs, practice and the role of commission precedents does not play any role.

Finally, let me highlight the fact that comprehensive regulation of MPs' accountability and incompatibility is a characteristic of a consolidation period. In the age of revolutionary changes, when the foundation of the new system has to be laid, these issues are not given a lot of importance. New democracies of Europe have passed this period and have come to the point of consolidation. It is no coincidence that detailed regulation in Hungary was passed after 1990 in 1997 and 2001. The process has obviously not ended yet. The conclusions of this seminar will surely help and support us further improve our legislation.