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Reform of the Legislative Procedure in Hungary

I. Introduction

In February 2014, the Hungarian National Assembly adopted new rules on the parliamentary legislative procedure.[1] Since this was the last decision of the legislature in its term 2010-2014, the new rules came into effect only after the 2014 elections. The previous rules of procedure were introduced in 1994, and during their 20 years of history, amended several times. The reform was also justified by the fact that the size of the parliament was changed radically by an earlier election reform: instead of 386, only 199 MPs were elected in 2014 into the unicameral Hungarian legislature.

The procedural reform was needed also because of the increasingly complex legislation and the tendency of political actors to avoid public debates in the plenary by speeding up the process of legislation, packing several amendments to legislation into one package. This fact faced criticism not only from the general public, but also the president of the republic sent back some pieces of legislation for further consideration, and even the constitutional court declared some legislation unconstitutional due to breach of procedural rules of legislation.

Based on the constitution, the Basic Law of Hungary, the parliament is entitled to adopt its rules of procedure with a two-third majority of its members present.[2] Currently, the rules regulating the operation and function of the parliament consist of two legal sources: the newly adopted Act on the National Assembly (2012), and the above mentioned new parliamentary resolution 'On certain provisions of internal order of parliament'. The latter contains detailed rules of the legislative process.

This article describes the system of legislation in Hungary, and then it gives a detailed insight into the parliamentary legislative procedure with special attention to the recent changes.

II. The System of Legislation in Hungary

The Basic Law stipulates that the authority to pass legislation is vested in the National Assembly, the supreme body of popular representation. Bills passed by the parliament are the highest source of law in the land below the Basic Law. The parliament may expand its legislative activity to any areas previously not or only partly regulated by law, and has the exclusive right to regulate in fields which are already regulated by law. Once the parliament has brought the matter within the scope of statutory regulation, this may be modified or repealed only by the adoption of another law passed by the parliament. Apart from that, the Basic Law explicitly determines a number of areas that must be regulated in the form of law.

As a general rule, a simple majority of MPs present is required to adopt a law. However, within the remit of the exclusive legislative competence, some laws can only be passed by a two-third majority of MPs present. Laws on fundamental state institutions, as

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[1] 10/2014 (II. 24.) OGY határozat egyes házszabályi rendelkezésekről (Parliamentary resolution No. 10 form 2014 (II. 24.) on certain rules of parliamentary procedure (in the following: rules of procedure, RoP).

[2] Basic Law of Hungary, Art. 5 par. 7.

well as on fundamental rights and freedoms need the approval of this qualified majority. The institutional category embraces the status and function of the President of the Republic, the Constitutional Court, the State Audit Office, the Ombudsman, the National Bank, the courts, the police and national security, national defence, local self-government and the principles of elections. The category of normative guarantees of fundamental rights covers among others laws on the freedom of speech, religion, association, assembly as well as the rights of national minorities. This requirement of a qualified majority decision was built in the constitutional system during the change of the political regime in 1990 to make the new democratic achievements complicated to change or abolish.

The Hungarian parliament, already in 1987, before the change to parliamentary democracy, adopted a law on legislation, which described the different sources of law and the relevant legislative bodies. After several amendments, a new Law on Legislation was adopted in 2010.[3] Its provisions aim to make the legislative system clear and transparent, granting opportunities for the public to participate in the legislative process. According to the Basic Law and the Law on Legislation, the Hungarian legal system has four major levels: laws (adopted by the Parliament), governmental decrees (adopted by the government), ministerial decrees (adopted by a minister), and decrees of local government. The Basic Law describes the hierarchy of norms: a decree may not contradict a law, and no legal source may contradict the Basic Law.[4]

The government may adopt a decree in any area that is not reserved to be regulated solely by the parliament, provided that the parliament has not adopted a rule in the area in question already. The legislative competence of the government is thus limited to the areas not regulated by laws. The government is required to adopt a decree if the parliament explicitly delegated the right to regulate a subject matter in a decree. In these cases the government is obliged to act (although there are no time limits and consequences for non-acting).

Ministerial decrees serve the purpose of regulating the details of a policy area. Ministers may not adopt decrees on their own initiative; they must have the legislative power delegated to them by the parliament or the government. However, the government may not sub-delegate legislative power which it received from the parliament. Still, ministerial decrees represent the majority of the legal system and most detailed rules are found in them.

The requirements of legislative drafting for all legislative bodies are outlined in a decree by the minister responsible for jurisdiction, dating from 2009.[5] In its 150 articles, the decree contains several rules for law drafters on linguistic matters, formulations, correct use of references, structure and breakdown of legal acts. The decree is accompanied by an equal amount of the relevant text examples.

If the government plans to propose legislation in parliament, it has to follow a strict procedure. Firstly, the services of one or more ministries have to draft a legislative proposal, accompanied by a preliminary legal and economic impact assessment, carried out by the ministries responsible for legislation and economy. The government is also obliged to prepare a preliminary impact assessment with the aim to check if the proposal does not contain serious contradiction with existing civil law, public law or EU law. Also, the effect of the proposal on the national budget is assessed. The proposal is then circulated within all ministries, and publicized on the website of the government. The

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[3] 2010. évi CXXX. törvény a jogalkotásról (Law No.130 from 2010 on Legislation).

[4] Basic Law of Hungary, Article T.

[5] 61/2009 (XII. 14.) IRM rendelet a jogszabályszerkesztésről (Decree of the minister for justice on legislative drafting, No. 61 from 2009).

responsible ministry has the task of evaluating the consultations, finalizing the draft, and preparing it for adoption by the government.

The process for drafting and consultations usually takes 3-6 months (with a possibility that the preparation takes more than a year), partly depending on the length of the proposal, but more often on the sensitivity of the area to be regulated.

These rules do not apply to proposals made by MPs, except for the obligation of submitting the proposal together with a general and a detailed reasoning. MPs usually do not have professional drafters to make correctly worded proposals and there is only limited staff available at the parliament to help MPs. Also, there is no general web-surface for MPs to consult the public during the drafting. However, proposals made by MPs usually address questions that have high relevance in daily politics and as such, the opinion of the public is usually well known. Also, proposals made by MPs are usually short amendments or simple bills that address a single issue.

III. The Stages of the New Parliamentary Legislative Procedure

Art. 6 of the Basic Law states that the president of the Republic, the government, any parliamentary committee and any MP can propose legislation in parliament. The formal requirements are rather simple: the proposal needs to contain the complete text and title of the envisaged law. If the proposal intends to amend or invalidate one or more existing legislative acts, this should be indicated in the title. Besides the text of the proposal, the legislative proposal also includes a general and a detailed reasoning. The general reasoning describes the general approach of the proposed bill, the problems or areas it would like to regulate and the decided actions. The detailed reasoning describes the exact role of each paragraph in the bill. The role of the reasoning is to give the readers a general idea about the intent of the legislator, why, and why exactly, that way the bill was adopted. This is important, since Hungarian bills do not have detailed preambles like the ones one can find at the beginning of EU legal acts.

In practice, the government is the most active proponent, normally up to 90% of the legislative proposals which are adopted later, come from the cabinet. However, in the last years, many bills were introduced by individual MPs. In the year following the 2010 elections, there were more MP proposals than government bills among the adopted laws.

Year	Share of MP proposals among adopted laws (%)	Share of government proposals among adopted laws (%)	Number of adopted laws
2010	54	46	151
2011	41	59	215
2012	32	68	224
2013	27	73	254

The major difference between MP-proposals and proposals of other proponents is that bills of MPs are subject to a decision of a designated committee on whether the parliament should discuss them at all or not (decision on admissibility). Since there are no legal criteria to check, this is a purely political decision, with high discretion of the committee. While government, presidential and committee proposals are automatically on the 'list of legislative items', a list of legislative proposals, which is the basis of the weekly agenda planning, MP proposals can only be put into deliberation if a committee decides accordingly. Due to the fact that all committees reflect the proportional composition of the plenary, this mechanism is extensively used to filter out opposition proposals: opposition proposals are unlikely to be discussed in plenary sessions. To a limited extent,

proponents of such rejected bills can ask that the plenary also decides on admissibility. In practice, the plenary mostly follows the previous committee decision.

Committees exercise decisive influence on the fate of legislative proposals from individual MPs. As long as the parliament has an obligation to deal with motions introduced by the government, the President, or a parliamentary committee, the destiny of a motion tabled by an MP (or more MPs) depends on the decision of the designated committee on whether the legislative initiative may proceed further or not. If the chosen committee does not support the motion to get onto the legislative agenda, the faction of the proponent MP(s) can still call for a vote on the acceptance of the motion for discussion in the plenary session.

In the following legislative process, committee and plenary stages follow one another in a set order, as described in art. 31-71 of the rules of procedure. As a first step, a 'general debate' is held on the proposal in the plenary, where the rationale, the objectives and the principles of the proposal are brought under the examination. In the general debate, the initiator has the right to speak first and present the argument for the legislative proposal. If it is not a proposal of the government, a cabinet representative can outline the governmental position on the proposed act. Then the keynote speakers of parliamentary factions can take the floor and finally the independent MPs are given the chance to join in the debate. A prior compromise on a timeframe is possible, where the parliamentary factions have time allocated proportionally.

In the earlier system, the general debate was followed by a committee stage, and a 'detailed debate' in the plenary, where only the textual details or the proposed amendments could be subject of an intervention. In practice, detailed debates were mostly of technical nature, with a rather low attendance rate. This was the main reason why detailed debates were removed from plenary, and are now held in committees. By the time the general debate starts, the Speaker designates one standing committee for the detailed debate. However, other committees may also request – upon a majority decision of the committee members – that they also organize a similar debate, in order to deliberate on the details of the entire legislative proposal or on parts of it. Upon the previous rules, multiple committees, and among them also a leading committee, could be designated, currently there is one designated committee, and others decide on the debate themselves.

The deadline for MPs and committees for filing amendments to the legislative proposal is the third day after the plenary adopted its agenda with the respective item. Amendments must be filed in writing and must be reasoned (no oral amendments may be made). The proponent of the bill is not allowed to submit amendments to its own proposal, since the logic of the system is that after the submission the owner of the bill is the parliament. The proponent can only express its view on the proposed amendments, whether he agrees with them or not.

A new feature of the procedure is that the MPs have to declare in the amendment proposal which committee they wish to discuss the amendment. Earlier committees selected themselves which amendment they wish to discuss, and the first designated committee was the only to discuss all amendments. If the MP does not appoint any committee, the designated committee will discuss and decide on the amendment proposal.

Amendment proposals contain the original wording of the legislative proposal with track changes, reflecting the desired change. The reasoning is a necessary element here as well. Amendments are only eligible if they are related to laws whose amendment was already provided for in the initial legislative proposal. If an MP seeks to include amendments to new laws, which the proponent did not want to treat in the original legislative proposal, and also the committees support this motion, the procedure has to go back one step: the general debate is reopened, but only as far as the new law is concerned.

After the deadline for amendments expires, amendment proposals are discussed by committees in the course of a detailed debate. In the previous system, the detailed debate was held in the plenary, now it is done by committees. After the discussion, the committee votes on the amendments within the competence of the respective committee one by one, in the order of the articles of the legislative proposal. In order to support this decision-making, parliamentary services prepare an internal working document which comprises all amendments submitted to a bill. The committee can decide either to reject, or to support an amendment proposal, a third possibility is to support it with changes. When all the amendments are examined in the committees, the representative of the proponents is expected to present its position on them. However, this opinion is not obligatory to the plenary.

The responsible committee than prepares a committee amendment by packing all supported amendments into a committee amendment proposal. The committee in charge of the assessment may also submit its own supplementary amendments. These coherent committee amendment packages will then be submitted to the Committee for Legislation. Committees – in contrast to the previous system – not only have to discuss, but also to declare in a final report whether the legislative proposal is in line with the constitution, the legal system, the international obligations and EU-law. This new system clearly shows the strengthening of the committees. They are now responsible for the intra-parliamentary check against constitutionality, legality, conformity with international law and EU-law, and they will report to the plenary about their findings. At the conclusion of the detailed debate, committees prepare a report to the Committee for Legislation, and submit those amendment proposals which they support as their own committee amendment proposal.

The Committee for Legislation and, as a result, the two-level committee system, is the most significant invention of the new legislative procedure. As a super-committee of 39 members (in contrast to the normal 12 to 20 members of standing committees), the Committee for Legislation has the ultimate responsibility for preparing the legislative proposal for the plenary decision, harmonizing the amendments coming from the various committees, preventing the simultaneous adoption of contradicting amendments. With the help of the legal service of the parliament, it delivers its position on the committee amendments in order to ensure coherence and precision. The Committee for Legislation, based on the amendment proposals of the committees, elaborates a final amendment package (summarizing amendment proposal), which is subject to a single vote in the plenary session.

After this, a second plenary stage takes place, where the committee reports and the summarizing amendment proposal (prepared by the Committee for Legislation) are subjects of the discussion. This debate recalls to some extent the detailed debate of the previous system. The chairman or another member of the designated or volunteering committees presents the summary assessment and the recommendation of the responsible committees. In case of a dissenting position within a committee, the minority opinion can also be delivered. Following this the keynote speakers of parliamentary factions take the floor, and also the independent MPs are given the chance to join in. Before the closure of the debate the proponent is given the floor again to reply to the questions raised.

Following this debate, votes are cast only on the summarizing amendment proposal in plenary, and not on every single amendment proposal. However, MPs may ask in a certain number of cases that the plenary votes on their amendment proposals which were rejected by one of the committees previously. After the vote on the summarizing amendment package, the proponent has the duty to prepare the amended version of the proposal for submission to the parliament (‘single proposal’). This is why the vote on amendments cannot be immediately continued with the final vote on the entire proposal,

there must be one week left in between. The single proposal will then be the subject of the final voting.

In the earlier system – in case of internal contradictions or conflict with other pieces of legislation caused by the parliament by approving contradicting amendments – amendment proposals of the proponent were allowed ('closing amendments'). Even if in theory no possibility for substantial changes was provided for in this phase (only textual errors may be corrected), this provision was often overruled by the need of politics for a quick change. In the current system, the Committee for Legislation is responsible for the proper incorporating of the amendment package into the text of the legislative proposal. If amendments are still needed in the last stage, the final vote has to be postponed, and a new plenary debate on the closing amendments organized. In the previous system, amendment proposals and plenary decisions on them were possible even without postponing the final vote.

The entire legislative proposal comes to pass when a final vote is held on the proposal in its amended form, as a whole. In the final vote, the parliament adopts a legislative proposal with the majority required either by the Constitution or by another law: simple majority of MPs present, or the 'qualified majority' (two-thirds) of MPs present.

If the proposal is approved, it is submitted for signature to the Speaker, and then to the President of the Republic. However, the president has the right to send back the bill to the parliament for reconsideration (political veto) or to send it to the Court of Constitution (constitutional veto). In the previous case, the parliament must hold a new debate on the proposal and a new final vote. But once the proposal is adopted again, the president must sign it anyway. In the case of a constitutional veto, the bill will only be signed if the Court of Constitution decides that it is in line with the Constitution. If not, it is sent back to the Parliament to correct the errors. If the president has no such objections, he signs the Act, and orders the promulgation in the Official Gazette of Hungary.

IV. Urgent Legislation

In the previous legislative terms, urgent or accelerated procedures for legislation were quite often initiated. In 2013 for example, 195 motions for urgency were initiated, and many of them were approved. In the same year there were 20 laws which were approved within one week or even faster, in five cases within the shortest possible timeframe, two days. In the new system, the shortest possible time to adopt legislation is seven days, because of the requirement that at least six days have to pass between the submission of the legislative proposal and the general debate, in order that the MPs have sufficient time for reading and analyzing the proposal.

Of course, the current provisions also provide for possibilities to speed up the parliamentary process. The proponent can initiate an urgent or an extraordinary procedure on its own legislative proposal. In case of the urgent procedure – which can be used only six times in a calendar semester and ordered by a two-third majority of the MPs present – the proponent can ask derogation from some deadlines of the rules of procedure. In the extraordinary procedure – which can be used only four times in a calendar semester, in contrast to the previous 12 processes yearly, and decided by a simple majority of all MPs – the parliament can set out the date of certain procedural steps in advance. Extraordinary proceedings are not allowed for motions related to the Basic Law (amendment, new constitution) and at budgetary processes. In the urgent procedure the time interval between the decision on the urgency and the final vote cannot be less than six days. In the extraordinary procedure there is no such minimum timeframe.

Another possibility is to decide in advance that in case if no amendment proposals are submitted, the parliament shall approve the legislative proposal in the form it was submitted. In this case the final vote can take place immediately after the closure of the general debate. This possibility can also be seen as a consensus-based divergence from the rules of procedure, putting aside the normal steps. The consensus is required because even in case of only one amendment proposal the ordinary procedural requirements would apply again.

With a majority of four-fifths of MPs present, the parliament can decide to put aside any provisions of the rules of procedure. This possibility can be used when a clear consensus among all political parties supports that exceptional steps are made. Normally this possibility – which has been existing since 1994 – is used to adopt legislation in a fast way, in cases of common interest of the parties.

V. Conclusions

With the new rules of procedure, based on the experiences of the two decades of the previous rules of procedure, complex provisions were created, with formulations which are more complicated than before. The need to regulate the procedure more precisely can be justified by the previous practice when attempts of politicians (mostly on the majority side) to use procedural rules to avoid open debates, push legislation fast through parliament. Urgent legislation was used more often than justified, amendment proposals were used to complete legislative proposals which entered the procedure without their substantial parts. Many of these possibilities are closed by the new rules of procedure. Parliamentary legislation may become more predictable, yet some spontaneous elements disappear.

Many elements of the new procedure show a shift from sheer l'art-pour-l'art debates towards a professional working parliament. (Of course it could be subject of another analysis whether there are l'art-pour-l'art debates in parliament at all – the heart of parliamentary debates is not the effectiveness but the freedom of speech and publicity.) The new rules require full time MPs, who are present at committee meetings and at the plenary sessions as well. This corresponds to the new legal provision that MPs are not allowed to have other earnings. All other positions, jobs are now incompatible with the MP status. The new rules therefore can require a higher level of awareness of legislation rules on the part of MPs. The new rules can help MPs to spend more time on quality legislation in the parliamentary phase, with focused plenary sessions and committee meetings which provide for thorough debates and detailed textual work. However, since there is not yet enough experience to judge how the new rules can be applied in practice, the future will show how much the new, logical rules can change political praxis and strategy.