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Popular sovereignty during the Covid-19 pandemic: Organize legislative and municipal elections in the shadow of the virus concerns

The pandemic also changed the ordinary life of the legislative bodies: during the period of the public health emergency, on the one hand, the exact margin of movement of the parliaments during the period of the special legal order became uncertain, and on the other hand, the regular meetings encountered serious obstacles. A majority of the restrictions whave been left behind as the intensity of the pandemic decreased, but at the same time, many trends that developed at that time seem to be partly or entirely permanent. The impact of the Covid-19 epidemic on parliaments has already been examined by several authors, but the contribution of the constitutional review to the adaptation of legislative bodies to post-Covid challenges is a sub-field that has not yet been investigated. Two directions of the relevant constitutional case law can be separated: on the one hand, the decisions are aimed at delimiting the special legal powers of the parliaments, and on the other hand at identifying the framework for the day-to-day operation of the legislative bodies during the pandemic. In our study, we examine the role of the constitution/supreme courts in relation to the latter through recent French, German, Spanish, Croatian and Estonian constitutional/supreme court decisions.

Keywords: pandemic, parliamentary law, popular sovereignity, constitutional review, special legal order

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Election security in the shadow of hybrid threats

The election of members of the legislature is a cornerstone of the functioning of democratic states. The integrity of elections ensures the legitimacy of democratic functioning, and undermining it threatens the functioning of the state.
Hybridity is one of the most significant and complex security challenges of our time. Hybridity is a multi-level concept involving different levels of escalation. The broadest level of interpretation of the concept is significant for the topic under consideration: the hybrid threat. In this case, the possibility of military confrontation is remote, and in fact hybridity is then seen as a means of geopolitical competition. In this case, it means interfering with the democratic processes of the individual members of the opposing geopolitical community in order to provoke a domestic political crisis for a longer or shorter period of time, which would sufficiently tie up the resources of the state in question to enable the other side to pursue its geopolitical goals more effectively.
The effectiveness of this strategy is enhanced by cyberspace and related technologies. Thus, modern democratic elections are a particularly suitable arena for this, since in most states today either the whole or part of the electoral process is carried out through electronic systems.
The security of elections should be looked at in two ways here. One is the security and integrity of the electronic system itself through which elections are conducted. The security of electronic electoral systems is of paramount importance and they are therefore part of the state critical infrastructure. In recent years, there have been cyber-attacks on election information systems in a number of countries, in which the perpetrators have gained access to large amounts of personal data. The European Union has taken restrictive measures against attacks on public elections and the voting process, including the freezing of funds and economic resources.
Another aspect is the danger of disinformation scenarios by foreign states in connection with elections. Through this disinformation, the offending state creates doubts and uncertainty in society about the purity of the elections and the identity of the candidates, essentially delegitimising the outcome of the elections. Thus realising the basic objective of the Russian hybrid strategy of controlled chaos. Both NATO and the European Union have taken a number of measures to combat disinformation, but it is now abundantly clear that these will not be a real solution to the problem until social media platforms are genuinely engaged in this process, sharing their filtering mechanisms and cooperating with state authorities.

Keywords: hybridity, hybrid threat, election, network security, disinformation

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Digitalisation and automation opportunities in legislation

"Can legislative drafting be deemed a scientific work?" asked Gábor Vladár in his address to the Academy in 1939. In his study he outlined a number of activities that are still being carried out in a similar way 80 years later – but today researches are rather focusing on the preparation and digitalisation of legislation, and on exploring its automation possibilities.

Nowadays, legislative drafting has become interdisciplinary, as in the internet, digitalization and automation era, legislation has long ceased to be drafted on paper, and instead of the printed version, the official text of the legislation is no longer the version published in printed form, but the version published in an electronically authenticated form. Therefore, codification lawyers, transcribers and typists have been replaced by computer scientists and project managers, because information superhighways generate a huge volume of information to work with in the legislation that would be very slow and almost impossible to process on paper.

In Hungary, a digitised system for lawmaking called "ParLex" was first launched in the Hungarian Parliament in 2017, followed by the Integrated Legislative System (IJR, 2021) that has made the legislative process from preparation to promulgation electronic, and extended it to the entire regulation-making process. Offering the possibility of broad public participation in lawmaking, the digitalisation of legislation would theoretically pave the way to involving voters at an earlier stage of legislation, thereby implying the possibility of achieving direct democracy.

In addition to legal digitalisation, we should also consider the use of AI-based text generators and whether they can be used in lawmaking over time. Machine-generated legislation necessarily has a linguistic dimension, since both law and legal norms are linguistic phenomena, and therefore, the automation of legislation cannot ignore the results of language technology.

Keywords: digitalisation, automation, Integrated Legislative System (hereinafter: IJR), ParLex, artificial intelligence

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The questions of codification of the state liability for damages caused by legislation in breach of EU law

The study presents the history and main characteristics of the legal concept of liability for damages in the case law of the Court of Justice of the European Union. It highlights the circumstances which make it difficult for national courts to apply it correctly. Then examines the institutional history and the controversies regarding state liability for legislation in the domestic context. It reveals that the failure to codify the damages caused by legislation during the drafting of the new Civil Code creates a contradictory situation in Hungarian tort law. It shows that in the practice of domestic courts, there is a parallel system of liability for damage caused by legislation infringing EU law and a system of compensation for damage caused by legislation based solely on domestic law. This leads to a disadvantageous situation for the claimants who pursue claims against the state on the basis of purely domestic facts for damages caused by legislation. In view of this, the study points out that it would be appropriate to codify the system of compensation for damage caused by legislation.

Keywords: codification, state liability, Court of Justice of the European Union, EU law, tort law

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Competition for influence or parliamentary subsidiarity checks on the scales: the presentation of the domestic practice with European perspective

Since 1 December 2009, the Treaty on the European Union and the Treaty on the Functioning of the European Union have given the EU national parliaments direct powers to check the application of the subsidiarity principle. In Hungary, the conduct of the checks was made possible by the adoption of the Act No 36 of 2012 on the National Assembly together with the related amendments to the Rules of Procedures.

The first reasoned opinion was adopted 10 years ago by the Hungarian National Assembly, on EU level the so-called yellow card threshold has been reached on a total of three occasions. An EU perspective and a domestic balance sheet, as well as the eternal combination of political and legal understanding as a justification for whether or not a new draft legislative act of the European Commission violates the subsidiarity principle. So far, in the course of 7 procedures by the Hungarian National Assembly a total of 12 draft legislative acts were considered to be in conflict with the subsidiarity principle. In the last 3 years a total of almost 300 draft legislative act falling under the scope of Protocol No. 2 of the Treaty of Lisbon was proposed by the European Commission while, during the same period around 60 reasoned opinions were adopted by the 39 parliamentary chambers of the EU 27 Member States.

The main finding of the paper is that the last decade or so has shown that there are only a few number of draft legislative acts, which – at the early stage of the EU decision-making procedure – capture the collective attention of national parliaments. The so-called early warning mechanism hasn't become commonplace. Nor could it have become commonplace, since EU affairs are dealt by the large majority of national parliaments as special parliamentary procedures. The activism of the Swedish Parliament should be highlighted which has consistently adopted the highest number of reasoned opinions, notably 101 since 2010. Also the trend at EU level for subsidiarity checks has clearly been decreasing since 2018.

Following the recent crises, proposals were submitted by the European Commission in areas where we have not seen it before: health union, energy union or media. While subsidiarity checks can't hamper the monopoly of the European Commission as proposer, the overreaching proposals of the European Commission may result in the limitation of the exercise of competences Member States and national parliaments. In case of such overreach, national parliaments have a duty to make warning.

Keywords: National Assembly, subsidiarity, reasoned opinion, political dialogue, yellow card

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Balázs Kiss

Issues of the parliamentary sovereignty in the procedure for the recognition of new minorities

The Hungarian National Minority Act provides for the possibility of recognising an ethnic group as a national minority on the initiative of the community concerned.

The Constitutional Court considers the initiative to be a special case of the popular initiative and in its practice has taken a position of absolute defence of the exclusive and discretionary competence of the National Assembly, which is entitled to take decide on the matter.

The study analyses the issues of parliamentary.

By examining the procedure for initiating the recognition as a national minority and the doctrine of parliamentary sovereignty the study seeks to answer the following questions. Whether the procedural rules of National Minority Act limit the power of the legislature. The study examines whether the specific procedural rules affect in any way the right of the President of the Republic, the Government, the Parliamentary Committee or the Member of Parliament to initiate the amendment of Annex 1 of National Minority Act. The study seeks to answer the question of whether Parliament can take a decision at all on an to recognise a community as a national minority in the absence of an initiative to declare the group concerned as a national minority. It examines the role of the opinion of the President of the Hungarian Academy of Sciences and whether absence or omission of such an opinion may render the decision of the National Assembly invalid under public law. The study also seeks to answer the question of whether the Constitutional Court reviews the decision of the National Assembly to declare a group a national minority or the rejection of the initiative.

The study concludes that the discretionary powers of the National Assembly and the fact that its decisions are not subject to judicial review create a real risk that the scope of national minorities will be treated as a closed list and that initiatives for recognition as a national minority will be selected in a discriminatory manner.

Keywords: recognition of new minorities, national minority, parliamentary law, parliamentary sovereignty

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The Model and its Adaptation. József Kun on the Difference of English and Hungarian Parliamentarism

The study focuses on József Kun Barabási's 1909 essay on the differences between English and Hungarian parliamentarism. In this, the author states that parliamentarism in Hungary following 1867 was just seemingly like the English one, in effect it cannot be seen as "true" parliamentarism. Before presenting Kun's work, the paper deals with the debates of the era concerning parliamentarism, arguing that two well defined approaches fought against one another concerning the evaluation of Hungarian parliamentarism in the period starting from 1867 to the turn of the century. According to one, the Hungarian situation is the same as the English example, that is, there is no significant difference between Hungarian and English parliamentarism. The political scientist Albert Deák, or the prominent figure of Hungarian political life, Gyula Andrássy Jr. was of this view. The other approach, which can be attributed to József Kun as well, disagreed with this, and did not accept the Hungarian variant as a "true" parliamentarism. Győző Concha, of whom Kun was a student of, and Mihály Réz also approached the topic similar to Kun. Kun based his argument against "true" Hungarian parliamentarism on two main claims. One was that the weight of parliament in Hungary was much smaller than in England. The other, is that there is no balance between Hungarian parties which could make it possible to create a rotation amongst the parties. Following the presentation of József Kun's views, the remainder of the study focuses on the lessons to be learned from them in our time. The paper emphasizes the category of "preconditions", which do not play an important role in political science today because the historical approach of mainstream political science is rather weak. The study of preconditions would require a stronger historical affinity. The paper concludes that József Kun Barabási can be seen, to use a contemporary expression, as a preconditionalist, who was faced with the universalists of his time. The closing part of the essay expands upon the meaning of the two concepts.

Keywords: Parliamentarism, dominant party, opposition, preconditionalists, universalists

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