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The Hungarian government amends the Fundamental Law for the ninth time

On November 10, 2020, a draft amendment to the Hungarian Constitution was submitted. Justice Minister Judit Varga submitted the bill with significant but politically controversial changes to the Constitution to be processed while Hungary struggles with the COVID-19 pandemic and the state of danger (article no 53 in Fundamental Law) being reintroduced.

State of danger again. Due to the significant development of the epidemic in Hungary, the state of threat caused by the spread of SARS-CoV-2 virus was reintroduced on November 4, 2020, by the ordinance of the Prime Minister, Viktor Orbán. On November 10, the National Assembly voted to extend this special legal regime by 90 days. The vote was the result of a consensus between various political parties. It is worth emphasizing here that while the extension of the extraordinary instruments granted to the Council of Ministers in spring was controversial, there were no similar doubts during the second wave of the pandemic. The reason for this change was the fact that this time the vote took place after political decisions, so the threat was extended not only by the votes of the Fidesz-KDNP coalition but by the opposition as well. President János Áder described this as a “responsible consensus”. The second difference concerned the exact period for which the attorney’s extraordinary powers of attorney are granted (90 days). In spring, their validity was not clearly defined. A few hours after voting in Parliament, the Minister of Justice introduced changes to the parliament regarding the Hungarian Constitution, which cast a shadow on the consensus reached.

Fundamental Law of Hungary – another amendment. Formally binding until December 31, 2011, the Constitution was passed in 1949 and then repeatedly amended after 1989. The current Hungarian Constitution – adopted in April 2011 – has been in force since January 1, 2012. This legal act of the highest order is referred to as “Fidesz Constitution”, because it was not created as part of a cross-party agreement but was adopted only by votes of the Fidesz-KDNP coalition. Apart from Jobbik, the opposition boycotted the vote in protest against the failure to adopt a single proposed amendment.

So far, eight laws amending the Hungarian Constitution have been included in the legal system. It should be noted that the packages amending the Constitution are not limited to just one article but often concern significant changes in its various parts. Subsequent amendments are submitted only by the coalition government. Over the years, the wording of several dozen articles has been changed.

The subject of the current act amending the Constitution. The amending act was given the number T / 13647. The Fidesz-KDNP coalition introduced amendments to two parts of the Constitution: “NATIONAL AVOWAL”, which is a specific, extensive preamble, and to part A – “Foundations”.

The draft amendment stipulates that marriage is a union of a woman and a man. This definition is also included in the Polish constitutional order. However, in Hungary, when the Law on Registered Partnerships was passed in 2007–2009, the Constitutional Court ruled that such relationships must be clearly distinguished from the institution of marriage. The legislator presented such solutions; a registered partnership is addressed only to people of the same sex who would like to legalize their relationship. The partners acquire a number of rights identical to those enjoyed by people living as a married couple. However, these persons do not have the possibility to choose each other’s surnames. There is also no presumption of paternity or formal joint adoption of children. In practice, the adoption issue was solved in such a way that one of the partners (or one of the partners) applied for adoption and afterwards the other party to the relationship was adopting the child. Based on that, both parties participate in the child’s upbringing on an equal basis.

The legislator, implementing the slogan of “protecting Hungarian families”, mentioned by the family minister Katalin Novák, wishes to restore the traditional family model. In this model there is not space for so-called

rainbow family. This goal could be achieved in two ways; on the one hand, in the draft amendment to the Constitution, it was specified that “family” is constituted by a mum and a dad, where “mum is a woman, and dad is a man”, on the other hand, through the amendment of the Civil Code, adoption by single persons is to be prevented (there will be no distinction between heterosexual and non-heterosexual persons). The Constitution will also include a provision on the parents’ right to raise a child in Christian culture and a prohibition to change gender recognition, as well as your first and last name. The latter provision was passed by the National Assembly in May 2020 and will now be elevated to a constitutional provision.

The second area of constitutional changes concerns the section devoted to “special legal regimes”. Under the current legal framework, there are six types of emergency measures a rendkívüli állapot (art. 49), meaning “state of national crisis”, a szükségállapot (art. 50), meaning state of emergency, and megelőző védelmi helyzet (art. 51), which means “state of preventive defence”, a terrorveszélyhelyzet, being “state of terrorist threat”, a váratlan támadás (art. 52), meaning “unexpected attack”, and a veszélyhelyzet (art. 53) – “state of danger”.

The legislator proposes that the number of states of emergency should be limited to three, the state of war, the state of emergency, and the state of danger. The explanatory memorandum states that these changes aim to specify the framework regulating individual types of legal regimes. It should be noted that the matter of changes in this part of the Constitution does not come down to the removal of three types of extraordinary measures, but also the transfer of the powers included therein to the prime minister. Currently, in the event of a state of emergency (Article 50), the powers are assigned to the president. The fact that the competences are transferred to the prime minister carries the risk of maintaining any of the states of emergency (especially the state of danger) for a period that is difficult to control.

Conclusions. Subsequent laws amending the Constitution, which are submitted only by one political camp (which is the creator of the Constitution), fit in a distinctive way of interpreting the Constitution as a “manifesto of the parliamentary majority”, as well as introducing changes to it in line with the current political agenda. In addition, the current amendment to the Constitution is introduced to parliament at a special political moment, when Hungary is struggling with the COVID-19 pandemic, and the parliament has been de facto deprived of any influence on the legal acts related to counteracting the spread of the coronavirus.

The changes concerning the part that could be described as “ideological” are not a response to the Hungarians’ demand but constitute the implementation of Fidesz–KDNP coalition’s the political goals. In the jurisprudence of the Hungarian Constitutional Court, one can find statements that clearly indicate, inter alia, the definition of marriage as a union between a man and a woman.

Limiting the right to adopt children by single persons may affect (although it is difficult to estimate to what extent) the adoption process of children in Hungary. It is worth pointing out that given the still high number of termination procedures in this country (approximately 30,000 annually), the government is trying to encourage women to refrain from abortions, report pregnancies, and transfer the child for adoption. Issues concerning, inter alia, the impossibility of changing the birth sex metric, changing the name and surname, as well as limiting the rights of LGBTIQI persons will come under international criticism. The inclusion in the Constitution of the right to raise children in a Christian culture will become the subject of criticism regarding the discrimination against families who wish to raise a child in a different faith. The right to freedom of religion is guaranteed in another article of the Constitution and in different freedom of religion law.

The changes to the part devoted to the specific legal regime and the transfer of competences included in individual states of emergency to the prime minister are other elements of changing the Prime Minister’s political position at the expense of other political actors. The political practice of applying various forms of emergency/ special legislation gives rise to concerns that the Hungarian authorities will abuse various forms of emergency measures once again.

Since the beginning of the COVID-19 pandemic, the government’s policy confirms the thesis that executive power is strengthened at the expense of the legislature.