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How Democratic are Illiberal
Democracies? Parliament and
Parliamentarism in the Hungarian
Constitutional Retrogression

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1. The spread of the Illiberal Democracy in Europe

For decades, starting from the Second World War, but especially after the progressive waves of democratization that took place in many regions all around the world after the end of the colonial and socialist regimes, scholars have noticed a constant increase, in every part of the world, of democracy against autocracy. The constitutional democracy has spread to different parts of the world as a form of State characterized not only, as the electoral democracy, by the presence of free and competitive elections, but also by further elements such as the presence of a rigid constitution approved through a democratic procedure, the constitutional guarantee of rights and freedoms and of the separation of powers, the openness towards international law and the recognition of local autonomy.

However, at the end of the last century, some analyses began to emphasize another trend, contrary to the previous one, which was progressively affecting a growing number of States in different parts of the world: this trend consists in the diffusion of the illiberal democracy and in the simultaneous questioning of constitutional democracy as a model of reference.

Currently, the trend seems to be confirmed and enriched with new elements that require a careful and complex analysis of the issue, especially for the European scholars: on the one hand, we are witnessing a circulation of the illiberal democracy model in the European continent, as shown by the threats recently posed to the constitutionalism in EU countries such as Hungary and Poland; on the other hand, even though the phenomena are strictly connected, there is an increasingly marked tendency to adopt the

^{*} Peer reviewed.

model of the illiberal democracy in systems previously characterized by a stable and effective presence of the constitutional democracy.

As a consequence of this evolution, several studies have been conducted in order to define the elements and processes characterizing the diffusion of illiberal democracy.

As for the content, some scholars observe that the phenomenon is giving life to a new form of State, which cannot be well framed neither in the framework of the democratic form of State nor in the autocratic one. The expressions illiberal democracy¹, hybrid regime², competitive authoritarianism³, have been used to describe this new form of State.

As for the procedure, several studies point out that the dissemination of such regimes takes place gradually, incrementally, as the result of a series of changes that appear to be of limited scope if they are taken into account separately, but that cause a general decline of the democratic State if considered as a whole. Also in this case, different definitions have been proposed to describe the complexity of the phenomenon: constitutional retrogression⁴, constitutional rot⁵, democratic decay⁶, democratic recession⁷, democratic disconnect⁸, democratic backsliding⁹.

The majority of these studies show the transformations that involve some systems on the side of the constitutional guarantees or counter-majoritarian powers. In particular, especially in the European context, the focus is on the challenges posed to the rule of law principle, also because of the involvement of the European Union in some national issues considered to be so serious to justify the activation of the art. 7 TEU clause concerning the violation of the fundamental principles of the European Union. Other studies are dedicated to the independence and functioning of the constitutional courts and to the interference in the composition and functions of these bodies. At the same time, other counter-majoritarian institutions, such as the judiciary and the independent authorities, and, in a wider sense, also the press and the media in general, have been analysed.

¹ F. Zakaria, *The Rise of Illiberal Democracy*, in *Foreign Affairs*, 1997.

² M. Tushnet, *Varieties of Constitutionalism*, in <http://www.icconnectblog.com>, 2014.

³ S. Levitsky, L.A. Way, *Competitive Authoritarianism. Hybrid Regimes after the Cold War*, Cambridge, Cambridge University Press, 2010.

⁴ A. Huq, T. Ginsburg, *How to Lose a Constitutional Democracy*, in *UCLA Law Review*, 2018.

⁵ J.M. Balkin, *Constitutional Rot and Constitutional Crisis*, in *Maryland Law Review*, 2018.

⁶ T.G. Daly, *Diagnosing Democratic Decay*, paper presented at the *Comparative Constitutional Law Roundtable Gilbert & Tobin Centre of Public Law*, 2017

⁷ L. Diamond, *Facing Up to the Democratic Recession*, in *Journal of Democracy*, 2015.

⁸ R. Foa, Y. Mounk, *The Danger of Deconsolidation: The Democratic Disconnect*, in *Journal of Democracy*, 2016.

⁹ N. Bermeo, *On Democratic Backsliding*, in *Journal of Democracy*, 2016.

The purpose of this paper is to focus on the other side of the coin¹⁰, the one related to the representative institutions, and in particular to the parliamentary assemblies, in order to analyse if, and eventually how, the spread of the illiberal democracy model, which has already compromised the guarantees typical of the constitutional form of State, can also affect the structures and functions of the representative institutions. Specifically, the Hungarian case will serve as paradigmatic case to achieve our goal. By analysing the evolution of the role of the Parliament in the country, which starting from 2019 has been classified as “partly free” by Freedom House¹¹, the purpose is to understand if it is possible to draw some general conclusions on the relation between legislative power and illiberal democracy.

2. Illiberal democracies and Parliaments: a multidirectional effect

For the sake of argument, we can state that the diffusion of the illiberal democracy may affect the role of the Parliament at least at three different levels: the relationship between the Parliament and the citizens; the relationship between the Parliament and the Government; and the relationship between the Parliament and the system of constitutional guarantees.

As regards the relationship between the Parliament and the citizens, the spread of illiberal democracies has been linked, both by the political scientists and the legal scholars, to the diffusion of populist movements. The populist rhetoric is based, among other elements, on the rejection of representative institutions and the promotion of a direct and immediate relationship between the leader and the people¹². Indirect democracy, of which the Parliament is the institutional manifestation, is considered from this point of view as an artifice and opposed to direct democracy, which is regarded as the natural and genuine form of democracy¹³. This lack of trust in the representative institutions has been the subject of many researches conducted by political scientists who have demonstrated, along with the growing disaffection with democratic institutions, an increasingly widespread appreciation for the illiberal democracy due to its greater efficiency and transparency compared to the representative democracy¹⁴. The consolidation of this trend could lead to an outsize use of the tools of direct democracy and to the questioning of those tools and principles that are typical of the liberal State, such as the prerogatives of the MPs and the prohibition of the binding mandate.

¹⁰ T. Groppi, *Occidentali's Karma? L'innesto delle istituzioni parlamentari in contesti 'estranei' alla tradizione giuridica occidentale*, in *Federalismi*, 2019, 27, highlights the need to focus more on the “organic dimension of constitutional law”.

¹¹ Report *Freedom in the World 2019* by Freedom House, available on freedomhouse.org.

¹² J.W. Müller, *Populist Constitutions. A Contradiction in Terms?*, in www.verfassungsblog.de, 2017; C. Pinelli, *The Populist Challenge to Constitutional Democracy*, in *European Constitutional Law Review*, 2011, 12.

¹³ P. Blokker, *Populist Constitutionalism*, in <http://www.icconnectblog.com>, 2017.

¹⁴ R. Foa, Y. Mounk, *The Danger of Deconsolidation*, cit., 12.

When it comes to the relationship between the Parliament and the Government, systems affected by a constitutional retrogression show a compression of the principle of separation of powers¹⁵. This phenomenon, which primarily concerns the counter-majoritarian institutions and the independence of these latter from the political power¹⁶, may also have implications on the relationship among the political institutions themselves. In this respect, it may lead to a limitation of the Parliament's autonomy from the Executive. In fact, the populist rhetoric exposes the Government, making it the interlocutor of the people. From this perspective, the Parliament would be deprived of its representative function, while the Executive would assume a position of absolute primacy within the system of government.

As to the relationship between the Parliament and the framework of constitutional guarantees, this can be analysed in the light of the relationship between government majority and opposition. Any analysis of the principle of separation of powers would be inadequate when exclusively focused on the dialectic Government-Parliament, which is typical of the liberal State; in this perspective, the relationship established between the opposition and the parliamentary-government majority must be taken into account¹⁷. From this point of view, once recognized the majority principle as a general rule, the right to participate and the possibility to elaborate alternative political guidelines should be guaranteed. The illiberal democracies, powered by the populist rhetoric, may at once overestimate the majority principle¹⁸ and underestimate the rights of the opposition¹⁹. The effects of these impulses may transform the constitution into a “constitution of power” or a “partisan constitution”, designed to bring populist movements to power and to allow them to maintain and exercise their power without the limits, conditions, checks and balances that are typical of the constitutional State²⁰.

3. Hungary: a paradigmatic case-study

Hungary can provide a useful case-study to verify these hypotheses. Indeed, following the reforms approved starting from 2010 and the new Constitution adopted in 2011, the country has become paradigmatic of the phenomenon of constitutional retrogression²¹. Moreover, the historical development

¹⁵ J.W. Müller, *Populist Constitutions*, cit..

¹⁶ A. Huq, T. Ginsburg, *How to Lose a Constitutional Democracy*, cit., 127.

¹⁷ G. de Vergottini, *Diritto costituzionale comparato*, Padova, Cedam, 2013, 562.

¹⁸ T.G. Daly, *Diagnosing Democratic Decay*, cit..

¹⁹ A. Huq, T. Ginsburg, *How to Lose a Constitutional Democracy*, cit., 136.

²⁰ P. Blokker, *Populist Constitutionalism*, cit.; J.W. Müller, *Populist Constitutions*, cit.; C. Pinelli, *The Populist Challenge*, cit., 12; J.M. Balkin, *Constitutional Rot*, cit., 151; M. Dani, *The 'Partisan Constitution' and the Corrosion of European Constitutional Culture*, in *LEQS Paper*, 2013.

²¹ The role of the Constitutional Court seems to be the most problematic node of the new Hungarian constitutional order; in particular, the reforms concern both the competences of the Constitutional Court, with the reshaping of the type of access, the restriction of the jurisdiction in financial matters and the prohibition from using the precedents pre-2012, and the composition of the Constitutional Court, which at the time, thanks to the changes

of Hungary is also to be taken into account, since it is among those States which moved from an authoritarian form of government, progressively approaching the constitutional democracy. After the breakup of the Soviet bloc, Central and Eastern European Countries have been for many years the subject of studies dedicated to the consolidation of democracy and the possible retrogression towards authoritarian or semi-authoritarian regimes²². The interest for the area has certainly known a new impetus after the reforms approved in some countries, such as Hungary and Poland, which have exposed the concern that the new democratic regimes were not strong enough to consolidate²³.

Besides being a forerunner of constitutional retrogression in Central and Eastern Europe, Hungary stands as a paradigmatic case in that its Prime Minister and Fidesz's leader Viktor Orbán himself asserted the intent to depart from the tradition of the liberal constitutions. He affirmed that the country «abandoned liberal methods and principles of organizing society, as well as the liberal way to look at the world»; that «a large governing party will emerge in the center of the political stage [that] will be able to formulate national policy, not through constant debates, but through a natural representation of interests»; and that «In Europe the trend is for every constitution to be liberal, this is not one»²⁴.

The edification of the illiberal democracy supported by Orbán took place through a series of reforms and it culminated with the adoption of a new Constitution in 2011²⁵, which entered into force in 2012 and

in the appointment process, the number of judges and their term of office, appears to be strongly controlled by the majority and the Government. See Z. Szente, *Challenging the Basic Values. Problems in the Rule of Law in Hungary and the Failure of the EU to Tackle Them*, in A. Jakab, D. Kochenov (eds.), *The Enforcement of EU Law and Values*, Oxford, Oxford University Press, 2017, 464; A. Vincze, *Wrestling with Constitutionalism: The Supermajority and the Hungarian Constitutional Court*, in *Vienna Journal of International Constitutional Law*, 2014, 89; M. Bánkuti, G. Halmai, K.L. Scheppele, *From Separation of Powers to a Government without Checks: Hungary's Old and New Constitutions*, in G.A. Tóth (ed.), *Constitution for a Disunited Nation. On Hungary's 2011 Fundamental Law*, Budapest, Central European University Press, 2012, 254; L. Sólyom, *The Rise and Decline of Constitutional Culture in Hungary*, in A. von Bogdandy, P. Sonnevend (eds.), *Constitutional Crisis in the European Constitutional Area*, Oxford and Portland, Hart, 2015, 25; A. Huq, T. Ginsburg, *How to Lose a Constitutional Democracy*, cit., 127. Nonetheless, also the independence of the judiciary and the media have been affected by reforms which pose serious challenges to the principles of the constitutional State. See Act CLXII of 2011 on the legal status and remuneration of judges and Act CLXI of 2011 on the organisation and administration of courts; Act CIV of 2010 on the freedom of the press and the fundamental rules on media content; Act CLXXXV of 2010 on media services and mass media. M. Bánkuti, G. Halmai, K.L. Scheppele, *From Separation of Powers*, cit., 262; G. Poliák, *Context, Rules and Praxis of the New Hungarian Media Laws*, in A. von Bogdandy, P. Sonnevend (eds.), *Constitutional Crisis*, cit., 125 ff.

²² Already in 2007, the *Journal of Democracy* significantly entitled “Is East-Central Europe Backsliding?” a monographic number. See also B. Bugarič, *A crisis of constitutional democracy in post-Communist Europe: “Lands in-between” democracy and authoritarianism*, in *I-CON*, 2015.

²³ That is why the area and, specifically, the decay of the structures of constitutional democracy within these Countries, have been the focus of attention and concern of European institutions.

²⁴ Statements quoted by G. Halmai, *Illiberal Democracy and Beyond in Hungary*, in www.verfassungsblog.de, 2014.

²⁵ The new text replaced the Constitution of 1949 which, although significantly modified from 1989, had remained in force following the end of the socialist regime in the country as the provisional Constitution of Hungary. See A. Jakab, P. Sonnevend, *Continuity with Deficiencies: The New Basic Law of Hungary*, in *European Constitutional Law Review*,

has already been amended several times. The 2011 Constitution has attracted criticism concerning both the constitution-making process and the contents, as well as a part of the ordinary and organic laws approved in recent years, considered inconsistent with the principles of the constitutional State.

Criticisms have animated not only the national debate, but they also raised reactions from the European institutions: the Constitution and its amendments, as well as the recent legislation, have been the object of attention and intervention both of the Council of Europe, with a series of opinions delivered by the Venice Commission²⁶ and some decisions of the ECtHR²⁷, and of the European Union, with the opinion of the European Parliament²⁸ and the procedures initiated by the Commission and decided by the Court of Justice²⁹.

As for the constitution-making process, a first matter of concern is the non-application of the four-fifths clause³⁰. This clause, according to which the constitutional amendment should have been adopted by a four-fifths of the Parliament, was introduced in 1995 at art. 24 of the Constitution of 1949. However, the allegation appears to be unfounded because the provision ceased to be in force after 1998³¹.

Furthermore, several political parties complained about the limited involvement of the opposition and the Parliament in general, as the draft was prepared by a restricted commission of three people and then approved after about one month from its presentation³². Moreover, they also raised criticisms concerning the unusual method of popular participation, which took the form of a survey consisting of twelve general

2013, 104; M. Olivetti, *Il regime parlamentare nell'Europa centro-orientale dopo il 1989*, in R. Ibrido, N. Lupo (eds.), *Dinamiche della forma di governo tra Unione europea e Stati membri*, Bologna, Il Mulino, 2018, 119.

²⁶ See Venice Commission, 25-26 March 2011, Opinion 614/2011 on Three Legal Questions Arising in the Process of Drafting the New Constitution; Venice Commission, 17-18 June 2011, Opinion 621/2011 on the New Constitution of Hungary; Venice Commission, 14-15 June 2013, Opinion 720/2013 on the Fourth Amendment to the Fundamental Law of Hungary.

²⁷ See, especially, ECtHR, *Baka v Hungary*, App. No. 20261/12, Judgment of May 27, 2014.

²⁸ European Parliament resolution of 5 July 2011 on the Revised Hungarian Constitution; European Parliament resolution of 3 July 2013 on the situation of fundamental rights: standards and practices in Hungary.

²⁹ See CJEU, C-286/12, *Commission v Hungary*, Nov. 6, 2012; CJEU, C-288/12, *Commission v Hungary*, Apr. 8, 2014.

³⁰ M. Volpi, *La nuova Costituzione ungherese. Una democrazia dimezzata*, in *Diritto pubblico comparato ed europeo*, 2012, 1013 ff.; K. Kelemen, *Una nuova Costituzione per l'Ungheria*, in *Quaderni costituzionali*, 2011, 681; R. Uitz, *Can you tell when an illiberal democracy is in the making? An appeal to comparative constitutional scholarship from Hungary*, in *I-CON*, 2015, 285.

³¹ J. Fröhlich, L. Csink, *Topics of Hungarian Constitutionalism*, in *Bij De Buren*, 2012, 427; P. Sonnevend, A. Jakab, L. Csink, *The Constitution as an Instrument of Everyday Party Politics: The Basic Law of Hungary*, in A. von Bogdandy, P. Sonnevend (eds.), *Constitutional Crisis*, cit., 43; M. Bánkuti, G. Halmai, K.L. Scheppele, *From Separation of Powers*, cit., 254.

³² Z. Szente, *Challenging the Basic Values*, cit., 459; P. Sonnevend, A. Jakab, L. Csink, *The Constitution as an Instrument*, cit., 24; K.L. Scheppele, *Understanding Hungary's Constitutional Revolution*, in A. von Bogdandy, P. Sonnevend (eds.), *Constitutional Crisis*, cit., 111.

questions proposed before the public presentation of the draft constitution³³; actually, this latter element witnesses the impact of populist rhetoric on the relations between the Parliament and the citizens.

Other issues have arisen after the approval of the transitional provisions at the end of 2011, that is to say after the adoption of the Constitution but before its entry into force. These provisions, whose content can hardly be defined as “transitory”, were declared unconstitutional in 2012³⁴. The decision of the Constitutional Court is at the origin of the fourth amendment to the Constitution of 2011, certainly the most controversial, aimed at constitutionalizing the transitional provisions annulled by the Court and other legislative provisions declared unconstitutional in the recent years³⁵.

Before addressing the evolution of the Hungarian Parliament and its role in the constitutional system after the reforms of the last years, it is important to point out the existence of some critical points concerning, in general, the sources of the constitutional legal order.

First of all, the 2011 Constitution seems to be a flexible one; indeed, the constitutional revision procedure appears to be at the disposal of the political majority, since a majority of two thirds of the members of the unicameral Parliament is sufficient to approve the revision, without further aggravation. As a consequence, and on the basis of the majority electoral system, the political majority itself is able to freely and unilaterally modify the text of the Constitution; it is then unsurprising that the Constitution has already been amended six times since 2012³⁶.

Secondly, the nature of the organic laws, qualified by the Constitution as “cardinal laws”, appears to be problematic. The reason for concern is not the provision of such acts, that are approved by a majority of

³³ R. Uitz, *Can you tell*, cit., 286; K.L. Scheppele, *Understanding Hungary’s Constitutional Revolution*, cit., 111.

³⁴ See Constitutional Court, Decision No 45/2012. The Constitutional Court affirmed that these Transitional Provisions added substantive constitutional rules, so that the judges revealed an excess of the constitutional delegation of power to enact transitional provision, by declaring the Provisions as *ultra vires*. See on the point R. Uitz, *The return of the Hungarian Constitutional Court*, in www.verfassungsblog.de, 2013.

³⁵ Z. Szente, *Challenging the Basic Values*, cit., 460; G. Halmai, *An Illiberal Constitutional System in the Middle of Europe*, in *European Yearbook of Human Rights*, 2014, 501; G. Spuller, *Transformation of the Hungarian Constitutional Court: Tradition, Revolution, and (European) Prospects*, in *German Law Journal*, 2014, 669; P.-A. Collot, *Difficulté contre-majoritaire et usage impérial du pouvoir constituant dérivé au regard de la quatrième révision de la Loi fondamentale de Hongrie*, in *Revue française de Droit constitutionnel*, 2013, 797; P. Sonnevend, A. Jakab, L. Csink, *The Constitution as an Instrument*, cit., 55; L. Sólyom, *The Rise and Decline*, cit., 25.

³⁶ It is true that, following the end of the Soviet regime, the Hungarian Constitution was characterized by its flexibility, having been amended 22 times from 1990 to 2010 and 12 times from 2010 to 2012; however, if in this long period a certain flexibility of the Constitution found its *raison d’être* in the provisional nature of the Constitution itself, which according to the actors of the democratic transition would soon had to be replaced by a new text, the post-2012 situation is challenging for the principle of the rigidity of the Constitution. A. Jakab, P. Sonnevend, *Continuity with Deficiencies*, cit., 104; Z. Szente, *Challenging the Basic Values*, cit., 460; M. Bánkúti, G. Halmai, K.L. Scheppele, *From Separation of Powers*, cit., 254; P.-A. Collot, *Difficulté contre-majoritaire*, cit., 790; G.F. Ferrari, *La Costituzione dell’Ungheria*, in M. Ganino (ed.), *Codice delle Costituzioni. Vol. III*, Padova, Cedam, 2013, 390; L. Sólyom, *The Rise and Decline*, cit., 21.

two-thirds of the MPs present, but the high number of referrals to this kind of legislation in the constitutional text and, above all, the kind of subjects reserved to the organic law³⁷.

Thirdly, according to the fourth amendment, the decisions taken by the Constitutional Court before the entry into force of the 2012 Constitution are repealed, even if their effects remain in force; this rule expressly contrasts with the position of the Court, which previously affirmed the continuity of its jurisprudence in cases involving those provisions that had been merely reproduced by the text of the new Constitution³⁸.

4. The Parliament of the Hungarian Illiberal Democracy

Differently from what happened in other post-socialist countries in Central and Eastern Europe after the fall of the socialist regimes, in 1989 Hungary chose a parliamentary form of government³⁹. The Parliament, in the Constitution of the democratic transition, was the focal point of the Hungarian system of government⁴⁰, marking a sort of formal continuity with the previous regime which, according to the socialist model, was characterized by the centrality and the primacy of the Assembly, expression of the popular will organized in the single party⁴¹. Despite the substantial detachment from the previous regime due to the affirmation of the principles of separation of powers and of political pluralism, along with the setting up of a parliamentary assembly effectively able to influence the form of government⁴², the practice soon revealed the subordinate position of the Parliament with respect to the Government⁴³.

³⁷ On the one hand, these laws must legislate on matters that would have to find a more rigid regulation in the Constitution, such as the organization of the guarantee bodies and the protection of rights and freedoms; on the other hand, the regulation of some matters, concerning for example social and fiscal policies, should be left to the ordinary law as a manifestation of the political directions likely to change with the evolution of the economic and political situation in the country. See A. Jakab, P. Sonnevend, *Continuity with Deficiencies*, cit., 104; M. Bánkúti, G. Halmai, K.L. Scheppele, *From Separation of Powers*, cit., 267; P. Sonnevend, A. Jakab, L. Csink, *The Constitution as an Instrument*, cit., 78 ff.; M. Volpi, *La nuova Costituzione ungherese*, cit., 1019; G.F. Ferrari, *La Costituzione dell'Ungheria*, cit., 395; G. Romeo, E. Mostacci, *La forma di governo*, in G.F. Ferrari (ed.), *La nuova Legge fondamentale ungherese*, Torino, Giappichelli, 2012, 85. See also Venice Commission, 17-18 June 2011, Opinion 621/2011 on the New Constitution of Hungary.

³⁸ See Constitutional Court, Decision No 22/2012. A. Jakab, P. Sonnevend, *Continuity with Deficiencies*, cit., 109; Z. Szente, *Challenging the Basic Values*, cit., 460; L. Sólyom, *The Rise and Decline*, cit., 25 ff.

³⁹ M. Ganino, C. Filippini, A. Di Gregorio, *Presidenti, Governi e Parlamenti nei Paesi dell'Europa orientale (Polonia, Lituania, Ungheria, Repubblica ceca): l'equilibrio innanzitutto*, in A. Di Giovine, A. Mastromarino (eds.), *La presidenzializzazione degli esecutivi nelle democrazie contemporanee*, Torino, Giappichelli, 2007, 139 ff.

⁴⁰ J.T. Andrews, *Legislatures in Central and Eastern Europe*, in S. Martin, T. Saalfeld, K.W. Strøm (eds.), *The Oxford Handbook of Legislative Studies*, Oxford, Oxford University Press, 2014, 648.

⁴¹ P. Sonnevend, A. Jakab, L. Csink, *The Constitution as an Instrument*, cit., 38; S. Bartole, P. Grilli di Cortona, *Transizione e consolidamento democratico nell'Europa centro-orientale: élites, istituzioni e partiti*, Torino, Giappichelli, 1998.

⁴² Z. Mansfeldova, *Central European Parliaments over Two Decades. Diminishing Stability? Parliaments in Czech Republic, Hungary, Poland, and Slovenia*, in *The Journal of Legislative Studies*, 2011, 129.

⁴³ G. Ilonski, *From Minimal to Subordinate: A Final Verdict? The Hungarian Parliament, 1990-2002*, in *The Journal of Legislative Studies*, 2007, 38.

The recent changes to the Hungarian constitutional system seem to confirm this trend. According to the wording of art. 1 of the Constitution, the Parliament is the «supreme organ of popular representation»⁴⁴. In fact, the chapter dedicated to the Parliament has been considered as one of the less controversial parts of the new Constitution⁴⁵, as also proved by the lack of interest shown by international organizations, such as the Venice Commission. Indeed, the reading of Chapter I shows that Parliament has formally gained ground in the general economy of the Hungarian form of government. However, a systematic examination of the Constitution, and in particular of the Chapter dedicated to the National Assembly (arts. 1-7), highlights a general weakening of Parliament, affected by a series of more or less incisive changes in its composition, functions and internal organization⁴⁶. This is even more true when supported by an analysis of the legislative and regulatory provisions which currently regulate the Hungarian legislative assembly within the complex legal framework aforementioned: Act CCIII of 2011 on the election of the National Assembly; Act XXXVI of 2012 on the National Assembly; Act XXXVI of 2013 on Electoral Procedure; Resolution 10 of 2014 on certain provisions of the rules of procedure⁴⁷. In the next sub-sections, the main novelties concerning the role and functions of the Parliament will be analysed, describing how the position of the Parliament has changed in its relationship with the citizens, the Government and the system of constitutional guarantees.

4.1 The Parliament and the citizens

The relationship between the Parliament and the people has been the subject of important changes able to bring out a transformation in the role of the representative democracy within the Hungarian constitutional system.

The method of election of the Parliament is a first aspect to be taken into consideration. The adoption of a mixed electoral system is a peculiarity of the Hungarian legal system, since during the democratic transitions the other Central and Eastern Europe countries generally opted for proportional electoral systems⁴⁸. The choice had a clear impact on the Hungarian political system, which has then been

⁴⁴ P. Smuk, *The Parliament*, in A. Varga, A. Patyi, B. Schanda (eds.), *The Basic (Fundamental) Law of Hungary. A Commentary of the New Hungarian Constitution*, Dublin, Clarus, 2015, 124.

⁴⁵ P. Smuk, *The Parliament*, cit., 136.

⁴⁶ Z. Sente, *Marginalising the Parliament. (Anti)Parliamentary Reforms in Hungary after 2010*, paper presented at the *Convegno SISP Democrazia e democratizzazioni*, 2016, 1.

⁴⁷ P. Smuk, *On Legislative Power*, in P. Smuk (ed.), *The Transformation of the Hungarian Legal System 2010-2013*, Budapest, CompLex Wolters Kluwer, 2013, 97; Z. Sente, *Marginalising the Parliament*, cit., 2.

⁴⁸ G. Ilonszki, R. Varnágy, *From Party Cartel to One-Party Dominance. The Case of Institutional Failure*, in *East European Politics*, 2014, 424; L. Monatanari, *Le nuove democrazie dell'Europa centro-orientale*, in P. Carrozza, A. Di Giovine, G.F. Ferrari (eds.), *Diritto costituzionale comparato*, Roma-Bari, Laterza, 2014, 519; M. Ganino, C. Filippini, A. Di Gregorio, *Presidenti, Governi e Parlamenti*, cit., 169 ff.

characterized by a progressive decrease of the parties represented in Parliament and by the strengthening of the more powerful ones⁴⁹. The political system also impacted on the functioning of the form of government, marked by a high degree of governmental stability, by the total absence of forms of consensual democracy and by the subservience of Parliament to the Executive⁵⁰.

The electoral system proved to be quite unbalanced in 2010, when it allowed the allocation of two-thirds of the seats to the party that had obtained just over a majority of votes. It was a mixed electoral system, according to which the then 386 seats of the assembly were partly assigned with a proportionate formula corrected by an election threshold and partly allocated with a majoritarian system⁵¹. Generally, the outcome was the obtention of a strong and stable majority⁵². In 2010, this granted the start of a constituent legislature: by obtaining the 53% of the votes, the Fidesz-KDNP coalition could take 260 seats in the Parliament⁵³.

The system was then amended in 2011 by introducing additional critical elements⁵⁴. First of all, the weight of the proportional quota and of the majority quota changed from a ratio of 55/45 to a ratio of 47/53. Moreover, both the reduction of the number of MPs, from 386 at 199, and the use of the plurality formula for the election in single-member constituencies, increase the distortive effect of the election system⁵⁵. Nonetheless, the new definition of the electoral constituencies has been contested and depicted as a work of gerrymandering⁵⁶.

The analysis of the new electoral legislation shall also take into account the other provisions promoted by the Orbán Government with the purpose to enlarge the electoral base of the current majority. In this respect, we can mention both the introduction of the vote for Hungarians abroad, along with the controversies related to the new regulation of citizenship and the registration of non-resident voters, and

⁴⁹ Z. Mansfeldova, *Central European Parliaments*, cit., 133. It is worth mentioning that the large consensus for Fidesz was also a consequence of the fall of the Socialist party, its main opponent, which held the majority within the Parliament from 2002 to 2010. Over the years, a volatility of the consensus has been registered among the Hungarian citizens, who generally tends to rally around a strong single party.

⁵⁰ J.T. Andrews, *Legislatures in Central and Eastern Europe*, cit., 662; D.M. Olson, P. Norton, *Post-Communist and Post-Soviet Parliaments: Divergent Paths from Transition*, in *The Journal of Legislative Studies*, 2007, 189; G. Ilonszki, D.M. Olson, *Questions about Legislative Institutional Change and Transformation in Eastern and East Central Europe: Beyond the Initial Decade*, in *The Journal of Legislative Studies*, 2011, 121; M. Ganino, C. Filippini, A. Di Gregorio, *Presidenti, Governi e Parlamenti*, cit., 170 ff.

⁵¹ See K. Benoit, *Hungary's "Two-Vote" Electoral System*, in *Representation*, 1996, 162 ff.

⁵² G. Romeo, E. Mostacci, *La forma di governo*, cit., 69.

⁵³ B. Bugarič, *A crisis of constitutional democracy*, cit., 230; M. Volpi, *La nuova Costituzione ungherese*, cit., 1017; K.L. Scheppele, *Understanding Hungary's Constitutional Revolution*, cit., 112.

⁵⁴ See Act CCIII of 2011 on the election of the National Assembly.

⁵⁵ K.L. Scheppele, *Understanding Hungary's Constitutional Revolution*, cit., 120.

⁵⁶ G. Halmai, *Illiberal Democracy and Beyond*, cit.; K.L. Scheppele, *Understanding Hungary's Constitutional Revolution*, cit., 120.

the proposal for the allocation of an additional vote for families with children, a measure contested by some members of the same Fidesz party and finally withdrawn⁵⁷.

Linked to the issue of elections and, more generally, to the relationship between the Parliament and the people, the rules on referendum have also been amended with the adoption of the new Fundamental Law. The Constitution of 1949, after the amendment of 1997, provided at art. 28/C that a referendum could be requested by 200,000 voters, or by the Parliament on the initiative of the President of the Republic, the Government, 100,000 voters or one-third of MPs⁵⁸. The new text eliminates the possibility for the parliamentary minority to request a referendum (art. 8 Const.). This change weakens the guarantee function of the referendum and increases its plebiscitary nature, as long as the President and the Government can resort to the popular consultation to ratify their decisions, bypassing the representative circuit.

The concrete functioning of the referendum, as well as of the election system, may also be affected by the new rules concerning the National Election Commission. The Commission consists of a chairman and six members elected for a nine-year term by the Parliament, with a two-thirds majority of the MPs, on the proposal of the President of the Republic. Each political party that is registered as a faction within the Parliament can appoint one additional member, whose mandate ends upon announcement of any parliamentary elections; after a national list has been registered for such elections, it may designate one temporary member whose mandate ends at the first session of the newly elected Parliament⁵⁹.

The Fidesz's majority has actually "captured" the Commission since 2010. The then in office members – who had been chosen in February and who were supposed to stay in place for 4 years – were removed in April in order to be replaced by new members to be elected with the new established procedure, that is to say by a majority vote of the Parliament. As a consequence, the party was able to obtain the control of the Commission, quickly filled with its loyalists⁶⁰. That means controlling the operations connected to the parliamentary elections⁶¹. Moreover, the Commission also has to certificate referenda before they can be submitted to the citizens; in this perspective, it is quite unlikely that this instrument could be used as a counter-majoritarian institution, that is to say as a way for the opposition parties to try to stop some legislative initiatives included in the Fidesz electoral program⁶².

⁵⁷ M. Steinbeis, Hungary's Proto-Authoritarian New Constitution, in <http://www.icconnectblog.com>, 2011.

⁵⁸ P. Kopecký, M. Spirova, *Parliamentary Opposition in Post-Communist Democracies: Power of the Powerless*, in *The Journal of Legislative Studies*, 2008, 153; J.W. Schiemann, *Hungary: The Emergence of Chancellor Democracy*, in *The Journal of Legislative Studies*, 2004, 133.

⁵⁹ See Act XXXVI of 2013 on Electoral Procedure.

⁶⁰ M. Bánkúti, G. Halmai, K.L. Scheppele, *From Separation of Powers*, cit., 256.

⁶¹ K.L. Scheppele, *Understanding Hungary's Constitutional Revolution*, cit., 120.

⁶² M. Bánkúti, G. Halmai, K.L. Scheppele, *From Separation of Powers*, cit., 256.

4.2 The Parliament and the Government

The most evident changes in the role of the Parliament are connected to its relationship with the Government, at least at a constitutional level. This link is at the core of the Hungarian parliamentary form of government, traditionally characterized by the primacy of the Prime Minister and by the presence of other elements of rationalization⁶³. Although it has been argued that the Hungarian form of government has substantially remained unmodified after the modification of the constitutional framework of the country⁶⁴, there are some mutations that can be read as a further strengthening of the Government to the detriment of the Parliament.

An element of continuity is for instance represented by the fact that, as it used to be in the past (art. 33 Const.), the Prime Minister is still elected by the Parliament with an absolute majority on the proposal of the President of the Republic (art. 16 Const.); the ministers are still appointed by the President of the Republic on the proposal of the Prime Minister, thus expressing the monocratic principle underlying the rationalization of the Hungarian form of government⁶⁵. However, some innovations deserve to be underlined.

A first element of discontinuity shall be detected in the fact that the Parliament does not discuss the Government program, as it used to do in the past, but at present it can only vote on the person of the Prime Minister⁶⁶; in this perspective, the sharing of political guidelines between Parliament and Government is missing and, as a consequence, the possibility for the Parliament to exercise its function of political direction tends to dissolve. On the contrary, the regulation of the relationship of confidence is confirmed: the Government must resign if the Parliament approves a motion of no confidence and simultaneously elects a new Prime Minister, or if the Parliament rejects a vote of confidence proposed by the Government (arts. 20-21)⁶⁷.

A second element is represented by the rules concerning the formation and the functioning of the committees of inquiry. The possibility of these parliamentary bodies to oversight the action of the Government is traditionally limited in the CEECs⁶⁸, but in Hungary it has been further compressed due

⁶³ The figure of the Hungarian Prime Minister has always been inspired by the German Chancellor. G.F. Ferrari, *La Costituzione dell'Ungheria*, cit., 395.

⁶⁴ A. Jakab, P. Sonnevend, *Continuity with Deficiencies*, cit., 119.

⁶⁵ M. Ganino, C. Filippini, A. Di Gregorio, *Presidenti, Governi e Parlamenti*, cit., 173; G.F. Ferrari, *La Costituzione dell'Ungheria*, cit., 395.

⁶⁶ According to the article 18 of the new Fundamental Law, "The Prime Minister shall define the general policy of the Government", so that it is no longer necessary to discuss the governmental program before the Assembly, since this latter already elected the Prime Minister. P. Smuk, *The Parliament*, cit., 136; M. Volpi, *La nuova Costituzione ungherese*, cit., 1022; G.F. Ferrari, *La Costituzione dell'Ungheria*, cit., 396.

⁶⁷ M. Volpi, *La nuova Costituzione ungherese*, cit., 1022.

⁶⁸ G. Ilonski, *From Minimal to Subordinate*, cit., 51; D.M. Olson, P. Norton, *Post-Communist and Post-Soviet Parliaments*, cit., 186; P. Kopecký, M. Spirova, *Parliamentary Opposition*, cit., 145.

to some recent changes. According to art. 36 of the rules of procedure in force from 1994 and now repealed⁶⁹, a committee of inquiry had to be set up if at least one-fifth of the MPs supported such a motion. As set out in art. 24 of the Act on National Assembly, approved in 2012, it is actually still possible for one-fifth of the MPs to request the creation of a committee of inquiry, but no guarantees concerning the effective establishment of this latter are provided for. Moreover, art. 24 also prescribes that it is not possible to establish such committees if another control tools, i.e. interpellations or interrogations, are sufficient to clarify the situation under investigation⁷⁰.

A third element concerns the regulation of another important scrutiny tool, the so-called question time. According to the previous rules of procedure, a minimum time of 60 minutes per week was dedicated to the instantaneous questions and answers; the rules of procedure also required the presence of the person called upon to answer, whose absence could only be justified in case of need to simultaneously perform a «pressing public duty» (art. 119). The Resolution 10 of 2014 seems to undermine the effects of the question time, since it revises the time constraints and it softens the obligation to be present and to answer (art. 125).

The fourth, and maybe most important, element of discontinuity is represented by the new regulation concerning the Parliament autonomy in exercising its budget approval function; as a matter of fact, the role of the Parliament in the adoption of the State budget is one of the few issues related to the Legislative prerogatives which roused the attention of the European institutions⁷¹. The innovations concern on the one hand the new hypothesis of early dissolution of the Parliament, and, on the other hand, its relationship with the newly established Fiscal Council.

According to the art. 3 of the new Constitution, if the Parliament cannot approve the State budget by March 31st, it is dissolved⁷². This novelty has to be read along with art. 44 Const., which provides for the creation of a Fiscal Council, an institution responsible for ensuring the respect of the financial clauses established in the Fundamental Law and specifically for monitoring the public debt, which does not have to exceed the 50% of the GDP (art. 36 Const.). The Council is a technical advisory body consisting of a chairman appointed by the Head of State, of the Governor of the Central Bank, also nominated by the Head of State, and of the President of the Court of Auditors, who is appointed by the Parliament. According to the Constitution, the Council examines the feasibility of the budget and it participates in its

⁶⁹ Resolution 46 of 1994.

⁷⁰ P. Smuk, *On Legislative Power*, cit., 113.

⁷¹ G. Halmai, *An Illiberal Constitutional System*, cit., 507.

⁷² As in the past, the dissolution may take place also if the Parliament does not elect the Prime Minister within 40 days of the proposal by the President of the Republic (art. 3 Const.). A. Jakab, P. Sonnevend, *Continuity with Deficiencies*, cit., 119; P. Smuk, *The Parliament*, cit., 140.

preparation. Moreover, it delivers opinions concerning the respect of the financial clauses which bind the Parliament, therefore unable to approve the budget without the consent of the Council⁷³. It is evident that this framework of provisions combined with each other formally limits the autonomy of the Parliament and its capacity to participate in the definition of the State budget.

4.3 The Parliament and the system of constitutional guarantees

To outline an overall picture of the changing role and functions of the Hungarian Parliament, one last aspect has to be analysed. Specifically, the relation of the legislative assembly with the set of constitutional guarantees foreseen by the Constitution of 2011 has to be taken into consideration. This last point is indissolubly linked to the altered position of the political minorities in the exercise of the parliamentary prerogatives.

Within this set of novelties, the innovations concerning the performing of the legislative function plays a major role, having been subject to important changes in recent years. In particular, what is most striking is the abolition of the two-readings procedure for the approval of bills. Before the amendment, according to the rules of procedure of 1994, the analysis of the bill started with a general debate, followed by a detailed debate on the single articles and the proposed amendments, and, finally, by the final vote (arts. 98 and ff.). The standing committees had a limited role in that procedure, since they could only express their opinion during the general debate; at this stage of the procedure, the opposition within the committee could present a separate opinion, called minority opinion (art. 101).

Currently, according to the Act on National Assembly (arts. 21 and ff.), the bill is discussed in detail only within the committees. Once the standing committee delivers its recommendations and votes on the proposed amendments, the text is immediately transmitted to the Committee on Legislation. This body, introduced in the Hungarian parliamentary system in 2012 through the Act on National Assembly, plays a central role in the legislative procedure: it combines the amendments adopted by the standing committee with its own proposals into a summary of proposed amendments, that is then submitted to the Assembly for the final vote⁷⁴. The procedure poses some problems not only in relation to the compression of the role of the Assembly in the exercise of the legislative function, but above all in that the committees secure a minor degree of representativeness and publicity, with a consequent restriction

⁷³ A. Jakab, P. Sonnevend, *Continuity with Deficiencies*, cit., 120; G. Spuller, *Transformation of the Hungarian Constitutional Court*, cit., 667; A. Tarzia, *La Costituzione finanziaria*, in G.F. Ferrari (ed.), *La nuova Legge fondamentale ungherese*, cit., 143; F. Vecchio, *Teorie costituzionali alla prova. La nuova Costituzione ungherese come metafora della crisi del costituzionalismo europeo*, Padova, Cedam, 2013, 53; M. Bánkuti, G. Halmai, K.L. Scheppele, *From Separation of Powers*, cit., 263; M. Varju, *Government, Accountability, and the Market*, in G.A. Tóth (ed.), *Constitution for a Disunited Nation*, cit., 301 ff.

⁷⁴ Z. Szente, *Marginalising the Parliament*, cit., 3; P. Smuk, *The Parliament*, cit., 152.

of the democratic guarantees underlying the legislative procedure⁷⁵. The Act on National Assembly only establishes that the number of the members of the committees «shall *preferably* be proportionate with the rate of the number of members of the parliamentary groups» [emphasis added] (art. 17); this provisions does not guarantee the possibility for the political minorities to have an influence on the work of the committees. This clause, along with the quite limited size of the committees⁷⁶, makes them, as it has been pointed out, «*de facto* agents of a strong executive»⁷⁷.

This important change is also supplemented by the introduction of new tools able to constrain the possibility for the oppositions to participate in the legislative procedure and to have an influence on it. This is the case of the urgent procedure and of the *vote bloqué*⁷⁸. The urgent procedure already existed under the rules of procedure of 1994 (art. 99), but only provided for the possibility to speed up the inclusion of a bill on the orders of the day. According to art. 60 of Resolution 10 of 2014, the adoption of the urgent procedure allows, *inter alia*, to reduce the time for the general and the detailed debates, to shorten the deadline for the submission of amendments and to reduce the timing between the different phases of the procedure. Alongside the new regulation of the urgent procedure, the Resolution 10 of 2014 has also introduced the block vote (art. 61 and ff.). Accordingly, the Assembly is not able to modify the legislative proposals, since it can only approve or reject the text prepared by the Committee on Legislation.

Criticism also arises from the scope assigned by the Constitution to organic (or “cardinal”) laws, i.e. acts approved by a majority of two-thirds of MPs participating in the vote. As already mentioned, these acts regulate a large number of relevant matters, like the protection of rights or the organization of the public powers/State bodies. The large use of this instrument, especially in social and economic matters, can excessively tighten the future discretion of the Parliament in areas that should more smoothly follow the natural evolution of alternative policies, at the same time downgrading the possibility for the opposition to influence these matters⁷⁹.

The role of the political minorities has been subject to other important changes. The relationship with the Constitutional Court represents one of the most worrying novelties. A first matter of concern is the

⁷⁵ C. Nikolenyi, *Strong Governments Make Strong Committees? Committee Composition and Decision-Making in the Hungarian Parliament, Paper prepared for presentation at the workshop on Institutional Determinants of Legislative Coalition Management*, 2015.

⁷⁶ The smallest one, the Committee on National Security, consists of 7 members, while the four biggest committee, Economics, Budget, Culture and Welfare, consist of 15 members. Data available on <https://www.parlament.hu/en/web/house-of-the-national-assembly/standing-committees>.

⁷⁷ C. Nikolenyi, *Strong Governments Make Strong Committees?*, cit., 3.

⁷⁸ Z. Szente, *Marginalising the Parliament*, cit., 4.

⁷⁹ A. Jakab, P. Sonnevend, *Continuity with Deficiencies*, cit., 122; M. Bánkúti, G. Halmai, K.L. Scheppele, *From Separation of Powers*, cit., 267; P. Sonnevend, A. Jakab, L. Csink, *The Constitution as an Instrument*, cit., 78 ff.

compression of the right of political minorities to appeal to the Constitutional Court. Preventive control is allowed only by request of the President of the Republic or of the Parliament on the proposal of the Government, the Speaker or the proponent of the bill⁸⁰. This system politicizes the role of the Court, whose preventive control is in fact sparked on initiative of the political majority only⁸¹. Furthermore, the previous Constitution allowed ex-post review on citizens' initiative through the *actio popularis*, but this possibility was abolished and replaced by *ex post* review following a request of the Government, of the President of the Curia, of the Procurator General, of the Commissioner for Fundamental Rights or of one-fourth of the members of Parliament. This provision, while allowing parliamentary minorities to appeal the Court, is actually ineffective, given the difficulty, under current Hungarian political conditions as moulded by the electoral system, to bring together such group of MPs necessary to activate the Court's review⁸².

The same diminishing of the role of the opposition can be observed in relation to the new rules for appointing Constitutional Court judges. Before the 2011 constitutional reform, Constitutional court's judges were chosen among a list of candidates proposed by a parliamentary commission where each party was equally represented. The Assembly had then the task of appointing/electing the judges with a two-thirds majority (art. 32/A). It has been pointed out that «this process ... made it impossible for most governments to just push their own nominees onto the Constitutional Court, even with a parliamentary supermajority. Compromise, and even log-rolling, became normal»⁸³. On the contrary, under the Constitution of 2011, the oppositions have a very limited influence on the selection of the Constitutional judges. Indeed, the parliamentary commission in charge of drawing the list of candidates is now composed proportionally to the representation of the political forces in the Assembly (art. 24), thus enabling a supermajority to “capture” the Court⁸⁴.

⁸⁰ Art. 6 Fundamental Law: «Parliament may, upon a motion submitted before the final vote by the proponent of the bill, by the Government or by the Speaker of Parliament, send the adopted Act to the Constitutional Court for an examination of its conformity with the Fundamental Law. Parliament shall decide on the motion after the final vote. If the motion is adopted, the Speaker of Parliament shall send the adopted Act without delay to the Constitutional Court for an examination of its conformity with the Fundamental Law».

⁸¹ M. Volpi, *La nuova Costituzione ungherese*, cit., 1024.

⁸² A. Jakab, P. Sonnevend, *Continuity with Deficiencies*, cit., 123; M. Steinbeis, *Hungary's Proto-Authoritarian New Constitution*, cit.; M. Bánkuti, G. Halmai, K.L. Scheppele, *From Separation of Powers*, cit., 260 ff.; P. Sonnevend, A. Jakab, L. Csink, *The Constitution as an Instrument*, cit., 91 ff.; O.W. Lembck, C. Boulanger, *Between Revolution and Constitution: The Roles of the Hungarian Constitutional Court*, in G.A. Tóth (ed.), *Constitution for a Disunited Nation*, cit., 296.

⁸³ M. Bánkuti, G. Halmai, K.L. Scheppele, *From Separation of Powers*, cit., 248.

⁸⁴ G. Spuller, *Transformation of the Hungarian Constitutional Court*, cit., 649; L. Sólyom, *The Rise and Decline*, cit., 22; M. Bánkuti, G. Halmai, K.L. Scheppele, *From Separation of Powers*, cit., 254.

5. What lessons from the Hungarian Parliament?

The Hungarian case provides us with some hints about the ways in which a political majority threatens or weakens the main tenets of the constitutional State and, for the here proposed analysis, specifically the parliamentary institution.

The relationship between the Parliament and the citizens has been modified both by the new electoral law and by the renewed regulation of the referendum, which seems to transform this tool of direct democracy in a plebiscitary sense and to oversize the majority principle.

The relationship between the Parliament and the Government is in turn subject to important tensions. The difficulty for the Parliament to participate in the elaboration of the political and economic direction of the country, on the basis of the new rules concerning the formation of the Government and the dissolution of the Parliament, together with the limitation of the scrutiny function, through the modification of the rules on the committees of inquiry and the on question time, clearly show a trend towards an increasing subordination of the Parliament to the Government.

Finally, the relationship between the Parliament and the system of constitutional guarantees seems to be affected by the changes to the legislative and scrutiny functions of the Parliament; in this context, the analysis of the ordinary and organic legislative production, along with the examination of the relationship with the Constitutional Court, shows that the opposition is increasingly weak.

However, if it is true that the evolution of the Hungarian legal system since 2010 questioned the role and the functions of the Hungarian Parliament, this general observation needs to be specified in order to understand the effective changes occurred in the role played by the Assembly under the illiberal regime. If one looks at the role played by the Hungarian Parliament over the years, it appears that, since the entry into force of the 1949 Constitution, it has been characterized by a sort of ambiguity. From a formal point of view, it has always been considered as the supreme organ of the State power, but, from a substantial point of view, its role has often been marginal. After the fall of the regime, starting from 1989, the Parliament has mainly been expression of the equilibrium reached by the new democratic constitution. The primacy of the Assembly was reaffirmed but, at the same time, some tools aimed at limiting its role had been put in place. Indeed, some tools for the rationalisation of the form of government had been implemented, so that they could strengthen the power of the Executive; in the same manner, a series of internal and external checks with the intent of limiting the power of the temporary majorities had been laid down⁸⁵. Nowadays, some scholars observe that the Hungarian constitutional system is «grounded on

⁸⁵ M. Bánkuti, G. Halmai, K.L. Scheppele, *From Separation of Powers*, cit., 244 ff.

absolute parliamentary sovereignty»⁸⁶ and that it is characterized by the lack of «counterweight to the power of Parliament»⁸⁷.

Nevertheless, these considerations are only partially correct. It is in fact possible to argue that the above mentioned absolute sovereignty cannot refer to the Parliament as a whole, since it has to be linked to the supermajority that, loyal to the Government, controls the Assembly on its part. In the same way, one should consider the lack of counterweight to the parliamentary power as a more specific lack of counterweight to the power of the super-qualified majority, that is to say to the absolute predominance of this latter within the Assembly itself. The whole current Hungarian reality has a fictitious basis: the Prime Minister is clearly trying to concentrate the State power in his hands and to promote himself as the representative of the national unity⁸⁸. The fact that he can count on a clear parliamentary majority, even if his coalition government has a limited consensus in the country, is at once tool and consequence of what has been said⁸⁹.

This fiction is obviously indissolubly connected to the current Hungarian political situation. It is in fact necessary to underline that a possible – even if at present unlikely – future downturn in the electoral results and, as a consequence, in the Parliament composition, could make its activity very complicated. That is to say, the current Assembly can work because of the presence of a compact supermajority, able to reach the two-third majority often required by the Constitution. Without a party – or a strong coalition – controlling the same number of seats, the Parliament would be stuck; for instance, it would not be able to approve cardinal laws and to vote for the renewal of the members of the guarantees bodies. It is evident that, in this case, it would play a very weak role in the constitutional and political life of the country.

The calling into question of the role of the Hungarian parliament, along with its narrowing, are the result of an incremental, gradual and almost silent action. Considered as a whole, the amendments affect the Parliament from many different sides and end up reshaping the structure and the function of political representation. On the contrary, when individually analysed, one could underestimate their potential threaten to the constitutional democracy and its stability. Moreover, it is worth noting that illiberal turn often happens through democratic instruments misused in favour of the majority in charge, so that a certain constitutional appearance is maintained.

⁸⁶ L. Sólyom, *The Rise and Decline*, cit., 18.

⁸⁷ P. Sonnevend, A. Jakab, L. Csink, *The Constitution as an Instrument*, cit., 35.

⁸⁸ O.W. Lembck, C. Boulanger, *Between Revolution and Constitution*, cit., 291-292.

⁸⁹ The coalition between Fidesz and KDNP obtained in 2018 the 49% of the valid votes (with a turnout of 70%) and the 66% of the total seats (that is to say 133 out of 199). See <https://www.parlament.hu/en/web/house-of-the-national-assembly/distribution-of-parliamentary-mandates>



As Hungary perfectly shows, a series of (even small) changes, legislative amendments and new praxis that follow one another can, when mixed together, put in danger the constitutional State. This can be done within the democratic circuit itself, by leaning on the attractive force of a government lead by a strong party. In this sense, the political context and especially the constitutional culture of the country have to be taken into account. As for Hungary, the Parliament is designed to function in a homogeneous political panorama and in a homogeneous society in which, according to a declaration made by the Prime Minister, «a large governing party will emerge in the center of the political stage [and] will be able to formulate national policy, not through constant debates, but through a natural representation of interests». In this perspective, the Parliament is controlled by the Government and its majority, its representative function is lost, and the political oppositions are not able to create political viable alternatives.

One should once more focus on the subtle feature of constitutional retrogression, resulting not only from the formal changes to the constitutional and normative framework, but also depending on the political reality and the political contingences. The now existing supermajority has emerged in 2010 due to an unbalanced election system and has then been reinforced through a modification of the same method of suffrage. It has undermined the principles of parliamentarism, changing the rules as well as the practice of the Hungarian parliamentary system. Can we still rest assured about our consolidated democracies and their degree of resilience?