Károli Gáspár University of the Reformed Church in Hungary
Doctoral School of Law and Political Sciences

Head of Doctoral School:
Prof. Dr. Éva Jakab, DSc

Dániel Csaba Lukácsi

Balance of Public Power
A Jurisprudential Evaluation of the Constitutional Framework of State Power in Hungary

Thesis summary

Supervisor:
Prof. Dr. Csaba Cservák PhD

Budapest
2024

Contents

BASE AND THE AIM OF THE RESEARCH

To lay the foundations of the modern state and, in relation to it, of society, it is necessary to define the structure in which public power is exercised. Individual states typically determine this at the constitutional level through legal regulations ensured by appropriate constitutional guarantees. Beyond the fact that these rules fundamentally define the nature of the state (especially its form of government), they also anticipate its operational effectiveness.

Effectiveness is difficult to measure in the case of a complex social institution such as the state (*unitas multiplex*), since the various *'outputs'* expected from the state often work against each other in terms of their objectives, depending on countless individual factors (e.g. the structure of the society, economic circumstances, development trends, political conditions, etc.) and cannot always be quantified. Despite all of this, methods can still be created on a principle level that helps the state to operate with sufficient effectiveness, i.e. within a *'margin of error'*. The primary aim of applying these methods is to ensure that the functioning of the state remains acceptable to society, i.e. that the state as a *sui generis* political entity, social institution and legal system ultimately has the competent authority.

Without going into details, the most general objectives of the modern state can, in my view, be understood in three main dimensions: (1) political, (2) social and (3) legal.

The main purpose of the state's existence in political terms is centred around two concepts: *'unity'* and *'integration'*. As pointed out by Mihály Samu in his analysis of the nature of power, in a society it is natural to have prosocial and antisocial activities, the opposition of centripetal and centrifugal social factors, conflicts of interest, conflicts, which can easily lead to anarchic relations. The state has the necessary task of managing and balancing these conflict factors. Accordingly, the function of power is to achieve social integration. This implies a constant interaction between the state and its population. According to Rudolf Smend, the state is not a static entity, but a dynamic process of integration. It is important to emphasise that, in democratic conditions, *'integration'* is not about social *'homogeneity'*; the aim is nothing more and nothing less than to forge its population into a single political nation.

From the social dimension, the aims of the state can be organised along two main lines: (1) to build and then operate a state institutional system which (2) is capable of performing state tasks and public services adequately and acceptably overall.

At the level of law, there is also a dual fundamental expectation: (1) all human acts performed in the name of the state (meaning both the acts that determine their scope and the order in which they are issued and the authorizations required for them) must be lawful, (2) while the legal

norms that are supposed to regulate social situations are – drawing on the relevant ideas of Hans Kelsen and Joseph Raz – generally recognised as a *'first-order reason'* for law-abiding conduct, and thus the people really behave, by and large, as they are required to by the norm.

Perhaps the most problematic aspect of the effectiveness of the modern state is its political dimension: the creation of a state capable of integrating its population into a single political nation. This dimension, within the framework of modern constitutionalism, requires a balance in the exercise of public power, namely that the functioning of the state should be a matter of 'public interest', both morally and materially, for the population as a whole. All this presupposes a reciprocal relationship between the state and its population: the authority of the state is based on the determination of its operation by the people as a whole (especially with regard to the motives and objectives behind its actions) and on its general recognition and acceptance, at least at a sufficient level (what is considered a sufficient level is actually decided in the course of political discourse). If we accept all this, we have to assume that an effective state is also a balanced limited state.

Viewed from the perspective of a given society as a political community, there are several political powers competing to assert their interests, while these powers exist in different and constantly changing relations. On the one hand, the modern state, mainly through its representative bodies, is the institutionalised environment for this political competition, which is also intended to ensure that no political power is in an overly dominant position, and on the other hand, it is itself one of the political powers, and the strongest political power, in which all relevant political powers must participate in some form. The modern state must therefore aim at creating a balance of power in itself. Ultimately, this is in the interest of all political powers, for just as a political power aims to pursue its interests to the fullest extent possible, it is not indifferent either to the extent to which its existence is threatened by any excessive political dominance.

This approach to the modern state is essentially based on the universal postulate, derived from ancient and mostly Christian philosophy, that all human beings have equal dignity, the unconditional respect for which is a moral obligation imposed on the state. The content of human dignity is difficult to define, but it definitely implies a certain degree of freedom and self-determination for all human beings, which implies the possibility of adequate participation in public affairs.

It is worth recalling here István Bibó's inaugural academic lecture that if we wish to ensure freedom, and accordingly regard the exercise of state power as a service, a moral task, we must

find a way to avoid the concentration of power. For concentrated power demoralises its possessor, it leads him to be arbitrary, and sooner or later, tyranny results.

The need to ensure these quality standards for the exercise of state power has given rise to the concept of state power subordinate to the law, which in the case of modern states means nothing other than – as can be read in the Rule of Law Checklist drown up by the Venice Commission – the supremacy of law, which also conveys fundamental moral values, is predictable for citizens and is accountable to independent and impartial courts.

The fundamental social needs that form the basis of the concept of a balanced and limited state were expressed in the principles of democracy, the separation of powers, and the rule of law throughout the course of civilizational development.

My objective was to identify the basic characteristics of the normative legal system, the existence of which is necessary for the emergence and maintenance of a balanced and limited state. Then, in the light of this, to assess the normative quality of the basic constitutional order of Hungary and to highlight the most significant – or at least what I consider to be the most significant – risks to the balance of public powers.

METHODOLOGY OF THE RESEARCH

In Chapter II of this doctoral thesis, I attempt to define the essential attributes of the balance of public power, which derive from the constitutional principles of democracy, separation of powers and the rule of law. It is important to emphasise that it is political principles that are the subject of analysis here. In a narrow sense, Chapter II is not a jurisprudential analysis, since political principles, even if they appear *expressis verbis* in the Constitution or in certain laws, are by their very nature, beyond the scope of jurisprudence, to be interpreted in the context of political philosophy. However, since the legal order – especially the constitutional framework – is not some sort of fictional theoretical construct, its existence and enforcement are closely tied to the power relations of the given society, its political environment, and the resulting social – ultimately moral – expectations; the accepted political principles form the basis for evaluating the quality of the legal system.

Jurisprudence and political philosophy are linked where the guiding political principles are given normative expression through the constitution-maker's or legislator's choice of values, and thus become an immanent element of the legal system, and at the same time the basic constitutional order. It is the task of jurisprudence to convert the value content of the political principles thus expressed – typically at the constitutional level – into requirements that can be adapted for legislation and the application of law through conceptual analysis. Because of their fundamental role in the legal system, it must be ensured that the interpretation of the law and the evaluation of the legal system and individual legal norms do not become divorced from the value of these principles. This constitutional requirement is also reflected in the constitutional and legal interpretation criteria of the Fundamental Law [Article R(3); Article T(3); Article 28]. However, this is not an easy task, as these political principles are highly abstract, their meaning is uncertain and the social expectations that derive from them are not evident.

In sum, Chapter II is a conceptual analysis of democracy, the separation of powers and the rule of law with a jurisprudential focus, with the expectation that attributes can be identified that allow the normative order of the exercise of power to be rationalised and evaluated. It is important to emphasise that I have deliberately not dealt with in depth the actual socio-political circumstances of the exercise of power, as my aim was to synthesise some of the widely disseminated and accepted findings of relevant constitutional practice. This does not mean, of course, that I have completely neglected a critical or comparative approach; at the same time, I did not wish to stretch the methodological (and scope) limits of this thesis apart.

Chapter III of this doctoral thesis focuses on the normative environment of the institutional system that determines the quality of Hungary's constitutional order *ab ovo*. Accordingly, Chapter III is a purely jurisprudential, basically dogmatic analysis. From a doctrinal-contextual approach, using an objective teleological interpretation in the light of the fundamental substantive principles enshrined in Articles B) and C) of the Fundamental Law (analysed in Chapter II), I have mapped the context of the relevant fundamental elements of the legal order and formulated my critical position.

My research was based on the complementary use of several sources. On the one hand, I have reviewed the most important works of political philosophy and philosophy of law (especially with regard to Chapter II), which I consider to be reasonably accessible, as well as the basic literature on state, constitutional, administrative and EU law (principally Chapter III. On the other hand, I have examined the relevant sources of law (hard law) and quasi-law (soft law) and the relevant case law of the Constitutional Court and the Court of Justice of the European Union (and its predecessors).

This doctoral thesis summarises the results of my research up to the elections of April 2022, in the light of the constitutional framework in force at that time. I have indicated the cardinal changes that have occurred since then in the footnote.

RESULTS

1. The essential attributes of the balance of public power

1.1. The fundamental requirements of democracy

There is no universal blueprint for the establishment and effective and lasting implementation of modern democracy as a particular order of rule; however, there are attributes that can be defined which must be essential features of the exercise of state power:

(ad 1) The exercise of state power must be legitimate, i.e. it must be based on regular elections capable of expressing the will of the people, based on the principle of popular sovereignty, and must be constantly correlated with changes in the will of the people.

(ad 2) The people are not only the source of state power, they also participate – based on individual ambition and quality – in the exercise of state power. An essential criterion (linked to the necessarily representative nature of the exercise of power) is that popular participation must be determined by political competition based on the principles of equality of rights and political freedom, which ensures the non-dominant exercise of power.

(ad 3) All the above require the existence of democratic processes and control mechanisms and their constitutional protection from the ruling majority.

(ad 4) Democracy is inconceivable without separation of powers and a pluralist political and social system. This is a *sine qua non* for the exercise of power based on popular participation and political competition.

(ad 5) The democratic exercise of state power – in the light of the previous points – necessarily has a human rights focus.

(ad 6) None of these attributes can be sustained if political decision-making and the exercise of power do not adhere the requirements of constitutionality and legality. At this point, modern democracy is linked to the concept of the rule of law.

In my view, all of the above are necessary attributes of modern democracy; the absence of any one of them will lead to the decline, and in time the demise, of democratic rule. Accordingly, the above elements should be considered conjunctive.

1.2. The fundamental requirements of the principle of separation of powers

Separation of powers is a set of constitutional requirements closely linked to plural democracy and the rule of law, which aims to avoid arbitrariness and ensure political freedom while preserving effectiveness.

The method, as I have indicated, varies in space and time, but we cannot talk about separation of powers if the exercise of state power does not meet the following basic requirements:

(ad 1) The normative conditionality of governance cannot provide a legitimate opportunity for the permanent expropriation of political decision-making, and especially for the centralisation of state power. As a result of natural political processes, it may happen that a *'same passion or interest'* becomes dominant. However, it must be guaranteed that even in such a situation, the interests of the political minority at any given time cannot be disregarded, while also ensuring a realistic chance for them to influence the shaping of politics, including the possibility of gaining governing power in the future.

(ad 2) It is a fundamental systemic requirement that political state-powers are genuinely bound by the normative conditions of political decision-making, neither able to arbitrarily transform nor to subvert them. This requires the separation of neutral state-powers of control from political state-powers, and not only at the level of law: the control state-powers must have real authority, and their existence and functioning should not depend on the current political majority.

(ad 3) The separation of powers should not lead to ungovernability, as the state must remain effective. To this end, a system must be developed – in accordance with the principle of checks and balances – which creates insurmountable obstacles for the state power, on issues of constitutional importance, i.e. those that are cardinal for democracy and the rule of law, but which encourages compromise in other fields.

(ad 4) For this to happen, it is also essential that the state ensures the conditions for the emergence and maintenance of political pluralism not only in state decision-making, but also at the level of society as a whole.

In my view, the fulfilment of the above requirements is an indispensable condition for the separation of powers, i.e. these conditions are conjunctive.

1.3. The fundamental requirements of the rule of law

Referring to the ideas of Barna Horváth: law is the precondition of the supreme social power, and at the same time its limit. However, it should also be stressed that the *'supreme power'* is also the source of law, and in this sense it cannot be limited by legal means, nor even legally accountable. This therefore appears to be a conceptual contradiction.

However, even if we can consider the *'supreme power'* as the source of law, we cannot ignore the fact that this power is not a centralized phenomenon in modern democratic states. In a

democracy, where the separation of powers is guaranteed, the *'supreme power'* is not centralized, not concentrated (because if it is, it is not a democracy).

Even so, it is important to note that – in the words of Péter Takács – *'a state based on the rule of law cannot create any law and apply it in any way'*. Although in a state governed by the rule of law, people exercise power, their actions are determined by law. Therefore, for the doctrine of the rule of law to be applied, and thus to constitute an effective barrier against arbitrariness, it is necessary that *'law'* as a system of norms be autonomous, at least in its foundations, from the *'supreme power'*. In order to achieve this, many see the system of law as based on natural law, others see historical development as the starting point, and still others see the establishment of certain formal requirements as the guarantee of a legal political state. This is essentially a combination of legality and constitutionality in the exercise of power.

(ad 1) The requirement of legality is essentially the formal aspect of the rule of law; in particular, formalised legislation defined by law, legal certainty in its entirety, and legal protection in the context of a judicial system independent of political state-powers.

(ad 2) In essence, constitutionalism covers the substantive requirements deriving from the rule of law, which are derived from the principles of democracy and the separation of powers, in particular a pluralist decision-making system that excludes the possibility of arbitrariness, equality and respect for fundamental rights. In this sense, the rule of law is the framework for the implementation of modern democracy.

Without legality and constitutionality, i.e. the coexistence and – if absolutely necessary, guaranteed by judicial/constitutional review – the enforcement of both formal and substantive aspects, we cannot speak of the rule of law. It is important to emphasise here that the rule of law is not a set of specific legal and organisational solutions, but a fundamental principle of the exercise of power which, in a given socio-political context, is intended to ensure the relative autonomy of law in order to exclude tyranny and protect the democratic social order.

Finally, it is worth noting that whatever the basis for the relative autonomy of law, it is a *sine qua non* of the doctrine of the rule of law that it is enforced by the legal profession, and indeed by the political community as a whole.

2. The constitutional order of the exercise of public power in Hungary

2.1. Propositio

The quality of a state power – and therefore its effectiveness – is determined by a highly complex system of phenomena that require an interdisciplinary approach. Social circumstances (sociology), the economic system (economics), public-political relations (political science) and the characteristics of the legal system (jurisprudence) play a cardinal role in this respect.

From a jurisprudential point of view, in the light of the attributes defined in Chapter II, I consider the following areas in particular to be fundamental in assessing the quality of the state power:

(1) the normative relations that regulate the supreme political decision-making and its control, which are also capable of shaping the constitutional order that determines the whole existence and functioning of the State;
(2) the system of human rights that defines all legal relations;
(3) the legal system of governing the relationship between the state and the individuals;
(4) the legal system that determines the possibilities for individual and collective assertion of interests and rights;
(5) the legal system that frames the scope and structure of the social public sphere;
(6) the legal environment laying down the foundations of the economic system; and
(7) the institutional and procedural arrangements designed to ensure the practical implementation of the law as a system of norms.

The above areas form an interconnected system, with each area having an impact on the quality of the system as a whole. It is important, however, that the jurisprudential assessment should take into account that the *origo* in the legal sense of the exercise of power is the supreme political decision-making and its control. It is this area that determines *ab ovo* the normative quality of the constitutional basis of the state. Due to the limitations of the research, I have concentrated the topic of Chapter III of the thesis on this area.

In Chapter III, I reviewed the normative environment of Hungary on a macro level, that is intended to regulate the supreme political decision-making and its democratic and rule-of-law control system. The aim was to assess this system and its impact on the constitutional quality of the exercise of power, as well as identify the major risk factors – which can be assessed by jurisprudence – that threaten the balance of public power and thus the effectiveness of the state.

In my research, I did not discuss the specific normative context of the special legal order, as this would have been beyond the scope of the dissertation, while not changing the results of the research in any meaningful way.

2.2. An evaluation of the normative status of political state-powers

Based on the issues examined, the following main sub-conclusions can be highlighted:

(ad 1) If we approach the question solely from the normative point of view, it can be clearly stated that the National Assembly is the strongest state power in our country, since – in line with the logic of parliamentarianism – the main power deriving from popular sovereignty is concentrated here as a result of elections, and then spreads among the other state power players from here. At the same time, in a way that does not necessarily derive from the logic of parliamentarism, it has almost unlimited discretion over the whole state. Of course, in the formal framework of separation of powers, the National Assembly is a functionally and temporally limited state power, but mainly in its constitution-making/constitution-amending power, it is ultimately restricted only by own institutional limits at the level of normativity. However, the actual exercise of power exists in the social context of the time and may not correlate with normative expectations. In the case of the National Assembly, this is clearly the case.

(ad 2) In our country, the Government (council of ministers), as the general organ of executive power [Fundamental Law Article 15 (2)], is the most important governing power in terms of administrative enforcement. However, its role – in a doctrinal sense – is better explained by its function in governance, rather than simply viewing it as 'executive power.' This approach more accurately describes the Government's role as a political leader. The political decision-making and accountability structure places the Government (more specifically the Prime Minister) in a dominant position of power. This derives from both the constitutional and political characteristics of parliamentarism. Accordingly, the actual governing power is more on the side of the Government, led by the Prime Minister, than on the side of Parliament.

(ad 3) The dominance of the Government in power is reinforced by the fact that the normative order influencing the composition of the National Assembly in our country places a strong emphasis on the ability to govern, while parliamentary representativeness and social legitimacy being secondary. As a result, there is at most a theoretical possibility of not having the political majority needed to govern; parties are not threatened by the need for coalitions requiring serious compromises.

(ad 4) In this power structure, the institutions and mechanisms designed to curb the over-power of the governing majority are explicitly valorised. In particular, the role of institutions and mechanisms that directly affect political decision-making should be emphasised, such as the role of neutral control state-powers with no interest in governance, the protection of the position of the parliamentary opposition and the qualified decision-making system. In terms of its importance, the external constraint of EU membership, the EU legal order (even if its purpose is not essentially to control political state-powers), cannot be bypassed.

3. Conclusions

We can speak of a balance of public power if the quality of the state power can be described in terms of the essential characteristics of democracy, power-sharing and the rule of law, which have been articulated in the course of social development and which build on and reinforce each other. Since individual states do not exist in identical and constant social contexts, there is no concrete and eternal recipe for the balance of public power, but the attributes identified are suitable benchmarks for decision-makers and voters.

The most important constitutional attributes of the Hungarian state from the point of view of assessing the quality of the balance of public power are:

(ad 1) Hungary's state power structure is essentially defined by its chancellery-style parliamentary nature. In this context, it should be pointed out that the system encourages the convergence of political state-powers (embodied in the current governing majority), while putting the head of government in a dominant position of power. In this light, the institutions and mechanisms designed to curb the over-power of the ruling majority of the all time are becoming more valuable.

(ad 2) Given that the Hungarian constitutional order – mainly through the unicameral parliamentary structure, the electoral system, the normative position of the parliamentary opposition and decision-making rules of constitutional importance – places a strong emphasis on governability (while social representation and legitimacy are secondary), the convergence of political state-powers, and the prime minister's supreme leader role, is – beyond the level inherent to parliamentary systems – almost predestined.

(ad 3) The Hungarian constitutional order provides a broad spectrum of internal control system over the main political decision-making: a) the current parliamentary opposition can be seen as a democratic counterweight; b) neutral control state-powers with a strong normative independence and, in accordance with their function, with significant competences, whose

function is to ensure the constitutionality and the rule of law. However, it is of cardinal importance that at the heart of the guarantees, institutions and mechanisms designed to ensure a system of checks and balances is the parliamentary qualified decision-making system as the ultimate constitutional guarantee. As long as the governing majority cannot permanently obtain a qualified majority in the National Assembly, especially a constitution-making/constitution-amending majority, democratic and rule-of-law control system can essentially ensure the balance of public power, even if their regulation is not always flawless. Otherwise, the qualified majority rule is not capable of preventing possible abuses of over-power; the separation of power that exists at the level of normativity can easily be eroded, while at the same time all democratic and rule of law checks can be eliminated. Of course, qualified majority voting is not the sole guarantee against arbitrariness, nor is it the *sine qua non* of parliamentary separation of powers, but it is the basis for the existence and quality of all other constitutional guarantees, institutions and mechanisms in Hungary. The concept of 'the achievements of the historical constitution' does not change this either, since, as I have pointed out, it is only an interpretative factor, not binding on the constitution-making/constitution-amending authority. It is important to emphasise that it is not the case that a permanent constitutional majority will necessarily eliminate the rule of law; it is the case that in such a situation there is no normative obstacle to the weakening or even the complete elimination of the control system of the rule of law by the ruling majority. In other words, the existence and quality of the rule of law control in such a situation becomes legally vulnerable to the governing majority.

Despite its importance, in the Hungarian constitutional normative system, even one party can obtain a constitution-making/constitution-amending majority with relative ease (see previous point), while there is no normative obstacle to this remaining permanent. This is underlined by the peculiar situation where the same party alliance has won a constitution-making/constitution-amending majority in four consecutive elections. There are a number of legal and extra-legal factors behind this constellation, but however we understand them, we cannot ignore the fact that the qualified majority voting system cannot fulfil its function as a constitutional guarantee in this situation of permanent political dominant position.

(ad 4) Although the EU legal order does not functionally serve as a democratic or rule-of-law control on political state-powers (even if it has an impact on this quality of political state-powers, its purpose is to achieve the objectives set out in the founding agreements), it is an external constraint at the constitutional level that limits, and in some cases eliminates, the autonomous scope of Hungarian political state-powers in areas of EU competences. Since this constitutional binding can only be decided in a binary way, i.e. even the constitution-

maker/constitutional reformer cannot change its normative, institutional and political system (only influence it in the context of the exercise of shared competence); EU law and its institutional system can be considered as a significant control of state power. However, there is no supranational enforcement mechanism to implement the EU legal order, so it can only be considered effective control as long as the highest political decision-making power, especially the constituent/constitutional amending authority, remain committed to EU membership.

4. *De lege ferenda*

An indispensable condition of a democratic system of power based on the separation of powers and the rule of law is that the governing majority at any given time must face constitutional and legal limits that preclude the permanent usurpation of power or its arbitrary exercise in a manner detrimental to the public interest. Reforming these limits requires broad political consensus, but even with such consensus, it must be secured that these legal limits cannot be dismantled or rendered ineffective. If these conditions are guaranteed, state power can be considered balanced overall at the legal level. However, if the governing majority at any given time is granted full and autonomous access to constitutionally significant decision-making – mainly to the constituent/constitution-amending power – the system inherently carries the risk of abuse of power. The easier the possibility of autonomous access, the more the system is exposed to the danger of arbitrary and public interest-harming exercise of power. In terms of access to the full constitution-making/constitution-amending power, the time factor does not matter in a normative sense either, since, *ad absurdum*, a single constitutional act is sufficient to eliminate the entire system of the democratic or rule-of-law control. However, given that many extra-legal factors prevent the complete elimination of the democratic and rule-of-law control system, the element of time still cannot be ignored. As I have already mentioned, the democratic and rule-of-law control system can be hollowed out through the prolonged possession of a dominant power position. Therefore, if a non-dominant, pluralistic decision-making process does not prevail in the highest political decision-making, and there is no normative barrier to the centralization of state power, the political minority at any given time becomes vulnerable, and the law as a normative system loses its relative autonomy. This does not depend on the actual abuse of power or its extent.

It is important to add that the goal cannot be to make governance impossible. The governing majority at any given time must possess the legislative power within the scope of its mandate, under the continuous and critical oversight of the opposition, which has a comprehensive view

of the state, and under the proper control of politically neutral supervisory powers. However, it should not have autonomous access to constitutionally significant decision-making, mainly to the constituent/constitution-amending power.

It is worth recalling the words of James Madison: *'In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful.'*

In order to ensure the balance of public power at the normative level, I think it would be necessary to reform certain elements of the Hungarian constitutional system. Since the aim of my research was not to develop a concrete proposal, I will merely indicate the possible theoretical directions for eliminating the risk factors identified and for reducing the threat posed by these risk factors.

(ad 1) In order to ensure democratic control of political and administrative execution, it is necessary to privilege opposition MPs and groups in some – even indirect – form. Regarding the political control of the governing majority, it is of fundamental importance that representatives have easy access to all information required to assess the quality of governance and administration.

The development of an optimal regulatory concept requires careful consideration, but I believe it is essential that a committee of inquiry should once again be compulsory if it is initiated by at least one fifth of MPs. Moreover, the functional efficiency of this committee could be improved if it were also to be compulsory, if it were to be proposed by at least two opposition groups. (Considering that it is far from impossible for the combined number of several opposition groups not even to make up one-fifth of the representatives. After all, it would be unrealistic to expect that several different opposition parties will unite to achieve their different political goals in parliament.) I also consider it essential to ensure that MPs cannot abstain from committee work or voting (not only in the context of committee of inquiry).

(ad 2) The opposition MPs and groups, by at large, must be unavoidable in the decision-making on issues of constitutional importance. To achieve this, several solutions are acceptable.

Simply making our electoral system more proportional could significantly reduce the long-term dominance of the ruling majority. The possible ways to achieve this deserve a separate

study, so here I will only express my sympathy for the *mutatis mutandis* application of the German personalized proportional system. However, given the current antagonistic party relations, this could even threaten governability, so it worth considering the complete separate of constitutionally significant decision-making from the normal political decision-making order.

A bicameral parliamentary structure could be an obvious solution for separation. Many arguments can be made for and against it, and it is not strictly necessary for maintaining a balance of public power, but a well-designed bicameral system could make the separation of power more nuanced and decision-making more balanced, which would be of fundamental importance in matters of constitutional significance.

Without proposing a specific formula, I suggest creating a second chamber of popular representation that is competent solely in decision-making of constitutional importance – thus not involved in governance – with an electoral system as proportional as possible (where it would not be a matter of ensuring effective governance as opposed to legitimacy, because that is where the governing chamber would be) and a parliamentary cycle different from that of the governing chamber (at least in principle, separated from elections aimed at governance). (I view with sympathy the application of corporatism to a certain extent, which could create an opportunity to break the dominance of party-preference-oriented political representation. However, in this area, the gap between different positions is extremely wide.) There are of course several issues that need to be clarified in such a modification (especially the relationship between the two chambers), but the key point is that 'constitutionally significant decision-making' should not be usurped.

(ad 3) I consider it necessary (even with a bicameral structure, but especially without it) that the constitution-making/constitution-amending power should not be able to manifest itself within one parliamentary cycle, thus ensuring, at least in principle, that society is an active participant in the constitution-making/constitution-amending process.

I think that the Belgian system could be a good model for achieving this. If the National Assembly could only express itself as a constitution-making/constitution-amending power in such a way that it could first only express its intention (in the form of a concrete conceptual bill), but the actual decision, the act itself, would be the task of the next cycle (immediately after the inaugural session); it would be possible both to link society – through elections – to the constitution-making/constitution-amending power and to allow at least a few months for the necessary debates to take place.

This could enhance the democratic legitimacy behind constitutional acts.

(ad 4) The situation of the Head of State deserves special mention. I believe that only a person with broad and non-partisan authority is capable of embodying *'unity of the nation'* and being *'the guardian of the democratic functioning of the state organization'*. To ensure this, direct election might be an obvious solution, but perhaps a bicameral parliamentary selection model (increasing the chances of political consensus behind the Head of State) would be more proper. However, at the very least, selection in a qualified decision-making order is necessary.

(ad 5) My research did not focus on the quality of constitutional review in Hungary, so a thorough critique of the Hungarian system was not my objective either. As I briefly mentioned in relation to the control state-powers, the Hungarian Constitutional Court is now a check on the courts rather than on the political state-powers, but even so it has sufficiently strong powers to ensure objective constitutional protection.

Without outlining a constitutional concept that I consider ideal, I feel it necessary to express my position on one point. The public finance limit on constitutional review must be abolished. First, this limitation unjustifiably relieves the governing majority of part of its responsibility, and second, as Géza Kilényi provocatively put it almost three decades ago, *'there are no, and cannot be, monetary limits to the enforcement of constitutionality'*.

(ad 6) Finally, if we are committed to 'parliamentary supremacy', it is necessary to take away the veto power of the Fiscal Council on the central budget law.

It is certainly useful and should be maintained that the Fiscal Council, as an IFI institution, examines the soundness and professionalism of the central budget, thereby contributing to fiscal sustainability. However, it cannot be justified within parliamentary frameworks that a body with secondary legitimacy is able to hinder or even prevent the implementation of the current governing majority's program without bearing any political – or any other significant – responsibility for it. As I pointed out regarding the control state-powers, even a decision by the Constitutional Court cannot directly obstruct the governing majority's program, let alone result in the dissolution of Parliament and, through that, the fall of the government.

In conclusion, it is important to note that, whatever direction our country's constitutional system takes in the future, it must be based on broad social and political consensus, as this provides the necessary democratic legitimacy for any act of constitution-making/constitution-amending, while also contributing to the balance of public power.

LIST OF PUBLICATION

1. Publications related to this thesis

LUKÁCSI, Dániel Csaba: *A közhatalom gyakorlásának egyensúlyi kérdései.* In SÁPI, Edit (ed.): *Jogalkotás és jogalkalmazás a XXI. század Európájában III*. Doktoranduszok Országos Szövetsége, Budapest-Miskolc, 2017.

LUKÁCSI, Dániel Csaba: *Az Alkotmánybíráskodás Magyarországon.* In CSERVÁK, Csaba – HORVÁTH, Attila (ed.): *Az adekvát alapjogvédelem. Alkotmányjogi tanulmányok.* Porta Historica Kiadó, 2018.

LUKÁCSI, Dániel Csaba: *Az újragondolt alkotmánybíráskodás Magyarországon*. In KERESZTES, Gábor (ed.): *Tavaszi Szél 2017, Konferenciakötet I*. Doktoranduszok Országos Szövetsége, Budapest, 2017.

LUKÁCSI, Dániel Csaba: *A Kormány közhatalmi pozíciója.* In MISKOLCZI, Bodnár Péter (ed.): *XII. Jogász Doktoranduszok Országos Szakmai Találkozója.* Jog és Állam, 22., KRE-ÁJK, Budapest, 2018.

LUKÁCSI, Dániel Csaba: *Államhatalom az Európai Unión belül, az alkotmányos identitás kérdése.* In MISKOLCZI, Bodnár Péter (ed.): *XIII. Jogász Doktoranduszok Országos Szakmai Találkozója.* Jog és Állam, 23., KRE-ÁJK, Budapest, 2018.

LUKÁCSI, Dániel Csaba: *Az alkotmányos identitás.* In KRE-DIt, 2018/2.

LUKÁCSI, Dániel Csaba: *Az Országgyűlés ellenőrző szervei.* In KRE-DIt, 2019/1.

LUKÁCSI, Dániel Csaba: *Ombudsmani típusú jogvédelem a hazai államhatalmi rendszerben.* In MISKOLCZI, Bodnár Péter (ed.): *XV. Jogász Doktoranduszok Országos Szakmai Találkozója.* Jog és Állam, 25., KRE-ÁJK, Budapest, 2020.

LUKÁCSI, Dániel Csaba: *Jogállam – a megszelídített hatalom.* In MISKOLCZI, Bodnár Péter (ed.): *XVII. Jogász Doktoranduszok Országos Szakmai Találkozója.* Jog és Állam, 30., KRE-ÁJK, Budapest, 2020.

LUKÁCSI, Dániel Csaba: *Gondolatok az Országgyűlés legitimációs funkciójáról.* In KRE-DIt, special issue, 2021.

LUKÁCSI, Dániel Csaba: *Hatalommegosztás és közhatalmi egyensúly.* In KRE-DIt, special issue, 2021.

2. Other publications

GULYÁS, Dávid – JUHÁSZ, László – LUKÁCSI, Dániel Csaba: *Az új választójogi szabályozás – egy választást követően.* In Jogelméleti Szemle, 2015/1.

LUKÁCSI, Dániel Csaba: *Hol kezdődik a „Jó" állam? - A közigazgatás alapelvei.* In SZABÓ, Miklós (ed.): *Doktoranduszok Fóruma*, Miskolci Egyetem Állam-és Jogtudományi Kar, Miskolc, 2016.

LUKÁCSI, Dániel Csaba: *Az Abtv. 26. § (2) bekezdés szerinti alkotmányjogi panasz befogadhatóságának kérdései.* In *Alkotmányjogi panasz – a hatáskörrel kapcsolatos kérdések. Az Alaptörvény érvényesülése a bírói gyakorlatban II.* HVGORAC, Budapest, 2019.

LUKÁCSI, Dániel Csaba: *A Független Rendészeti Panasztestület mint szakosított ombudsmani típusú intézmény.* In FARKAS, György Tamás – RIMASZÉCSI, János (ed.): *Alapjogok – Alkotmány – Alaptörvény.* Doktoranduszok Országos Szövetsége, Debrecen, 2019.