

Hungary

Author: Zsolt Szabó¹

Introduction

Since the fall of the socialist regime in 1989/90, Hungary is a functioning parliamentary democracy: a republic with a multiparty political system, governed by the rule of law. Like the constitutional and institutional framework of governance, also the system of legislation underwent major changes compared to the one-party-system at the end of the 1980s, when by-laws and other low-level sources of law determined significant policy issues, restricted fundamental rights; transparency and democratic legitimation were lacking. Nowadays one can witness the opposite: high-level legislative acts (laws requiring either simple or qualified majority) dominate the legislative scene, turning parliament into a legislative machinery, leaving no time for thorough preparation and deliberation, adopting laws overloaded with details which would sometimes better fit into secondary legislation.

As a result, legislation rules mainly focus on procedures and formalities, while policy contents and quality gain less attention, and impact assessments aren't taken into serious consideration.² Especially – but not exclusively - the FIDESZ-government in office since 2010 has come up with an ambitious legislative agenda, including many accelerated procedures and frequently modified legislation – and some corrective procedural measures (e.g. limiting the number of fast track procedures) after 2014.³

This paper describes the current institutional-legislative framework and practice of preparation of statutory legislation in Hungary. After introducing the institutions, procedures and some data related to legislation, internal workflows of the government and the role of the relevant actors will be analysed.

Overview of the constitutional and political system

The form of government in Hungary – as well as political practice - is parliamentarian. The main organ of state power in Hungary is the unicameral legislature (*Országgyűlés*) with 199

¹ This study was also supported by the János Bolyai Research Scholarship of the Hungarian Academy of Sciences.

² R Franczel, 'Kormányzati döntéshozatal 2010-2014 között' (2015) *Kodifikáció és Közigazgatás* 6.

³ For a general overview of this period see G Ilonszki, 'From minimum to subordinate: A final Verdict? The Hungarian parliament, 1990–2010' (2011) 13 *Journal of Legislative Studies* 38–58; G Ilonszki and K Jager, 'Hungary: Changing government advantages – Challenging a dominant executive' in E Rasch and G Tsebelis (eds), *Role of the governments in legislative agenda-setting* (Routledge 2011) 95–110.

members (MPs), elected for four years by direct universal suffrage. The Cabinet (*Kormány*) is politically strongly linked to parliament, according to the principles of parliamentary governance. The head of the state, the president (*Köztársasági elnök*) is a representative position, without effective control rights towards parliament, elected by the legislature. His main role is to safeguard the proper functioning of the three main branches of power and promulgate laws adopted by parliament. The president also has the right to introduce legislation in parliament. However, presidents hardly ever made any use of this right, apart from few legislative proposals at the beginning of the 1990s. More frequent is the suspensive veto of the president: he may return any adopted statute for reconsideration to parliament, but has to sign them nevertheless, if parliament adopts it again with or without amendments. The main form of state power in Hungary is representative democracy, the institution of direct democracy (referendum) is used only very exceptionally. The state structure and fundamental rights are set out in the Fundamental Law (*Alaptörvény*), the country's written constitution, dating back to 2011.

The operative executive organ of the country, the Cabinet, has among others the task to take the necessary measures to ensure public order and security, to prepare and implement the state budget, to determine the foreign policy and conclude international agreements on its behalf. Generally, the Cabinet is also responsible for executing laws adopted by parliament.

The Cabinet consists of the Prime Minister (*Miniszterelnök*) and the Cabinet ministers. The Prime Minister is not just a formal leader of Cabinet: he also defines and directs its policy. He is elected by a simple majority vote of the MPs, while ministers are proposed by the Prime Minister, and appointed (and relieved) of their duties by the president. The Cabinet bears a collective political responsibility towards parliament. The central role of the Prime Minister is reflected by the provision that it is not possible to initiate a vote of no-confidence against an individual minister, only against the Prime Minister, who represents the whole Cabinet. In order to guarantee stability, the Fundamental Law makes only the constructive form of the confidence vote possible: the majority of MPs have to agree on the new Prime Minister before withdrawing confidence from the previous one.

The establishment of ministries falls within the competence of parliament and a law defines their name and broad portfolio in each legislative term,⁴ while the detailed tasks of the ministries are set out by the Cabinet in a decree.⁵ Each ministry is headed by a single responsible minister who is also a member of the Cabinet. Under ministers, state secretaries are responsible for a certain policy field.

In lack of a second chamber or other kind of co-legislator in Hungary, the main 'check and balance' to parliament's legislation is the Constitutional Court (*Alkotmánybíróság*). The Court, established in 1989, followed the model of the German Federal Constitutional Court, controls the constitutionality of legislation and judicial decisions. It comprises a separate branch of state power and is not considered to be part of the judiciary. By the end of the 1990s, the Court

⁴ E.g. Law no. V/2018 on the List of ministries of Hungary.

⁵ E.g. Government decree no. 94/2018 on the Tasks and responsibilities of the Members of the Government.

developed a case law which was of great importance as regards the new constitutional system, many of those principles were later enacted in the Fundamental Law in 2011.

The judiciary is independent from the legislative and executive powers, it is comprised by a separate ordinary and administrative court system. Ordinary courts are local, municipal courts, appellate courts and the Supreme Court (*Kúria*) as final instance. Courts directly interpret the acts of the legislation, while the Constitutional Court checks any legislative acts against the constitution and may strike them or parts of them down if they are in contradiction with the constitution. Replacing the annulled legislation, however, is in the exclusive competence of the parliament.

The Constitutional Court is therefore an important actor in the field of legislation, having quite a wide range of competences.⁶ It has the sole right to interpret the Fundamental Law; it provides normative standards and ex-ante as well as ex-post supervision over the constitutionality of legislation (an ex-ante supervision takes place after parliament adopted but the president not yet promulgated the law, an ex-post takes place after promulgation); it also reconciles collisions between international and domestic law. The Court may also determine the violation of the constitution by an omission if a legislative body omitted to adopt legislation necessary for implementing a certain constitutional provision. Also ordinary court judges may initiate the procedure if they conclude that the law they are to interpret contradicts the Fundamental Law. The Court also establishes the public responsibilities of the head of state and other public officials; and it determines the spheres of authority of municipalities and local authorities, and interprets limitations on public referendums.⁷

Legal and institutional framework for the preparation of legislation

Sources of law and their role in the legal system

As in other civil law countries, in Hungary, below the constitution, the highest sources of law are parliament-made laws. Besides statutory legislation, parliament holds constituent power as well: it may approve and amend the constitution with qualified majority (2/3 of all MPs) . The constitution may be thus seen as quite flexible: the incumbent two-third majority may amend or adopt constitution anytime without involving any other organs or calling for a referendum. As a result, the constitution has constantly been subject of changes; the current Fundamental law underwent seven amendments since its adoption in 2011.

The Fundamental Law (Art. T) describes the four levels of legislation in following hierarchy:

- the Fundamental Law,
- laws adopted by the parliament (*törvény*),

⁶ Besides supervision of legislation, the Constitutional Court has the opportunity to review court verdicts with regard to fundamental rights ('constitutional complaint') on the initiative of the person affected by the case if they were based on unconstitutional legislation or were based on constitutional grounding but came to an unconstitutional result.

⁷ Law no. CVI/2011 on the Constitutional Court.

- governmental and ministerial decrees (*kormányrendelet/miniszteri rendelet*), adopted by the Cabinet as a whole or a minister (they become valid only if published in the Official Gazette of Hungary – *Magyar Közlöny*)
- and decrees of local governments (*önkormányzati rendelet*).

The hierarchy between these sources of law mean that a decree may not contradict a statutory law, and no legal source may contradict the Fundamental Law. The Fundamental Law also accepts the universally recognized rules and regulations of international law without any further implementation, and guarantees to harmonize domestic legal acts with the obligations assumed under international law. According to the dualist practice, parliament and Cabinet need to implement international treaties in legislation of their own domain. A significant number of all legislative acts (appr. 1/3 of all laws) are enactments of international agreements.

Laws are normally adopted by simple majority vote in parliament. However, some laws need a qualified majority approval, as specified in the Fundamental Law.⁸ These are called cardinal laws (*sarkalatos törvény*). The distinction between ordinary and cardinal laws was a result of the compromise between old and new elites in 1989. The issues requiring qualified majority are thus not selected by value, weight or importance, rather by a political agreement reached at the roundtable discussions thirty years ago. Since many policy areas are affected, major reforms need a compromise between Cabinet and opposition. However, between 1994 and 1998, and multiple times since 2010, the Cabinet has a 2/3 majority in parliament and can make any changes, including amendments to the constitution. It is important to stress that in theory, there is no hierarchy in the legal system between ordinary and cardinal laws. In practice, however, cardinal laws often work as a barrier to ordinary laws' amendments if the required qualified majority in parliament is lacking.

This legislative framework implicates that laws enjoy a strong preference in the Hungarian legal system. Besides the Fundamental Law, which describes some legislative subjects to be regulated exclusively by law,⁹ parliament generally may expand its almost unlimited legislative activity to any areas previously not or only partly regulated by law. The Fundamental Law requires also that the legislation affecting fundamental rights and duties to be enacted in statutory legislation. Furthermore, parliament has the exclusive right to regulate fields which are already regulated by law. Once parliament has brought the matter within the scope of statutory regulation, this may be modified or repealed only by the adoption of another law. As a result, the number of yearly adopted laws is increasing, also because it is often a matter of prestige for the line ministries to place their legislation to the highest possible source of law. Replacing laws by lower level instruments hardly ever happens, the necessary time and

⁸ Some examples: citizenship, use of national symbols, protection of families, religious organisations, operation and management of political parties, freedom of press, military service, election procedure, right of parliamentary inquiry, establishment of regulatory organs, powers, organisation and operation of the Constitutional Court, operation of the parliament, judicial system.

⁹ A few examples: creation of new administrative organs, rules of self-protection in criminal law, conditions by creation of religious organisations, content of freedom of teaching, conditions of labour contracts, conditions of releasing university tuition fees, social benefits.

political will is hardly there. The legislative competence of the Cabinet is limited to the areas not regulated by laws.

As a result of this dominance of laws, their number is relatively high in the legal system. This is in huge contrast with the situation in the past socialist regime where only a few laws were adopted by parliament each year, and legislation was generally practiced by different subjects (Presidential Council, Council of Ministers) deciding behind closed doors. After this extremity, nowadays one can witness the opposite: between 1990 and 2020 parliament adopted more than 5000 laws, more than half of the amending previously adopted ones. Parliament passes almost 200 laws each year, the number have slightly increased with time.¹⁰ Laws are changing rapidly: only one third of the 5000 laws are currently in force, the others – mostly due to their merely amending character – have already been repealed. The current situation is shown also from the following numbers of legislative acts currently in force:

Table 1: Legislation currently in force in Hungary

Legislative act klein	Quantity	Average length¹¹
Law	1849	121500
Government decree	2517	50700
Ministerial decree	2827	60722

Source: www.njt.hu (National Legal Database, as of March 2020).

Delegated legislation plays a secondary role in the Hungarian legal system, contrary to an ideal situation where primary and secondary legislation have the same importance notwithstanding the hierarchy between them. By-laws are sometimes seen as ‘second-class’ legislative acts, thus the general intention of the executive is to regulate as much as possible in law. The numbers of average length show also that laws are normally more detailed than secondary legislation, the opposite of an ideal situation.

It should be added that delegation in Hungary does not mean empowerment, i.e. delegation of legislative power of one legislative organ to the other, it rather means activating the legislative power of a lower legislative organ by a higher one. Parliament may never delegate its law-making power to the Cabinet, it may only require the Cabinet to legislate by adopting a decree in a subject matter within its own legislative domain. Cabinet may never adopt legislation on statutory level, not even in extraordinary circumstances. In case of delegation, the Cabinet is

¹⁰ Corruption Research Centre Budapest: A magyar törvényhozás minősége 1998–2012 – leíró statisztikák, available at www.crbc.eu.

¹¹ Number of characters, including footnotes on amendments.

obliged to act, although there are normally no time limits and consequences for non-acting. However, the Cabinet may not sub-delegate legislative power it received from the parliament, as well as ministers may not sub-delegate their legislative tasks to any other organ. While Cabinet may adopt a decree on its own initiative (in case the subject is not yet regulated by law) as well as by statutory delegation, a minister may only adopt a decree upon delegation.

As seen above, instead of a pyramidal structure, where ministerial decrees would represent the majority of the legal acts with the most detailed rules, we are witnessing a ‘top-heavy’ structure of legislation with laws on the first place in number as well as in length. Of course, the basis of the extensive statutory legislation is the expertise of the Cabinet: the majority of laws adopted by parliament were Cabinet initiatives. The Cabinet normally spends more time and efforts with preparing bills for submission than drafting its own secondary legislation.

Legal sources on legislative drafting

Besides the Fundamental law, another important legal source of legislation is the Law on Legislation (LoL) from 2010, which sets out the general rules of law-making, including:

- the prohibition of retroactive effect (with the exception of an exclusively positive effect on all stakeholders),
- the requirements of delegated and transitional legislation,
- the general rules of geographic and personal effect of legislative acts,
- the formal rules of amending and repealing existing legislation,
- the obligation of impact assessment,
- the rules of justification (reasoning) of legislative proposals,
- the rules on promulgation, transparency and availability of the legislation.¹²

The Law also regulates the internal rules of organs of public law (*közjogi szervezetszabályozó eszköz*), which may only affect persons within the respective organ and do not have general effect. An important issue, public consultations of legislation has been outsourced in 2010 and is being governed by a separate law ever since (see details further below).¹³

Legislative drafting rules are to be found in a decree of the Minister of Justice.¹⁴ With its 150 articles, it is the longest legislative act from the domain of legislation. Beyond the normative provisions of legislative drafting, there is an equally long set of annexes attached to it, providing textual examples for formulation of legal provisions (e.g. use of references, formula for amendments). The decree contains provisions on linguistic aspects, designs the formal structure and sections of legislative acts (book, chapter, title, article, paragraph, point) as well as the logical structure (preamble, general provisions, detailed provisions, final provisions).

¹² Law no. CXXX of 2010 on Legislation.

¹³ Law no. CXXXI/2010 on the Social participation in the preparation of legislation.

¹⁴ Decree no. 61/2009 of the Minister of Justice and law enforcement on legislative drafting.

Another ministerial decree that need mentioning regulates ex-ante and ex-post impact assessment of all legislative acts.¹⁵ The brief decree (only eight articles!) contains the tasks, describes the documents and their content during the impact assessment process. An ‘impact assessment form’ is attached to the decree as annex, which need to be filled for all legislative proposals. However, the form is a one-page document with three chapters each with open space subject to free formulations: ‘I. Budgetary impacts’, ‘II. Administrative burdens’, ‘III. Other impacts.’ The previous legislation, which was in force between 2011 and 2016, foresaw a more detailed evaluation form, which was albeit not used in regular practice and was radically simplified in 2016.

The practice of impact assessments corresponds to the weak regulatory framework: as a pre-2010 comparative research found, Hungary almost altogether ignored the preparation of regulatory impact assessments. Few regulatory issues were addressed, and if they were, they were introduced in an ad hoc manner. Even if Hungary was the first in the region to introduce RIAs in legislative procedure, the practice showed a fragmented, sporadic and formal attitude towards them.¹⁶ Since 2010 the RIA procedure has been streamlined and used in a more systematic way, but it is rather a tool to control the administrative services than to secure quality legislation.¹⁷ The LoL only foresees impact assessment of governmental bills, proposals from the MPs are excluded.

Even from the structure of legal sources dealing with legislation it is obvious that the formal rules dominate and policy content quality tools are of secondary importance. Elaborate, detailed, sometimes rigorous provisions govern the formalities, while the content and quality of legislation lag behind.

Analysis of practical functioning of the preparatory process

There are four possible proposers of statutory legislation in Hungary, as set out in the Fundamental Law: the Cabinet, MPs (either as single proposers or as groups of MPS), the President of Hungary, and parliamentary committees. In practice, the latter two hardly practice their right. On the contrary, many MPs, especially opposition MPs submit legislative proposals to parliament, even if these are hardly ever approved, and often do not even enter into parliamentary procedure, not being discussed either by committee or by plenary. There is no procedural guarantee of debating opposition bills, even a minimum of them. Most laws adopted by parliament start their career as Cabinet proposals.

¹⁵ Decree no. 12/2016 of the Minister leading the Prime Minister’s office on Ex-ante and ex-post impact assessment.

¹⁶ K Staroňová, ‘Regulatory Impact Assessment: Formal Institutionalization and Practice’ (2010) 1 *Journal of Public Policy* 117–136.

¹⁷ G Gajduschek, ‘Előkészítetlenség és utólagos hatásvizsgálat hiánya’ in J Szerk and G Gajduschek (eds), *A magyar jogrendszer állapota* (MTA TK 2016) 801.

By Cabinet proposals, the procedure of preparation of bills begins with the submission of the legislative plan on a sessional basis, as the Law on the National Assembly requires.¹⁸ In practice, at the beginning of each parliamentary session (semester), the Cabinet submits its legislation plan to parliament, including those bills planned to be submitted to parliament. This list is put together from the scheduled legislative proposals of the line ministries and finalized by the Prime Minister's administration. Since it happens regularly that many items from the list are not submitted or at the same time other bills appear without being originally scheduled, the plan is not treated in practice as a strategic tool of targeted government policy, rather as an information on what workload parliament has to face in the upcoming months.

The legislative plan in practice has an Excel-sheet format with columns for the name of the proposal, the responsible ministry, a short description of content in 3-4 lines, the planned month of submission to parliament, the expected month of adoption by parliament, and the volume described by one of three simple variables ('short', 'medium', 'long'). There is no textual explanation and analysis related to government policies. The plan only contains prospective laws, but not governmental or ministerial decrees.

In practice, the plan is regularly and timely submitted, but it is hardly ever fully implemented: about half of the items are dropped, and a similar number of new proposals are submitted spontaneously in the course of the legislative term.¹⁹ If there is a shortage of time at (for example at the end of the legislative session), the political agenda normally prevails over policy planning. In autumn 2017 for example, there were 46 items on the legislative plan, in spring 2018 only one (due to the upcoming elections), for autumn 2018 there were 39 items foreseen.

As far as the intra-institutional organization is concerned, each ministry has a legal department also responsible for legislative drafting. This department is normally supervised by the administrative state secretary, the de facto director of the ministry. The details of the procedure of Cabinet's legislative preparation are set out in a decision of the Cabinet on its rules of procedure (RoPC).²⁰ As a first practical step of the legislative drafting procedure, this service drafts a legislative proposal, which is subject to revision and approval by the minister or his cabinet.²¹ This involves the 'political line' already at the very first stage of the process. It is also common that the policy departments of the ministry take part in the drafting as well, but the general responsibility lies at the legal unit. At major legislative tasks, the drafting is sometimes outsourced to a drafting committee consisting of senior experts of the particular field (eg. Civil Code, Penal Code reforms from 2012).

This 'ministerial draft' is then sent to the central coordinative unit of the Cabinet (§ 15 RoPC). This unit was traditionally placed at the Prime Minister's Office (PMO), which is a central

¹⁸ Law no. XXXVI/2012 on the National Assembly.

¹⁹ Gajduschek 2016, *ibid.*

²⁰ Government decision no. 1044/2010 on the Rules of Procedure of the Government.

²¹ For a more detailed description of the preparatory phase see some earlier works as E.g. S Pesti, 'Közpolitikai döntéshozatal Magyarországon' in G Gajduschek and T Rossiter (eds), *A közpolitika formálásának gyakorlata a brit és a magyar közigazgatásban* (Magyar Közigazgatási Intézet 2002).

government organ, headed, like a ministry, by a Cabinet minister. Since June 2018 however, policy legislative coordination is a responsibility of the Government Office of the Prime Minister (GOPM), a central government office, separated from the PMO, and headed by the Prime Minister himself. The coordination of Cabinet legislation is managed by the administrative state secretary of the GOPM directly supervised by the Prime Minister directly. This means that under current setup, PMO is rather a strategic coordination body than a legislative one, responsible for mainly long-term policy planning. The coordination of legislation within the Cabinet is done by the GOPM.²² The administrative state secretary of GOPM checks whether the legislative proposal is ‘in line with the general policy of the government’, as the rules of procedure of the Cabinet require. High profile political issues are therefore possible to be taken into account already at this stage, even before inter-ministerial or public consultations.

After the legislative proposal (which is a detailed, paragraphed text already at this stage, and not a conceptual paper) is checked by the GOPM and the Ministry of Finance, the bill is circulated within all line ministries, and in the same time published on the website of the government for public consultation. Both line ministries and the general public, working parallelly, have very short deadlines. The responsible ministry has the task of evaluating the consultations, finalizing the draft, and preparing it for adoption by the Cabinet (§ 12 RoPC). During inter-ministerial consultations, in almost all cases only legislative units of other ministries take part in the process, policy departments very often do not have the possibility (and time) to interact. Comments of other ministries made to a legislative proposal are usually done by e-mail exchanges, and are neither open for the public nor kept in a searchable database, their content is therefore not available for further analysis.

During inter-ministerial consultations, the Ministry of Justice (MoJ) has the task to review constitutional and legal aspects, including EU-related legal matters. Therefore, all bills and draft decrees (including ministerial ones) are subject to an opinion of the MoJ during the inter-ministerial consultation, which is to be prepared in extremely short deadlines, often in one or two days, or just a few hours.²³ As a legislative expert body, MoJ sometimes interferes with the central legislative coordination body of the government (currently the GOPM). Practically, the MoJ is rather one of the line ministries, representing the legal profession, than a strategic or coordinative body, as it was until the mid-1990s.²⁴

The process of drafting and consulting bills of the Cabinet may take several months, partly depending on the length of the proposal, but more often on the sensitivity of the area to be regulated. However no procedural rules apply to bills submitted by the MPs, except for a simple obligation to provide a reasoning for the bill (§ 18 LoL). MPs usually do not have professional drafters in their team to prepare correctly worded legislative proposals and there

²² In Hungary, the Cabinet does not have a secretary general or equivalent position.

²³ S Pesti and R Anikó-Franczel, ‘A kormány működési és szervezeti rendje (1990–2014)’ in A Körösényi (ed), *A magyar politikai rendszer – negyedszázad után* (Osiris 2015) 109-134.

²⁴ For a detailed description of the role of the Ministry of Justice see LP Salgó, *Az Igazságügyi Minisztérium szerepe a kormányzati jogszabály-előkészítésben* (Fontes Iuris 2017).

is only a limited staff available within the team of parliamentary groups. Also, there is neither obligation nor tradition for MPs to consult the public during drafting legislation, with the justification that MPs proposals usually address questions that have high relevance in daily politics followed by an intensive press coverage, therefore the opinion of the public is ‘well known’.

While most MPs’ proposals of legislation come from the opposition²⁵, MPs on the Cabinet side also submit bills regularly. Typical proposals made by MPs supporting the government are short provisions or amendments in bills that address a simple but politically sensitive issue. The main driver behind these type of bills is the faster procedure than the usual preparation within the government services.²⁶ Especially the Cabinet after the elections in 2010 used this type of fast tracking. Between 2010 and 2014, almost half of adopted laws started as MPs’ bills.

The ‘Law on public consultations in the preparatory phase of the legislative procedure’ (LPC), adopted in 2010 contains mostly broad principles and just few details. The ‘widest possible range’ of public opinions (preamble) should be facilitated, allowing ‘appropriate time’ (§ 10) with ‘the most transparency’ (§ 2) during public consultations of legislative concepts or drafts. However, there are no exact numbers and data explaining these broad terms. As a general rule, only governmental bills are subject to a public consultations (§ 1). Nevertheless, many exceptions apply: bills adopted during urgent legislative procedures shall not be consulted as well as if there is danger to Hungary’s important military, state security, financial, foreign policy, environmental or cultural heritage interests (§ 10).

According to the LPC, there are two forms of consultations: open consultations online, and direct consultations upon invitation on the responsible minister (§ 7). In case of an open consultation, the legislative proposal is published at the Cabinet’s website. Anyone can send a comment per e-mail, but there is no administrative obligation to reply, only the receipt of the comment should be confirmed. The deadline for posting comments is the same as for inter-ministerial consultation: the general public has the same, rather limited time as the professional staff of the ministries, which makes public consultations rather unrealistic. Deadlines hardly exceed a week, and the five days set as a minimum by the rules of procedure is not respected in practice, usually the consultation only takes two or three days. The website used for consultation is embedded in the website of the Cabinet and there is no transparent, searchable database of items under public consultation.²⁷ The comments are also not published on the website, the ministry only has obligation to prepare a summary document with the list of those who commented and justification for rejected comments.

²⁵ Legislative proposals submitted by the opposition almost never become laws. For a detailed analysis see C Nikolenyi and C Friedberg, ‘Vehicles of opposition influence or agents of the governing majority? Legislative committees and private members’ bills in the Hungarian *Országgyűlés* and the Israeli *Knesset* (2019) 25 *The Journal of Legislative Studies* 358-374; R Zubek, ‘Negative Agenda Control and Executive–Legislative Relations in East Central Europe, 1997–2008’ (2011) 17 *The Journal of Legislative Studies* 172-192.

²⁶ Gajduschek 2016, *ibid.*, p. 802.

²⁷ Database is available at <http://www.kormany.hu/hu/dok#!DocumentBrowse>.

The other form, the ‘direct consultations’ are not open for the public at all. This process is based on long-term partnership agreements (covering maximum the parliamentary term) between the ministry and related stakeholders “representing wide social interest or performing scientific activity”. The LPC provides a list of possible partners, including civil organizations, churches, scientific organizations, representation of nationalities, universities or chambers. There are several laws requiring consultation on certain policy issues. Subject, timeframe of consultations and the form of communication (personal negotiations are possible here, contrary to open consultations) should be set out in the agreement, which should be “made available for anyone”. The strategic partners having entered into such agreements have the obligation to “represent the opinion of other organizations not having such an agreement”.

In theory, it is possible to consult the legislative concept as well as the final legislative draft (§ 5). In practice, a legislative concept hardly ever exist,²⁸ normative texts are drafted immediately, at the very early stage of the legislative procedure. In the past decades, several stakeholders attempted to claim the negligence of public consultations at the Constitutional Court, but the Court in its consistent practice rejected these arguments, stating that the lack of consultation lies in the political responsibility of the Cabinet, and it does not affect the legal effect of the legislative acts.²⁹ The Court also stated that from the legal perspective, the legislative procedure as such starts in parliament, which is a forum for democratic deliberation, and the preparatory phase should be left to the proponent’s (Cabinet or individual MP) discretion. The preparatory phase is therefore completely excluded from constitutional review.

The Cabinet is obliged to prepare a preliminary impact assessment with the aim to check if the proposal contains serious contradiction with existing domestic or EU law as well, and the effect of the proposal on the national budget is also assessed. The proposal is therefore accompanied by a brief preliminary legal and economic impact assessment. In practice, this assessment is only of formal nature, and is hardly taken very seriously by any actor in the process, it has low impact on the planning or decision-making on the political level. Impact assessment sheets are being filled out, but the information is often incomplete, very general, and usually aims at a political message rather than evaluating the factual impacts.³⁰ This situation might be explained also by the observation that Hungarian legislative thinking is dominated by formality, overshadowing the real aims and possible impacts of legislation.³¹ Legislation often becomes the target itself, instead of a tool to reach policy targets.³²

²⁸ T Drinóczi, *Minőségi jogalkotás és adminisztratív terhek csökkentése Európában* (HVG-ORAC 2010).

²⁹ See for example following decisions of the Constitutional Court: 7/2004 (III. 24.), 29/2006 (VI. 21.), 87/2008 (VI. 18.), 109/2008 (IX. 26.).

³⁰ A Gyűrű, ‘A jogszabályok és a stratégiai tervek környezeti hatásvizsgálatának gyakorlata’ (2012) *Pro Futuro* 85-102.

³¹ K Jugovits, ‘A jogalkotás tartalmi megalapozottsága a jogi oktatás tükrében’ (2016) *Pro Publico Bono – Magyar Közigazgatás* 36–49.

³² This becomes obvious as we look at the difference between level of development at legislative drafting techniques and impact assessment methodology. The latter is lagging behind the first: National Assembly services recently elaborated a software (PARLEX, available at <http://www.parlament.hu/parlex>) for legislative drafting and

After the inter-ministerial consultation, the proposal will be put on the agenda of the weekly meeting of administrative state secretaries of all ministries (MASS), chaired by the administrative secretary of GOPM (§ 39-50 RoPC). This format is the general preparatory forum of the Cabinet's weekly sittings where all bills and draft decrees have to pass. This is the last chance to reconcile line ministries' interests and harmonize within the government services. The meetings of MASS are not open for the public. In practice, there were estimates that in the late 1990s about one-third of agenda items were not passed and sent back to the ministries for reconsideration.³³ Since 2010, due to a more streamlined mechanism, this number is much smaller.

After the proposal is approved at MASS, it can be discussed by the Cabinet or one of its smaller circles (thematic and strategic cabinets). There are currently four such formats, headed by the responsible minister and consisting of the relevant ministers: the Cabinet for Strategic and Family issues, the Economic Cabinet, the State Security Cabinet, and the Cabinet for National Policy (§ 1 RoPC). This is another stage when political actors can intervene and send the issue back to an earlier stage for reconsideration. In practice, the frequency of returns highly depends on the persons involved at this decision-making stage.

Since 2010, political lines have not divided the Cabinet as there has been no coalition government in Hungary. Until 2009, various models of policy coordination between coalition parties were used. Between 1990-1994 each ministry headed by a minister from one coalition partner had a state secretary from the other (cohabitation model). During the 1994-1998 period there was a system of linked ministries attached to one single coalition party, accompanied with a strong coordination mechanism orchestrated by a steering committee and mutual veto rights. In the next period (1998-2002), the isolation (and mutual distrust) between ministries headed by different parties of the coalition became complete, and „pet projects” of ministers (whether reasonable or not) were implemented without significant coordinative control.³⁴ In 2009, the ruling coalition broke up, paving the way for the opposition. FIDESZ (in alliance with KDNP) won the elections in 2010, but as these parties formed common candidate lists, the Cabinet was based on a party alliance rather than coalition. The negative reputation of coalition governance has resulted in a rejection of coalitions and the popularity of the single-party governments within the general public in Hungary.

Cabinet bills in the parliamentary phase

Like in most European countries, the last decades were characterized by the emerging importance of the Cabinet and the decreasing role of the parliament in Hungary. As a result of

workflow which will soon be used by all governmental drafting services, including inter-ministerial consultations (the system will accordingly be extended to a network called GOVLEX). The tool makes possible to reach a high level of perfection at formal rules of drafting (numbering, references, wording etc.), while policy content and impact assessment are hardly addressed in current workflow.

³³ Pesti 2002, *ibid.*

³⁴ Pesti 2015, *ibid.*

this tendency, we can almost say that parliament does not ‘legislate’ any more, it is rather approving, ‘rubber-stamping’ legislation prepared by the Cabinet. Parliament does not have the capacity (time, expertise) to thoroughly discuss and revise the legislative drafts, it mostly gives the forum only for highlighting issues which are politically sensitive or strategically important for the parties. This tendency is strengthened by the “political government” approach of the last years, since 2010 parliament plays a decreasing role in the policy process. As following the traditional model of the ‘working parliament’, the Hungarian National Assembly dedicates most of its time to formal legislation procedures, however, this time is also quite limited, thorough debates on legislative agenda items are hardly influencing the outcome.

Governmental bills, after having been approved by the Cabinet, are sent by the Prime Minister to parliament and consequently, immediately published on the parliament’s website (this applies also to MPs’ bills). This is the initial phase of the most transparent part of the legislative procedure: all parliamentary documents are openly accessible via the parliament’s website. Having avoided the quality review of the MoJ, there is one ‘checkpoint’ for MPs’ proposals during the parliamentary phase as these bills are subject to an additional admissibility check by a designated committee. In practice this is rather a political filter instead of a legal assessment: opposition proposals regularly fail, bills from governmental MPs normally pass. The Cabinet also needs to give its opinion on all bills submitted by MPs.

The parliamentary stage of the legislative process is regulated by the rules of procedure of the parliament³⁵ and the Law on the National Assembly³⁶. The parliamentary debate may only start if at least six days pass after the submission of the bill.. The first main step is then the general debate (first reading) at the plenary, followed by the detailed debate in a sectoral committee (the second reading). MPs may submit amendments before the committee session, which are approved or rejected by the committee. After the committee stage, all bills are checked by the Committee for Legislation (established in 2014) as well, which may also amend the proposal. Finally, the closing debate and final vote take place at the plenary session.

The Hungarian parliament is one of the fastest to legislate within the EU. The whole parliamentary phase takes only four to five weeks in average, if the ordinary (not accelerated) procedure is used. However, there are possibilities upon qualified majority decision to speed up the process and approve legislation even within two days. The possibility of having a law adopted so quickly often leads to a temptation for politicians to react to societal challenges within quick legislation, usually without thorough preparation and elaboration. The share of laws that were amended within one year of their (original) adoption grew from about 5 to 8 percent (before 2010) to almost 25 percent after 2011.³⁷

During parliamentary process, the proposal is being debated and possibly amended in committee and plenary. While opposition MPs seek to change the policy of the proposal, most amendments submitted by governmental MPs rather seek to correct technical mistakes which

³⁵ Decision no. 10/2014 of the National Assembly on Certain rules of parliamentary procedure.

³⁶ Law on the National Assembly No. 36/2012.

³⁷ P Smuk, ‘Az Országgyűlés’ in J Szerk and G Gajduschek, *A magyar jogrendszer állapota* (MTA TK 2016) 631.

remained in the bills after the inter-ministerial consultation and controlling phase. Especially the Committee for Legislation has the task to take care of the coherence of the bill, relying on the (confidential) opinion of the legislative department of the parliamentary services.³⁸ As far as parliamentary debates are concerned, the time reserved for debating bills has been continuously decreasing, and the debates have little or no impact on the outcome. The parliamentary phase of legislation slowly becomes an obligatory but purely formal task in Hungary.³⁹

Table 2: The number of recently adopted bills (broken down by proposing subject)

Year	Members of parliament		Cabinet klein		Committee	
	submitted	adopted	submitted	adopted	submitted	adopted
2010 – 2014	902	269	597	570	22	20
2014 – 2018	744	146	566	564	24	17
2014	114	24	63	70	6	3
2015	231	42	182	181	9	7
2016	224	42	156	148	2	2
2017	175	38	165	165	7	5
2018	116	19	103	113	4	4
2019	86	11	107	114	4	4

Source: Data extracted from www.parlament.hu.

Note: 2014 and 2018 were election years with less parliamentary activity before the elections. The number of these years only shows the activity of the newly elected parliament. Since some bills were submitted by the Cabinet before the elections, Cabinet has higher adoption numbers than submissions.

The afterlife of laws also deserves a short mention. An important feature of the Hungarian legal system is the high number of amendments of recently adopted laws. In some policy areas governed mainly by laws overloaded with detailed provisions (education, health, agriculture

³⁸ During the 1990s it happened that contradicting amendments remained in the final version of the bill after the final vote, which led to another vote or correction by the official gazette.

³⁹ Zs Szabó, 'Hozzáadott érték benyújtás és elfogadás között: viták és módosító javaslatok az Országgyűlésben 2006–2016 között' (2017) Parlamenti Szemle 25-47.

etc.), it is common to bring a yearly or sessional ‘update package’ to parliament packed into a huge set of amendments. These so-called ‘salad laws’ often modify dozens, or even up to a hundred of other laws, sometimes reflecting changes in relevant EU legislation or consequences of the cross-sectoral reform policies (e.g. e-government), but often only correcting previous wrong drafting or target-setting. Many laws have an already ‘scheduled’ amendment rate of two to three major amendments per year. This is most obvious at the taxation legislation, which is amended regularly, together with the budget approval. The law amended most times underwent 525 (mostly technical) textual amendments, although it was adopted only in 2011.⁴⁰

While this trend can be partly explained by the structure of the legal system and the even faster changing novelties of our modern times, there are amendments which are aiming at correcting previously made mistakes caused by time pressure. As noted above, the number of laws modified within a year is increasing. The average number of amendments during lifetime of a law reaches 14 and laws are more frequently amended than secondary legislation. The genre of ex-post evaluations, which could support a more consistent framework for ex-post amendments, is strictly voluntary (§21 LoL) and in practice almost completely missing in Hungary.⁴¹ Ex-post scrutiny in parliamentary committees is a task in theory, but hardly ever takes place in practice.

Conclusions

Hungarian legislation can generally be described as quickly adopted, instable and overgrown. A strategic approach for drafting legislation does not exist, neither ex-ante nor ex-post evaluations are given enough weight. The legislative practice is dominated by the daily political agenda, procedural rules tempt politicians to fast reactions to societal problems by legislation instead of using other tools. The formal rules for creating and adopting legislative acts, including those contained in the constitution, are also very flexible. Laws are generally conceived not as instrument of policies (or implementation of Cabinet programme) but as tools to implement single political issue.

Parliament is burdened with legislative tasks, allowing insufficient time for thorough deliberation. Delegated legislation does not have the same importance as statutory one. Formal and institutional guarantees of rule of law (including the activity of the Constitutional Court) are preserved, but quality of legislation lags behind. During legislative drafting, formalities are observed yet impact assessments and consultations are often performed perfunctorily or not at all. Justifications for legislative proposals are regularly prepared (as procedural rules foresee), but the real aim of legislation mostly remains unclear. Constitutional compliance and legislative rules are controlled during the whole drafting process at multiple stages (quality-checking by the MoJ at inter-ministerial consultations, Committee for Legislation in the parliamentary phase), unfortunately strategic questions like ‘which kind of legislation is needed’ (if any) are

⁴⁰ Law no. CXCV/2011 on State finances.

⁴¹ Gajduschek 2016, *ibid*, p. 811.

hardly raised. Concepts (green papers etc.) are not prepared or consulted, instead, long paragraphed legislative proposals are drafted in the first step of the procedure.

All this lead to the change of legislative roles. In ideal circumstances, politicians define the main targets or concepts of legislation, and the expertise of the ministries define the tools to reach them. The Hungarian practice shows the contrary: very often civil servants define political targets by choosing legislative tools and drafting legal texts, and politicians consequently debate over detailed provisions of legislative proposals.⁴² Government's legislation is characterised by political agenda-setting implemented by legal procedures and expertise, wider policy aspects (societal, sustainability) are often neglected. Despite these deficiencies, the legislative system is still able to handle and coordinate professional and complex procedures, which – in times of constant ongoing policy reforms and increasing quantity of EU-legislation to be transposed – is clearly an advantage.

⁴² G Gajduschek 'A közpolitikai célok megjelenése a jogban' in J Szerk and G Gajduschek (eds), *A magyar jogrendszer állapota* (MTA TK 2016).