

3. Weak but not powerless: The position of the president in the Hungarian political system

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Introduction

It is a commonplace of Hungarian politics that the head of state has a weak, constitutionally limited position. On a closer look, however, several important factors seem to worth analysing. While the strong head of state is part of Hungary's long-term traditions, during the transition from communism to democracy, its role became constitutionally weak. This discrepancy would suggest broad opportunities for strengthening the informal position of the president still; only isolated efforts have taken place for the last two decades which, however, can always be traced back to the formal frameworks.

The chapter proceeds as follows. After a short historical background, the subsequent section describes the formal position of the Hungarian president providing a general outline of the legal framework and its interpretation by the Constitutional Court. The competences of the president are analysed from the viewpoint of those which may contribute to the increasing engagement of presidents in politics. The main part of the chapter is devoted to how the presidents have built their informal positions with their relatively weak constitutional powers. On the base of political activity of the heads of state so far, we make an attempt to describe and separate different models of role perceptions.

Antecedents, traditions and historical background

Beginning from its foundation, Hungary was a kingdom until the early 20th century. As a result of the establishment of the Austro-Hungarian Empire in 1867, constitutional monarchy was introduced that existed until 1918.

The kingdom was abolished in 1918 and Hungary declared itself to be a republic. Although the kingdom was restored in 1920, no king had been crowned, and the national assembly voted to install Miklós Horthy as regent. According to the Act I of 1920, the regent's power was relatively limited (although by no means symbolic), in the next decades, however, his power had been systematically expanded. Given the fact, that the regent and the prime minister both had strong political affiliations, this period can be described as a kind of authoritarian semi-presidential system.

After the chaotic years of 1944–1945, the republic had been proclaimed by the Act I of 1946, which had simultaneously pronounced that the head of state is the president of the republic, possessing

limited powers.¹ However, the struggle for democracy was fated to fail since the communist party – by the support of the Soviet Union – systematically eliminated all of his opponents, and as a result, a communist dictatorship had been established.

Table 1: Simplified summary of the forms of government and head of state in Hungary²

Period	Forms of government	Head of state
1000–1918	kingdom	king
1918–1919	(people’s) republic	president of the republic
1919	conciliar republic	President of the Revolutionary Governing Council
1920–1944	kingdom	regent
1946–1949	republic	president of the republic
1949–1989	people’s republic	Presidential Council of the People's Republic
1989–	republic	president of the republic

Compiled by the authors.

The communist constitution of 1949 changed the state from a republic to a ‘people’s republic’ and abolished the institution of the President of the Republic. Modelled on the 1936 Soviet Constitution, the Presidential Council of the People's Republic (PCPR) had been introduced, which consisted of 21 members (a president, two vice-presidents, a secretary and 17 further members) and acted as a collective head-of-state. The PCPR exercised not only the powers of the head of state, but also functioned as the substitution to the parliament. When the parliament was not in session, most of its functions were exercised by the PCPR, which had the right to adopt a special kind of law, the decree law (a decree having the force of law).³

The head of state of the Hungarian parliamentary government

Political system

After the fall of the communist regime, Hungary was turned into a parliamentary democracy. The transition proceeded through the so-called round-table talks, the amendment of the constitution by the last parliament of the communist regime, a referendum, that affected the position of the head of

¹ On the role of Act I of 1946 in the debates on the role of the president during the transition see Szűcs (2008) and for its limited legal relevance after 1989 see Kovács (2001).

² The chart does not indicate some provisional periods (e. g. 1919–1920, 1944–1946).

³ The number of the laws adopted by parliament was extremely low through the whole era but the end of the 1980s. 227 laws were adapted from 1949 till 1987, which means an average of 6 laws pro year. Meanwhile the number of decree laws were as much as 1306 in this period (more than 34 pro year).

state, the first free and competitive election in 1990, and a few further amendments of the constitution at the beginning of the democratic era.

The main features of the Hungarian system of government are in line with the literature on the differences between presidential, semi-presidential and parliamentary systems. The head of state is separated from the head of government the latter being dependent on the confidence of the parliament while the former is without such political responsibility. Effectively, the president is not part of the government in the narrow sense of the term, although categorically, it makes sense to describe the Hungarian political system as adopting a dual executive.

However, a closer examination reveals the particularities of the political system that affect both the overall functioning of parliamentarism in Hungary and the position of the president. Regarding the former, it can be argued that despite the fusion between the executive and the legislative powers characteristic of modern parliamentary governments, there are features that institutionalize a 'parliamentary separation of powers' and maintain a dualism between the two. According to the constitution, the dissolution of parliament cannot be initiated by the prime minister and even the head of state is severely constrained in this regard. Effectively, it is only the legislature that can decide on its own dissolution, however, in turn, the position of the prime minister is strengthened by the constructive vote of no confidence. The strong Constitutional Court and its activist role, especially in the first decade after the transition, as well as the independent Central Bank are also features that, among others, suggest a deviation from a 'clear' parliamentary model. (Körösényi et al. 2009:265-273). Thus, the Hungarian version of parliamentary government reflects both the expectation of a potent government and the fear of concentrated rule of those who happen to win the election.

Altogether, the outcome of the transition was a parliamentary government in which the prime minister has become a central figure who on the one hand, is responsible to the legislature but, on the other, the latter is actually led by the former. Because of the presidentialization of the role of the prime minister and the constructive vote of no confidence, the Hungarian system of government can be compared to the German system of *Kanzlerdemokratie*. The emergence of the office of the prime minister both in terms of its formal and informal position became obvious in the late 1990s, shortly after the consolidation of the institution of the head of state. As it will be shown later, after the first presidential term, systemic rivalries between the two constitutional offices terminated and it became clear, that it is not the president who is the effective leader of the government.⁴

For the sake of comparability, we accept and stress the view of the mainstream literature according to which the Hungarian political regime is defined by the dependence of the executive on the confidence of the legislature or, at least, it is its most important feature (Strøm 1995: 53; Lijphart 1999; von Beyme 2000: 73; Laver 2006; Müller – Bergman – Strøm 2006). With regard to the constitutional position of the president, it makes sense to use Siaroff's (2003) dispositional combinations in the description of the system of government. Following this, firstly, the head of state in Hungary is not also the head of government which defines a dual executive. Secondly, the head of state is not popularly elected rather it is a normal session of the parliament that selects the president. Thirdly, the head of government is accountable to the legislature (Siaroff 2003: 294). This pattern suggests a weak president in Hungary, whose role is more than being only a figurehead but

⁴ On similar conflicts in more countries in the Eastern European region see Baylis (1996).

whose corrective powers (Siaroff 2003: 309) are limited. We describe these powers and their limitations in the following with regard to the political contexts in which they were shaped before we move on to the actual powers. Acknowledging the aims of this volume, however, we will not try to find out how the position of the Hungarian head of state can be moved closer to abstract comparative categories,⁵ rather, we will analyse it from the inside and interpret its powers according to the local political and constitutional context.

Developments after 1989

The position and powers of the head of state in the Hungarian system of government are rooted on the daily political conflicts of the transition. A particularity of the Hungarian parliamentary government is a typically weak head of state that however, in a few respects, is stronger compared to other parliamentary democracies. The explanation to this contradiction was the dual presence of trust and distrust in a political power that stands above parties and is able to handle their strives but at the same time is weak enough to be constrained by other political players in case the position would be seized by the communists.

The constitutional role of the president was shaped by the round-table talks during the transition, that is, a compromise between the ruling communist party and the new opposition forces also divided along internal ideological and tactical frontlines. Although the negotiations may be termed successful and crucial amendments of the constitution were applied to create a new political system (modifications were approved by the round-table but were enacted by the parliament of the old regime), the role of the president remained an open question even after the first free election in 1990.

It was the role of the president that provoked the sharpest conflict among the opposition forces during the round-table talks. The most contested issue was how the president should be elected; directly by a popular vote or indirectly by members of parliament. It was the aim of the ruling party to get the president elected directly for they hoped to win and safeguarding at least one important position by nominating the reform-leaning and apparently popular Imre Pozsgay. The centre right MDF (Hungarian Democratic Forum) led by the future prime minister, József Antall seemed to support the idea, partly because they hoped to maintain the communist party's cooperation in the transition process. However, the more radical parties of the opposition supported the president to be elected by the parliament after the first free election. Two parties, the SZDSZ (Alliance of Free Democrats) and the FIDESZ (Alliance of Young Democrats) even abstained of signing the closing document of the round-table talks that, regarding the president, included the direct election. Instead, they initiated a referendum on this question that, thanks to the smart tactics resulted in postponing the election of the president after the general election.

The constitutional position of the president was a compromise between the new government party and the largest opposition party just weeks after the election. The centre right MDF led by the prime minister and the liberal SZDSZ joined forces to amend the constitution by the necessary two-thirds majority. The agreement helped the government to become more autonomous and capable of

⁵ For an analysis of the methods and categories used to measure presidential powers see Fortin (2012).

running a potent and more responsible government (e.g. by reducing the number of bills that were bound to a two-thirds majority, even the budget among them). In turn, the major opposition party were entitled to nominate the first president of the newly founded republic.

A few important conclusions follow from the political circumstances outlined above. Besides the rule of the constitution (according to which the president safeguards the democratic functioning of the state), it is the mirroring of the government-opposition confrontation embodied in the prime minister and the head of state in the first term. From this, the expectation follows that the president should be a counterweight to the government. It was also a peculiarity of the Hungarian debate regarding the role of the president that it was more about the method of the election than the scope of the powers and authority (Kovács 2001: 354).

Competences of the president

The competences of the president may be categorized in several ways. Considering that this volume does not follow the viewpoint of constitutional law, we would refrain from in-depth analysis of the powers. It is more fruitful to emphasize those which may contribute to the increasing engagement of presidents in politics.

Given the fact that Hungary is a parliamentary republic, most of the president's powers are symbolic and a number of his or her actions and decisions require the counter-signature of a member of the government.⁶ The head of state has 'common' competences, for instance, he or she represents Hungary; sets the date for elections; appoints certain high officials; exercises the right to grant presidential pardons; may dissolve the parliament⁷. As for these competences, the president of the republic has limited power.

Some of the competences give him or her certain room for manoeuvre. Firstly, the two kinds of veto – the constitutional⁸ and the political⁹ – must be mentioned, which are often viewed as an indicator

⁶ The counter-signature is not a general requirement. The Fundamental Law of Hungary declares the actions and decisions which require and the ones which do not require counter-signature in two separated subsections. [Fundamental Law of Hungary, Article 6, Subsection (3)–(4)]. The judgement of the reasonableness of the counter-signature is rather controversial among the Hungarian scholars. Kovács (2011: 12) argues for the extension of counter-signature, meanwhile Szalai (2011: 79) brings on the abolishment of counter-signature.

⁷ The right of dissolution of parliament may be exercised only in two highly exceptional cases, under unusual circumstances. [Fundamental Law of Hungary, Article 3, Subsection (3)].

⁸ *"Should the President of the Republic consider the Act or any of its provisions to be contrary to the Fundamental Law, [...] he or she shall send the Act to the Constitutional Court to examine its conformity with the Fundamental Law."* [Fundamental Law of Hungary, Article 6, Subsection (4)].

⁹ *"If the President of the Republic disagrees with the Act or any of its provisions [...] he or she may return it, together with comments, to the Parliament for reconsideration on one occasion."* [Fundamental Law of Hungary, Article 6, Subsection (5)]

of the president's political activity.¹⁰ The use of the veto power (especially the constitutional one¹¹) may temporarily block the legislative process, thus, the head of state becomes a relevant actor of the political scene. However, the significance of the political veto should not be overestimated since it can be overridden by a simple majority of the parliament (contrary to Poland, for instance). Secondly, the head of state enjoys some autonomy in the field of nomination as well, since he or she shall nominate certain high officials to the parliament (e. g. prosecutor general, president of the Curia (supreme court), the commissioner for fundamental rights).¹²

The head of state has certain powers, which are rather unusual in a parliamentary republic and are often considered to be '*semi-presidential deviations*' (Kukorelli, 1995: 80), since he or she may initiate an act of parliament and may initiate national referenda (N. B. without counter-signature). Although these powers have never been used in the last two decades¹³, they might be powerful tools in the hand of a future president, who would aim to extend his political influence.

It must be highlighted that the legal status of the president (including his powers, duties and the method of election) is almost constant since 1990 and only minor changes have been made in the new Fundamental Law of Hungary adopted in 2011.¹⁴ Notwithstanding the unchanging legal framework, after 1990 the actual position of the president in the political system was not unambiguous at all.

Certain powers of the president were interpreted and specified by the Constitutional Court in the early 1990s. The findings of the Constitutional Court can be summarized in the followings:

Although the Constitution declared that "*The President of the Republic shall be the Commander in Chief of the Hungarian Armed Forces*", this competence had to be interpreted in a rather symbolic sense. As the Constitutional Court pointed out, "*This supreme command function was a constitutional one and did not thereby give him a rank or post in the Hungarian armed forces. Since the commander-in-chief was outside the structure of the forces, being its leader but not chief commanding officer, he therefore did not act as superior officer in respect of the armed forces since the commands (...) were issued by the commander of the Hungarian Army.*"¹⁵

¹⁰ The two kinds of veto have been used 86 times since 1990. For details, see Annex I.

¹¹ Until 2012 no deadline had been set for the Constitutional Court for its decisions. If an act had been referred by the president of the republic to the Constitutional Court, the introduction of this act may have been postponed for even a year.

¹² Despite this autonomy, presidents (with the exception of László Sólyom) used to consult with parliamentary parties on the candidates before making the nomination.

¹³ No more than three acts have been initiated since 1990, each of them by Árpád Göncz in the beginnings of the 1990s. National referendum has never been initiated so far by any head of state.

¹⁴ The Fundamental Law has refined some of his competences, redefined the power of the dissolution of parliament (although without any significant change) and amended the method of election.

¹⁵ 48/1991. (IX. 26.) decision of the Constitutional Court, Part A), Chapter IV. Translation: Sólyom–Brunner, 2010: 160.

All appointments, approvals and dismissals effected by the president become valid by the countersignature of the prime minister or the respective minister.

The president might not reject the appointment of a candidate (e. g. appointment of a minister or a state secretary) unless '*he is of the opinion that the necessary legal preconditions (e. g. Hungarian citizenship, professional qualification) for such appointments were absent*' or '*if he came to a well-founded conclusion that his compliance with the proposal could seriously endanger the democratic functioning of the State,*'¹⁶ Beside the previous aspects, the president has no right of discretion and he is not entitled to set up further conditions beyond the legal conditions of the appointment or dismissal.¹⁷

Concerning the president's position in the system of separation of powers, the Constitutional Court declared that '*the President of the Republic stands outside the executive power and has independent presidential powers. It cannot be derived from the Constitution that the Government and the President of the Republic hold executive power jointly and that they mutually monitor and counterbalance each other or come to consensual decisions.*'¹⁸

The previous declarations of the Constitutional Court were essential in the final clarification of the competences of the President. As seen above, the Court interpreted the powers of the president in a restricted way, thus, the conception of a 'semi-powerful' head of state that might be an effective counterweight of the government, has been defeated.

Constitutional powers and informal positions

Preliminary evaluation

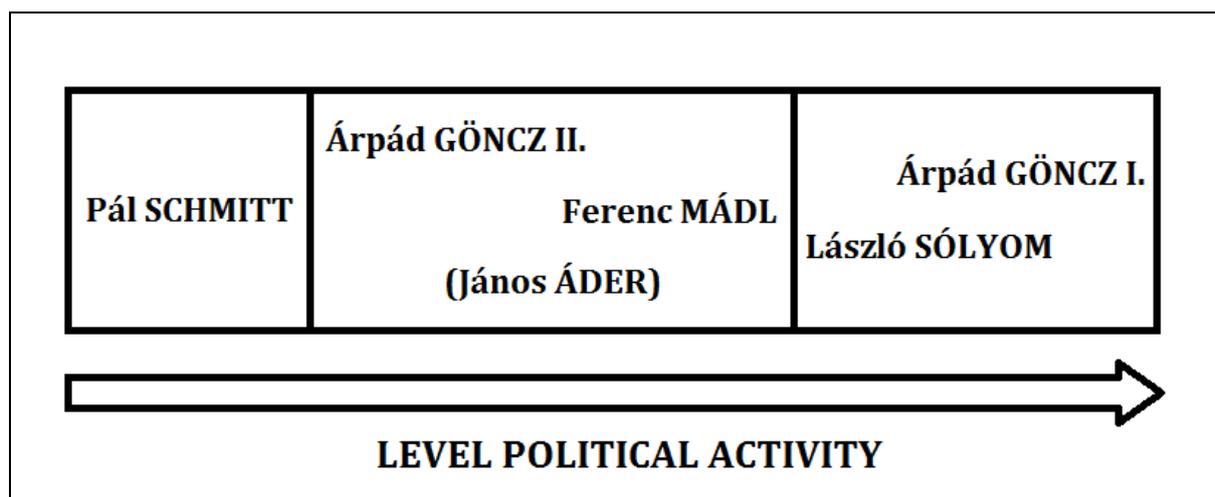
The Hungarian heads of state did not develop a strong and durable informal position that extended their constitutional roles. While there were cases when efforts were made by some to become stronger than a usual president of a parliamentary democracy, these remained isolated examples which did not create a pattern followed in subsequent terms as well.

Figure 1: Formal and informal activity of the presidents in Hungary

¹⁶ 48/1991. (IX. 26.) decision of the Constitutional Court, Part B), Chapter II. Translation: Sólyom–Brunner, 2010: 161.

¹⁷ 36/1992. (VI. 10.) decision of the Constitutional Court, Chapter III.

¹⁸ 48/1991. (IX. 26.) decision of the Constitutional Court, Part A), Chapter IV. Translation: Dezső, 2010: 98.



Compiled by the authors.

In figure 1. we have sorted the terms of presidents since 1990. The first term of Árpád Göncz, (the first presidency after the regime change) was mostly about the contestation of the constitutional limitations of the head of state. László Sólyom's presidency (in office between 2005 and 2010) was about redefining the role of the president, whereas his successor, Pál Schmitt even narrowed it. The remaining three terms (those of President Göncz's second term, Ferenc Mádľ's term from 2000 to 2005 and President Áder's ongoing term) could be described as being as close to the constitutional role as possible however, that does not mean that they were all weak on an equal level still, informal position broadening was not significant.

Examples of (constitutionally) limited positions

Before we would analyse the ways some presidents followed in order to broaden their informal position, it is necessary to describe shortly the examples of those who, at the first sight at least, remained close to the weak role of a head of state of a parliamentary democracy. All further cases of informal position building could be evaluated only if one has determined the basis from which exceptions seem to be really exceptions. In addition, the rules of the constitution cannot serve as measures or criteria of that basis, for it is always the application not the mere rules which are comparable. It follows that, theoretically, the examples of non-deviations cannot mean that the three presidencies in question (Árpád Göncz's second term, Ferenc Mádľ's term and the first year of the current president, János Áder) are nothing more than pure rule-following.

There are, however, some principles which should be considered in these cases too. Firstly, all presidencies imply some sort of informal position; politically, it is impossible to run a presidency according only to the constitutional rules. Secondly, all presidencies are influenced by contextual factors. These are, among others, the political landscape and the political agenda during the given term, the nature of political cycles, as well as the personal habits and political background of the actual head of state, etc. Thirdly, even if it is only about the authorities and measures provided by

the constitution, the selection of these creates a certain (and singular) presidential position that could be termed informal.

Whereas Árpád Göncz' first election was the outcome of an exceptional agreement between the largest government and the largest opposition party in 1990, his re-election five years later followed from the coalition between the socialists (Hungarian Socialist Party, MSZP) and the liberal party (Alliance of Free Democrats, SZDSZ) in 1994. Four years after the transition the socialists came back to power by winning the absolute majority of the mandates but because of certain political circumstances a coalition government was formed that possessed a two-thirds majority in the legislature. Gyula Horn, the future prime minister announced already during the campaign that his party is going to support President Göncz's re-election, a move that was intended to suggest democratic commitment from a political group which was created on the basis of the communist state-party only a few years earlier. Árpád Göncz who was a prominent member of the opposition to the communist regime, belonged to the future coalition partner SZDSZ, therefore, Gyula Horn aimed at reassuring them as well as the domestic and international public.

Although Ferenc Mádli had no real chances to become head of state (since the coalition had two-third majority), his nomination in 1995 was an important event in Hungarian politics. The Hungarian centre-right fell in pieces after its serious defeat at the election in 1994, and it was Fidesz's strategy the recreate its unity. The nomination and support of Ferenc Mádli, a former minister of the Antall-government was a sign that Fidesz is willing to join forces with the defeated centre-right forces. Moreover, it was personally Ferenc Mádli who helped to get Fidesz acknowledged among the conservatives and Christian-democrats.¹⁹ Five years later, when Árpád Göncz's second term terminated, it was, therefore, a sound move to nominate Ferenc Mádli again in order to exhibit continuity. Ferenc Mádli was elected only after serious tactical battle with the Smallholders' Party, the coalition partner that wanted to nominate its own party chairman.

After the resignation of Pál Schmitt in 2012 the Fidesz decided to elect János Áder as the new head of state. Unlike his predecessors, János Áder belonged to the inner circle of the party that nominated him. Until 2012, János Áder was a member of the European Parliament but he returned home when the two-thirds majority of the government parties decided to nominate someone with significant political weight after the unsuccessful half-term of President Schmitt. While President Áder has not served a full term as head of state yet, his example is worth to be mentioned because it can be characterized as a return to the role perception of the second term of President Göncz and the term of President Mádli.

Whereas, it is not as crucial as in semi-presidential systems, the political balance of forces during the term of a certain president is significant in relation to their formal and informal position. President Göncz commenced his second term in 1995 with a friendly political majority in the legislature but served his last two years during the term of Viktor Orbán's cabinet whose coalition came to power in 1998 as a sharp contrast to the socialist-liberal alliance. President Göncz's first term between 1990

¹⁹ Between 1996 and 2000 Ferenc Mádli chaired a rightist civic association that has become one of the most important organizations behind Fidesz. The Association of the Hungarian Civic Cooperation has been the host of Viktor Orbán's yearly 'state of the country' speeches since 1999, but its informal role is to provide intellectual background for Fidesz.

and 1995 was the most debated period in relation to the powers of the head of state (see section 4.3.) but he moved to the passive when a friendly coalition came to power. It is a proof of consolidation, however, that his relative silence continued after the right emerged again in 1998. Whereas, his first term was a clear intention to extend the boundaries of the institution he fulfilled, in the second, even the use of the formal powers showed a significant reduction of the involvement of the president in issues of governance. While he initiated 7 constitutional vetoes during the term of the centre-right government of József Antall, 2 political vetoes were initiated after the cohabitation terminated and only 1 during his last two years when the Fidesz was in power (see Table 3.). If president Göncz's first term exemplifies the role of the head of state as the counterbalance to the government (or, at least, an intention to create it), his second, in contrast, established the role of the president as the 'unkle of the nation' which later became an expectation related to the apolitical attitudes in the Hungarian society.

The second half of President Mádl's term also ended up in a different political landscape compared to its beginning. In 2002, the socialist-liberal coalition won the election but until 2005 the centre-right leaning president remained in office. Although the political differences were mirrored in the growing number of constitutional and political vetoes (see Table 3.), it did not result in the broadening of the position of the head of state. On the contrary, when President Mádl vetoed the act on hospitals in 2003 but the legislature passed it on the same day without actual reconsideration, a decision of the Constitutional Court²⁰ declared that the head of state cannot use the constitutional and the political veto successively but he or she has to choose between them. On the other hand, however, the same resolution declared that the political veto has to be taken seriously, that is, it needs to be, at least, reconsidered and be open to a debate in the legislature with real opportunity given to the president to participate the session. Being a professor of law and aristocratic in habit²¹,

²⁰ Declaration of the Constitutional Court, No. 62/2003. (XII. 15.).

²¹ Both the personality and the previous career of the presidents contributed to their understanding and shaping of the office. Árpád Göncz being an author and known for his translations of literary works, Tolkien's *Lord of the Rings* and works by William Faulkner among them, had the background of a 1956 revolutionary sentenced to death remained out of the public and professional life of the communist regime. It is not only because of this that he attempted to run an office as close to the ordinary people as it was possible. It helped him to shape his office as being above the party politics on the one hand but being involved in the sharpest political conflicts on the other as it was seen in his confrontations with the right wing cabinet of József Antall. President Göncz's successor, Ferenc Mádl took a more distant stance retaining the traces of his academic background. Whereas he was a member of the cabinet of József Antall, the understanding of his office was shaped more by his professional background than the political involvement after the transition. In contrast to him, László Sólyom, also a professor of law, was a more active personality being the former President of the Constitutional Court and an important figure of the Hungarian green movement a factor that remained determining during his years in the office. Similarly to Árpád Göncz, the resigned president, Pál Schmitt tried to become a head of state close to the people. Being a olympic champion and a public person well-known of his TV-program that promoted everyday sport before the transition, he exemplified an adaptive personality who was able to get along with the leaders of the communist regime so much so that he was a deputy manager of one of the most important hotels in Budapest which definitely was a position of trust in the communist era. In contrast to all of the previous presidents, János Áder did not have any significant professional past except for minor positions related to his judicial qualification. He has been a professional politician since the transition, a member, faction leader and the Speaker of Parliament. Consequently, if there are similarities in János Áder's presidency to the previous ones, they are not so

Ferenc Mádl remained strictly between the constraints of the rules of the constitution. However, partly because of this, his stance was criticized by some on the right for not intervening in the change of governments in 2004 when Péter Medgyessy stepped down as the prime minister and Ferenc Gyurcsány was elected by the same coalition. In fact, the head of state has no real authority in government formation according to the constitution but there were speculations that the 'nomination of the prime minister' might give the authority of an effective selection. In this regard, Ferenc Mádl reassured the limits of the formal rules of his office by ruling out any political intervention.²²

After the extraordinary but unsuccessful presidency of Pál Schmitt, the term of János Áder suggests a return to a limited but at the same time independent understanding of the office. However, the overall character of his presidency is not yet known that could be affected by, among others, the next general election in 2014 as well.

These narrow understanding of the office of the president suggests that if there are any differences at all regarding the informal position, they must depend on how the respective presidents were using the power of words.²³ That is, the designated issues they intended to emphasize, the conflicts in which they took a stand even without referring to their formal powers steps except for the constitutional obligation of 'safeguarding the democratic operation of state organisation.' Besides, there were certain values which all the presidents thought to be worth of emphasizing, for example in their inaugural addresses, however, neither President Göncz in his second term, nor President Mádl seemed to have a special agenda they declared to pursuit and so it is the case with President Áder. That is, as it will be shown later, that separates them from President Sólyom whose informal position was, at least partly, the outcome of the agenda he construed.

Contesting the constitutional framework: the first presidency of Árpád Göncz

In 1990, as a result of the MDF-SZDSZ pact, the Speaker of the Parliament, Árpád Göncz became the first elected president of the post-transition Hungary. Despite the restricted constitutional authority,

much related to his professional background as to the two-decade long traditions of the office, the patterns he inherited and the experiences of a professional politician. Besides, he is famously known for his cold-blooded and extremely moderate personality that is definitely reflected in his understanding of the office.

²² On the overall – limited – role of presidents in government formation in Hungary see Horváth (2009). On the legitimacy and the political context of the nomination of Ferenc Gyurcsány by President Mádl after Péter Medgyessy's resignation see Körösnéyi (2005).

²³ It exemplified both the power of words and the constraints of the powers of the Hungarian head of state, when President Mádl reflected upon the socialist Prime Minister's involvement in the communist secret service that leaked shortly after he was elected in 2002. According to the words of Ferenc Mádl, he did not know about the case therefore, he was not able to make his nomination to the office of the Prime Minister completely advised. Should the President have been informed of the facts in question, his role would have been by all means constrained. While Ferenc Mádl was able to indicate his disapproval, at the same time, he declared that the head of state does not possess the necessary powers to intervene in such a situation.

he tried to create a wider legal and political space and act as a counterweight to the government (Körösényi et al. 2009: 110). In more than the half of his presidency, there were continuous conflicts with the government regarding the presidential scope of authority. The conflicts resulted in declarations of the Constitutional Court that established and constricted the position of the president within the Hungarian political system²⁴.

Árpád Göncz had clear connections to the SZDSZ, the main opposition party of the first governmental period: he was a founding member of the party and even gained a mandate in the parliament in 1990. As president, he positioned himself to be the opposition to the prime minister and his cabinet and acted in line with his party's ideological position in his first tenure.

The first years of his presidency were about finding his formal position in the political system: the contingencies of the transition created 'blind spots' in the constitutional structure that seemed to offer opportunities for increasing the power of the president. Examining this counterweight function, one cannot separate President Göncz's political motives (his criticism on policies of the government) from the institutional ones: he tried to extend the power of the presidential office and this effort always resulted in a conflict with the governing parties. He did not follow any particular agenda but a reactive politics in a series of political issues and events. As we pointed out earlier, declarations of the Constitutional Court regulated the presidential institution. All of these decisions can be linked to the conflicts between President Göncz and the Antall cabinet.

In the first year of Árpád Göncz's presidency, the so called 'taxi blockade' set him against the government. The taxi drivers were protesting against the raising of the petrol prices by blocking the traffic of Budapest. The situation was near to the state of emergency; the whole political system was shocked by the out-of-law nature of the protests shortly after the transition, while the president even called upon the cabinet to withdraw the price raising,²⁵ obviously intervening in a policy issue appertaining to the cabinet. He also had an argument with the Minister of the Interior about the right to put the army in action because the Constitution declared that *'the President of the Republic shall be the Commander in Chief of the Hungarian Armed Forces'*. A few months later, the conflict was continued when President Göncz wanted to intervene in the appointment of the staff of officers. The Constitutional Court issued a declaration in September 1991 which clarified the situation: the commander-in-chief position is outside of the structure of the forces therefore, the president cannot act as superior officer with respect to the armed forces. The decision was a milestone in the establishment of the constitutional structure of the Hungarian political system, because it declared that the president stands outside the executive power and holds *'independent presidential powers'*.

Another infamous affair of the early 1990s, concerning the position and powers of the president was the so called 'media war'. In 1991 the government (with reference to a decree from 1974) wanted to place the public media under the supervision of the cabinet by appointing a vice president both in the directorate of the public television and radio. Árpád Göncz rejected the appointments and later,

²⁴ See the declarations of the Constitutional Court cited in 3.2.

²⁵ The 'taxi blockade' showed that President Göncz did not refrain from turning against the MDF government: he openly supported the taxi drivers against the cabinet, and after the incident he initiated a new law about the amnesty of the protesters.

he also refused to sign the relief of the television/radio directors whom the government saw as being biased towards the opposition. The strife was about whether the president has the right of discretion regarding government appointments or he has to approve them without hesitation. This affair also ended up in a declaration of the Constitutional Court that restricted the power of the president and severely limited the scope of possible rejections.

To sum up, the decisions of the Constitutional Court eliminated the 'blind spots' of the constitutional structure and in every cases restricted the power of the president. Therefore, Árpád Göncz's efforts to broaden the space of his presidential activity were fruitless. On the other hand, it is important to emphasize that his actions helped him to develop a 'political counterweight' role as the opposition's president: by continuously presenting an opposing political stance reinforced by the authority of his office, he could successfully hamper the Antall cabinet's work. Thus, he established the role of the head of state as a potential political player in daily politics by being active in conflicts.

In his first tenure, President Göncz used his formal powers actively: he regularly attended the parliament sessions and even took the floor 22 times. He also proposed three bills, a peculiarity among the powers of presidents of parliamentary democracies.²⁶ He used the constitutional veto of statutes moderately, while most of his objections were approved by the Constitutional Court.

Broadening informal position through agenda-setting: the presidency of László Sólyom

László Sólyom brought a radical change in the patterns of the modern presidencies ten years after the transition.²⁷ His past and his strong character destined him to redefine the office of the head of state. As former President of the Constitutional Court (between 1990 and 1998, under the terms of Árpád Göncz), he played an active part in shaping the institution of the president, that is, constraining its role.

László Sólyom's presidency might be characterized by his declared intent to become a passive head of state that, eventually, turned into unprecedented activity. Before his inauguration, he declared to break with the traditions of earlier presidencies. President Sólyom emphasized his independence from party-politics and wanted to change the image of the presidency. Borrowing his own words, he did not want to be the people's beloved president.²⁸ In his early interviews, he clearly pointed out

²⁶ No other president exercised this particular power after President Göncz's first term.

²⁷ Even his election in 2005 was unprecedented in the history of the post-transition Hungary. Because of the division related to the nomination within the governing coalition, the opposition managed to get László Sólyom elected. (Árpád Göncz was also a candidate of the opposition in 1990, but his election was a result of the extraordinary compromise between MDF and SZDSZ.) At the end of his term, President Mádl rejected to be nominated for a second term therefore, Fidesz and MDF supported László Sólyom, who was suggested by the environmentalist organization called *Védegylet*. President Sólyom had a peculiar coalition behind him that crossed the settled party cleavages: during days of the transition, he was a member of MDF, became a known environmentalist and a centrist who was supported by human right liberals and the centre-right parliamentary opposition as well. It was a factor that contributed to his independent and often anti-party role perception.

²⁸ Newspaper article: 'Nem akarok szeretett elnökünk lenni' Magyar Hírlap, 5th August 2005.

the directions of his presidency: First, he wanted to limit the number of his public appearances to increase the importance of his messages. Second, he did not want to initiate independent bills because, in his approach, a president cannot expose himself to the danger of the parliament's rejection. And finally, he also wanted to reduce meetings with political leaders to emphasize his independence.²⁹

His intentions, however, were coupled by a particular activity: he was the first president of the post-transition Hungary who had a pro-active agenda. One may identify two policy fields where he tried to broaden his presidential position: that of environmental protection and that of the Hungarian minorities in the neighbouring countries. Referring to the Constitution, he emphasized his responsibility for the Hungarian people all over the world and tried to build connections to the Hungarian civil society abroad by organizing a series of conferences and meetings. President Sólyom's commitment to the environmental protection was part of his political past but even this aspect of his role perception caused inner tensions in his presidential activity when he opposed the installation of a NATO radar.³⁰

His reluctance to liaise with leaders of the parliamentary groups in issues that required the cooperation of the head of state and the legislature, also led to several conflicts. While in cases of nomination (according to the rules of the Constitution) it is up to the discretion of the president whom he or she proposes to the parliament, the actual election has always been dependent on party cleavages. In this regard, President Sólyom took his constitutional role word-for-word; he expected the parliament to approve anyone he nominated; he conceived of his presidential rights to be truly independent. Since the problem concerned several nominations, fruitless debates and deadlocks followed harming the political position of the parties and the head of state alike.³¹ Besides, it should be mentioned that regarding the use of veto, he was by far the most active head of state compared to others (see Table 3.).

The political crisis of the autumn of 2006, the spark of which was the famous leaked 'we lied' speech by Prime Minister Ferenc Gyurcsány, evoked serious comments by President Sólyom. He

²⁹ Newspaper articles: 'Nem akarok szeretett elnökünk lenni' Magyar Hírlap, 5th August 2005.; 'Az emberi méltósághoz való jogot soha nem lehet korlátozni.' Népszava, 19th August 2005. 'Most tehát akasztják a hóhért.' HVG, 11th August 2005.

³⁰ On the one hand, László Sólyom fought for the preservation of the designated mountain's natural values, on the other, however, he had to take responsibility for the security of the country – even as the Commander in Chief of the Hungarian Armed Forces. In other cases President Sólyom achieved some success: he tried to establish the "network of green presidents", which resulted in a collective declaration of the Finnish, Austrian, Lithuanian and Hungarian Presidents on the preservation of Europe's environmental diversity.

³¹ For example, he nominated a Prosecutor General in 2006 without any recourse to the (governing) parties and he did not get the support of the parliamentary majority. However, the conflict affected other high officials such as the ombudsmen (whose nominations were rejected three times leaving the positions unfulfilled for months) and the President of the Supreme Court.

metaphorically revoked confidence from the Prime Minister as he was describing the situation as a moral crisis caused by the words of Ferenc Gyurcsány.³²

Among presidents after the transition, it was László Sólyom who most of all intended to create a strengthened informal position. Firstly, his strategy was to emphasize the independent position of the head of state in the Hungarian political system by referring to the Constitution and opposing the established patterns of how the office was ran by his predecessors. Secondly, his efforts were also supported by the designation of his own issues which helped him to be active on his own right instead of reacting only to the acts of the government or the legislature. Thirdly, opposed to his own declared intentions he did not remain in the background running a silent presidency, on the contrary, he was an active player of the daily political process.

Constraining informal position at free-will: the presidency of Pál Schmitt

The election of Pál Schmitt in 2010 had two unique features. On the one hand, compared to his three predecessors, he had much stronger party affiliation: he became the first president of the republic who was a par excellence party-politician.³³ It was a break with the practise existed after 1990 that active party-politician may not be nominated for president of the republic.³⁴ On the other hand, it is worth to mention that Schmitt's election did not take place in the middle of the term of parliament, but in line with the establishing of the new government, thus the office of the head of state became part of the patronage for the two-thirds majority. The new Fidesz–KDNP cabinet animatedly embarked on various reforms. In this unique political situation the government preferred a head of state who was not expected to become a strong political actor in the ongoing term.³⁵ So it did not come as a surprise that Pál Schmitt, before being elected declared that *'I will not be an obstacle to the legislative dynamism of the government but the engine of it.'*³⁶

The role perception of Pál Schmitt fundamentally differed from his predecessors, and may be described as unconditional loyalty. During his presidency, the parliament passed as much as 336 acts and the president, unlike his predecessors, never used the politically either the constitutional veto,

³² The relation of the two remained manifestly hostile: during the economic crisis in 2008 Ferenc Gyurcsány hoped to extend his elbow-room by summoning an extra-parliamentary consultation chaired by the President. 'The state functions not that way' – answered László Sólyom thereby hindering the strategy of the Prime Minister.

³³ In 2003, he became a deputy president of Fidesz. He led the party's European Parliamentary list in 2009.

³⁴ The MSZP made the first attempt to break this practise: in 2005 the party nominated Katalin Szili, vice president of the MSZP and current speaker of the parliament for president of the republic.

³⁵ That is the reason why the re-election of the outgoing president László Sólyom did not come into question at all. Despite his centre right orientation, being an autonomous head of state, he did not meet the requirements of the ruling party.

³⁶ Newspaper article: 'Meghallgatták Orbán Viktor államfőjelöltjét a Fidesz-KDNP frakcióban.' Népszabadság, 25th June 2010.

even though a number of laws had been adopted, which were heavily criticized not only by the parliamentary opposition, but also by Hungary's international partners and the EU (e.g. the media law). The Constitutional Court had afterwards annulled a number of laws which had been signed by President Schmitt therefore, it can be concluded that his constitutional measure did not function properly. Schmitt refrained from the veto even if the unconstitutionality of a certain law was obvious (e. g. the amendment of criminal procedure act).³⁷ Schmitt made no attempt to manoeuvre even in the field of nomination of high civil servants, since all of his personal propositions made to the parliament were in accordance with the government's expectations.

However, it does not mean that Pál Schmitt had no preferred issues; as head of state he wished to emphasize the protection of the Hungarian language, the propagation of healthy lifestyle, sports and the importance of lifelong learning as well as to represent the belief of the 'national togetherness'. According to his own political credo, he desired to create the image of a politician who is one among the people. It should be mentioned, however, that the president failed to achieve even his own under-positioned goals and thanks to his political mistakes he became constant target of criticism and at the end, after 21 months in office, he had to resign because of a plagiarism scandal.

In contrast to his predecessor (László Sólyom) President Schmitt was not successful in developing his own agenda in order to broaden his informal position rather, he looked for alternative fields of activity in place of the formal powers he 'gave up' at free-will. It can be concluded that the most important factor of President Schmitt's under-positioned term was his party-affiliation and his personal dependence on the Prime Minister's political will.

Evaluation and conclusions

According to our findings, while there were obvious efforts to broaden the role of the head of state in Hungary after the transition, no actual president was able to build successful politics based on such a strategy.

The most important factor behind the relatively weak informal position of the Hungarian presidents is a structural one; it is the system of parliamentary government in which rather the prime minister has become 'presidential'³⁸ than the presidents themselves would have been able to influence governments. That is, the formal and informal characteristics of Hungarian parliamentarism hindered presidents who tried to become more than the constitutionally role they were granted by the formal rules.

³⁷ This kind of attitude obviously differed from the period of 1995–1998 and 2000–2002. Although the political colour of the government and head of state more or less coincided, both President Göncz and President Mádl used their formal or informal powers if they found it justified.

³⁸ The 'presidentialization' of the Hungarian prime ministers can be observed in three fields (see Körösnéyi et al. 2009:273-274):

- strengthening the executive power within the political system
- increasing the independence of the prime minister from its party background
- personalization of the electoral campaigns.

Moreover, efforts to broaden the informal position of the presidents either proceeded from formal conflicts and dilemmas or ended up in formal decisions. The best example in this regard was the first presidency of Árpád Göncz whose attempts were constrained by declarations of the Constitutional Court. At the end, the consequence of the conflicts was the elimination of the blind spots that were leftovers of the contradictory transition agreements.

As a next conclusion, while anti-party sentiments are not far from the attitudes of the Hungarian society,³⁹ the presidents did not base political strategies on them and there were only a few attempts in this respect.

We found that among the informal measures, only public speaking (e.g. constructing an own agenda independent from the parties) was available to presidents who wished to broaden their position. However, the most consequent effort in this regard did not prove to be successful; the case of László Sólyom showed that independence from parties does not create distance from them rather; continuous conflicts follow which easily erode the perception of the office of the head of state as well.

To sum up, in Hungary, we conclude, the pattern is more complicated: leaning on formal powers (e.g. the use of veto) combined with the power of words can be a successful way of creating and maintaining presidential authority, at least within the frameworks of the parliamentary government. Thereby, formally weak presidents might be potent political players even without contesting the boundaries of the office.

Appendix

Table 2: Election of presidents in Hungary 1990-2012

President	Other Candidate	Election
Árpád GÖNCZ Affiliation: SZDSZ	-	<i>3rd August 1990 - first round</i> Yes: 295 votes; No: 13 votes
Árpád GÖNCZ Affiliation: SZDSZ	Ferenc MÁDL Affiliation: MDF-Fidesz	<i>22nd April 1995 - first round</i> Göncz: 259 votes; Mádl: 76 votes
Ferenc MÁDL Affiliation: Fidesz-MDF	-	<i>4th August 2000 - first round</i> Yes: 243 votes; No: 96 votes
László SÓLYOM	Katalin SZILI	<i>6-7th Juny 2005 - third round</i>

³⁹ The trust towards parties was constantly low since the transition. While in case of presidents it was always over 60% , the trust towards parties has stabilized around 35%.

Affiliation: Fidesz-MDF	Affiliation: MSZP	Szili: 183 votes; Sólyom: 13 votes (first round) Sólyom: 185 votes; Szili: 178 votes (second round) Sólyom: 185 votes; Szili: 182 votes (third round)
Pál SCHMITT Affiliation: Fidesz-KDNP	András BALOGH Affiliation: MSZP	<i>29th Juny 2010 - first round</i> Schmitt: 263 votes; Balogh: 59 votes
János ÁDER Affiliation: Fidesz-KDNP	-	<i>2nd May 2012 - first round</i> Yes: 262 votes; No: 40 votes

Compiled by the authors.

Table 3: Constitutional and political vetoes in Hungary (according to the political affiliation of the presidents and the cabinets)

Period	I	II	III	IV	V	VI	VII	VIII	IX
Year	1990-1994	1994-1998	1998-2000	2000-2002	2002-2005	2005-2010	2010	2010-2012	2012-
Government parties	MDF-FKgP-KDNP	MSZP-SZDSZ	Fidesz-FKgP-MDF	Fidesz-FKgP-MDF	MSZP-SZDSZ	MSZP-SZDSZ	Fidesz-KDNP	Fidesz-KDNP	Fidesz-KDNP
President	Árpád GÖNCZ (SZDSZ)	Árpád GÖNCZ (SZDSZ)	Árpád GÖNCZ (SZDSZ)	Ferenc MÁDL (Fidesz-MDF)	Ferenc MÁDL (Fidesz-MDF)	László SÓLYOM (Fidesz-MDF)	László SÓLYOM (Fidesz-MDF)	Pál SCHMITT (Fidesz-KDNP)	János ÁDER* (Fidesz-KDNP)
Length of the period (years)	4,0	4,0	2,2	1,8	3,2	4,8	0,2	1,8	0,8
Number of political vetoes in the period	0	2	0	1	5	28	3	0	9
Number of the constitutional vetoes in the period	7	0	1	3	10	15	1	0	1
Number of total vetoes in the period	7	2	1	4	15	43	4	0	10
Average number of vetoes pro years in the period	1,8	0,5	0,5	2,2	4,7	8,9	23,5	0,0	12,0

* Until March 2013.

Compiled by the authors.

Notes:

- 'Period': a new period starts if either the government or the president changes
- The unusual high number of average vetoes (23,5) at László Sólyom (Period VII) may be explained by the short length of this period. It lasted only two months, however, four vetoes were exercised. Similarly, neither the Period IX should be overestimated, since János Áder came into office only 10 month ago.