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Law Pertaining to Political Parties and Political Pluralism – Freedom of the Foundation and Functioning of Political Parties in Post-Communist Hungary

Abstract. This paper studies the law pertaining to political parties in Hungary, from the viewpoint of establishing and maintaining of political pluralism. In the period of 1989–1990, the transition from the one-party system to the democratic and pluralistic state of law could be followed up relative to the development of the law pertaining to the political parties, which is based on the rules that foreclose the contingent development of unconstitutional political system.

The paper reviews the concept of the political party according to the constitutional law, the normative framework of functioning and the regulations of the internal organization of political parties. The provisions of primary importance concern: a) equality of political parties, b) forbidden purposes and instruments, c) rules of incompatibility, d) state subvention. Rules concerning the internal organization require the openness and the prevailing of democratic will-making also inside the political parties, so contribute to the maintaining the democratic competition of political parties.

The author emphasizes the factors that determine multiparty-system, and argues that electoral thresholds and the effective method of state-financing of political parties contest the principle of equality and harm the fair-competition. Thresholds and subvention are both based on the effectiveness of political parties—though being capable to prevent the party system and the parliament from fragmentation, nonetheless, they prefer extensively, if not unconstitutionally, the political parties in the Parliament, so they can be seen as being designed to protect the current political elite.

Keywords: political parties, party law, political pluralism, state subvention of political parties, electoral systems/electoral law

Constitutionality, established by provisions affirming and demarcating rights as well as by rules safeguarding these rights as institutional guarantees of the prevailing social-political system provided under Constitutions, is principally a requirement to be observed by governments primarily as a sequel to the grievous experiences of history. The bewildering precedent of the Weimar Republic is only one regrettable instance to admonish posterity that no political establishment can dispense with the rules that foreclose the contingent development of

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unconstitutional political systems.¹ Nonetheless, according to András Sajó's view, effective Constitutions are not designated to safeguard future societies. Since Constitutions are mere corollaries of ("creations related to") the fears generated by previous political systems, they set forth the *modus operandi* of the exercise of political power.²

In view of the post-transformation constitutional processes in Central-Eastern-Europe, it is particularly valid to assert that Post-Communist political systems, by reason of disquieting historical experiences, intended to institute multifarious constitutional safeguards, so as to protect the pluralism of political parties. Therefore, the respective provisions can be construed with respect to the former exclusive role of the Communist Party. In this paper, we'll briefly expound the rules of the Constitution and other law governing political parties in Hungary framed with the purpose of legally substantiating and sustaining pluralist democracy and the underlying multi-party system.

As a matter of course, countries in the former Soviet-bloc had had to comply with the Stalinist "constitutional" pattern, therefore, they had implicitly declared the autocracy of the communist party (e.g., Hungary in 1972 set forth, "The Marxist–Leninist Party of the working class shall be the leading force of society.", Poland in 1952 stipulated, "The Polish United Workers' Party shall be the leading political force of the society designated to build socialism.")). Nevertheless, memories of the multi-party system prevailing in Hungary before the communist-socialist era had not faded by the time of the change of regime, when Parliament annulled the provisions substantiating the exclusive power of the Socialist Workers' Party under the Constitution. Nonetheless, as Halmai concurrently noted, law pertaining to political parties as a sub-division of the law of associations cannot *per se* ground the democratic functioning of the multi-party system, because these regulations have a limited scope of effect.³ Consequently, the observance of the effective legal environment established during the 18 years following the political transformation would be an in-

¹ See, Para. 59 of Decision of 1995 of the European Court of Human Rights on *Vogt v. Germany*: "The Court proceeds on the basis that a democratic State is entitled to require that civil servants are loyal to constitutional principles, on which the State is founded. In this respect, the Court takes into account the calamities Germany had suffered under the Weimar Republic and during the woeful period that followed the collapse of that regime up to the adoption of the Basic Law in 1949. Since Germany intended to avert the contingent recurrence of those experiences, it founded the new State on the concept of a 'democracy capable of self-sustenance'."

² Sajó, A.: *Az önkorlátozó hatalom* (The Self-Limiting Power). Budapest, 1995, 18.

³ Halmai, G.: *Az egyesülés szabadsága* (Freedom of Association). Budapest, 1990. 161. For the discussion of law governing the one-party system, see, 135–139.

dispensable condition of the democratic functioning of the multi-party-system even in our days.

1. Freedom of the Foundation of Political Parties

1.1. *The Definition of Political Parties and Their Functions*

The freedom of the foundation of political parties is derived from the concept of the freedom of association, since political parties are construed as special associations to be governed by specific rules as to their purposes and functions. The specificities of law pertaining to political parties, which derive from their specific constitutional relevance established in 20th century, are adequately intelligible on the basis of the conceptual position of the pertinent rules. Scilicet, the freedom of the foundation of organisations is conceived as a civil right within the scope of the fundamental freedom of association under Art. 63 and the political freedom of the foundation and functioning of political parties is stipulated under Art. 3 of the Constitution of Hungary. Such reversed positioning of the pertinent regulation has been frequently criticised for its inconsistency,⁴ nevertheless, it can be justified on grounds of the prominent role of political parties as ‘intermediaries’ between the State and the individual, as instruments to effectuate the will of the citizens between elections.⁵

Political parties are not regulated under all constitutions, since the framers of constitutions tend to exclude that area.⁶ Nevertheless, the Constitution of Hungary specifies rules pertaining to political parties as follows: “Political parties [...] may be freely formed and may freely function, provided that they respect the Constitution and other law established in accordance with the Constitution” (Para. 1 of Art. 3), “political parties shall participate in the formation and declaration of the common will of the People” (Para. 2 of Art. 3), “political parties may not directly exercise public authority, therefore, they may not control State organs...” (Para. 3 of Art. 3). Whereas, it does not

⁴ On the pertinent provision of the Constitution of Poland of 1997, *see*, Chmaj, M.: Freedom of the Foundation and Functioning of Political Parties in Poland. *Polish Political Science*, 2001. 103.

⁵ Halmai, G.: *Kommunikációs jogok* (Rights Related to Communication). Budapest, 2002. 237. Quote from 206 BVerfGE 20, 56 (101).

⁶ Sólyom, L.: *Pártok és érdekszervezetek az alkotmányban* (Parties and Interest Organizations as Regulated under the Constitution). Budapest, 2004. 27. As Sólyom established, “the history of Hungarian codification cautions that *omnis definitio periculosa est*.”

circumscribe the concept of political parties, nor does other pertinent law, such as Act 2 of 1989 on Associations or Act 33 of 1989 on the Functioning and Finances of Political Parties (hereinafter: Act on Political Parties), therefore, it shall be construed on the basis of the specified functions. The latter statutes specify further conceptual elements of functioning, e.g., nomination of candidates for elections, democratic functioning, publicness of finances, exercise of public authority by representatives, reservation of membership for natural entities. Accordingly, political parties are civil organisations with extra functions (which, according to the current Head of State of Hungary, is a “staggering concept of political parties”). Although, the freedom of the foundation of political parties is construed as a form of the fundamental civil right of association, it may be limited by law pursuant to constitutional authorisation, so as to demarcate the manners and the scope of interference by the State and public authorities.⁷

1.2. Normative Framework of Functioning

a) Equality

The right of the foundation of political parties construed as associations shall be unrestricted as a condition of the equality and fair competition of political parties: the entry of new entities in the competition can be guaranteed in this manner.⁸ Furthermore, during campaigns, since the neutrality of public authorities is prescribed, each political party will have equal chances to become a governing party or a party in opposition.⁹ Equal opportunity is meant to be guaranteed by way of equal legal remedies or by the delegation of representatives to electoral committees pursuant to law governing elections, such as Act on Election Procedures,¹⁰ pursuant to Art. 3 of which, the equal chances of candidates are stipulated, whereas, Art. 106 provides that local public media shall at least once, free of charge broadcast political advertisements of nominating organizations and of candidates for mayorship in proportion to the nomination or electoral lists, from day 15 preceding voting to day 3 before voting. All independent candidates are entitled to exercise this right jointly, in proportion to their nomination. On the final day of the election campaign, national organs of media shall broadcast a round-up on eight nominating organisations that have put forward most candidates for representatives and mayorship on the

⁷ Halmai: *Freedom of Association. op. cit.*, 147.

⁸ Sólyom: *op. cit.* 64–65.

⁹ Halmai: *Rights Related to Communication. op. cit.*, 238.

¹⁰ Act 100 of 1997 on Election Procedures.

basis of a nation-wide aggregation. Joint candidates and lists shall be taken into consideration according to their rate of nomination.

Therefore, the provisions of the Constitution and other law underwrite political pluralism, since they treat political parties on an equal basis.¹¹ Equality, however, is fundamentally contested by the effective method of financing political parties by the State (see below).

b) Purposes and Instruments

The scope of objectives of political parties specified under deeds of foundation shall be supervised both upon registration and during functioning, as well. The most severe specified sanctions are the denial of registration and dissolution as a safeguarding measure, which independent jurisdiction is authorised to apply.¹² (N.B., The admissibility of dissolution by reason of risks known from history was a matter of debate in Germany and established with a view to hindering the reorganisation of totalitarian parties.)¹³ Nevertheless, according to the assertion of the current Head of State of Hungary (appointed to manifest the unity of the nation and to protect the democratic functioning of state organisation pursuant to the Constitution), “The dissolution of a political party is always a *political decision*. The judgement whether or why a party is deemed dangerous *in re* democracy is always dependent on *the actual political situation*, because *it is a preventive measure*.”¹⁴ Whereas, the European Court of Human Rights, which has been in several cases designated to decide on the substantive restrictions of the purposes of political parties, has consistently argued that the danger of the curtailment of democracy shall be an acceptable justification for limitations, especially for those the institution of which is necessitated by historical experience.

In 1998, in its Decision on *Socialist Party and others v. Turkey*, ECHR held that „one of the principal characteristics of democracy is that it creates opportunities for resolving the problems of a country through dialogue, without recourse to violence, even if those problems are irksome. Scilicet, a basic prerequisite of democracy is guaranteeing the freedom of expression, on grounds of which, no justification obtains for the elimination of a political group solely by reason of its endeavour to initiate and effectuate public debate on the situation of specific segments of the population and their involvement in public life, in order to seek democratic solutions to the mutual satisfaction of all

¹¹ Cf., Chmaj: *op. cit.* 110.

¹² Under Point d) of Para. 1 of Art. 3 of Act on Political Parties.

¹³ Halmai: *Freedom of Association. op. cit.* 143–144.

¹⁴ Sólyom: *op. cit.* 94.

parties concerned.”¹⁵ Concerning the appeal of another Turkish party, the Court argued that it derives from the core concept of democracy that diverse political programs may be put forward and debated, even those that contest the actual organisation of a State, provided that the respective programs shall not violate democracy.¹⁶

Nonetheless, according to the argumentation of the current Head of State of Hungary, the special protection of the freedom of the foundation of political parties as a civil right of party founders is recognised as constitutional on grounds of the function of political parties as mediators between the State and the People, i.e., of the relatedness of its content to the fundamental rights of communication. Substantive restrictions can be admitted exclusively with regard to this relation. Therefore, as opposed to the indication of the objective of the political party (which may be reduced to the phrase: performance of the constitutionally specified duties of political parties), the specification of political purposes under the deed of foundation of the political party cannot be made mandatory (may not be required) under Hungarian law, furthermore, neither the submission, nor the existence of a political program shall be specified as requirements for the registration of a political party.¹⁷ With respect to fundamental freedoms of communication and law pertaining to political parties, the provisions that guarantee the freedom of mass communication need to be highlighted, since the freedom of the media (as the main battleground of the competition of parties) is a universally recognised prerequisite of political pluralism safeguarded by the prohibition of censorship.¹⁸

Nevertheless, various institutional guarantees *de facto* obtain to delimit the scope of purposes and instruments. Accordingly, the Preamble of the Constitution stipulates that the Republic of Hungary is a state founded on the rule of law, which effectuates a multi-party system and parliamentary democracy, which, as an imperative, is further substantiated pursuant to Para. 1 of Art. 3 with a limiting clause. A safeguarding provision pursuant to Para. 3 of Art. 2 stipulates that no entity may attempt the forcible acquisition, exercise or the exclusive possession of public authority, consequently, every citizen has the right and obligation to take action against such attempts in all manners permitted by law. Furthermore, Para. 3 of Art. 3 precludes that political parties

¹⁵ Para. 45 of Decision of 1998 on *Socialist Party and others v. Turkey*.

¹⁶ Para. 41 of Decision of 1999 on *Freedom and Democracy Party (ÖZDEP) v. Turkey*.

¹⁷ Sólyom: *op. cit.* 65–66. and 76–77.

¹⁸ Cf., Garlicki, L.: Principles of the System of Government in the Republic of Poland. In: Sarnecki, P.–Szmyt, A.–Witkowski, Z. (eds.): *Principles of Basic Institutions of the System of Government in Poland*. Warsaw, 1999. 61–62.

exercise public authority directly. Accordingly, no single party may exercise exclusive control of a Government organ. Pertinent statutes prohibit the foundation of party organs in workplaces and provide that the exercise of the right of association may not involve criminal offences or a call for criminal offences and may not violate others' rights and freedoms. Furthermore, on grounds of the exercise of the right of association, no military organisation may be established.¹⁹

c) Rules of Incompatibility

Under the provisions of the Constitution, party membership shall be incompatible with the fulfilment of specific public offices, because the functioning of personae fulfilling these offices shall be attached to the requirement of impartiality, therefore, incompatible with the promotion of political causes. Consequently, the fulfilment of the offices of the Justices of the Constitutional Court and of the Head of State of the Republic of Hungary, of the Judiciary and the Persecution is incompatible with party membership.²⁰ The prohibition of party membership as to the official personae fulfilling offices of the armed forces, of the police is stipulated under Para. 4 of Art. 40/B. In its pertinent Decision on *Rekvényi v. Hungary*, ECHR held that the freedom of association of the applicant, i.e., the General Secretary of the Independent Trade Union of the Police, was not violated under Para. 2 of Art. 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms prohibiting party membership of persons fulfilling offices of the armed forces, the police and certain offices of state administration. According to the argument, "in view of the background of Hungary's recent history and the sustenance of a politically committed police force, which used to support a totalitarian regime

¹⁹ For a comparison, see, Art. 13 of the Constitution of Poland of 1997: The functioning of political parties and other organizations, the programs of which bear the marks of totalitarianism, Nazism, fascism or communism, as well as those whose programs or activities instigate racial or national hatred, admit recourse to force for the purpose of the obtainment of political power or of influencing State policy or secrete their organisation or members shall be prohibited. In Poland, pursuant to Arts 6–7 of Act of 1997 on Political Parties, it is also stipulated that political parties shall not implement or take over the implementation of duties of public authorities specified as such by law and may not organize or establish political party organs at workplaces.

²⁰ Cf., Para. 1 of Art. 30, Para. 5 of Art. 32/A, Para. 3 of Art. 50, Para. 2 of Art. 53 of the Constitution, cf., Para. 3 of Art. 178, Para. 3 of Art. 195 of the Constitution of Poland.

for decades, the Court considered the efforts to depoliticise the police by no means arbitrary.”²¹

d) State Subvention of Political Parties

Whereas, it is stipulated under the Constitution that the State shall not interfere with the competition of political parties, the majority of European states are actively involved in financing parties from the state budget. Such an arrangement has been established basically on the following grounds: on the one hand, with a view to the curtailment of the influence of private interest-groups, on the other hand, the more professional functioning of political parties as organs operating in the public sector should be facilitated by financial support.²² Nevertheless, party-financing raises the moot questions concerning the position of the State and the equality of political parties. As a matter of course, the revenues of political parties always affect their respective positions in the competition, furthermore, revenues are indispensable for persistence. Therefore, the State has a crucial role as to the maintenance of the competitiveness of political parties, consequently, it may also violate the principle of equal opportunity. Evidently, for the purpose of counterbalancing such defaults, formal and normative criteria as to the scale of state subvention will have to be stipulated, which preclude the consideration of the programs and ideologies of political parties.²³ This way, although, we may have reservations concerning the differences in financing parliamentary or non-parliamentary political parties, the current system of state subvention does undeniably sustain both the smaller political parties *in opposition* and the multi-party system. The current Head of State of Hungary raised the question, whether the State may be obligated to subsidise political parties, if they cannot perform their constitutionally stipulated duties without state support.²⁴ In view of the fact that the plurality of political parties (at least of two parties) is a prerequisite of the functioning of the current political and constitutional system, the answer needs to be affirmative. Therefore, the duties of the State encompass not only the recognition of political pluralism, but its promotion, as well, which implies the sustenance/organ-

²¹ See, Para. 57 of Decision of 1999 on *Rekvényi v. Hungary*. For commentaries on this decision, see, *Fundamentum*, 3 (1999) No. 3.

²² Enyedi, Zs.–Körösi, A.: *Pártok és pártrendszerek* (Political Parties and Party Systems). Budapest, 2004. 137.

²³ Sólyom: *op. cit.* 120.

²⁴ Sólyom: *op. cit.* 123.

sation of political pluralism and securing compensation in the scope of affirmative action for parties holding disadvantageous positions in opposition.²⁵

The effectual normative framework of public financing of political parties is provided under Act on Political Parties, according to which, the results of the previous election shall determine the admissibility of publicising the finances of a political party and the scale of public funding. The obtainment of 1 p.c. of the votes in national elections is stipulated for political parties as the lowest limit for entitlement to public funds. According to the German pattern,²⁶ Act on Political Parties further provides that the proportion of public finances may not exceed 50 p.c. of all revenues of political parties. This regulation, however, could not be upheld, in recent years, state funding has equalled the proportions of 80–0 p.c. of all revenues of parliamentary parties.²⁷

Within the purview of Act of 1990 on Remuneration, Cost Reimbursement and Other Benefits of Members of Parliament, the fractions of parliamentary parties are entitled to receive different amounts of funding according to their positions (in Government or opposition), such as a monthly amount equivalent to the basic remuneration of twenty-five Members of Parliament, furthermore, 30 p.c. of the basic remuneration of each member of the party/parties in government and 60 p.c. of the basic remuneration of each member of the parties in opposition shall be granted for the coverage of expenses of operation from the budget of the Office of Parliament.²⁸ Independent Members of Parliament shall be granted 75 p.c. of their basic remuneration in support of their work. The payment of a lower rate of remuneration for parties in Government can be explained by their privileged positions in state administration and infrastructure, whereas, the opposition in Parliament has been compensated by the specification of such a distinction.

2. Regulation of the Internal Organisation of Political Parties as Associations

In the followings, we'll provide a brief conspectus of the rather laconic regulation of the internal organisation of political parties under Hungarian law. As Halmai

²⁵ On grounds of the territorial lists of political parties. *Cf.*, Para. 2 of Art. 5 of Act on Political Parties.

²⁶ *See*, Halmai: *Rights Related to Communication. op. cit.* 243–244.

²⁷ Source: Financial reports of parties published on their websites.

²⁸ Before 01. 01. 2003, the respective rates had been 25 p.c. and 50 p.c., thus, the difference has increased.

noted in 1990, in countries that had been subjected to totalitarian regimes, Constitutions stipulate explicit rules pertaining to internal democracy. These rules and the conforming regulation under Hungarian law governing political parties are designated to prevent the deformation of political life by giving way to totalitarianism.²⁹

2.1. The Constitution of Hungary does not require explicitly that political parties and other social organisations have a democratic structure or function according to democratic principles. Whereas, Act 2 of 1989 on Associations does require that democratic functioning on the basis of the principle of self-governance is stipulated under deeds of foundation, that clause would need to be substantiated by the Constitution, since the stipulation of that requirement qualifies as a restriction of the constitutionally guaranteed fundamental right of association. Nevertheless, as the pertinent argument of the current Head of State of Hungary generally applicable to constitutional democracies demonstrates, the requirement of democratic functioning can be inferred from the Constitution: “If the Constitution establishes a democratic State, political parties, having a constitutive role in it, cannot function according to departing principles. The internal democratic structure of political parties derives from their constitutional functioning. If the duty of a political party is *the mediation the common will of the People towards the State, it will be organisationally apt* to manifest the political will of the People within the political party, which may shape the program and policy of the political party. Nevertheless, it is primarily *the role of political parties in shaping the will of the State* that requires democratic will-formation within political parties. [...] The State will be democratic, so far as mediation on the part of political parties guarantees that the People exercise sovereignty.”³⁰

To evade further ambiguity, we’ll attempt to render a definition of democratic functioning. Hungarian statutes don’t provide many guidelines. The Polish Constitutional Court, on the basis of the concept of political parties circumscribed under the Constitution, held that a political party should establish its internal organisation (membership and structure) on the democratic principles of equality and voluntary access. As Chmaj argued, “For the purpose of avoiding non-conformity of its purposes to the Constitution, a political party shall in its deed of foundation or other legal document define the purpose of its

²⁹ Halmai: *Freedom of Association. op. cit.* 147. Cf., Para. 1 of Art. 21 of the Constitution of Germany, Para. 2 of Art. 10 of the Constitution of Portugal, Art. 6 of the Constitution of Spain and Art. 49 of the Constitution of Italy.

³⁰ See, Sólyom: *op. cit.* 55–56.

foundation in relation to the scope of State policy and the purpose *per se* as well as the instruments specified for its realisation shall be democratic. [...] The phrase of 'democratic methods' refers not only to the 'external' scope of activities of a party, but also to its 'internal' activity."³¹ Russian law governing political parties provides a concise list of binding democratic criteria, which includes: the insurance of openness of structure, formation of party organs via elections and majority decisions made by members.³²

*2.2. Democratic Principles (that should govern the main aspects of the internal organisation of a political party are as follows):*³³

a) Openness

The finances of political parties are recognised as the most delicate aspect of public functioning. Therefore, Art. 9 of Act on Political Parties stipulates a warranting rule, according to which, financial reports of parties shall be publicised in the press or the Hungarian Official Gazette.

Membership in political parties is a further precarious element of openness, since the fundamental right of privacy encompasses the confidentiality of political commitment.

In its pertinent Decision, the Constitutional Court ruled that democratic political parties, which may not exercise public authority directly under Para. 3 of Art. 3 of the Constitution, may claim the protection of their documents or files similarly to other legal entities on grounds of the privacy of personal data under the provisions of the Constitution and other law. Although, pursuant to Act on Association and Act on Political Parties, the exercise of the freedom of association is attached to publicity in specific areas, such as finances and deeds

³¹ Chmaj: *op. cit.* 105.

³² Cf., Art. 8 of Act 95-FZ of 2001: The activities of political parties shall conform to the elements of voluntary membership, equality, self-governance, legality and openness. Political parties shall be free to determine their internal structure, objectives, forms and methods of their activities in compliance with pertinent Federal Law. Accordingly, the operation of political parties shall be public, consequently, information on their constituency and program shall be accessible for the general public. The formation of oligarchies shall be prevented by guaranteeing equal opportunity for the citizens of the Russian Federation (for men and women without distinction) as members of political parties for participation in the Supreme Bodies of political parties, for candidature for the positions of representatives and various offices in the organs of state administration as well as in bodies of local self-governments.

³³ Cf., Decision of 1952 of the German Constitutional Court (BVerfGE 2,1 ff.). Quoted in: Halmai: *Freedom of Association. op. cit.* 143.

of foundation, otherwise, functioning shall be attached merely to self-governance and the observance of democratic principles. Scilicet, the stipulation of public access to information of public interest under Art. 61 of the Constitution is a constitutional guarantee designated to promote the control of authorities that exercise public authority.³⁴

b) Freedom of Establishing and Terminating Membership

Restrictions of membership in political parties were already mentioned with respect to incompatibility, whereas, coerced membership is also prohibited. Some authors established that the citizens' unlimited right to acquire membership derives from the democratic features of the internal organisation of political parties.³⁵ Whereas, according to the judgement of ECHR, freedom of association does not imply freedom of accession to political parties, since associations are on no grounds obligated to admit all applicants.³⁶

With respect to the freedom of terminating membership in political parties, the provisions that guarantee voluntary withdrawal and preclude arbitrary exclusion are of great importance. Arbitrary exclusion is applicable, if the member is excluded for reasons indicated under the deed of foundation of the party, or, it is not the leader of the political party, but the Congress or other Supreme Body that decides on exclusion by a qualified majority. In some countries, political parties are obligated to include the rules of admission and exclusion as an obligatory element under the deed of foundation.³⁷

c) Majority Rule and Exclusion of the Leader-Principle

Democratic organisation evidently implicates these elements, however, Hungarian law governing associations and political parties is not explicit on these matters. What is merely stipulated under Art. 12 of Act on Associations is that the powers of the Supreme Body of the political party are secured by law, which is meant to prevent that an oligarchy in the party unsubstantiates internal democracy by acquiring the fundamental powers of members. Accordingly, the most important powers of the Supreme Body shall be: adoption and amendment of the deed of foundation, admission and exclusion of members, election of the Party Leader, liquidation of the political party, nomination of candidates

³⁴ Decision no. 34 of 1994 of the Constitutional Court (VI. 24.) (AB.), III. 2–3.

³⁵ For a summary of this view, see, Halmai: *Freedom of Association. op. cit.* 143.

³⁶ See, *Cheall v. United Kingdom* (1985). Quoted in: Sólyom: *op. cit.* 105.

³⁷ Hungarian law does not specify such a rule, nevertheless, see, Point (2) of Para. 1 of Art. 9 of Act on Parties in Poland, and Point c) of Para. 2 of Art. 21 of Act on Parties in Russia.

upon the election of representatives to State organs, adoption of the political program of the party. Nevertheless, as to practical experience, we can discern that Party Leaders have overwhelming and ultimate influence over general members.³⁸

d) Freedom of Expression of Members and Legal Remedies

Freedom of expression is exercised in the scope of active involvement in the activities of organs of the political party guaranteed under Arts 9–10 of Act on Associations. A member of the organisation may participate in the activities of the organisation, may exercise the right of election or may be elected to its organs. Any member of the organisation may apply for legal remedies *vis-a-vis* majority decisions in case of unlawfulness.

3. Further Factors Determining Political Pluralism

We cannot fail to mention other factors determining the functioning of the system of political parties constitutive of multi-party systems, which are of great importance with special respect to the competition of political parties and their equal opportunities. These may eventuate in a system of a duality or plurality of parties. The provisions of the Constitution that stipulate political pluralism may be expounded in their completeness exclusively with respect to these factors to be reviewed in the following:

3.1. Electoral Systems

Majority electoral systems are destined to favour the most powerful and successful party as well as ignore a large segment of votes, thereby, the composition of legislation fails to reflect the actual variation of the political standing of society. Due to the disproportionateness of such systems, the stability of government majority is satisfactorily achieved, which promotes the efficiency, but obstructs the accountability of Government. Whereas, proportional electoral systems further diversity in representation dependent on the size of constituencies, on the basis of a mathematical formula applied irrespective of the reach of political parties.³⁹ Therefore, in principle, the proportion of representatives in legislation conforms to the proportion of votes obtained by the specific party, which, however, may entail the instability of government. Mixed-systems,

³⁸ See, Enyedi–Körösényi: *op. cit.* 130–135.

³⁹ Quoted in: Enyedi–Körösényi: *op. cit.* 255–263.

such as the multi-mandate electoral system attempt to combine the advantages of the two basic systems.⁴⁰

Although, it is primarily majority systems that tend to generate two-party systems, the Hungarian party-system officiously progresses towards a bipolar structure, scilicet, in 2002 and 2006, the two largest political parties obtained 90 p.c. of the votes in national elections. Nevertheless, these results are putatively rather ascribable to electoral behaviour, than to the electoral system.

3.2. *Parliamentary Thresholds*

Both majority and proportional electoral systems establish thresholds as limitations of access to Parliament, so as to avert the fragmentation of the party-system and of Parliament.⁴¹ However, the system currently prevailing in Hungary obstructs the evolution and empowerment of new political formations, especially in view of the system of public financing of political parties, which further weakens the positions of smaller political parties. Thence, consequential and extensive groups of society lose the chance of representation in Parliament implying that their views fail to influence decision-making by the State and social will-formation.

Reservations concerning thresholds are grounded on the constitutional requirement of the equal opportunities of political parties. According to the argument of the current Head of State of Hungary, the institution of thresholds infringes the principle of equality, because, “although, the threshold limiting access of political parties to Parliament seems to be an objective criterion, the requirement of maintaining the efficiency of the functioning of Parliament cannot justify the prescription of holding the currently effective rate of 5 p.c. or other percentage of the votes for the admission of a political party to

⁴⁰ In Russia, which lacked political pluralist traditions, the electoral system was framed by reformers with a view primarily to the establishment of the multi-party system. The system of proportional election has furthered the formation of political parties and movements. Sakwa, R.: *Russian Politics and Society*. New York, 2002. 166–167.

⁴¹ The German *Bundesverfassungsgericht* ruled in 1952 that the 5 p.c. threshold (*Sperrklausel*) prescribed in Schleswig-Holstein was constitutional, since the stipulation of certain degrees of thresholds is admissible, but raising it above this level shall be unlawful. Scilicet, the maintenance of the balance of democratic representation and of the efficient functioning of the legislative organ is imperative. Nevertheless, thresholds are designed to prevent democracy from the fragmentation of the political system. (BVerfGE 1, 208.) Quoted in: Szente, Z.: *Európai alkotmány- és parlamentarizmustörténet* (The History of Constitutionalism and Parliamentarism in Europe). Budapest, 2006. 243.

Parliament.”⁴² On the contrary, emphasising efficiency entails similar dangers to those inherent in the unlimited proportional electoral system and threaten the functioning of legislation *per se*.⁴³

3.3. *The system of financing political parties*

We’ve expatiated on the main aspects of the effective system of state subvention of political parties, finally, we need to highlight its effects with respect to the previously mentioned factors of political pluralism. As we noted, the system is based on the principle of efficiency (formerly: aptitude) and on the results of the previous national elections. That system, however, tends to exclude newly emerging and small political parties, since it will recognise them as efficient, on condition that they reach certain results in extremely expensive national campaigns (relying on their own sources). According to this rationale, new and small political parties are expected to compete relying on their own resources, while it is public financing that accounts for the “efficiency” of political parties currently in Parliament.⁴⁴ Consequently, the gap between larger and smaller political parties is undeniably widening, since the political parties in Parliament are entitled to extensive, if not unconstitutional privileges, whilst, the ascent of smaller parties is sheerly precluded under the present system.

For the confirmation of this statement, we’ll inquire into the results of the national elections of 2006. Accordingly, four political parties in Parliament in the former parliamentary session obtained 97 p.c. of the votes. Only one party could surpass the prescribed 1 p.c. threshold of financing and a new party, that of the Christian-Democratic People’s Party was admitted to Parliament on the basis of a coalition agreement with Fidesz as its “pseudo” party. *Ceterum censeo*—the effective regulation of financing of the multi-party system is designed to protect the concurrent political elite.

⁴² Sólyom: *op. cit.* 114.

⁴³ Haberland, S.: *Die verfassungsrechtliche Bedeutung der Opposition nach dem Grundgesetz* (The Constitutional Concept of the Opposition pursuant to the Constitution). Berlin, 1995. 50, 56–57.

⁴⁴ *En passant*, according to the *Bundesverfassungsgericht*, elections are designated to facilitate efficient governance by a parliamentary majority, and this objective shall legitimate the override of fragmented parties. See, Ipsen, J.: *A politikai pártok [helyzete a Német Szövetségi Köztársaságban]*. In: *Államtan. Írások a XX. századi általános államtudomány köréből*. [The Position of Political Parties in the German Federal Republic. In: Takács, P. (ed.): *Political Science—Studies on General Political Science in 20th Century*]. Budapest, 2003. 726.