

The legal and political conditions of opposition parties in Central and Eastern Europe. An overview

edited by
Serena Baldin
Angela Di Gregorio



This volume focuses on the status, functions, and role of the political opposition in the frame of government of some Central and Eastern European countries. The rules and practices reinforcing the democratic decision-making process, or the ones that risk to jeopardise political pluralism by denying the opposition's rights, are key aspects to measure the quality level of a democratic Parliament. As these are issues at the core of constitutional democracies, a number of guarantees for the opposition should be provided directly in constitutions, parliamentary rules of procedure, or other sources of law. The essays included in this volume make legal scholars and political scientists reflect on the importance of status and role of political and parliamentary opposition to better understand the dynamics affecting transition to democracy, democratic consolidation and the guarantees for pluralism, both considering the good results and the democratic backslidings occurred in some countries of this geographical area.

The volume is one of the outcomes of the research activities carried out within the project “El Estatus jurídico-político de la oposición política en las Democracias representativas”, PI prof. Manuel Fondevila Marón - University of Lleida, funded by the Ministerio de ciencia e innovación of Spain (PID2020-117154GA-I00; MCIN/AEI/10.13039/501100011033), and within the project “The legal status of political opposition in the Western Balkans: a comparative analysis”, PI prof. Serena Baldin, funded by the University of Trieste.

SERENA BALDIN is Associate Professor of Comparative Public Law at the University of Trieste (Italy) and currently Jean Monnet Module Coordinator of the project “The Rule of Law in the new EU Member States”, co-funded by the European Union.

ANGELA DI GREGORIO is Full Professor of Comparative Public Law at the University of Milan (Italy), and the Editor-in-Chief of the Journal “Nuovi Autoritarismi e Democrazie” (New Authoritarian Regimes and Democracies).



BIBLIOTECA DELLA SOCIETÀ APERTA
STUDI E RICERCHE 14



BIBLIOTECA DELLA SOCIETÀ APERTA

Studi e ricerche

DIREZIONE EDITORIALE

Diego Abenante, Serena Baldin, Giuseppe Ieraci, Luigi Pellizzoni

COMITATO SCIENTIFICO

Francesco Battezzozzore (Università di Pavia), Matthijs Bogaards (Jacobs University Bremen), Bernardo Cardinale (Università di Teramo), Ian Carter (Università di Pavia), Marco Clementi (Università di Pavia), Giovanni Delli Zotti (già Università di Trieste), Paolo Feltrin (già Università di Trieste), Danica Fink-Hafner (University of Ljubljana), Damian Lajh (University of Ljubljana), Luca Lanzalaco (Università di Macerata), Liborio Mattina (già Università di Trieste), Leonardo Morlino (Luiss Guido Carli Roma), Damiano Palano (Università Cattolica Milano), Lucio Pegoraro (Università di Bologna), Franca Roncarolo (Università di Torino), Guido Samarani (già Università Ca' Foscari Venezia), Mauro Tebaldi (Università di Sassari), Michelguglielmo Torri (già Università di Torino), Luca Verzichelli (Università di Siena)

LOGO DESIGN: Pierax

This book is one of the outcomes of the research activities carried out within the project “El Estatus jurídico-político de la oposición política en las Democracias representativas”, PI prof. Manuel Fondevila Marón - University of Lleida, funded by the Ministerio de ciencia e innovación of Spain (PID2020-117154GA-I00; MCIN/AEI/10.13039/501100011033), and within the project “The legal status of political opposition in the Western Balkans: a comparative analysis”, PI prof. Serena Baldin, funded by the University of Trieste.

This book has been published with the financial support of the Department of Political and Social Sciences of the University of Trieste.



Impaginazione
Elisa Widmar

© copyright Edizioni Università di Trieste, Trieste 2023.
Proprietà letteraria riservata.

I diritti di traduzione, memorizzazione elettronica, di riproduzione e di adattamento totale e parziale di questa pubblicazione, con qualsiasi mezzo (compresi i microfilm, le fotocopie e altro) sono riservati per tutti i paesi.

ISBN 978-88-5511-441-7 (print)
ISBN 978-88-5511-442-4 (online)

EUT Edizioni Università di Trieste
via Weiss 21, 34128 Trieste
<https://eut.units.it>
<https://www.facebook.com/EUTEdizioniUniversitaTrieste>

UPI
UNIVERSITY
PRESS ITALIANE
Opera sottoposta a peer
review secondo
il protocollo UPI –
University Press Italiane

The legal and
political conditions
of opposition parties
in Central and
Eastern Europe.
An overview

edited by
Serena Baldin
Angela Di Gregorio

Table of Contents

- SERENA BALDIN AND ANGELA DI GREGORIO
- 7 The legal and political conditions of opposition parties in Central and Eastern Europe: an introduction
- MANUEL FONDEVILA MARÓN
- 15 The protection of political minorities in the European context
- GIUSEPPE IERACI
- 45 Governments and oppositions in the Parliaments of Central and Eastern European democracies
- FRANCESCO CLEMENTI
- 71 Parliamentary opposition in the Baltic states' experience: problems and challenges in the face of the Westminster model
- MAREK DOMIN
- 97 Political opposition in Slovakia: no explicit legal recognition but significant legal possibilities
- PÉTER KRUSZLICH
- 123 Opposition's rights in Hungary: constitutional framework and political practice
- JAN SAWICKI
- 139 The legal status of the opposition in Poland: many clues, no clear evidence, a significant deterioration as a consequence of the rule of law crisis

NATAŠA DANELCIUC-COLODROVSKI

179 Le statut juridique de l'opposition politique en Moldavie et
en Roumanie

IRENA FIKET AND DUŠAN SPASOJEVIĆ

205 Opposition in Serbia: oppression, delegitimization and
extra-institutional engagement

Opposition's rights in Hungary: constitutional framework and political practice

PÉTER KRUZSLICZ*

1. INTRODUCTORY REMARKS

When approaching the problematics related to the legal status of political opposition in Hungary, the first question to be asked is about the relevance of the matter. One would think that the constitutionally protected rights of the opposition are a technical or simply theoretical subject. As we intend to demonstrate in our essay, through the example of Hungary, those rights have a key-role in the functioning of a modern constitutional structure as they are contributing to the democratic exercise of political power.

In a theoretical perspective, democracy is one of the fundamental principles, one of the main pillars of modern constitutional structure. Also, in post-socialist countries like Hungary, democracy was the core-element to be defined or re-defined in constitutional transition, which, for these reasons, is

* Senior Lecturer in Constitutional and European Law at the University of Szeged (Hungary). The research was supported by the ICT and Societal Challenges Competence Centre of the Humanities and Social Sciences Cluster of the Centre of Excellence for Interdisciplinary Research, Development, and Innovation of the University of Szeged. The author is a member of the Digitalization and Democracy research group.

also called – not by chance – democratic transition or, simply, democratization. Hence, there is a particular interest to discuss the democratic functioning of a constitutional regime both from a normative and practical – law in action – perspective. As will be demonstrated, in Hungarian constitutional law the rights of political opposition are strongly protected but, in practice, the absence of a decent political opposition makes the regime dysfunctional. In other words, opposition rights are ill-functioning due to the inefficiency of the political system.

However, before drawing hasty conclusions, it is worth reminding why opposition is important in a constitutional democracy that is functioning according to the principle of representation and the so-called majority rule, especially in a parliamentary regime like the Hungarian one, strongly characterized by those principles. To answer this question, one should think about the general aim and contribution of democracy in modern constitutional regimes where democracy is a fundamental constitutional principle without proper constitutional definition. It is more precisely described in political science as the modern form of public authority. However, it is up to the Constitution to ensure the conditions of its functioning by guaranteeing free and general elections and fundamental political freedoms. When the public authority gains this modern form based on a special relationship between institutions and citizens, and its functioning is guaranteed by a constitutional framework ensuring free elections and the respect of political freedom, we can start talking about a true democracy.

Nevertheless, the real contribution and the basic aim of a democracy is to bring trust into the political functioning of a regime. In a modern constitutional perspective, this trust can be gained by enabling citizens to be represented, as well as by continuously proposing political alternatives, and ultimately by providing opportunities to change or to correct political actions in case of mistrust (Jakab 2016: 118-119). Therefore, modern constitutional law fosters representative democracy because this can achieve those aims in the above-mentioned framework. Representative democracy is one of the greatest achievements of modern constitutionalism, as Hungarian constitutional development also demonstrates. It can allow public opinion to shape, to control, and to guide political actions¹ while these actions are led by institutions.

¹ Using the words of Winston Churchill in the House of Commons the 11th of November 1947: «It has been said that democracy is the worst form of government except all the others that have been tried».

However, nowadays, the general crisis of representative democracy is one of the main challenges for constitutional law. Due to a variety of factors, a general mistrust of citizens in political institutions is evident, especially in developed democracies. To solve this problem, one proposal concerns the radical reform of democracy (Rousseau 2015), in order to strengthen direct, so-called deliberative or participative democratic instruments. In our opinion, this cannot be the solution, especially not in Central Europe as the problem with the democratic functioning of the constitutional system – if there is one – is completely different. To find a solution, a good approach might be to analyse the legal status of political minorities and to evaluate the problems with representative democracy. These aspects can be fixed, without radical changes, so as to gain back the trust of citizens by making them feel they are represented and by offering them the possibility of political alternatives.

In Hungary, the feeling of being represented has been acquired. According to surveys on public opinion and the results of general and local elections, the existing political majority benefits from the trust of citizens in a huge proportion. Moreover, when asked specifically about social and political values, citizens seem to feel represented by the same majority and its political choices and actions. However, the presence of political alternatives is manifestly missing. In Hungary, the opposition is extremely weak, and it fails to play its role in the proposal of alternative political programmes not only to gain trust, but also to contribute to quality political actions and a permanent debate in public opinion.

This condition is lacking due to a more than decade-long governmental super-majority. In our opinion, Hungary does not represent a case of democratic backsliding, but rather denotes the failure of the constitutional regime due to an exceptional political context. It is worth analysing this situation, especially because of its consequences on the everyday functioning of the constitutional framework.

With democratisation, when the regime changed in Hungary following the previous socialist monolithic political structure, pluralism was the most important constitutional value to be protected (Petrétei 1991). Since the constitutional rules ensuring pluralism have remained in force, the political minority has very important and well-protected rights. Given the current political context, the protection of those rights gains special importance to avoid the return of a monolithic regime.

Previously, there was expressed general mistrust by manifestations in October 2006 which were violently repressed by the political forces that are now in opposition. The political force benefitting from a two third

majority in Parliament has been able to develop a very efficient way of exercising public power, coupled with the same efficiency in political manoeuvres (Stumpf 2015: 8-14). This phenomenon is also present in other democratic countries. However, the absence of any political force capable of going to power in place of the current majority government has made the Hungarian situation very special.

In our opinion, the lack of an effective opposition is a very important factor in terms of constitutional structure. The absence of pluralism and open debate, as political alternatives in other spheres or even inside the existing political majority and debates, have repercussions in other areas of political life. In addition, especially from a constitutional perspective, parliamentarism can be weakened leading to a huge impact on the separation of powers and the constitutional equilibrium of institutions. Even though this is clearly a matter of “law in action”, the difficulty to solve this problem is due to the theoretical issues concerning the development of opposition.

The Hungarian constitutional structure has a strong parliamentary character. Given Hungary’s constitutional past, parliamentarism has always been a fundamental institutional principle. In parliamentary law, the issue of political minority and its constitutional protection appeared early in its history, even in theoretical terms (Kautz 1862: 313). After the changes caused by II World War and the totalitarian socialist regime, Hungary could have return to its constitutional legacy. The constitutional reform adopted by the current political majority has preserved those elements of Hungarian constitutional law in the Fundamental Law and in the legal framework developed after its adoption.

However, in such context, it is difficult to predict how the situation might change in the future in terms of the rebalancing of constitutional values. The existing opposition is unlikely to become a majority in spite of the free elections guaranteed in Hungary. This is due to its past failures and some manoeuvres that were more about political communication than the rights of opposition. Should it win the next parliamentary elections in 2026, the qualified majority is unlikely to be obtained. Thus, the opposition rights, in this case detained by the political forces of the existing majority, would be an obstacle in the realization of an alternative political programme.

Finally – and even more hypothetically –, if the existing minority should become a super-majority like the present one, it might be questioned whether it would turn the system into its own benefit by copying the existing way of exercise of the political power. The problem does not concern the majority which, by nature, would like to preserve its political power, but the failed

opposition. The latter would be a very weak political minority which, even though constitutionally well-protected and enable to renew itself, would not be capable to use its rights and to play the constitutional role of opposition. That situation might occur in a political context where opposition rights will finally become a guarantee for the actual political majority in case of any political change. This majority would use all constitutional and political tools to guarantee its position without any self-restraint. Meanwhile, due to an exceptional dividing political discourse spread massively by means of public resources, the government would make the opposition even weaker.

Following these introductory remarks, the exact definition of opposition as political minority in Hungarian constitutional theory should lead us to a normative but complex concept allowing to determine the so-called opposition rights as they are protected against the risk of arbitrary exercising of public power (§ 2). Then these rights are observed following four categories: those related to the functioning of the National Assembly, those concerning the law-making process and the control of the executive power, and finally the specific tools used for the direct political functions in a horizontal approach of the opposition (Kukorelli 1995; § 3). In the conclusions, the trustworthiness of our introductive remarks is placed under scrutiny.

2. THE DEFINITION OF OPPOSITION AND THE OPPOSITION'S RIGHTS IN CONTEMPORARY HUNGARIAN CONSTITUTIONAL LAW

The constitutional and legal protection, and hence, the legal and political definition of the opposition is based on the fundamental idea that the will and the action of the majority should be limited. The risk of an arbitrary exercising of the power was the core of the political thought of the Enlightenment (Montesquieu 2019) and it was, together with the ensuring the freedom of people, the main objective of modern constitutionalism². The system of checks and balances or the principle of separation or division of powers is the main constitutional guarantee against the arbitrary exercising of power. But, even though judiciary is declared as independent and, as in the modern constitutionalism more sophisticated and neutral institutions

² As Art. 16 of the French Declaration of the Rights of Man and the Citizen (1789) states, «Any society in which the guarantee of the rights is not secured, or the separation of powers is not determined, has no constitution at all».

(such as the constitutional courts) were developed in order to ensure the correct balance of powers, it does not seem to be enough.

In a dynamic approach of analysis to the political functioning of the state, an important challenge is to find a constitutional way to protect political minority (Tocqueville 2010: 212). That would be essential for a truly democratic system as it is the gage of pluralism and hence, the only way to ensure the possibility of democratic change in government by a proper dynamic between majority and minority and their eventual alternation. The political presence and action of minority are, first, protected by a proportional electoral system not giving all to the winner. This helps political minority to be able to play a political role even though not sustained by the majority's will. Also, its opportunity to have a say in the decision-making process is protected by the respect of fundamental political freedoms contributing to its evolution, or, at least, offering a possible application.

Of course, social context remains very important for the democratic functioning of a country. Not only the openness for the debate and a capacity of making its own political opinion should be developed, but also, as the famous Hungarian scholar István Bibó repeated, the people's courage is the true foundation of a democratic regime (Bibó 1986). Only if citizens will be able to listen and to step up for their convictions, democracy can be functional with the political majority and the opposition continuously making a proper dynamic work among them.

Coming back to a more legal and constitutional approach, it is important to highlight that with constitutional reform applied for the sake of changing the regime in 1989, in Hungary, both factors were guaranteed. The minority has been protected by a mixed electoral system which really considers proportionality. After some reforms, it remains – even though the system has been simplified – such: it is interesting to remember that if the parliamentary elections were held in Hungary according to the French or the British electoral systems, the actual political majority would have even more legislative mandates and there would not be almost any opposition force in the National Assembly. Also, political freedoms were guaranteed in a very high level, as the jurisprudence of the Constitutional Court proves, not only in the 90s (Sólyom 2001: 686) but also in the new century.

At the same time, Hungarian political context has never been opened to a so-called consensual democratic functioning. Political life in Hungary has been always conflictual, and, after constitutional transition, opposing, democratic forces one to the other in political debate. In order to ensure the stability and the efficiency of government – these goals have a special

relevance in a period of constitutional changes – the Hungarian constitutional regime was defined as openly founded on the principle of majority. However, as stated above, efficient constitutional guarantees were established to protect the minority.

In our opinion, in such context, the legal or normative definition of minority is more important than the political one, in order for these constitutional guarantees to be implemented efficiently to its benefit. However, in Hungary, no legal act contains the proper definition of minority. Neither the constitution nor the basic rules of the functioning of the National Assembly offer such a definition of the opposition which would be the way for the political minority to appear in the institutional framework. On the other hand, interestingly, some legal acts refer to opposition to ensure some rights to its benefit but, once again, without giving a general definition.

In such legal context, constitutional judges should think about a normative definition of opposition so that the legal protection can be guaranteed. The Hungarian Constitutional Court had this opportunity in a case related to the application of the newly adopted legal act on media (judgement no. 22/1999 VI.30). According to the definition proposed, the opposition is mainly constituted by the members of political parties taking no responsibility in the exercise of the executive power. This means that the normative definition restricts opposition to the political forces appearing inside the parliamentary hemicycle, and the characteristic that distinguishes the opposition from the political forces of the majority is that it is not participating in the executive power because the opposition parties are not taking part in the coalition agreement.

At the same time, the key-role of the opposition is also highlighted in this constitutional judgement. According to the judgement, opposition has three kinds of political functions. Firstly, even though the current opposition holds a minority position, it could participate in the development of the political will and, once the majority is gained, accordingly, it can lead to political action. Secondly, it has a very important role to play in controlling the action of political majority. Finally, the opposition should be in the condition to present political alternatives offering the possibility of correction to the political action.

Hence, the opposition is the set of political forces having no responsibility in government but that can participate in the development of political will and control the action of the political majority. When doing so, the opposition introduces some alternative ideas and programmes in the political debate; consequently, it might efficiently take part in the political compe-

tition for power. The opposition can only be a guarantee of pluralism considering that, contrary to majority that needs to remain united in order to be efficient in exercising the political power, it remains plural with different opinions exposed in public debate. As such, opposition parties can contribute to the constitutional dynamic of pluralism which is the main purpose of political parties.

For this purpose, Hungarian constitutional and legal provisions try to ensure rights for the opposition that are formally determined in a restrictive way – because of its function and its main characteristics – but in reality, according to their interpretation, defined in an enlarged way – because of its normative definition with regards to its political functions. Of course, the rules that favour the creation and the functioning of political parties as well as the fundamental political freedoms are very important for the opposition; in our opinion, according to the above-developed definition, in Hungary opposition rights are those that ensure parliamentary political forces the efficient realisation of the mentioned three political functions. In another way, their presence in the National Assembly is guaranteed by a mixed electoral system and the efficient protection of fundamental political freedoms. In addition, their functioning as well as their existence is sustained by the rules giving constitutional importance to the role that political parties play for pluralism. These rights are the ones that enable opposition forces to develop their political will, to control the action of the political majority, and to present political alternatives in an open debate.

3. THE OPPOSITION RIGHTS IN HUNGARY

The legal status of opposition in Hungary is defined by parliamentary law. As it has been explained, according to the normative definition of opposition produced by constitutional case-law, the members of the parliamentary groups of the political parties, which are not formally part of the government, represent the opposition. Also, their functions as taking part in the articulation of political will, are parts of our first formally restrictive definition.

Hence, when their particular rights are to be described, it is no surprise that they can be found in parliamentary law. According to the above-mentioned classification of four kinds of rights, some rights are related to the functioning of the National Assembly. The most important ones concern the participation in the decision-making process and the control over the action of the majority. However, some other rights can be determined as

concerning the direct political functioning of the opposition in the everyday activity of the Hungarian Parliament and some of these are related to the institutional functioning of the National Assembly (Smuck 2007: 140-176).

As a preliminary consideration, the setting of a new assembly offers important rights to opposition forces. Essential structural questions are decided when a new parliamentary term begins, and strongly protected rights are reserved for the future opposition, namely the political minority that appears after the election. For example, once the confirmation of the mandates of deputies and the settling of the parliamentary groups is over, even though the majority can decide about the presidency of the Assembly, proportionality or even parity between government and opposition are the guiding principles to form the parliamentary commissions.

Currently, there are nine parliamentary groups. This is the highest number of political groups. The former record was held by the hemicycle resulting from the first democratic elections when eight political groups were established. Among them, only two political forces are supporting the government, with 135 members over a total of 199 parliamentary mandates. A feature of Hungarian parliamentary life is that six of the opposition groups gained their mandates in an electoral alliance. Two thirds of them were selected from a shared list of left-wing parties. This means that they benefitted mostly from the proportional formula of the Hungarian mixed electoral system. According to parliamentary law, the opposition can establish numerous parliamentary groups so that it can benefit from the rights reserved to the political minority. However, from a political perspective, they are not really separated; on the contrary, they are closely related and not only because of their former alliance during the campaign. It is true that such an alliance during an electoral campaign makes it difficult for those forces to articulate their different alternative programmes. Once the parliamentary groups have been constituted, generally the biggest political force of the opposition annexes to it the most important representatives of the others group. Even though the existence of many opposition groups might seem profitable at first, it makes them less efficient when realising their missions: formally protected rights cannot be beneficial when the political context makes the opposition unable to take advantage of these rights.

As for parliamentary commissions, according to the principle of proportionality, among the fifteen commissions that are working in the current National Assembly, five are presided by a member of the opposition. This provides the opposition with important rights to participate more efficiently in the functioning of the parliament, offering different per-

spectives. However, the super-majority of the government's parties in the hemicycle and in the commissions often weakens such capacity of the commissions led by presidents coming from the opposition. In this matter, the highly conflictual attitude of commissions presided by members of the opposition is also to be blamed. In fact, because of the small number of opposition members, presidents are mostly using their rights for communication and not to negotiate political positions with government members in a more consensual way. Therefore, they cannot produce real results in their political action even though commissions could be a place to show their visions about timely political issues.

The principle of the equality of mandate ensures equal protection for the deputies of the opposition and for the members of government political groups. However, their everlasting conflictual position has resulted in many cases in the Hungarian parliamentary hemicycle when the presidency stepped up to sanction their behaviour by reducing their salaries. Of course, immunity protects them from prosecution, but according to parliamentary law, the presidency has important disciplinary competences. The current president has often used those competencies against deputies of the opposition, sometimes sanctioning dozens of them to pay financial penalties during a single parliamentary session.

The most important right that should or would protect opposition is related to the decision-making process where a huge number of domains can only be ruled by national acts adopted with the consent of two third of the deputies. This is a particularity of the Hungarian constitutional framework that was adopted during the constitutional transition. The number of fields covered by this qualified majority remains more or less the same. However, when the 2011 Fundamental Law was adopted the relevant number of fields in which a cardinal law must be adopted was criticised. In particular, the Venice Commission (in its Opinion adopted on its 87th plenary session, on the 20th of June 2011) demanded that the majority forces achieve a compromise for some fundamental domains, without obtaining any results. The same occurs for the appointment of some important state officials such as constitutional judges, general prosecutor, etc., when the same majority applies. The everlasting conflictual approach of the opposition does not help to make, even in such context, some consensual decisions.

In the decision-making process, the members of the opposition have the right to initiate new legislative acts and modify the proposals of the majority. Legislative proposals are often introduced by members of parliament and not by those of the government. The reason is simple: when a member

of parliament is the author of a proposal, the rules are less strict for its introduction and even the adoption can be quicker and easier. Once again, it is the conflictual character of Hungarian political life that is the obstacle for an efficient use of such right by the members of opposition. As for the presidency of the commissions, this does not help them to play an effective opposition role.

The political opposition can also appear in ordinary public life and try to make real changes outside of the parliament. For example, the use of the so-called obligatory referendum (when the result of a referendum is binding for the Parliament in the adoption of a legislation) is a good opportunity for the opposition to gain attention and propose alternatives. However, the sad experience of invalid referenda discourages the opposition from the use of such instrument in the decision-making process. It is important to highlight that after the change of regime, only one referendum was successful³. All the others, more than a dozen, failed to attract enough voters independently of the source of their initiative. For example, the last failed referenda were proposed by the government to reinforce its political position on immigration and children's protection against so-called LGBTQI-propaganda. Clearly, it is not simple for the opposition forces to collect enough signatures for the initiative in order to organise a referendum. Then, they can be almost sure that the referendum will be valid. Naturally, the initiative can also be used for political communication as has been the case.

It is likely that the control of government activities reserves the most important rights for opposition. This is not the case of the question of confidence, due to the huge majority required that cannot be really raised. The accountability of the government before National Assembly remains one of the fundamental principles of Hungarian parliamentary regime, even when a huge majority supports the government's position. In the application of this principle, the opposition benefits of important rights. For example, the transparency of the parliamentary debate gives the opposition the opportunity to point out the errors or the dysfunctions in the action of the government. Also the right to call for a parliamentary session gives the opposition an occasion to create a space for political debate. These rights can be activated even by a small number of members of parliament.

³ With the well-known exception of the two other valid referenda on the accession to the NATO and the EU, but in these cases the constitutional criteria were modified in order to be sure of their validity.

Concrete instruments of parliamentary control are, first and foremost, written questions, interpellations, and direct questions. About four-fifths of these instruments are used by the members of opposition, making them able to ask the members of government and also other state functionaries in their field of activity any questions. These questions and interpellations, together with the possibility to take the floor for any subjects before and after the session, offer a great opportunity for political debate that is, surely, in a very conflictual way, in use even by the current opposition. It must be said that the members of the government and even the Prime Minister are often at the disposal of the members of the opposition for this exercise which can be once again a tool for political communication but is certainly a moment of open political debate benefiting both government majority and the opposition forces depending on their ability to dispute.

A more detailed and technical method of control is the audition before parliamentary commissions. These auditions can help the opposition to control the activity of the government. On the other hand, as stated above about the presidency of commissions, the more restrictive publicity of the relative meetings, and the specific character of these sessions giving less space for exercising the conflictual political communication tools, make this instrument used less by the members of the opposition. However, when the commissions are working on matters that are more politicised or more tangible for the public opinion, they can be also an interesting control measure.

Finally, there are some rights reserved to the opposition that we can qualify as related to its direct political functions. The most important is the right to speak reserved to members of parliament. Of course, the question raises as to how to prevent the misuse of such right. Filibustering is always an important risk. However, as demonstrated by relevant case-law of the Constitutional Court (judgement no. 12/2006 VI.24), in Hungary the right to speak of the deputies, especially those belonging to the opposition, is well protected.

As stated above, this right gives the members of the opposition the opportunity to take the floor before or after the session and to participate in the definition of the agenda of the session. Even though the president of the National Assembly and the Committee of the House play the main role to define the order of the daily session, the members of the opposition can influence the calendar of the sessions. They are present in the Committee of the House which has the function of a bureau of the Parliament and decide, among others, about the proposals for the agenda, and they also have the possibility to initiate changes, or to ask for proper session, for example to debate the matter of their choice.

The transparency in the functioning of the Parliament offers the opportunity for political debate. The above mentioned conflictual attitude can also be openly played out in the use of those opportunities. These rights are often used by the present opposition. Their members are frequently taking the floor even though with its super-majority the political forces of the government are limitedly affected. These tools are mostly used for political communication, as they do not allow the opposition to realise the above listed functions.

In the Hungarian parliamentary law, the political forces of the minority have important and guaranteed rights. However, those rights become empty when, first and foremost, there is a super-majority in Parliament. The constitutional and legislative guarantees for the respect of the parliamentary character of Hungarian constitutional regime are, on the contrary, instruments for the governmental majority to satisfy its temptation in anchoring power. The rights of opposition are also empty when the political forces of the opposition renounce playing their constitutional role and simply try to benefit formally those rights without giving them the adequate content. The conflictual approach is an obstacle for substantial parliamentary work. Only the tools enabling the opposition to make its voice better heard are used in actuality by the record number of parliamentary groups of the opposition. They fight for their very existence without being able to propose real alternatives and without realising when parliamentary rights allow them some alternative political actions.

4. CONCLUSION

To conclude, it is to be remembered that Hungary has a constitutional legacy of strong parliamentarism. It has developed under an unwritten, historical constitution and achieved a liberal, parliamentary, modern constitutional stage of its evolution by the end of the 19th and the beginning of the 20th century. The constitutional transformations following the First, and especially the Second World War, under the occupation of the Red Army and the rise to power of the communists, made the parliamentary character weaker and subsequently non-existent in a monolithic, socialist regime.

When the contemporary constitutional framework was established during the democratic or constitutional transition, political pluralism became one of the foundations of the new regime. This pluralism, on one hand, wanted to be opposed to the monolithic, socialist era; on the other hand, it was also established to protect the new democracy against the risk of the return of the former regime.

This pluralism was constitutionally protected, especially with regard to political parties recognised as the main structure contributing to its existence. The free and universal elections were constitutionally guaranteed, and the protection of the political freedom gained special importance. However, the constitutional guarantees of those two main conditions were not judged as sufficient. According to the principle of the separation of powers, in addition to the independence of the judiciary, the establishment of neutral but politically influential institutions, such as the Constitutional Court, and the dynamic balancing between legislative and executive power were decided. With regards to the equilibrium between legislative and executive power, the protection of the political minority was an important matter.

Hence, even though without a proper legal definition, but with determined functions and constitutional protection, the opposition benefitted and is continuing to benefit from relevant rights. This opposition is considered to be composed by political parties that have parliamentary groups without any responsibility taken in governmental activities. Even though such a normative definition seems to be restrictive, its precise character coupled with the main functions defined also by constitutional case-law, helped to give efficient protection to the political minority, especially in parliamentary law.

The main constitutional role of the opposition is to contribute to the representation of people and hence to the conservation of citizens' trust by representing the political will of an existing minority and by developing political alternatives. Such alternatives can become an instrument of correction of the political action if the former minority becomes a present majority. Opposition functions are the participation in the articulation of political will, the control of the action of the political majority, and the promotion of the above-mentioned alternative programmes. It is for the purpose of such a constitutional role and for the realisation of these missions that opposition rights are guaranteed.

Some of these rights, such as the participation in the settling of a new assembly, and the presence in the organised internal structure of the parliament ensure a position that makes the opposition able to realise its missions. In addition, in the decision-making process and in the political control over the action of the government, these rights are protected in order to allow the development of these functions.

However, in the present political context, where for the last thirteen years the same political majority has had a super-majority in the National Assembly, the structure seems to be turned upside down. In our opinion,

this is due to some manoeuvres of the majority and to the lack of any self-retainment, and especially to the lack of action and renewal of the opposition. Indeed, the latter is not capable of playing its role and realising the above-mentioned functions: taking part in the articulation of political intentions, being able to control the actions of the political majority and introducing alternative programmes into the political debate. At the same time, it benefits – at least formally – from the so-called opposition rights frustrating their real content because they use them in a conflictual approach for the sake of political communication.

The above enumerated rights and tools provided for the political minority, the so-called opposition rights, are not able to enhance the parliamentary character of the Hungarian constitutional structure. In the presence of a super-majority, but also in the absence of a decent opposition, this structure is upside down, and, as there are no constitutional tools to sanction a democratically elected super-majority, until a strong and able opposition appears, there is no chance for rebalancing the system. Hence, the public opinion, until then, will not have the opportunity to choose between alternatives and to shape, to control, and to guide, in this way, the action of the government.

BIBLIOGRAPHIC REFERENCES

Bibó I.

Válogatott tanulmányok, vol. II, Budapest, Magvető, 1986.

Kautz Gy.

Politika vagy országászat, Pest, Heckenast, 1862.

Kukorelli I.

“Kormány és ellenzék az új házszabályban”, in Kukorelli I. (ed.), *Az alkotmányozás évtizede*, Budapest, Korona, 1995.

Jakab A.

Az európai Alkotmányjog nyelve, Budapest, NKE, 2016.

Montesquieu Ch.S.

De l'Esprit des Lois, Paris, Flammarion, 2019.

Petrétei J.

“Ellenzék a parlamentáris demokráciában”, in Ádám A., Kiss L. (eds), *Elvek és intézmények az alkotmányos jogállamban*, Budapest, Lukács György Alapítvány, 1991.

Rousseau D.

Radicaliser la démocratie, Paris, Seuil, 2015.

Sólyom L.

Az alkotmánybíráskodás kezdetei Magyarországon, Budapest, Osiris, 2001.

Smuck P.

Ellenzéki jogok a parlamenti jogban, PhD-thesis, 2007, <http://www.sze.hu/~smuk/DoktoriIskola/Fokozatszerzes/Smuk/Ellenzeki_jogok_Smuk.pdf>.

Stumpf I.

“A kormány alkotmányos jogállása”, *Új Magyar Közigazgatási Jog*, 2, 2015.

Tocqueville A.

De la démocratie en Amérique, Paris, Flammarion, 2010.