

Separation of powers in the Hungarian State

The organizational structure of the Hungarian State, effective from 1 January 2012, is itself proof that Hungary has not weakened its system of checks and balances, and that the principle of the separation of powers is still in place. In contrast to the previous Constitution, Paragraph 1) Article C) in the first chapter of the Fundamental Law explicitly states that “the functioning of the Hungarian State shall be based on the principle of separation of powers.” The principle of separation of powers also applies consistently to specific provisions of the Fundamental Law on state organization.

The Fundamental Law states that Hungary shall be an independent, democratic state governed by the rule of law; the supreme body of popular representation of the state shall be the legislative branch: Parliament. Hungary’s Head of State shall be the President of the Republic, who shall be elected with a two-thirds majority in Parliament, and who – as a so-called “neutral branch of power” – shall have authority of a mainly symbolic nature, embodying the nation’s unity and safeguarding the democratic functioning of the State.

The Fundamental Law states that the Government shall be the general body of executive power, with several central and regional administrative bodies. The Prime Minister shall be elected by Parliament with a simple majority, and Parliament may also express lack of confidence in the Prime Minister. As part of its supervision over the Government, Parliament shall address questions to government members, and may also set up committees of inquiry.

The judiciary shall comprise independent courts, the supreme body of which is the Curia. The President of the Curia shall be elected from among the judges by Parliament at the nomination of the President of the Republic. Judges are appointed by the Head of State, at the nomination of the President of the National Judicial Office, based on a preliminary procedure set out in a cardinal Act, and carried out with the participation of judicial bodies of self-governments. As regulated by a cardinal Act, the President of the National Judicial Office carries out the central tasks of management of courts (except for the Curia, which has its own management), respecting the constitutional principle of judicial independence. The President of the Curia shall be elected from among the judges with a two-thirds majority of the votes of the Members of Parliament. As stated in the Fundamental Law, prosecution services shall act independently of the Government in prosecuting cases involving unlawful acts and omissions; they shall be led by the Supreme Prosecutor, who is elected with a two-thirds majority of the votes of the Members of Parliament.

In addition to the clear separation of traditional state bodies of the legislature, executive and judiciary, the Fundamental Law also enforces the division of powers and the principle of

checks and balances with regard to the formation of other state bodies and their relationship to each other.

The Constitutional Court shall be the supreme body for the protection of the Fundamental Law. It can review the constitutionality of laws and regulations – either adopted by both the legislature and the executive but not yet published, or adopted and published – and can review any court ruling for conformity with the Fundamental Law, upon constitutional complaints. The Constitutional Court can also review legislation to determine whether it conflicts with international treaties. The Fundamental Law has introduced changes to the procedure for applications to the Constitutional Court. According to these, there are more conditions placed on certain applications to the Court: bearing in mind its burden of cases, the Court itself recommended that the right to ex-post constitutional review should no longer be automatically available to everyone in all cases, whether or not they are directly affected by the law in question. However, where unconstitutionality occurs in concrete cases, the Court now has greater powers to ensure redress via the constitutional complaint procedure.

The Fundamental Law also provides for the Commissioner for Fundamental Rights, as guarantor of the protection of fundamental rights. The Commissioner principally forms a counterweight to the executive branch.

The Commissioner of Fundamental Rights shall:

- examine any abuses of fundamental rights of which he or she becomes aware;
- have the powers of an ombudsman;
- be elected by a two-thirds majority of the Members of Parliament;
- present to Parliament an annual report on his or her activities.

The Fundamental Law, by modifying the previous fragmented ombudsman system with its separate parliamentary commissioners, moves to a one-person ombudsman system. The basic model change does not reduce the level of legal protection, but just means that the protection of fundamental rights may be carried out within a more efficient organizational framework. The Fundamental Law states that the duties of the Commissioner for Fundamental Rights cover all fundamental rights, but also specifically names the interests of future generations and the defense of the rights of nationalities living in Hungary; for these tasks Parliament also elects Deputy Commissioners for Fundamental Rights.

As state bodies managing public finance-related tasks, the National Bank of Hungary (the MNB) and the State Audit Office have their independence guaranteed by the Fundamental Law, just as it was by the former Constitution. The Governor and the Deputy Governors of the MNB shall be appointed, as under the previous rules, by the President of the Republic. As specified in a cardinal Act, the members of the Monetary Council (but not its Governor and Deputy Governors) shall be elected by Parliament. The Monetary Council plays an important role in the decision-making of the MNB. The Governor of the MNB presents an annual report

on his or her activities to Parliament. The Fundamental Law recognizes the validity of EU legislation on the independence of central banks, including in Hungary. As Parliament's financial and economic auditing agency, the State Audit Office supervises all state and local government bodies in the management of state budget resources. The President of the State Audit Office – who presents an annual report to Parliament on the activities of the State Audit Office – is elected by a two-thirds majority in Parliament. The Fundamental Law designates the Budget Council as a new constitutional institution, which shall independently evaluate the central budget. The President of the Budget Council shall be appointed by the President of the Republic, and the other two members are the Governor of the MNB and the President of the State Audit Office. The Budget Council forms a counterweight to the Government in the budget's planning and preparation phase, and to Parliament with regard to the content of the adopted legislation. The Budget Council may only veto the adoption of the central budget bill in strictly defined cases, related to the level of government debt. This power is justified by the need for economic stability.

In addition to the above, autonomous regulatory bodies and autonomous administrative bodies are part of the system of separation of powers, which – due to their official activities completely or partially under court control – are connected to the executive, but which operate independently from the Government in terms of their legal status, being subordinate only to the law. A significant difference between autonomous regulatory bodies and autonomous bodies of state administration is that the former may be entitled to issue decrees on issues precisely defined by cardinal Acts, based on, and within the framework of, the individual statutory authorization from the Parliament. The decrees issued by these bodies – similarly to other laws – may be subject to constitutional review by the Constitutional Court. Independent autonomous regulatory bodies include the National Media and Infocommunications Authority and the Financial Supervisory Authority. As a result of the requirements of EU legislation, further independent autonomous administrative bodies are the Public Procurement Authority, the Equal Treatment Authority, the Competition Authority and the National Authority for Data Protection and Freedom of Information.

According to the Fundamental Law, in the interest of the management of local public affairs and exercise of local public power, local governments operate with a number of autonomous competences, also including the right to issue local decrees.

Governmental bodies also play a role regarding the supervision of lawful operation of local governments, but the activities of the latter are ultimately under the control of the courts and, with regard to making decrees, partly under the control of the Constitutional Court. In a similar process to that which existed under the former Constitution, it is the Parliament which decides on the dissolution of local representative bodies operating in conflict with the rules of the Fundamental Law, following the Constitutional Court's ruling on principles.

The new Hungarian public law provisions have not affected the fundamentals of state organizational structure, and the main functions and legal status of state bodies have not changed in essence compared to those under the old Constitution. Changes that have taken place – such as the constitutional designation of an independent authority responsible for the enforcement of rights relating to data protection and public information, and the creation of the Budget Council – do not restrict the separation of powers, but move towards enhancement of the system of checks and balances, by the creation of new, independent bodies.