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This essay has the purpose of elucidating the weights of the various centers of power in Hungary relative to each other, and the shifts that have taken place in their importance since the change of the political system in 1989. The past twelve years seem to be sufficiently enough to provide us with a perspective to better understand the causes and motives of events that can be described only imperfectly if the time frame is narrower (cf. my analysis in my earlier volume on The Hungarian Parliamentary System: Pokol 1994).

1. The separation of powers in a modern, pluralistic democracy

The development of the British political system since the Glorious Revolution of 1688 has provided us with practical solutions to the problems of governance in modern political democracies (Loewentstein 1963: 24-26). Almost a hundred years later, from the end of the 18th century, the United States instituted an another way of operating a democratic state based on elections. The slowly progressing democratization process of the European countries on the continent following the first few decades of the 19th century has already taken place in the mold of these models.

The two models have resulted in two opposite state organizations. The centralized British model is based on the complete integration of power. This model has led to the complete loss of the royal prerogatives of the head of state in the sense that the sovereign is obligated, without any deliberation, to appoint the head of the party acquiring majority in the House of Commons, and the British two-party system yields this majority automatically. The head of government thus appointed is authorized, by virtue of the parliamentary majority, to wield all the powers that the state can exercise. There are no checks and balances, no countervailing power against the might of the state, and even the judiciary branch is integrated into the Parliament. And, in the House of Lords, the body of the "Law Lords" represents the highest judicial forum, headed by the Lord Chancellor who is always a member of the ruling government (Cf. Loewenstein 1967: 218-231).

Diametrically opposed to this power compact is the American organization of the state, which embodies a separation of powers. On the one hand, the Americans split the legislative power and the executive by the fact that both houses of the Congress, and the head of the executive, viz., the President of the United States, are elected in two elections that are independent from each other. On the other hand, both powers are insulated from each other by not making the head of state, i.e., the President, contingent upon the confidence of the parliament, and, in turn, the President may not dissolve the parliament. A further area in the separation of powers is represented by the fact that, in the United States, the judiciary is constituted in an independent branch of the powers-that-be, headed by the federal Supreme Court. Following their appointment, the federal judges cannot be removed. They are appointed for life, and they have an equal say in the way the society is run by exercising a constitutional control over the legislature, and they also exercise a control over the decrees and decisions coming from the executive (cf. Bickel 1962; Shapiro 1994).

These practical examples were at hand for the countries of continental Europe when, in the first part of the 19th century, the exercise of power in the earlier absolute monarchies began to shift to a way of exercising power based on periodic elections. The first implementation of this change was made possible by

an act of the constitution promulgated in Belgium (after its secession from the Netherlands) in 1831. This was significant also in the sense that the results of the one hundred and fifty years of development of the British constitutional process became embodied in a written constitution, although the British Constitution was an unwritten body of laws. (cf. Beyme 1975: 31; Loewenstein 1963:25). The Belgian constitution, and, then, the democratization process that was spreading eastward from the western part of our continent during the 19th century, was implementing the British parliamentary form of government in every European country. In the Scandinavian monarchies a governance tied to a parliamentary majority was implemented everywhere (Sweden, Norway, Denmark) by the end of the 19th century while preserving the monarchical form of the state.

In France, from the eighteen seventies onwards, following the collapse of the empire of Napoleon III, an extremely strong variant of the parliamentary governance developed. In a unifying Italy, governance became also tied to a parliamentary majority there by the end of the 19th century, and, following World War I and the collapse of the German Empire, the model adopted in the successor states of the disintegrated Austro-Hungarian Monarchy was also based on a parliamentary majority.

Thus, the democratic development of the state in Europe proceeded along the British model, and it stood in marked opposition to the separation of powers. However, compared to the unity of the British form of governance, certain checks and balances were taking form in some continental European countries. One such countervailing balance was a rupture in some countries with the monarchical state, and an institution of a periodically elected president of the republic was to replace the monarch who, by that time, lost all his/her prerogatives of power. This solution meant inherently that the new head of state, in contradistinction to the monarch, scion of a dynasty and born to rule for life, had the necessary motives to play a part in the political struggle of the centralized state. This possibility was further enhanced by the fact that in most of Europe a more fractional party system developed than the two-party system of the United Kingdom, and this provided the opposition of an unstable parliamentary majority with an increased chance of toppling the actual government. The "brittleness" of such a form of power increased the clout of the head of state from the beginning even if he received no more prerogatives of power than the British monarch.

At any rate, by the mid-20th century, a parliamentary form of governance had developed in most of the countries of the continent in which the transformation of exercising power took place, and this was tinged only to a minor extent by the existence of a head of state with a certain degree of countervailing power, or the fact that the judicial hierarchy was not dovetailed into the parliamentary structure following the British model, but was made a hierarchic part of a supreme court that was independent from the legislature – or even several supreme courts if the individual areas of the law were supervised by separate judicial hierarchies. For instance, following the French model, the apex of the judiciary hierarchy working in the area of public administration is the independent Council of State, unlike in Germany where the judiciary hierarchy ends, at the top, in five supreme judicial bodies (cf. MacCormick/Summers 1991).

This could not become an independent branch of power for the reason that the government of the actual parliamentary majority held in its hands the administration and financial management of the justice system through the minister of justice. The independence of the judiciary here always meant the *independence in sentencing by the individual judges* and not the corporate-type of autonomy of the entire body of all the magistrates, or the independence of the judiciary power. However, from the second half of the 20th century, it could be observed to different degrees that even in the countries of continental Europe there were aspirations for making certain solutions to the problem of the separation of powers part of the parliamentary form of governance based on the unity of power.

It is worth noting that the constitutional terminology emphasizes the very limited nature of the separation of powers in the parliamentary forms of government in the European countries by using the term "separation of powers" and not "separation of the branches of power." And, by this, a certain retrenchment can be seen towards a division of the scopes of authority. But even the various constitutions in the countries of

Europe did not contain, until the most recent times, the term of "separation of powers" even in this more "tamed" form. It can be seen in the ongoing debates on the Constitution and in the literature that the French use this expression more often, but its content is directed at holding back the magistrates from formulating laws, and, to constraint them as a legal branch that is not the same as the legislature. (Cf. Saletti 1998; Carbonnier 1994).

In opposition to this, the main direction in the introduction of the separation of powers is, rather, to hold in check the parliamentary majority and the government.

The milder forms of the separation of powers on the continent were provided by the lessons drawn from the dictatorships that existed between the two world wars. While seeking dictatorial governance, Hitler was able to acquire power legally, and to become chancellor based on the Constitution of the Weimar Republic, then, abolishing it, he was able to build a total dictatorship. A parliamentary democracy converging into a single power center without checks and balances could transform this road into a constant source of danger. In the wake of rebuilding state power following World War II, this threat was the force that directed the American occupational authorities when they determined how vanquished Germany and Italy should rebuild their government and reframe their constitutions.

A long experience gathered in the United States showed the countervailing power of the federal Supreme Court vis-à-vis the legislative and the executive branches, and that was one of the ways by which a separation of powers was integrated into the system against the parliamentary majority. Another solution was adopted in Italy by which not only symbolic, but some real forms of power were bestowed upon the head of state. The autonomous organization of the body of the magistrates was also ensured to provide additional checks and balances vis-à-vis the government, and this created, especially from the seventies, an independent judiciary (Pederzoli/Guarnieri: 1997; Ferrarese: 2001). Although in Germany where the Constitutional Court had sweeping powers, the scope of authority of the head of state was not increased, but the federal structure of the state there divided the powers among the parliaments of the Länder, the government and the federal level. And, in addition, the second chamber, the Bundesrat, where delegates of the parliaments of the länder sit, represents an important counterweight to the federal government tied to the confidence expressed by the Bundestag.

The French have been using a different solution to the problem of the separation of powers from 1958. They placed a head of state, elected directly by the people, in the center of governance, but the government, contingent upon the confidence of the National Assembly, was also garnered with considerable powers. Especially during periods of "cohabitation," that is, in case in which these two apexes of power belong to different parties, this solution forces, in essence, the political actors of the state into a political stalemate. As a matter of course, it should be indicated that such a constellation was a rare occurrence during the past decades, and the head of state that stood in the centerstage could exercise his power without any important impediment.

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These were the experiences standing in front of the countries in Central Europe and before us, in Hungary, as well, when a pluralistically constituted political democracy had to be built from scratch. Let us look at the development of the organization of the central state mechanism, and the factors that have played an important role.

2. The new political system in Hungary

The possibility of a radical change of system was a surprise for the body politic in Hungary and the embryonic groupings that were unfolding. We had plans, worked out to different degrees, only for a gradual change to a multi-party system, and it was characteristic of this state of affairs was that the opposition during

the Kadar-regime with the highest profile, the so-called "civic opposition," thought, too, that a demand for an open multi-party system was too early in the beginning of 1989. The same way, the reform ideas of this author, which gained wide currency in the political debates of those times, also aimed at introducing the institution of a limited plurality in a two-chamber parliament (cf. Pokol 1989). It was also an important concern in relation to the 1989 beginnings that, basically, there were no constitution expert groups in the community of Hungarian legal specialists, and a sparse knowledge of the constitutional law has been present mostly in the mold of the European parliamentary form of government as mediated by the Basic Laws of Germany. This became complemented by the ideal of elderly politicians that grew up at the time of the coalition era after 1945, which resurfaced in the spring of 1989. This ideal was the model of Act I of 1946 on the form of government, which built up the central government also in accordance with a parliamentary form of government (cf. Kukorelli 1991).

In its basic forms, it was evident that a form of government had to be evolved that relied on the unity of power and concentrated in the National Assembly. This is enshrined in Article 19, paragraphs (1) and (2) of the current Constitution: "The Parliament is the supreme organ of state power and a popular representation in the Republic of Hungary. Exercising its rights deriving from the sovereignty of the people, the Parliament ensures the constitutional order of society, and determines the organization, orientation and conditions of governance."

Two circumstances of the political balance of power at that time determined directly the issue of checks and balances vis-à-vis the government of the parliamentary majority, and this influenced the constitutional institutions of the round-table discussions conducted in the fall of 1989. One was the President of the Republic of Hungary, and the other one referred to the legal status of the Constitutional Court to be set up at that time. The successors of the old monopolistic party, the Socialists, headed by Imre Pozsgay, the acknowledged leader of political reforms, fought for a legal status of the President to be elected directly by the people, and the position was viewed by the public at large to be occupied by Mr. Pozsgay. No other nominees of other parties could run for the presidency with any realistic chance of winning, and, this way, a great majority of the newly formed parties rejected the thought of a directly elected, strong president for the republic. With this, a counterbalance for the government enjoying a parliamentary majority in a future power equation was gone.

However, in negotiating the future legal status of the Constitutional Court, the balance of forces of the political parties at the time, and the deliberations on the odds with regard to the upcoming elections led to an inordinate importance of the Constitutional Court as a countervailing force. The fact of the matter was that, during the negotiations in the fall of 1989 on the constitution, everybody predicted a political balance in which the popular reform socialists – who themselves gave up their one-party rule and turned against the Soviet model – would, without doubt, garner a large majority at the first free elections, and, as a result, they would form the government based on their parliamentary majority. The minor political parties in opposition, which established themselves a few months earlier, were practically unknown to the public, and their resources were incomparably weaker than those of the reform socialists. Thus, it was a generally accepted idea at that time that they would be able, at most, to oppose the government of the socialists winning a formidable majority as a small parliamentary party.

This was the point of departure for which two important checks were built into the reframed Constitution as drafted at the round-table discussions. On the one hand, sweeping power was given to the Constitutional Court to be set up, believing that the opposing parties would be able to have a larger say in the direction of politics than in a National Assembly largely dominated by the socialists. On the other hand, the governance by a parliamentary majority was circumscribed by making the overwhelming majority of the laws to be accepted by two thirds of the parliamentary votes. With this solution, it was thought that the votes cast by the opposition were to be also needed to run the state.

This is how we arrived at the first parliamentary elections in the spring of 1990. The focus of the Constitution was the power exercised by the National Assembly, but, due to the frequent use of the two-third principle, the majority rule was limited, and, on the other hand, the important controlling power of the Constitutional Court over the legislature enhanced the presence of checks and balances in the parliamentary form of governance.

3. Shifts of power during the first cycle of governance

In order to understand the shifts in power during the 1990 to 1994 period, it is important to mention one of the effects of the Kadarist one-party system. The cautious reforms of the Kadarist system, and the gradual relinquishing of the total political control produced, by the end of the seventies, an elite group of professionals that had presided over the use of resources, which was, in its overwhelming majority, properly educated and skilled, and it was no longer possible to be part of this elite group merely by someone's political reliability. This kind of liberalization, coupled with the abolishment of the open forms of oppression by the time of the change of the system in 1989, resulted in a Kadarist elite that was capable of exercising not only political, but, also, professional control over the various sectors of society, and, on the other hand, it was not hated by society, as it was in most of the neighboring one-party states where overt oppression remained the order of the day all the way until the change of the system in 1989. To a large degree, this accounts for the fact that there was no popular sentiment to remove this elite, even if the socialists, as successors of the former Communist Party, won, at the end, 11 percent of the votes. Popular demand for removal from political life and for bringing those to justice who were responsible for the totalitarian regime were formulated only vis-à-vis the erstwhile members of the dreaded secret police during the Rakosi-regime, and the paramilitary forces taking part in the retribution following the defeat of the 1956 Revolution, the fighting, the in-fighting, and the political restructuring during the first government period after 1990 made this demand to go unsatisfied.

At any rate, the acceptance of the societal elite of the Kadar-era, and its continued control over social resources also within the framework of the new institutional order, determined fundamentally the shifts in the power equation during the first governmental cycle and at the level of exercising the power of the state. The fact of the matter was that the results of the first parliamentary elections sent those parties to govern with a slight majority whose voters were not, with a few exceptions, members of the former societal elite. In contradistinction to these voters, the constituency of the Free Democrats and the Socialists included practically the entire former elite, and it was this elite that kept its control over the resources of society (cf. Szalai 1997> 113-135). Although there were some disagreements between the constituencies of the Free Democrats and the Socialists in the first governmental cycle, these disagreements had been resolved quickly by the end of 1992, especially under the pressure of the political pressure groups working in the media, who coalesced so visibly in the so-called Democratic Charta (cf. Bozoki 1996).

This basic situation came to determine the shifts that took place in the constitutional law after 1990. *On the one hand, those on the government were deprived of their influence on society (especially in the media and the intellectual life), and, on the other, the supporters of the Free Democrats and the Socialists in opposition had an enormous control over society through their control of the societal resources, and the only thing they did not have was the power of the state.* This peculiar two-tiered nature of power made it understandable why the division of powers and the principle of the separation of powers came to occupy the center stage during the first cycle of governance after the change of the system in Hungary.

During the transformation process taking place at the round-table discussions in 1989, the separation of powers as a principle of organizing the administration of the state did not get included in the Hungarian Constitution, just as it is the case in most of the constitutions in Europe, although there were, as we have seen, some cautious moves to this effect. The already cited Article 19 of the Constitution that mentions the National

Assembly as the embodiment of the laws emanating from sovereignty, and emphasizes its supreme role above the rest of the governmental bodies, is inimical to the separation of powers and the equality of the separate branches of power, as it exists in the United States. In spite of it, in the two-tiered power constellation delineated above in which the political forces standing at the helm were opposed by the parties in opposition exercising control over the social resources, a quick process was set in motion to check the parliamentary majority and its government and circumscribe its power wherever it was possible.

This restructuring in the constitutional and executive power was engineered by the Constitutional Court with a number of dovetailing rulings, and these rulings were greeted by the media and the intelligentsia beholden to the Free Democrats and the Socialists as achievements of democracy and the constitutional state. The term "separation of powers" appeared, in its more qualified version of "separation of the branches of power" in one of the rulings of the Constitutional Court in December 18, 1990, more than six months after the Antall-government had taken office. This august body was deliberating on the raise, due to inflation, of the discount interest rates provided contractually by the state banks on previous loans, and the Court indicated in its reasoning that "…the principle of separation of the branches of power, which is the most important organizational and functional principle of the Hungarian state structure, shall be taken into consideration by all means" (Ruling 31/1990 of the Constitutional Court). Notwithstanding, this principle has always been included in subsequent rulings with textual underpinning, and the constitutional solidity of this principle has been, from that moment on, a reference to Ruling 31/1990. Hardly three months later, on the spring of 1991, we again find the newly introduced constitutional principle this way: "So far, the Constitutional Court has been consistent in taking great care to ensure that the principle of the branches of power prevail, and it has interpreted it, within its own authority, accordingly. In its ruling 31/1990 (XII 18), it has emphasized that in interpreting the scope of authority of the Constitutional Court aimed at interpreting the provisions of the Constitution, "the principle of the separation of the branches of power shall be given all due consideration, as it is the most important organizational and functional principle of the Hungarian state structure""(16/1991). Subsequently, this will always become the basic formula when the ruling gets based on the separation of powers, and Ruling 31/1990 of the Constitutional Court becomes the constitutional platform. This, however, as we have seen it already, had, originally, no foundation at all.

The constitutional scenario based on the separation of the branches of power differs significantly from the new constitutional framework created in 1989, but this has had no serious bearings on the interrelationship of the various government organs. We can even say that both Ruling of 31/1990 and that of 16/1991 talks about the self-limitation of the magistrates of the Constitutional Court with regard to the issues they specifically deal with. The real consequence of this principle started to be seen in the fall of 1991 when the Constitutional Court had to make a ruling either to favor the head of the government or the head of state hauling from the biggest party in opposition. (The fact of the matter was that the head of state denied to appoint individuals nominated by the head of the government to steer the public service radio and television, and, therefore, the Prime Minister turned to the Constitutional Court for an interpretation of the authority of the head of state.) By that time, the entire media elite and the most influential elite controlling Hungary's public sphere wanted to hem in the scope of authority of the government and increase, in turn, that of the head of state. The slogan "President of the Republic = democracy" became a boilerplate. In their quite nebulous Ruling 48/1991, the magistrates of the Constitutional Court decided in favor of the PM, and left little room for the head of the state to reject nominations by the head of government. The nebulous ruling provided the head of state and the elite supporting him to read the ruling the way they were pleased with. The principle of the separation of the branches of power was given an extraordinary publicity in this case, and this appeared already as an unequivocal check on the parliamentary majority and its government. From this moment on, the formula "President of the Republic = democracy" was supplemented by the slogans "separation of powers = democracy" and "Constitutional Court = democracy." If, by playing a theoretical experiment, we replaced the government of the Hungarian Democratic Forum (MDF) by the government of the Alliance of Free Democrats (SZDSZ) enjoying the support of societal resources and the media in this constitutional situation,

no one would doubt that this restructuring from a parliamentary majority of the SZDSZ towards the rest of the state institutions could not have been done. And this would not have been an issue due to the absence of any "dual power" type of situation. No checks on the power of the government could have been placed vis-à-vis an SZDSZ-government profiting from the support of the groups having control over social resources.

The separation of powers became deeply embedded in the public consciousness after these political debates, and the points of view represented by the mass media taking an extremely active part in forming politics were informed by an independence vis-à-vis the government and an importance of the checks and balances. We managed to create one of Europe's most independent central bank by passing the 1993 Act on the Bank of Issue, molded after the German Bundesbank, and, by this, control over the monetary resources were shifted from the government and the Minister of Finance to the bank. The laws relating to the office of the ombudsman were passed at that time, and while in Northern Europe and in the countries of Western Europe, the ombuds were more often than not equipped with the authority to correct only minor administrative errors, in Hungary, they were institutionalized more like the watchdogs of constitutional basic rights, including their control over the government, and, even, the National Assembly. The pressure on the government exercised by the elite with the biggest clout to influence the public – in order to engineer legal ways to push for a separation of powers - could be seen clearly, and, in the meantime, the government and the parliamentary majority, whose power was limited to an extent not seen elsewhere in Europe, had to fend off a constant propaganda barrage for instituting a "parliamentary dictatorship."

In spite of this, the parliamentary majority could have managed to fend off attempts to limit its scope of authority even more, and could have resisted the passing of such laws. As a way of providing an explanation – in addition to the already mentioned "dual power" situation – we can mention the internal power struggle waged by Prime Minister József Antall against his more radical party base. The head of government and his supporters favoring only a cautious replacement of the Kadarist elite exercising control over societal resources were faced by an MDF-base attempting at a radical change of the elite. ("The horrendous constituency" – a member of Antall's innermost circle quipped later.) In this situation, the head of government could often resist to the demands of his own parliamentary majority by using the rulings limiting the power of the parliamentary majority. "Why did not you make a revolution?" – he said in mock desperation and in a sigh of relief that he was thrown a life jacket from those standing at the shore. However, in accordance with the original power formula of the 1989 constitution, no revolution would have to be made in order for the then parliamentary majority to replace the social elite in a more thoroughgoing manner. As a matter of course, the confrontations and strife thus generated in society would have evidently made our adaptation to the Western system more difficult, and now we would, presumably, farther away from the currently visible social stability and dynamic development. However, right now, we do not to wish provide assessment, but merely to show factual processes and motives to better understand the restructuring of power.

4. Creation of an independent judiciary

During the nineties, the formulation of the thesis of a state mechanism based on the separation of the branches of power resulted, in addition to the above, in the creation of an independent judiciary. The new political democracy created the *independence of the individual judges in their sentencing* at the time of the transition period in 1989, but the constitution of the judiciary as a branch of power did not surface as an issue. The government and the Minister of Justice had the decisive say in appointing judges especially to leading positions of the courts. This provided the government with a potent means to shape judicial policy in addition to the fact that the political objectives of the government inform, through its parliamentary majority, the new bills introduced to the National Assembly.

The judiciary as an independent branch of power was put on the agenda of the Constitutional Court in the fall of 1991. Now, that Ruling 48/1991 of the Constitutional court made the separation of the power

branches part of the public awareness, accompanied by the enormous publicity of the mass media supporting the head of the state, Ruling 53/1991 of the Constitutional Court dealt with the independent nature of the judiciary as a branch of power. In the opinion of the proponent of this ruling "there can be no doubt that the Constitution stipulates that the courts are an independent branch of power" (cf. reasons adduced to Ruling 53/1991 of the Constitutional Court). A textual underpinning of the Constitution to the "evident stipulation" is missing, but all those familiar with the text of the Constitution know that it is by no way an accident. In spite of this, the Constitutional Court itself stresses "the judiciary that is separate also in the Hungarian parliamentary democracy from the legislative and the executive branches of power…" (Cf. Ruling 53/1991 of the Constitutional Court, p. 231).

The bone of contention in Ruling 38/1993 of the Constitutional Court is, again, the independence of the judiciary, and the authority of the Minister of Justice to limit this independence by the appointment of magistrates, and although a majority of the members of the Constitutional Court do not yield to this motion either, and rules the disputed authority of the Minister of Justice to be acceptable, the separation of the judiciary from the other two branches of power gets reinforced from additional angles. Ruling 45/1994 analyzes the possibility of awarding the magistrates by the government, and this ruling again works out in detail the insulation of the judiciary from the government. And, finally, Ruling 28/1995 stipulates that the integration of the budget of the courts into that of the Ministry of Justice, with the Minister of Justice deciding on the use of the budget, violates the principle of the separation of powers.

The new legislative regulation on the courts came into existence, based on these rulings of the Constitutional Court, at the end of 1997, and this regulation, by insulating the tribunals completely from the Ministry of Justice of the government, brought the corps of magistrates and the entire hierarchy of the courts under the umbrella of a local government body, the National Judiciary Council as an independent branch of power. This happened in spite of the fact that, by that time, there was no longer a "dual power situation," since the governing forces, embedded in the ruling strata of society, happened to be the Socialists and the Free Democrats, and, in their case, the sheer governmental power was supported by the massive weight of society's might. However, by that time, the fact that the separation of power took up roots in the consciousness of the public lent an independent life to all attempts pointing in this direction.

If we take a cursory look at the modern states in Europe and overseas, we can see that the judiciary in Hungary was given one of the most considerable independence, and, in addition to the well-known case of the American federal judges with their large degree of autonomy, this kind of independence of the courts exists only in Italy, and, to a lesser degree, in Spain (cf. Tate/Vallinder 1995; Horváth 2000). As a matter of course, it has to be seen that the Hungarian magistrates as a body can be described as strongly attached to the texts of the legislative provisions, and they did not crystallize around political fault lines, and, this way, it does not play a factual power role among today's actors of state power (Pokol 2000). However, the legal framework has been created without fail for this purpose. Both the appointment of the judges, and the appointment of the chief magistrates of the courts, including the apex of the hierarchy, are subsumed under the scope of authority of the National Judiciary Council. It is only the election of the President of the Supreme Court that remained to be the bailiwick of the National Assembly, but even this body is unable to carry out a factual control.

The issue of the independence of the public prosecutor's department as a branch of power is an interesting epilogue. In most of the countries in Western Europe, the hierarchy of the state prosecutorate is subordinated to the government, and it functions as the executor of the legal policy of the powers-that-be in shaping criminal justice. However, in Hungary's case, the hierarchy of the state prosecutor remained, following 1989, directly under the National Assembly. During the first government cycle, within the framework of the already mentioned dual power situation, all attempts were foredoomed to failure to subordinate, in the Western mold, the state prosecutor to the government. However, by the second cycle, when, in the case of the social-liberal government, this situation has vanished, there was a reduced resistance

on the part of the media elite and the groups controlling the rest of the resources of power to the separation of the various branches of power. Thus, by the end of the cycle, i.e., the first months of 1998, when the actual balance of power projected a secure continuation of the actual government, attempts were underway to bring the state prosecutor's office under the government. Mr. Péter Hack, the legal politician of the Free Democrats has detailed in a study as to why the state prosecutor's office should be put, in all circumstances, under the tutelage of the government (Hack 1998). By the same token, a draft was already prepared in the Ministry of Justice of the social-liberal government to implement this plan.

The 1998 legislative elections held in May 1998 checkmated the implementation of the plan, since a change in the government took place against all predictions. The larger groups controlling the means of societal resources, the media and the intellectual life were again in the opposition, and the "dual power" type of situation experienced during the first cycle of government resurfaced to a great degree. From that moment, the subordination of the public prosecutor's department appeared as "a direct slap in the face of democracy" in the political debate and the mass media. But, equally, the importance of the separation of powers and the issue of the checks and balances vis-à-vis the government and the parliamentary majority became, again, the main argument for the makers and shakers of public opinion. The most recent change of government following the parliamentary elections in May 2002, resulting, again, in the return of the social-liberal coalition to government, showed, yet one more time, that the media elite could forget about emphasizing the separation of powers. Whereas during the Orbán-government, the opinion formers waged a most conspicuous war of words to side with the Chief Public Prosecutor and the upper echelon of the magistrates if a dispute erupted between a government minister and the former, they immediately make nasty comments if these representatives of the judiciary come into conflict with the new government.

5. Outlook and evaluation

As a result of the above restructuring of the mechanism of power, an unusual high degree of power concentration has taken place in Hungary compared to the rest of Europe. In Hungary, a Constitutional Court keeps in check the parliamentary majority and the government, and this Constitutional Court is relatively perhaps more powerful than any other judiciary body anywhere in the world, and our ombuds further widen, as watchdogs of the constitutional rights, the sphere of checks and balances vis-à-vis the government. Although a judiciary independent from the government can be regarded, in terms of sociology, as "slumbering," but the legal frameworks in place make this branch of power completely independent. Within the corps of magistrates, the formation of internal political fracturing – as it has occurred in the case of the similarly independent Italian judges -, or the evolution of a less strict sentencing based on the constitutional provisions (as it has happened in the United States) could turn the judiciary into an independent branch of power (cf. Ferrarese 2001; Scheingold 1998). It is still an open question whether this would happen or, luckily, fail to happen in Hungary. We have the same type of power balance of the public prosecutors, with the Chief Public Prosecutor's Office at the head of the hierarchy as in the case of the magistrates. From a legalistic point of view, the framework is there to fill it with content, and use it as a counterbalance vis-à-vis the government, but this did not take place during the past years. At the same time, the independence of the central bank vis-à-vis the government could also push the issue of playing a stronger role of a countervailing force on the part of the central bank in the case mentioned.

The separation of powers has, by today, become an accepted reality in the organization of the Hungarian administrative mechanism. This has militated so far against a more radical revamp of the status quo, and, in the case of future governments, this will continue to have the same effect. This often thwarts the implementation of some necessary changes or makes their implementation delayed, but, looking at it from another point of view, it serves social stability.

The solidification of the separation of power in a mass democracy based on periodical elections, and, coupled with it, the holding of the parliamentary majority and its government in check are primary interests of the elite seeking the preservation of the status quo. The political development in Hungary during the nineties has proven the veracity of this theses beyond doubt. In a political democracy, a change of government could mean a minor revolution if the government is given the entire state power based on the principle of "winner takes all." The separation of power prevents this scenario, and forces the power groups into a stalemate situation. This is the reason that the groups interested in preserving the status quo would support this kind of structuring. In the beginning of the nineties, a situation could take develop in which the former ruling elite groups of society were able to fill, basically peacefully, the void of the new institutional frameworks, all the while a radical change of system was taking place at the level of the entire institutional system. This was also the reason why the change of system remained an institutional regime change, and a wholesale change of the societal elite failed to realize.

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