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Comparison of the Right of Initiative in the Old and the New Rules of Procedure in the Hungarian National Assembly

I. INTRODUCTION

In the last years, there was a significant change in the Hungarian public law system. The Fundamental Law defines the most important tasks of the Parliament, the basis of its organization and operation. When the Fundamental Law came into force, several important areas of law have been re-regulated; these changes also affected the area of parliamentary law. Through these changes, the Rules of Procedure and other legislations of the Parliament were also renewed. On 16 April 2012, the Hungarian Parliament adopted Act XXXVI of 2012 on the Nation Assembly (hereinafter: Ogytv.). This act determines the legal status, organization and order of the sittings of the National Assembly, the legal status and the remuneration of the Members of the National Assembly (hereinafter: Members) and nationality advocates, furthermore the co-operation of the National Assembly and the Government in European Union affairs. At the same time, the Rules of Procedure were also amended. This was followed by a new wave in 2014, when the Ogytv. was amended, and the Resolution 10/2014. (II. 24.) OGY on certain provisions of the Rules of Procedure (hereinafter: HHSz.) was adopted. So the provisions of the Rules of Procedure can be found in two legal acts, the Ogytv. and the HHSz. The Act regulates the organization of the National Assembly and the Resolution regulates its procedure. From 2014, the National Assembly works on the basis of the new Rules of Procedure. In my present study, I compare how the right of initiative – which is often called a tool of obstruction – is regulated in the old Resolution 46/1994 (IX.30.) OGY (on the standing orders of the Parliament of the Republic of Hungary) (hereinafter: HSz.) and in the new HHSz.

II. ABOUT THE OBSTRUCTION

“A parliamentary hearing is a formalized assembly hearing. In thought parliament, it is true, represents the whole nation. Certainly, the most perfect form of representation is, which best represents the

entire population of the country in terms of its thinking, will and numerical composition."[1] Parliament is the highest-level forum for discussing public affairs, so-called "political arena". During the operation, Parliament faces several tasks: the legislation of laws, adoption of resolutions and acts, express the public will. "The purpose of the plenary sessions of the parliaments is to discuss, to negotiate the current case throughout the whole sitting and make the necessary decision."[2] The participants of the session, of the debate are the members of the parliament, whose individual and group goals are different from each other, furthermore "a significant number of the members, usually the minority are admittedly trying to obstruct the activities if the other side, the government majority. It seems they do anything just to make things difficult for those, who – through their majority – can make the final decisions of the parliament."[3] As the goals and intentions of the opposing debaters are different, the parliamentary legislative process is not a forward-looking, straightforward process. The task of the National Assembly – as the highest level forum for discussing public affairs – is "to present the suggested alternatives, the different and opposing proposals of each parties"[4], that the Members be able to freely express their opinions, so it must lay down such negotiating rules, that are suitable to fulfil also public law and political functions, while ensuring the democracy of the sitting. Therefore, one of the main guidelines of parliamentary sittings is the democracy of the deliberation. In contrast, the other operating principle is the majority rule, "the right of Members and political groups, to express their views on any subject on the agenda, should not prevent the adoption of actual majority decisions, as this would make impossible for Parliament to function properly".[5]

"The ultimate goal of the work of the National Assembly is to decide on each proposal, to which the »path« begins with a debate in the plenary session, and finally ends with a decision-making in the same forum. The »path« must include guarantees such as aligning majority decision-making with the principle of the protection of the parliamentary minority and balancing the rules ensuring the effectiveness of the session's order with the right to speak in parliament."[6]

"The parliamentary debate, the freedom of speech is one of the most important mediums of the opposition's existence, as this is the only way it can fulfil its role. However, the rules of procedure must also serve the efficient functioning of parliament by blocking the opposition's technique of postponing or preventing decisions: the obstruction, the phenomenon that has provoked the most controversy in the history of parliamentarism."[7]

[1] Szászy-Schwarz, 2017, 173.
[2] Szente, 2010, 253.
[3] Szente, 2010, 253.
[4] Szente, 2010, 254.
[5] Szente, 2010, 254.
[6] Dukán – Vajda, 2018, 192.
[7] Smuk, 2018, 141.

Obstruction is a tool to intentionally postpone a debate or a decision-making, to prevent reaching a decision, to extend the length of a debate, first and foremost based on the right to speak and the right to petition. Obstruction is not an independent parliamentary legal institution, yet it is present in most parliaments.

Obstruction can be applied by a single Member, or even by a group of members. In case the opposition sees no other opportunity to influence the work of the National Assembly, they will use the tools of obstruction to make its operation more difficult or postpone the decision-making. "It is likely impossible to arrive at a definition of obstruction that exhaustively describes every type of parliamentary maneuver that could be used by members of parliaments to prevent forward progress on pending business. Delays may occur as well for reasons that do not involve specifically dilatory behavior. Rutherford (1914), for example, distinguished between conscious and unconscious forms of obstruction – the latter, he argued, was a by-product of political conditions in which normal parliamentary behavior inadvertently resulted in the delayed prosecution of the legislative agenda."[8]

"Modern parliamentary rights see obstruction as an improper use of the rights of Members, which must be regulated partly by 'normal' debate leading rights and partly by application of disciplinary law measures."[9] The disciplinary law of the parliament primarily covers the behavior of the members of the parliament acting as representatives, however, in order to ensure the independence of the ruling party measures may necessarily expand to members' private sphere as well.[10] „Due to the parliamentary autonomy and the legal immunity of Members the sanctioning of various unlawful actions (and actions violating the provisions of the Rules of Procedure) is only allowed to other authorities (police, courts) in very limited cases. Since there is no possibility to normal judicial remedy either, practicing the disciplinary law can be regarded as the privilege[11] of the parliament."[12] The responsibility to comply with the negotiation rules belongs to the Speaker of the National Assembly. Parliaments seek to shape the rules of negotiation in the Rules of Procedure in such a way that they are inherently against obstruction, as their aim is to prevent the right to speak and make suggestions from being used indiscriminately.

The results of obstruction, too, have already become manifest in parliamentary law. In many legislatures, radical changes have been made in the rules of procedure; in others, such changes have been proposed and seriously debated. From the present, however, our gaze is turned with anxiety to the future. It

[8] Bell, 2017, 5.
[9] Szente, 2010, 256.
[10] Szente, 2010, 277.
[11] Parliamentary privileges ensure the independency for the plenum; therefore, members of the National Assembly have such immunities as being excluded from regulations being under judicial power.
[12] Szente, 2010, 277.

cannot be ignored, although the obstructionists often fail to perceive it, that obstruction militates not only against the right of the parliamentary majority to decide but against the parliaments themselves as institutions."

The sittings of the National Assembly have been scandalous many times in Hungary, especially the cycle between 2010 and 2014 can be highlighted. Ogytv. was modified at that time and many new elements were introduced (such as the decrease of Members' remuneration) in order to discipline problematic Members of the National Assembly. However, it did not deliver the expected results, it seemed that the existing sanctions were not strict enough for members to stop them from disturbing the sittings, using banners, shouting or using obscene words and expressions.

Therefore, it had to be even stricter, so on 12 November 2019 government party members handed in the proposal for the modification of Ogytv. The proposal was entitled as Act CVIII of 2019 on the amendment of certain acts related to the operation of the National Assembly and the legal status of its members.

The amendment of the law caused great uproar, the media was full of the strengthening of the disciplinary power. The act was adopted on 10 December 2019 and entered into effect on 1 February 2020.

Within obstruction, in practice, the so-called "technical obstruction" is often categorized separately, which means a Member or a group of Members submits an unmanageable amount of motions at the same time.

The most common tools of preventing obstruction in parliamentary law are the set of rules on the right to speak, the setting of a time frame, the rules for closing the debate and the regulation of the right to make a motion.

In the further part of the study, I compare the regulation of the right to initiative in the old and the new Rules of Procedure.

III. TYPES OF MOTIONS, INCLUDING ON THE AGENDA

As I wrote earlier, a commonly referred type of obstruction is the so-called ”technical obstruction”, which is implemented by Members through submitting an unmanageable amount of bill or amendment proposal. The root of the regulations against the ”technical obstruction” is the introduction of the type system of the motions, so this is also the origin of my investigation.

There are two different types of motions: substantive and subsidiary motions. Substantive motion can be a separate agenda item at the sitting of the National Assembly (for example a bill, a motion for a resolution), while everything that is related to the substantive motion or its discussion shall be considered a subsidiary motion.

Both HSz. and HHSz. contains a list of the substantive and subsidiary motions. In HSz., it could be found under title "motions". However, the listing, which covers the types of substantive and subsidiary motions, is placed in HHSz. into

Chapter V, called "parliamentary papers". According to the interpretative provision of HHSz., "parliamentary paper" is a broader concept: it includes the substantive and subsidiary motions, as well as petitions received by the Parliament or the Speaker, of which the registration has been ordered by the Speaker.[13]

Not all types of substantive motions listed in the HSz. have been transferred to the HHSz. It no longer contains the proposal and report for the adoption or amendment of the Fundamental Law. In addition, taxation was expanded with the report, the initiation of a political debate, the motion initiating a personal decision of the National Assembly, the initiation of a referendum, and the request for the presentation of a general resolution regulated by the Ogytv. Both Rules of Procedure state that documents must be suitable for trial and decision-making, documents must be submitted to the Speaker of the National Assembly. "However, the details of this general requirement hasn't been specified by any other rule. In addition, there was a formal requirement, the justification obligation (in the case of a bill and a proposal for amendment), which was considered to be fulfilled in the case of a textual justification of almost any content and scope."[14] The HHSz. regulates the refusal more detailed, the range of cases giving reason to refusal has been expanded, and it also allows appeal against the refusal.

"According to the HHSz., in addition to being suitable for debate and decision-making, the documents must also fulfill the task and the obligation already prescribed in the Rules of Procedure. Previously the documents only had to meet the first two requirements (being suitable for debate and decision-making), therefore if the document did not fulfill its task or the prescribed obligation, then the task or obligation was not completed, so such a situation could arise as if no document had been submitted at all."[15] Furthermore, according to the new HHSz., the Speaker of the National Assembly may also reject the document that violates the authority of the Parliament. The aim of the legislator with this measure is to preserve the authority of the Parliament. Another innovation is that while HSz. contained that in the above cases the Speaker "may reject" the document, the HHSz. prescribes as the duty of the Speaker of the National Assembly, since it states that the Speaker "rejects" the document in conflict with the regulations. The decision to reject shall be communicated to the concerned parties by letter from the Speaker. The HHSz. contains the possibility of appealing against a decision to reject as a new element, such possibility was not provided in the previous Rules of Procedure. The HHSz. places the possibility of appealing against the rejection "within its own organization": The submitter of the rejected document - if his request is supported by at least five members - may request the ad hoc resolution of the committee responsible for interpreting the Rules of Procedure or the decision of the National Assembly within five working days. Until the resolution or the decision of the Parliament

[13] Interpretative provisions of HHSz., Point 10.
[14] Pintér – Szabó, 2014, 38.
[15] Pintér – Szabó, 2014, 39.

is made, the rejected document cannot be negotiated.[16] Therefore, the decision of the Speaker of the National Assembly may be reviewed by the Parliament or the committee responsible for the interpretation of the provisions of the Rules of Procedure. It is a question though whether this implements the "real" remedy in practice, given that neither the HSz. nor the HHSz. "does not specify in more detail when a document is not suitable for negotiation and decision-making, or when it violates the authority of the National Assembly".[17] Therefore, the decision is based on the subjective decision of the "second forum", furthermore it is questionable that the "parliamentary bodies acting on the basis of political logic and party principles can ensure the effectiveness - in particularly the expected guarantee system and impartiality" of parliamentary internal control mechanisms.[18] The two regulations are the same in that regard, that the bill submitted by the Member will only be on the agenda of the Parliament if it is approved by the designated committee[19], and the bill submitted by the Member is passed by the Speaker to the designated committee, which decides within thirty days if the motion should be placed on the agenda.[20] The purpose of these regulations is to filter bills from Members. "In the absence of a filter, Members' bills could also be used for obstruction purposes, making parliamentary work impossible. Therefore, in order for a bill initiated by one or more deputies to be dealt with on the merits by the National Assembly, it is necessary to make a decision on its inclusion in the series of subjects. The decision to include the subject in the series means that the appointed parliamentary committee considers the bill to be suitable for the Parliament to put the discussion of the issue on the agenda or not. (...) In Hungary, after the 2010 elections, it was repeatedly the case that the authors of important bills were individual representatives. It is undeniable that by avoiding government consultations, a bill that is in line with political will can be drafted more quickly. However, parliamentary governance can be dysfunctional: first of all, the administration may become insecure if has been left out of the drafting mechanism, and second, the passed laws may sometimes suffer from professional shortcomings."[21]

"In most European countries it is possible that Members submit a parliamentary initiative, despite the fact that these individually submitted initiatives give only a small portion of the parliamentary initiatives, and the number of initiatives discussed and the laws derived from them is even smaller. Most European countries have individual representatives among those, who are entitled to initiate legislation. The exceptions are Latvia, where five or more Members together may exercise their right of initiative, and, in some respects, Luxembourg, where

[16] HHSz. 29 Section 4-5.
[17] Pintér – Szabó, 2014, 40.
[18] Erdős, 2014, 5.
[19] HSz. 98 Section 3; HHSz. Section 58 Para 1.
[20] HSz. 98 Section 4; HHSz. Section 58 Para 2.
[21] Trócsányi – Schanda, 2014, 129.

Members' initiatives are only proposals to the Grand Duke, and only the Grand Duke himself can submit the initiatives. The adoption of a Member's motion may be subject to certain restrictions, such as the fact that in France it may not create additional costs in the annual budget or reduce revenue. However, the most severe restriction can be found in the formal requirements of the legislative initiative. (...) Where there are two chambers, in most cases the representatives of both chambers may exercise the right of initiative."[22] However, the initiative by individual representatives is not known in the Austrian legislative process either, but is familiar with the people's legislative initiative, as the "government as a board, at least five representatives or a committee of the Nationalrat, as well as the Bundesrat itself as a board or at least one third of the members of Bundesrat, and finally the people themselves, with the initiation of at least 100,000 voters" have the right of initiative.[23]

According to the HSz., an independent Member could request the decision of the Parliament on admission to the agenda if its request was supported by at least ten members. The HHSz. significantly reduced this number, the support of only four Members of Parliament required for the decision.[24]

In previous years, there have been example of Members submitting a bill to Parliament with ironic title. "However, in the case of a bill, the serious question arises as to whether the petitioner really intends to pass a bill with a manifestly provocative purpose. If the member really doesn't want the bill to pass, just want to provoke a parliamentary debate about it, then the possibility of rejection may rightfully arise. According to the HHSz., the bill or initiative is »a proposal to legislate a law«, and the intention of an ironic proposal is clearly not to legislate."[25]

The speaking time has not changed for the subject of adding to agenda, the proposer of the initiative may speak for a maximum of five minutes, after which one Member from each political group and the first independent Member shall speak for two minutes.[26]

"Amendments, especially if they are taken seriously, are excellent for obstruction, so the opposition is confronted with various constraints set up to protect the parliamentary majority and efficiency."[27] To avoid this, the submission of amendments is limited in most countries. "By regulating the right to amend – the possibility of changing the submitted bills – the Hungarian Rules of Procedure bring the Parliament closer to »real law factory-type« organization. The role of the opposition in the law factory also goes beyond the provisions of standing alternatives and controlling in public debate."[28]

[22] Nagy – Papp – Sepsi, 2003, 202.
[23] Chronowski – Drinóczi, 2007, 146.
[24] HSz. 98 Section 6; HHSz. 58 Section 8.
[25] Pintér – Szabó, 2014, 40.
[26] HSz. 98 Section 5; HHSz. Section 58 Para 6.
[27] Smuk, 2018, 159.
[28] Smuk, 2018, 159.

On the one hand, the old HSz. limited the submission of amendments in time, and on the other hand, the submission of amendments during an exceptional procedure or in the case of the negotiation of the Budget Act was included in a separate section. The time limit for amendments is set out in HSz. Section 102, according to which an amendment proposal could be submitted until the closure of the general debate, further amendments related to the amendment proposal could be submitted until the end of the detailed debate, and in case of the procedure of the designated committee and the Constitutional Committee at the end of the detailed debate. At the end of the detailed debate, only the amendments had to be voted for which had the support of one third of the members being present of the nominated committee or which had been tabled by the nominated committee, or which had been requested in writing by the leader of the group, who may exercise this right up to five times.[29]

"This meant a major disadvantage, especially when negotiating larger, more serious laws and codes. The alternative standing function of the opposition was the rule that, as an exception to the general rule of simultaneous amendment on related amendments supported by the submitter, allowed the leader of any political group to highlight up to three amendments and request a separate vote."[30]

In the case of an exceptional procedure, a proposal for amendment could be submitted within twenty-one days from the decision ordering the exceptional procedure. In the case of an urgent negotiation, the deadline for submitting amendments is eight days from the adoption of the parliamentary decision on urgency.

The Hsz. also set requirements in the content of amendments to be submitted during the negotiation of the Budget Act. In accordance with HSz. 94 Section 5, if the proposed amendment may result in an increase in the expenditure of the central budget or a decrease in its revenue, it must also indicate the solution proposed in order to maintain the budget balance.

There were a few more restrictions in various topics included in different sections of the HSz. for the content of the right of amendment. No amendment could be tabled in the following cases: report on the results of the verification of credentials, proposal for a resolution to set up a temporary committee, proposal for the election of the President, Vice-President and the Registrars by Parliament.

The HHSz. re-regulated the possibilities for tabling amendments. Under the new rules, a proposal to amend a bill can be submitted by the Member, the Negotiating Committee and the committee on legislation. The deadline for submitting an amendment proposal has changed compared to the HSz. After the detailed debate, a new element of a new organization comes into the process, the procedure of the committee on legislation. The deadline for tabling the Members amendment's changed from the closing of the general debate to an objective date. The amendment may be tabled by 4 pm on the third working day follow-

[29] HSz. 106. Para 1-3.
[30] Smuk, 2018, 159.

ing the adoption of the agenda of the sitting at which the general debate on the draft law is to be concluded.[31] It is therefore possible to be acquainted with the bills, and after the inspection to prepare amendments in accordance with further guarantee provisions, which ensure sufficient preparation time. According to the HHSz., the general debate can be started after the sixth day after the submission of the bill, and together with the deadline for submitting an amendment proposal, there is therefore a minimum of 10 days for the submission of amendment proposals.

The special rule in the HHSz. Section 67 provides an opportunity to speed up the procedure in the event of the submitter of the bill initiates in writing that the Parliament, in the absence of an amendment proposal, decides on the adoption of the bill at the same sitting at which the general debate is closed.

In the amendment proposal, the Member shall indicate the negotiating committee to which he/she requests the amendment to be discussed, the debate of the amendment may be requested only by one standing committee. In a proposal for amendment, a Member may only nominate the designated committee or the committee involved in the debate, which has indicated that it intends to hold a detailed debate related to the provision affected by the amendment proposal. "In the absence of an amendment proposal, it is possible to take a decision without further stages of negotiations. The requirements for the content of the proposed amendments can be examined separately according to whether there is a case of external or internal over-expansion, because while in the case of the committee indicates external over-expansion at least one separate decision of the National Assembly is required, but if necessary, another, separate procedure is required, however to the submission of the internal over-expansion amendment proposal belongs no legal consequence specified in the HHSz."[32] "In general terms, an over-extended amendment proposes to change a part of the law that is to be amended, which was not affected by the original proposal (»internal over-extension«) or to amend a law that the original amendment did not want to re-regulate at all (»external over-expansion«). According to the definition of the HHSz. only the latter one is an over-extension amendment proposal, and in this case the duration of the procedure can be significantly extended, but in case of »internal over-extension«, if the negotiating committee or the committee on legislation deems it proper and necessary, the submission has no negative procedural consequences."[33]

There are also formal requirements for proposed amendments, which can be considered as conditions for the validity of the respective motions. According to the HHSz. Section 40 Para 2, the proposed amendments must be justified, as it was already stated in the relevant provisions of HSz.[34], "on the other hand, only

[31] HHSz. 41 Section 1.
[32] Dukán – Vajda, 2018, 266.
[33] Dukán – Vajda, 2018, 274.
[34] HSz. 94 Section 4.

experiences from the past and a resolution from a Rules of Procedure Committee[35] adopted based on these past experiences were the basis for the further requirement, which states that an amendment to delete the bill as a whole (including if it only keeps the title, the preamble and the provisions to enter into force) shall not be negotiated or put to the vote."[36]

With regard to the amendments, the committee on legislation has a special role, as its basic task is to evaluate and take a commitment on the amendments formulated and supported by the standing committees in the detailed debate (the Commission's amendment concluding the detailed debate). The committee on legislation may – in addition to evaluating the Commission's amendments concluding the detailed debate – intend to make further amendments. It is the task of the committee on legislation to reconcile all the intended amendments they support, and to make the clarifications that are essential for the coherence of the amendment proposals.

IV. SUMMARY

"The functioning of the Hungarian Parliament is also characterized by lively, often heated debates between government party and opposition compatriots. Depending on this, it is therefore very important that the regulations governing the parliamentary deliberations be able to ensure the efficiency of parliamentary work by giving Members the opportunity to express their views, to not even indirectly violate the freedom of expression."[37], [38]

With regard to the right to petition, the Rules of Procedure continue to distinguish either between substantive and subsidiary motions, no significant change can be observed either in the procedure for submitting motions or in the duration of speeches. However, a change is, that according to HHSz., an independent representative may request the decision of the National Assembly to include the subject in the agenda if his/her request was supported by at least four representatives, compared to the support of 10 Members in the HSz. previously.

[35] Amendments which seek to omit the entire proposal (including the case where the amendment retains only the title, preamble or enacting terms from the proposal) do not comply with the requirements of the Rules of Procedure relating to the proposed amendment. Such a proposal shall not be put to the vote and no related amendment may be tabled (1/1998-2002. ÜB.).

[36] Dukán – Vajda, 2018, 264.

[37] Dukán – Vajda, 2018, 192.

[38] It is debatable whether we can talk about freedom of speech at all, as "Members of Parliament come into contact with the state not as citizens or individuals, but as holders of public offices. Their constitutional status does not consist of fundamental rights, but consists of rights and obligations of public law type. Members of parliament hold public office from which they do not have individual rights against the state, nor do they enjoy the protection of fundamental rights. Freedom of expression for Members may not be inferred from Article 5 on the right to freedom of expression, but from Article 38, which lays down a free mandate." (See: Ijoten.hu: Member of the National Assembly, 2019).

The HHSz provides more time for the submission of amendment proposals by Members, which means that, in normal procedure a longer time may be available for parliamentary scrutiny and discussion of the bill.

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