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***Hungarian Parliamentary Law under the Control of
the Strasbourg Court***

1. INTRODUCTION

The Hungarian Parliamentary Law has been totally renewed in the last few years: on 1st January 2012, the new constitution – the so-called Basic Law – came into effect. After the enforcement of the Basic Law, other sources of parliamentary law were also remade: a brand new act on Parliament¹ was passed and Standing Orders² were shortened due to the Parliament Act.

The Parliament Act regulates the parliamentary discipline law in detail and it ensures new and broad competences in this field for the speaker,³ the president of the Parliament (hereinafter: President) and for the plenary seat of the Parliament. In 2012 and 2013, disciplinary instruments were applied several times.

Other fields of parliamentary law were affected by the renovation of sources of parliamentary law but there a lot of institutions and issues operated similarly to the former regulation. One of these characteristics is the lack of legal control over the parliamentary decisions. For example, the decisions of the speaker or the president and the single – non-normative – resolutions of the Parliament shall not be questioned from legal point of view.

¹ Act XXXVI of 2012 on the National Assembly (hereinafter: Parliament Act).

² Resolution 46/1994 OGY on several rules of standing orders (hereinafter: Standing Orders).

³ For the sake of convenience “speaker” means the person who leads the plenary seat. According to the Parliament Act speaker shall be the president of the Parliament and the vice-presidents of the Parliament.

Although, there is a political control – the affirmation of plenary seat – against several decisions of the speaker or the president but in these cases the Parliament’s decision is also devoid of any type of legal control: the Parliament’s decision is the final one. The lack of the legal control is really interesting in those cases when the Parliament, speaker or the president shall apply – and not make – the law: for example decisions made in the field of disciplinary law. For imposing a disciplinary sanction, the Parliament (speaker or the President) shall collate Parliament Act’s norms and the behaviour of a Member of the Parliament (hereinafter: MP) and decide whether the regulation and the facts shall indicate the imposition of a sanction. From this point of view, the speaker’s and the Parliament’s decision-creating is analogical with a judicial decision-creating.

In the last four years, the inner-parliamentary “political” control of the speaker’s or president’s decisions was affectless due to the two-third majority of the governmental coalition. According to the common political power relations of parliamentarism, the Hungarian parliamentary law’s only political “brake” is the two-third majority in several decisions: in a typical situation the governmental side does not have a two-third majority, so this type of majority shall function as a special veto right for the opposition.

The new disciplinary competences, the lack of legal control mechanism (constitutional court’s and the “ordinary” judicial process) over several parliamentary decisions⁴ and the two-third parliamentary majority of the government indicate that oppositional MPs look for an alternative legal control forum and they found it in

⁴ The lack of legal control mechanism over parliamentary operation is an old debt of the Hungarian parliamentary law. In his 2008 book, Péter Smuk emphasizes that the Hungarian law does not take any sanction because of the violation of the Standing Orders and he depicts this phenomenon as a general problem. SMUK, PÉTER: *Ellenzéki jogok a parlamenti jogban* [Oppositional Rights in the Parliamentary Law], 2008, Gondolat, Budapest, 138. See also Lajos Csörgits’s recension on this book: CSÖRGITS, LAJOS: *Smuk Péter: Ellenzéki jogok a parlamenti jogban* [Smuk Péter: Oppositional Rights in the Parliamentary Law], in *Jog-Állam-Politika*, Vol. 3. No. 1. (2011) 138.

the Strasbourg European Court of Human Rights (hereinafter: ECtHR or Court). This paper tries to show three applications concerning parliamentary cases received before the ECtHR. The Court still does not decide on the applications but it found them admissible. For this reason this paper also tries to deduce the expected decision of the Court via its former case-law.

Constitutional law – and within the parliamentary law – was used to be mentioned as the most national branches or fields of law. Because of this, the effect of an international forum – the Strasbourg Court – is really important for the Parliament’s autonomy.

2. SUMMARY OF THE APPLICATIONS

2.1. *Szanyi v. Hungary*

At a plenary session on 18 March 2013 an oppositional MP Tibor Szanyi – a member of the Magyar Szocialista Párt (Hungarian Socialist Party) – showed his middle figure, in the course of his speech, to the members of the right-wing party called Jobbik. Ten days later he was fined HUF 131.140 for using a blatantly offensive expression. The same MP submitted an interpellation request addressed to the Minister of National Development which was denied by the speaker on 6 May 2013. The applicant submitted a further interpellation request on the same topic, which was again dismissed by the Speaker on 27 May 2013. The reason of the speaker’s decisions was that the interpellations hurt the prestige of the Parliament because of their content.⁵

The legal ground of the decisions was the general commitment of the Commission for Constitutional, Justice and Procedural Affairs No. 22/2010-2014. (1 October 2012) AIÜB. It declares: “for the President, practicing the right ensured in Article 97, paragraph 4 of the Standing Orders – on denying proposals – is established with that

⁵ Application no. 35493/13. Available at: HUDOC database of the ECtHR: [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#%22fulltext%22:\[%2235493%22\],%22itemid%22:\[%22001-138867%22\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#%22fulltext%22:[%2235493%22],%22itemid%22:[%22001-138867%22]}) [cit. 2014-03-27].

if the proposal is inappropriate for negotiation and decision-making. Negotiating proposals of obviously frivolous and offensive content is incompatible with the Parliament's reputation. Denying such proposals is the right and obligation of the Speaker, based on Parliamentary act Article 2. (1).” According to the above mentioned part of the Standing Orders: “the speaker shall deny proposals of inadequate form.” Hence, it is significant to note that the committee's resolution extended the speaker's sphere of competence for the content investigation of proposals.

2.2. Karácsony and Others v. Hungary

At a plenary session on 30 April 2013, during a voting process, the Gergely Karácsony and Péter Szilágyi – two MPs, members of the oppositional party called “Lehet Más a Politika” (hereinafter: LMP) – showed a billboard in the session hall displaying the text “You steal, you cheat, you lie.” On 13 May 2013 the Parliament fined Mr. Karácsony HUF 50.000 and Mr. Szilágyi approximately HUF 185.000 for seriously disrupting the proceedings of Parliament.

On 21 May 2013 during a plenary voting, two other MPs of LMP – Dávid Dorosz and Rebeka Katalin Szabó – presented a billboard with the text “Here operates the National Tobacco Mafia”. On 27 May 2013 they were fined HUF 70.000 each for seriously disrupting the plenary proceedings.⁶

2.3. Szél and Others v. Hungary⁷

The final voting of the bill on the turnover of agricultural lands and forestry holdings which provoked great political turbulence was held on 21st June 2013. During the course of the voting, a few oppositional MPs who are members of the LMP – Bernadett Szél,

⁶ Application no. 42461/13. Available at: HUDOC database of the ECtHR: [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{%22fulltext%22:\[%2242461%22\],%22itemid%22:\[%22001-138866%22\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{%22fulltext%22:[%2242461%22],%22itemid%22:[%22001-138866%22]}) [cit. 2014-03-27].

⁷ Application no. 44357/13. Available at: HUDOC database of the ECtHR: [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{%22fulltext%22:\[%222sz%C3%A9l%22\],%22itemid%22:\[%22001-138868%22\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{%22fulltext%22:[%222sz%C3%A9l%22],%22itemid%22:[%22001-138868%22]}) [cit. 2014-03-27].

Ágnes Osztolykán and Szilvia Lengyel – used a megaphone and expanded posters, furthermore, brought soil in front of the president in a small golden wheelbarrow.⁸ Due to this, the speaker suggested to decrease those three representatives' honorarium by one-third (HUF 130.000-155.000), which suggestion was accepted by the Parliament.⁹

2.4. Legal aspects of the complaints

Hungarian legislature does not provide any kind of legal remedy neither with the speaker's decision of denying interpellation, nor against disciplinary sanctions. Hence, representatives turned to ECtHR in all three cases and named Articles 10 and 13 of ECHR as the basis of their complaints. The first one protects the freedom of expression, the latter one protects right for an effective legal remedy.

Furthermore applications cite Article 14, because they state that measures targeted them as oppositional MPs, constituting discrimination on the ground of political affiliation, in breach of Article 14 read in conjunction with Article 10.

3. EXPECTED DECISION OF THE STRASBOURG COURT

3.1. Freedom of expression

Second point of Article 10 contains the reasons for restriction of the freedom of expression: "The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of na-

⁸ Available at: Parliamentary Journal: http://www.parlament.hu/internet/plsql/ogy_naplo.naplo_fadat_aktus?p_ckl=39&p_uln=292&p_felsz=63&p_felszig=65&p_aktus=30 [cit. 2014-03-27].

⁹ Proposal No. H/11658. See website of the Parliament: http://www.parlament.hu/internet/plsql/ogy_irom.irom_adat?p_ckl=39&p_izon=11658 [cit. 2014-03-27] and the Parliamentary Journal: http://www.parlament.hu/internet/plsql/ogy_naplo.naplo_fadat_aktus?p_ckl=39&p_uln=293&p_felsz=78&p_felszig=80&p_aktus=24 [cit. 2014-03-27].

tional security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.” The Court examines other questions concerning the admissibility of the restriction. The restriction shall meet all of the following requirements:

1. the restriction shall be based on an act;
2. the intervention shall tend to an aim listed above and;
3. it must be necessary in a democratic society. It has no general interpretation, the Court shall decide regarding all circumstances of the given case. But the Court always demands that the intervention shall
 - a) serve a factual and powerful public interest and
 - b) be proportional.¹⁰

The disciplinary sanctions adhere to the strict test’s point a) that is, to the regulation equal to acts, as their formation is based on Parliamentary Acts. At the same time, the speaker denying interpellation only rests on a committee resolution lacking obligatory power. This scarcely corresponds to ECTHR’s notion of law – which is used in wide interpretation – : “...in practice, every public act is regarded as law”.¹¹

As regards point b), we can state that with contrast to courts, the maintenance of parliamentary bodies’ prestige is not present in the indications of limitation. The efficiency of referring to the “protection of others’ rights” can be questioned as well, as appointing such rights of other people which would have been wounded by using posters is complicated, especially if we take permissive rules of judging politically exposed persons into consideration.

The requirement of cogent public good written in point c) is realized, as parliamentary work free of disruption – and efficient – is by no means can be regarded as such. However, it is worth taking it

¹⁰ See GRÁD, ANDRÁS – WELLER, MÓNKA: *A strasbourgi emberi jogi bírászkodás kézikönyve* [Handbook of the Jurisdiction of the Strasbourg Court of Human Rights], 2011, HVG-Orac, Budapest, 449, 546.

¹¹ Ibid. 449.

into consideration that representative's freedom of communication is generally strictly protected by ECTHR: "While freedom of expression is important for everybody, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests. Accordingly, interferences with the freedom of expression of an opposition member of parliament, like the applicant, call for the closest scrutiny on the part of the Court."¹² The case – in which declaration was born – was proposed to ECTHR by a Spanish ex-representative, as he was condemned because in an article he was saying strict charges of terrorism regarding the Spanish government, upon which the Senate terminated his parliamentary immunity, and the court sentenced him for contravening the government.¹³ Hence, it is visible that the case of LMP representatives and the Costello vs. Spain case – in which ECTHR declared Spain's violation of agreement – varies in many cases such as representative behaviour and the type of the applied legal consequence, however, its general statements are of orientation nature.

3.2. Right to an effective remedy

According to Article 13 of ECHR, the right to an effective remedy means: "*Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.*" Generally, all such legal relations give basis to the applicability of Article 13 of ECHR, in which ECHR's violation comes up but for its remedy, the national law does not provide a forum.

¹² *Castells v. Spain* judgement of 23 April 1992, Series A no. 236-B section 42.

¹³ For a detailed summary of *Castells v. Spain* see: VÁCZI, PÉTER: Képviselői szólásszabadság és mentelmi jog [MP's Freedom of Expression and immunity], in SZENTE, ZOLTÁN (ed.): *Applicatio est vita regulae. Nemzetközi jogesetek a parlamenti jog köréből* [International Cases from the Field of Parliamentary Law], 2013, Universitas, Győr, 121-126.

The likelihood of the grievance of ECHR's other articles itself gives basis to Article 13' call: "actual grievance of another article is not a precondition of a successful citation of Article 13, instead, if this citation from another article is substantive, is connected to question under the effect of the Agreement and is not clearly incompatible with the Agreement, and not clearly causeless, suffices."¹⁴

If EHCR really declares right for legal remedy as a compulsory requirement, it also means the relevant decrease of parliamentary autonomy. However, it is a question that how right for efficient legal remedy appears in EHCR's case law and whether we could regard parliamentary decisions as exceptions.

The practice of ECtHR does not leave any doubt about that Hungarian law violates Article 13 of EHCR with that it does not ensure opportunity for legal remedy against parliamentary actions causing the violation of EHCR: "If a person does not have the possibility for any kind of legal remedy in connection with a substantive case from the point of view of the Agreement, this undoubtedly goes together with the violation of Article 13 (compare with for instance Halford v. the United Kingdom judgement of 25 June 1997, Reports 1997-III., p. 1004, and Wood v. the United Kingdom judgement of 16 November 2004, no. 23414/02). The practice would be the same as well, if the unappealable supremacy decision originates from a sovereign prince, himself (compare with Wille v. Liechtenstein judgement of 28 October 1999, no. 29396/95)."¹⁵

The Wille v. Liechtenstein case is especially important for us, as political discretion appears in it, which is on the one hand, characteristic of a parliamentary session, on the other hand, the parliament's provisional right for its members. Let us briefly investigate the Wille case's facts and the Court's decisions.

The applicant, Dr. Herbert Wille, was the member (deputy head) of the Liechtenstein government in the beginning of the 1990's. In 1992, a controversy arose between His Serene Highness Prince

¹⁴ GRÁD – WELLER: *op. cit.* 621.

¹⁵ *Ibid.* 624.

Hans-Adam II of Liechtenstein (“the Prince”) and the Liechtenstein government on political competences in connection with the plebiscite on the question of Liechtenstein’s accession to the European Economic Area. The applicant had not stood for re-election in May 1993, and he was appointed President of the Liechtenstein Administrative Court. On 16 February 1995, in the context of a series of lectures on questions of constitutional jurisdiction and fundamental rights, the applicant gave a public lecture at the Liechtenstein-Institut, a research institute, on the “Nature and Functions of the Liechtenstein Constitutional Court”. During the course of the lecture, the applicant expressed the view that the Constitutional Court was competent to decide on the “interpretation of the Constitution in case of disagreement between the Prince (government) and the Diet”. On the next day, a newspaper published an article on the lecture given by the applicant, mentioning his views on the competences of the Constitutional Court.

The Prince sent a letter to Mr. Wille and expressed his disapprobation because of Mr. Wille’s views on the role of the Constitutional Court: “Unfortunately, I following the publication of the report in the *Liechtensteiner Volksblatt* had to realise that you still did not consider yourself bound by the Constitution and held views that were clearly in violation of both the spirit and the letter thereof. [...]. In my eyes, your attitude, Dr Wille, makes you unsuitable for public office. I do not intend to get involved in a long public or private debate with you, but I should like to inform you in good time that I shall not appoint you again to a public office should you be proposed by the Diet or any other body.”¹⁶ After the letter, there were several bouts between the Prince and Mr. Wille but their relationship became really harsh when Mr. Wille’s term of office as a judge expired. On 14 April 1997, the Liechtenstein Diet decided to propose the applicant again as President of the Administrative Court. In a letter of 17 April 1997 to the President of the Diet, the Prince refused to accept the proposed appointment. He explained that, considering his experiences with Mr Wille, he had become convinced that Mr Wille did not feel bound by the Liechtenstein

¹⁶ Quotation from the Prince’s letter.

Constitution. In these circumstances, he would be failing in his duties as head of State if he were to appoint Mr Wille as President of the Administrative Court. After the Prince's decision, Mr. Wille appealed to the ECtHR.¹⁷

The Court stated that the Prince violated Mr. Wille's right to free expression declared by Article 10 of ECHR. After the declaration of the violation of Article 10, the Court dealt with the right to effective remedy declared in Article 13. The ECtHR examined the Liechtenstein statute law – especially the Constitution – and case law of the Constitutional Court and appointed that there was no effective national remedy against the decision of the Prince.¹⁸

The ECtHR knew the discretionary character of the Prince's decision and the nature of the Prince's legal status but the Court did not let to fault the defence of the ECHR. What is more the Court examined rules of the constitution, which are situated on the highest level of the national legal system.

Hence, the Wille-case – *mutatis mutandis* – should be instructive for the Hungarian Parliament's autonomy because it shows that exercising discretionary competences does not mean an exception of the right to the effective remedy.

3.3. Prohibition of discrimination

Maybe it is the hardest challenge to forecast the Court's decision on the breach of Article 14. The Parliament's operation is based on the contradiction of the governmental and oppositional factions. Since parliaments are political entities this type of contradiction must be political, too. In such an environment the discrimination on political belief is unavoidable. On the other hand there is the legal demand of the president's and speaker's impartiality: the speaker shall rule the plenary sessions impartially and president shall exercise its competences impartially, too.¹⁹ It means that they shall apply the same way the rules on interpellation and discipline law to the governmental and oppositional MPs. Aside from the rejection of the

¹⁷ The case's facts were based on articles 6-22 of the Court's judgement.

¹⁸ Paragraphs 71-78 of the Court's judgement.

¹⁹ Parliament Act Art. 2. para. (2) point f) and Art. 3. para. (1).

interpellation – which is the sole competence of the President – disciplinary measures (imposing fines) are applied by the plenary session, the President shall only suggest the application of a measure. Due to the principle of free mandate, there shall be no legal demand for the vote of an MP, what is more, an MP can be partial – therefore nobody can enforce an “impartial” “non-discriminative” decision from the plenary session.

In the second section of the ECtHR’s process the Court asked in all three cases whether “only opposition members were subjected to disciplinary measures and restrictions due to the content of their statements?” It shows that the Court will back away from its former decision, because in *Sunday Times v. the United Kingdom* (No. 1.) the Court declared that the fact, that no sanction was taken against another subject – which is in a similar situation – is not sufficient evidence of constituting of discrimination.²⁰ This case is really important for us, because this declaration was made concerning discrimination on the ground of political affiliation, in breach of Article 14 read in conjunction with Article 10.

The question of the Court creates a difficult situation for the Government because no governmental MP was subjected to disciplinary measures. Does it mean at once that the Parliament’s practice of disciplinary law is discriminative? As if the Court does not pay attention to the chance that governmental MPs did not commit any disciplinary fault.

It is worthy to note that the reception of the complaints show that the prohibition of discrimination is a general demand which shall be applied in the field of parliamentary law – despite of the principle of free mandate.

²⁰ “The fact that no steps were taken against other newspapers, for example the Daily Mail, is not sufficient evidence that the injunction granted against Times Newspapers Ltd. constituted discrimination contrary to Article 14 (Art. 14).” *Sunday Times v. the United Kingdom* (No. 1.) Paragraph 71. Available at: HUDOC Database of the ECtHR: <http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#%7B%22fulltext%22:%5B%22sunday%20times%20v%20United%20Kingdom%22%5D,%22itemid%22:%5B%22001-57584%202%22%5D%7D>] [cit. 2014-03-27]. See also: GRÁD – WELLER: *op. cit.* 677.

4. SUMMARY

The role of international law in constitutional law is really questionable, and in the field of parliamentary law is much more doubtful, because parliaments are both political and legal entities and therefore their operation is special. Despite of these the Court seems to apply the “general” requirements to the parliamentary operation, leastways *Castells v. Spain* and *Wille v. Liechtenstein* cases point to this direction. Furthermore the question that the Court asked in the Hungarian cases also shows that the Court is disposed to put across the demand of the prohibition of discrimination, too.

Summing up all the facts and conclusions listed above, it seems that the ECtHR may become the strongest restrictor of the Hungarian Parliament – and therefore each national parliament of the member states of ECHR – several complaints concerning parliamentary law were admitted by ECtHR and it shows the importance of the international law’s effect on the national parliaments’ autonomy. I think that the three complaints from Hungary will also strengthen the influence of the Court to the operation of the national parliaments.

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