

A short summary of the dissertation

In my dissertation I would like to put an emphasis on the importance of the joint analysis of the electoral system and system of government. Examining the forms of government and by this way finding the appropriate method is strictly connected to the analysis of the electoral system. Why is it so by necessity?

Because the process of practising the power is the interaction of constitutional law factors and the connected political factors which leads from the constituent, through expressing one's opinion to the final act of the state that is making law. This could happen indirectly through the election and the work of MPs gained mandate and on the other hand by directly through referendum which is very rare compared to the direct form of democracy.

For instance in single-seat constituencies if 30 percent of the society have the same opinion about a question, then the parties representing the electorate can acquire 50 percent of the seats in Parliament, so they have the chance to decide as they wish. While in a party-list proportional representation 30 percent will perhaps not be enough for pushing through the will in Parliament. It is also conceivable that accepting the given question require qualified majority in a state, in this case the absolute majority reached in single-seat constituencies will not be enough to reach a decision either.

What can we expect for if the voters or their MPs change their mind regarding the above mentioned example concerning a given matter? Could the relevant opinion be controlled by another factor of power? In my dissertation I compared different countries making it clear that there are few control mechanisms exist in the Hungarian form of government. What kind of control mechanisms do I mean? It can be a two-chamber system, or a strong President elected by popular vote or an independent body or even a referendum modifying the Constitution.

Regarding the separation of political powers we can see the Constitutional Court as a very strong entity (strictly speaking the institution of

constitutional complaint is beside the mark); however one-channel judicial nomination intensifies the predominance of politics.

In the majoritarian model disproportion is usually regarded as the disadvantage of the system while the possibility to vote for an individual is commonly regarded as an advantage. I underline the fact that voters quasi look about for parties even if they vote for an individual candidate. This can be explained by the increasing role of the media, the self-consummated prediction that the party will drop out, as a consequence in preferential party-list election (which is also proportional) constituents de facto have greater chance to choose between individuals. (The voters' possibility to have a say could range from scant even to compiling the whole list).

It does matter if the constituent must place confidence in Parliament for 4 years or if one of the checks and balances (in the picture of a Second Chamber or a strong President) can force a special or by-election before the termination of the cycle as the efficiency of government would be not the same. In Hungary this has hardly any chance.

If there was a Bicameral Parliament that would mean a new angle on the problem as for the division of power from which the analysis of electoral models is entirely inseparable. The reasonableness and power of the Second Chamber can mainly be founded along the composition of it. The more it is based on classical national representation the more its power will be close to the power of the First Chamber. In the framework of Law Comparison I am going to point out that Two-Chamber Parliaments can not only function in federations as it is well-demonstrated by the examples of Ireland and Slovenia.

According to public opinion it is the people who elect the Prime Minister however this statement (excluding the Israel model) is not true; as voters only have direct influence on the creation of Parliament; the legitimacy of the Head of Government is only secondary or indirect. So the par excellence election of Prime Minister is a two-stage process, as narrowly speaking it combines the elements of electoral and government system (nomination of the President, confidential voting). Though these two stages are closely linked together as classically Parliament is convened first and the Prime

Minister is elected right after national representation election has taken place.

While in presidential systems the President is elected by a totally separate step, so in this case a classical national representation method is used and the relationship between the two power poles is greatly depends on the way the President gained his power. Viz. A popular politician elected in a majoritarian model can easily get into antagonistic conflict with a proportional and even an expressly oppositionist Parliament.

This statement is acutely true in the semi-presidential model which is examined substantially in my dissertation. Concerning this mentioned model, in the power exercising machinery it is a very important question whether the President is the number-one leader of his own party, group or just the rival of the Governor as the consequence of the given voting system.

„Today Law Comparison means the following: international dispute over the problems of jurisprudence, noticing great similarities instead of small differences and in all deepening the belief in the unitary idea of justice”¹.

„How can we find the same functions in national and foreign legal systems? As it may occur that in one legal system the same regulation need is satisfied with the help of one legal institution while in another legal system the legislator (or the judge in judge-made law systems) creates more legal institutions in response to the same need”². One may get the feeling that it is only about the presidential system: in the parliamentary model the Prime Minister get into office indirectly and not by voting directly to the Head of Government. In the previous case rules governing the election are placed in doctrines of the government system; so it is totally isolated from the whole electoral procedure. In this way jurisprudence can only develop half-truths.

The complex system of power-exercising (that is the coherency of electoral and government system) is defined by the way that the different kind of strengthening and weakening factors fit to each other. The two kinds of factors must be in balance, none of them should exclude the other one otherwise the system will become dysfunctional.

¹ Zweigert-Kötz: Introduction to the Comparative Law

² Zweigert-Kötz: I.m.

My theories put under new light are the following (I paraphrase the following for the first time):

- In electoral districts as for equal suffrage the situation of absentee voters possessing a certificate is problematical;
- Specific classification of the Irish single transferable voting system;
- Equitableness of the austral alternative (single) voting compared to the traditional single systems;
- I arranged the different concepts used incorrectly in the Legal Terminology making differences clear as for the concepts of single-majority voting or compensation (party-list-proportional) seats systems;
- I systematize the concepts: division of power, balance of power branches, separation of powers matching to one another;
- I attempted to categorize the intensity of ministers' accountability before Parliament;
- I point to the „golden mean” model situated between the semi-presidential power and the power of protocolar presidency;
- For the first time I analysis the role of fractional votes of receding candidates which are distributed according to the party lists and examine the impact they play on electoral system and;
- The Government Procedure that confers de facto jurisdiction upon the Prime Minister to regulate on behalf of the Government;
- I analyze the interpretation of the Constitutional Court regarding raised electoral threshold (5 percentages) for the first time;
- I threw new light upon the institution of constructive no-confidence voting.

To conclude in Hungary efficiency of government functioning is guaranteed by the written Constitution and the relevant laws, especially thanked to the mixed electoral system (that is close to the majoritarian system according to results), constructive vote of no-confidence and the lack of minister's individual accountability. However the all-time government, not to say the over-power of parties requires some additional checks and balances.