



# Party Law in Modern Europe

The Legal Regulation of Political Parties in Post-War Europe

## The Diminishing Importance of Party Regulation in Hungary?

### When and how do institutions matter?

Ilonszki, Gabriella, Professor

[gabriella.ilonszki@uni-corvinus.hu](mailto:gabriella.ilonszki@uni-corvinus.hu)

and

Várnagy, Réka, assistant professor

[reka.varnagy@uni-corvinus.hu](mailto:reka.varnagy@uni-corvinus.hu)

Corvinus University of Budapest

8 Fővám tér, Budapest, H-1093, Hungary

The Legal Regulation of Political Parties

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## **Introduction<sup>1</sup>**

Parties play an essential role in modern democracies as they are the main tools of representation (Sartori, 1976). Parties have become the key instruments of democracy and thus a minimal prerequisite for a regime to be regarded as democratic is the existence of free elections with real alternatives to choose from. Alternatives are in most cases represented by parties, which evokes the necessity or at least the possibility of multi-party democracy. Being central to the working of democracies parties have evolved from voluntary organizations to “public utilities” (Van Biezen, 2004) and as such became the center of regulatory attention. Becoming “public” instead of private business motivated the development of a strong normative approach in regulation towards party politics: leveling the field in order to ensure access to party-formation, transparency requirements as well as the respect for democratic principles are among the factors that constitutions especially in recently established democracies or reconstituted democracies increasingly incorporate (Van Biezen, 2011). It comes as no surprise then that the proliferation of party laws in European countries has been demonstrated by various research (Van Biezen–Rashkova, 2011; Casal Bértoa-Piccio-Rashkova, 2012).

However it is important to distinguish between two different regulatory approach: on the one hand recognizing parties as the key actors in making democracies work promoted a permissive and supporting regulation. It is especially true in recently formed democracies (for

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<sup>1</sup> This paper has been originally published on-line on the homepage of the Centre for Elite Studies of Corvinus University of Budapest: <http://elitkutatas.uni-corvinus.hu/index.php?id=tanulmanyok>.

example in Eastern-Central Europe) where the lack of parties called for the state to create party-friendly environment which enables party formation, development and institutionalization. On the other hand parties increasingly dominate various dimensions of the political field such as political communication, legislative work and even administration through patronage which calls for regulatory framework limiting the over-empowerment of parties and the politicization of the state. The cartel party argument (Katz-Mair, 1995) points out the fact that parties can also be obstacles hindering the proper functioning of democratic processes. The widespread mistrust of political parties in European countries also underlines that parties are associated with corrupt processes and non-transparent decision-making practices. As a result party regulation is a debated phenomenon: there is a growing demand for party regulation to ensure transparency and to fight corrupt processes while regulation in itself can serve as a tool for cartelization. The situation is even more blurred in EastCentral European countries where regulation does not reflect the public demand but rather the elite-consensus born at the time of regime-change and thus the roles of regulators and regulated actors are often blurred.

Moreover, Hungary is an outlier even in the region in various aspects: first and foremost instead of producing an increasing degree of regulation party laws proved to be stable for a long time incorporating elements of decreasing regulation (Van Biezen-Rashkova, 2011). Second, in spite of its post-communist character which Rashkova and Van Biezen attribute with enabling new political entries, a clear majoritarian tendency dominates the pattern of party competition with decreasing effective number of parties, parliamentary parties and many other indexes of party fragmentation (see table 1).

Table 1: Party system dynamics in Hungary 1990-2010

	Effective no. of parties	No. of parties in parliament	No. of parties running at least one candidate	No. of non-party candidates	No. of parties with a national list	No. of parties entitled to public finance
1990	6.71	6	28	199	12	11
1994	5.23	6	37	103	15	10

1998	4.46	6	26	53	12	9
2002	2.84	4	22	40	8	7
2006	2.69	5	21	12	10	6
2010	2.86	5	20	21	6	6

Third, despite of the concentration of power within parties and the long-lasting incumbency advantage of parliamentary parties which both should enable the preservation of the status quo, the Hungarian party system collapsed by 2010 with many “old” parties dating back to the regime change disappearing and two “new” parties without links to previous parliamentary parties gaining access to the Hungarian Parliament. Popular arguments disregard party regulation as a possible explanatory factor in explaining the above mentioned changes and peculiarities stating that parties overlook regulations anyway. We believe otherwise. The development of the party regulatory framework reflects the dynamics of cartelization in Hungary. The elite-consensus that prevailed at the time of regime change can be understood as an initial cartel: the definitive role of state in creating a multi-party framework suggests the interpenetration of the party and the state through regulation and financing even if the original regulatory will aimed at distancing these two actors. The cooperative type of regime change strengthened inter-party negotiations where all actors’ needs were taken into account (if not always satisfied). However, soon after the regime change the reality of politics broke down the inter-party consensus which to a certain extent supported the formation of independent party poles. While cartelization is a viable phenomenon in competitive party systems as well, we argue that the diminishing consensus in Hungarian politics accompanied with the bipolarization of the party system and later even stronger majoritarian tendencies resulted in such deep divide and mistrust that even cartel interests could not be realized. Party regulation which is among the regulations that require a qualified 2/3<sup>rd</sup> majority in Parliament became victim of these hostile tendencies and could not be renewed. The original intent of regulators was clear: the (self-)regulation of parties should rest on consensus. This intent however is clearly under attack: in the past the frozen battle lines impeded consensus while in the present the dominance of majority neglects the need for consensus. Thus we argue that the regulation of the party system captures the naissance and the break-down of the elite-consensus and mirrors the majoritarian tendencies characterizing Hungarian democracy. Under these

circumstances the main question is to what extent Hungarian parties can contribute to the functioning of democracy and can be regarded as the main instruments of democracy?

In the paper first we will describe the main characteristics of party regulation in Hungary arguing that legal regulations were more important in the first, formative years of democracy and their importance has continuously diminished. Despite of the stable regulatory framework and the intention of maintaining the status-quo, party politics serving the advantage of the major (parliamentary) parties finally and finitely collapsed by 2010 when new parties managed to get into the political scene. Thus second, we will look at the transformation of the party system and look for the factors of regulation that influenced its development and allowed for the appearance of new actors. At this moment however the new dominant party political groups seek to create a new regulatory framework, so fourth we will have an outlook on the upcoming legislative changes to see whether the pattern of under-regulation endures.

### **Party regulation in Hungary**

The legal framework of the new democratic Hungarian political system was designed at the wake of the regime change in 1989 during the so called round-table discussions where the “new” opposition parties and the “old” socialist elites negotiated the main characteristics of the new democratic regime. The negotiations that allowed for a peaceful transition represented an agreement between the ruling groups and such an elite-consensus characterized the major regulations of the new system. The regulation of parties was no exception, while the need to develop a multi-party framework was recognized very early and the right of assembly and the freedom of association (Act II. and III. of 1989) were granted in the Constitution even before the beginning of discussions, the main regulations concerning parties reflected the will of both elite groups. Concerning party regulation there was a widespread agreement on the fact that parties are indispensable actors in the democratic process, the revised Constitution (Act XXXI. of 1989) itself states in the introductory part that “in order to facilitate peaceful political transition into a constitutional state ready to realize a multiparty system, introduce parliamentary democracy, and promote conversion to a socially alert market economy, Parliament submits the following text as the authorized version - until the ratification of its replacement - of the Constitution of Hungary.” As Van Biezen notes in all post-war waves of democratization the constitutionalization of parties is the product of the restoration of democracy indicating their essential role in the political process (2011:198) although in new democracies she expects a more extensive regulation of parties than in the older liberal

democracies and due to Hungary's totalitarian past constitution a clear separation between parties and the state (2011:201). The Hungarian Constitution of 1989 did include a section on the regulation of parties, the private nature of parties was ensured through the regulation of conflicts of interest: "The parties may not exercise public power directly. Accordingly, no party may control or direct any State organ. In order to ensure the effective separation of the parties from State power, the law determines the social and public offices that cannot be filled by any member or officer of any party." (Article 2 (3) of XXXI. of 1989).

Following the amendments to the Constitution a more detailed regulation of the parties was negotiated in the round-table discussion. The resulting Law on the Operation and Financial Functioning of Parties (XXXIII. of 1989) can be regarded as the main legal source of party regulation, although important aspects of the working of parties are regulated in other legal acts. For example campaign financing issues are regulated within the Electoral System Law along with the media access of parties during election campaigns. Table 2 gives an overview of the most important aspects of party regulations including the main elements of regulation as well as the most important amendments and whether the regulation is still in force or not.

Table 2: Overview of the regulatory framework on parties (in bold: laws that are still in force)

Year	Title	Main elements	Dates of amendments	Main amendments affecting party regulation
1989	<b>Law II of 1989 on the Right of Association</b>	To be registered, a party needs to collect the signatures of 10 Hungarian citizens, to elect a representative body and to adopt party statutes.		
1989	<b>Law XXXIII of 1989 on the Operation and Financial</b>	Income of parties can include fees, state funding and earnings from narrowly prescribed economic	1990, Law LXII of 1990	The upper limit on state subsidies is abolished.

	<b>Functioning of Parties (Party Law)</b>	activity. Parties can also establish for-profit companies. These companies are subject to standard tax regulations, while parties are not.	1992, Law LXXXI of 1992	Parties are not allowed to receive donations from companies partially owned by the state or from foundations supported by the state. Parties whose national list did not pass the threshold for election to Parliament are no longer entitled to a share of the 25 percent segment of the annual national budgetary support for parties. The State Audit Office is to check the parties' finances every two years. New standardized, but less detailed, budgets are demanded from the parties.
			2003, Law XLVI of 2003	Party foundations are introduced.
1989	Law XXXIV of 1989 on the Election of Members of Parliament (Electoral Law)	Parties must publish their campaign budgets in the press. Parties with regional and national lists as well as local candidates are guaranteed free access to broadcast in the national public media.	1997, Law C of 1997	Campaign expenditure must be reported in the National Gazette. Individual candidates cannot spend more than 1 million HUF
1991	Law XLIV of 1991 on the Parties' Headquarters	All parties obtaining 1 percent or more of the popular vote receive offices from the state. The headquarters buildings hitherto rented by the parties from the state are given to the parties for good. The buildings become the parties' property. Parties can sell these state-donated buildings.		
1994	<b>Resolution 46/1994 on the Standing Orders of the Parliament</b>	The minimum number of MPs forming a faction is 15. The financing of factions	2007, Resolution 103/2007	The minimum number of MPs necessary to form a faction is reduced to 10. In case at the national elections a party gains more than 5% of votes (parliamentary threshold) but the number of its MPs is less than 10, a faction including all of its MPs can still be formed.



2000	Laws XCIV and XCV of 2000 on Party Properties	Parties submitting a national list at elections and having a faction in Parliament are entitled to the free use of state-owned offices. The maximum number of state-owned offices that can be used by any one party is set at 30.		
2003	<b>Law XLVII of 2003 on Party Foundations</b>	A party foundation is entitled to a state subsidy if the party has representatives in parliament at least throughout two terms.	2008, Law LI of 2008	A party foundation is entitled to state subsidies if it is founded by a party that is eligible to state subsidy in the given year.

Source: Enyedi, 2007 updated by authors

The data in Table 2 suggest that the majority of regulations surprisingly persisted for the 20 years of democratic development. This stability can be explained on the one hand by the elite-consensus and on the other hand by the permissive regulation that was designed to promote the emergence of a multi-party system based on the small grouping of opposition groups that were just starting the process of institutionalization (Ilonszki, 2008). The actors that profited from the supportive regulations continued to dominate the Hungarian political arena during these 20 years so they were indeed interested in keeping up the status quo. Given the stability of the regulation, it is worth studying the main characteristics of the system.

*The first characteristic is the permissive even under-regulated nature of the party system.* At the beginning of the regime change the explanation lied in the elite consensus and the need for new parties. The consensus within the political elite soon broke down impeding the adoption of stricter regulations since according to the Hungarian Constitution the amendment or re-regulation of party affairs requires a qualified, 2/3<sup>rd</sup> majority. The majoritarian tendencies coupled with growing conflicts between the two blocks of politics translated into a hostile relation of the government and the opposition. As a result the legislative process became dominated by the government with a decreasing rate of consensus and fewer and fewer number of adopted laws requiring qualified majority (Ilonszki-Jáger, 2008; Jáger –Várnagy-Ilonszki, 2011). While the decreasing trust in political parties challenged the elites and the growing presence of corruption called for action event attempts to legislate party affairs especially financial issues decreased. In the 1998-2002 parliamentary cycle 3 opposition amendments and 1 governmental amendment were introduced to the Act XXXIII/1989 but none of them reached the level of plenary debate within the legislative process. In the period

of 2002-2006 two bills were introduced and passed concerning party foundations but in these cases consensus had been reached before the legislative process started since the initiators included MPs from both the government and the opposition. In the 2006-2010 parliamentary cycle two governmental amendments addressing the transparency of party financing were rejected and only a minor modification to the law on political parties and an amendment introduced by a parliamentary committee were accepted. These examples suggest that the stability of the regulatory framework can only be partly explained by the desire to maintain the status quo and that the inability to change should also be considered as an explanatory factor.

*The second characteristic of the regulatory framework is the strong focus on financial issues<sup>2</sup>.* This is not a special Hungarian characteristic as Van Biezen and Rashkova point out (2011) as the Hungarian campaign financing regulation does not seem to be very different from the practices of other Eastern-Central European countries. In Hungary state subsidy is provided to parties with a minimal requirement of collecting 1% of votes at the national parliamentary elections. Besides state subsidies parties were entitled to collect membership fees, realize own revenues and accept donations, although according to the parties' balance sheets the main source of income is the state subsidy (see table 3).

Table 3: The financial structure of Hungarian parliamentary parties in 2010 in '000 USD<sup>3</sup>

Party	Income total	Income sources				Spending total	Spending			Balance
		membership fees	state subsidies	donations	other		political activity	operational costs	other	
Fidesz	9 384,2	658,2	4 271,0	2 934,5	1 520,6	10 883,2	7 181,4	1 925,1	1 776,6	-1 498,9
Jobbik	1 719,5	43,2	1 157,8	512,1	6,2	1 508,1	1 421,6	70,1	16,3	211,4
LMP	1 341,4	17,3	664,0	338,2	321,9	2 013,0	1 674,8	286,8	51,4	-671,6
MSZP	5 066,1	222,0	3 241,5	1 372,6	230,1	7 488,4	4 055,3	2 967,6	465,5	-2 421,8

Source: Juhász, 2011, [www.hvg.hu](http://www.hvg.hu)

Originally there were no formal limits on the income side of party revenues except for prohibiting donations from foreign countries and the requirement of naming major donors but in 1992 a modification prohibiting donations from state-owned companies was introduced.

<sup>2</sup> For a more detailed description of Hungarian campaign financing see Enyedi, 2007 and Ilonszki, 2008

<sup>3</sup> At the official exchange rate of 1\$=208,147HUF

Bank loans are also available to parties and as we can see from the data in table 3 the “other income source” which stands mainly for loans while the “other spending” stands for paying installments are very important figures in the parties’ budget. Ilonszki notes that during election campaigns some parties almost go bankrupt and many of them use the assets provided by the state (such as headquarters) as financial resources (Ilonszki, 2008).

After the first parliamentary cycle one major restriction in the financial field was the restriction of campaign spending. State subsidies also specifically contribute to the parties’ (and independent candidates’) campaign expenses proportionately to the number of candidates running. In 1997 a modification was introduced limiting the amount of campaign spending in 1 million HUF per candidate. However, candidates and parties openly disregard this limit as the latest report of Transparency International (2012) stated. This leads us to an important aspect of the regulatory framework namely the weak control capacity of monitoring institutions. The State Audit Office of Hungary is in charge of monitoring party finances and campaign spending but its competence only concerns the formal requirements of reporting and thus cannot assess the true content of reports which results in a discrepancy between reported campaign spending figures and estimated costs of political advertisements (Transparency International, 2012).

*The third characteristic of the regulation is the advantageous treatment of parliamentary parties.* First, state subsidy is divided into two parts: Twenty-five percent is divided in equal proportion among all parliamentary parties while seventy-five percent is distributed according to election results among all parties in accordance with the proportion of the vote that the party (or its candidates) received in the first round of the election given it exceeds 1%. Second state subsidies arrive from various channels towards parties: according to the Party Law foundations of parties also receive state subsidies while parliamentary groups are also eligible for funding. The sum of financial support provided to party foundations and financial support provided to party groups can reach the amount of state subsidy provided to parties: for example in 2011 the Socialist Party received 2,6 million USD while the party group got 1,0 million USD and the Táncsis Mihály Foundation 1,3 million USD. The same percentages apply for Jobbik – the Right Hungary which gets 2,2 million USD in form of state subsidies, 0,9 million USD as party group and 1,1 million USD financial support goes to its foundations. In most Hungarian parties, the parliamentary party group plays a leading role which is further strengthened by its financial resources. Party groups are understandably keen on maintaining

this situation so when in 2011 party subsidies were strictly cut back due to the financial crisis, the financial support provided to party groups were soon augmented by 20-25%.

While legal rules did not imply change there are examples or best practices when parties answer the popular demand by offer higher transparency as was the case in the '90s first with British Labour and then with the Conservative Party who following a scandal of party donors decided to name those donors who offered more then 5000 pounds. Later, in 2000 this requirement was codified which signals that the legal framework does not always take a lead in regulating the functioning of parties. However, *the fourth characteristic of Hungarian party regulation is the lack of self-regulation*: the organizational and operational rules of parties only define the main pillars of party organizations. The resistance towards self-regulation is further strengthened by the fact that often the existing regulation is overlooked during decision-making processes: for example the analysis of the candidate-selection mechanism of parties revealed the centralized nature of selection in all parties and the neglect of existing quotas<sup>4</sup> (European Parliament, Directorate General for Internal Policies, 2009; Várnagy, 2010). So far only a new parliamentary party LMP-Politics Can Be Different seems to be an exception to the rule since it declared a strong commitment to intra-party democratization and gender balance. Based on Kitschelt's (1989) and Gunther and Diamond's (2003) typology LMP is a left-libertarian movement party which is based on a loose network of grassroots groups with little formal hierarchy or central control (Kitschelt, 1989:66). While the description fits well with LMP the reality of everyday politics puts an enormous pressure on the party to conform with the formal and informal rules of political life and as a result LMP struggles with keeping up with the pace of politics while maintaining its internal democratic processes and highly consensual decision-making. The other new party of the Hungarian Parliament, Jobbik represents just the opposite. Jobbik is what Gunther and Diamond labeled post-industrial extreme right party based on Ignazi's typology (1996) with a strongly leader-centered and thus centralized decision-making process that hinders transparency to a great extent. The State Audit Office (2012) has pointed out various problems with the transparency of the party's financing since its reports did not even meet the formal requirements, and for example its 2010 financial report was not published on the party's website despite of the legal expectations.

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<sup>4</sup> The use of quotas is not widespread in the Hungarian system either: only the Socialist Party and LMP established gender-quotas affecting candidate-selection.

### **Party system change: the formation and the breakdown of cartelization in Hungary**

At the beginning of party system formation the Hungarian party system was characterized by the presence of an organizationally strong but socially segregated Socialist Party (MSZP) that was the descendant of the ruling Hungarian Socialist Workers' Party on one side and the abundance of organizationally weak and socially not yet embedded opposition groups on the other. While these opposition groups did not have strong ties to society they united in what they were not: they were not yet compromised by the old regime. The fact of having a rather small elite-base actually benefited these opposition groups since it enabled them to unite and negotiate together with the "common enemy": the old party elites. Based on this divide the round-table discussions aiming at creating the pillars of the new democratic regime started in 1989. *The first phase of cartel politics dates back to this period, 1989-1990* and can be characterized on the one hand by a negative consensus within the new political elites that is the takedown of the old elites and by the pragmatic cooperation between the old and the new elites that rested on a strict give-and-take approach where new elites fought for the leveling of the political field and old elites fought for saving as much assets of the past as possible. The Hungarian transition process is often labeled as an elite-driven democratic process and while the elite-consensus is clearly the explanatory force behind the basic codification of the new democratic system, it did not last for long. After the negotiations were settled and the most important acts were accepted, opposition parties launched an offensive against the socialist forces (for example by impeding the election of socialist-leaning President through a referendum) and started to compete with each other at the first parliamentary elections.

*The second phase of cartel politics coincides with the first parliamentary cycle, 1990-1994.* This period can be characterized by the emerging conflicts that affected both intra- and inter-party alliances. The burden of government and the surfacing disagreements ruptured the main governing party, the Hungarian Democratic Forum, MDF (for the overview of the distribution of seats in the Hungarian Parliament, see table 4) while the discontent with the political direction the government took opened up new possibilities for cooperation in opposition, namely allowed for the re-entry of the Socialist Party to the political field. Despite these differences an elite-consensus prevailed concerning the issues and the values of self-regulation: several modifications to the Party Law were introduced which meant stricter regulation but more importantly benefited the new parliamentary parties as opposed the

Socialists. New parties indeed needed this assistance as a great asymmetry prevailed between the MSZP and the other parties in organizational terms such as party size (membership and local branches), internal organizational complexity and affiliated organizations (Enyedi-Linek, 2008).

Table 4: Parliamentary parties in Hungary, 1990-2010 (no of seats)

	1990-94	1994-98	1998-2002	2002-2006	2006-2010	2010-
Fidesz	22	20	148	164	141	227
FKGP (Independent Smallholders' Party)	44	26	48			
Jobbik (Movement for the Right Hungary)						47
KDNP (Christian Democratic Party)	21	22			23	36
LMP (Politics Can Be Different)						16
MDF (Hungarian Democratic Forum)	165	38	17	24	11	
MIÉP (Hungarian Justice and Life Party)			14			
MSZP (Hungarian Socialist Party)	33	209	134	178	190	59
SZDSZ (Alliance of Free Democrats)	94	70	24	20	20	
Independents	7	1	1		1	1

With the second national election the left-right divide that has defined Hungarian party politics ever since emerged. As Enyedi and Tóka note while in this period we are dealing with the same actors as only one new party entered the Parliament (in 1998 the Hungarian Justice and Life, MIÉP party a radical right-wing party that seceded from the MDF), the perceived stability hid a fluid party system. The two liberal groups, the Alliance of Free Democrats (SZDSZ) and the Alliance of Young Democrats (FIDESZ) developed in two opposing directions: while before the elections of 1994 party leaders still talked about a possible electoral alliance, the coalition agreement with the Socialist Party positioned the SZDSZ on the left side of the political spectrum and the Fidesz oriented itself towards the right where no dominant parties prevailed after the unpopularity and landslide loss of the first coalition government headed by conservative MDF.

Table 5: Governments of Hungary 1990-2010

Prime Minister	Type of Government	Parties in Government	Parliamentary Term
Antal	Coalition majority	MDF (Conservatives), KDNP (Christian-Democrats), FKGP (Smallholders)	1990-1994
Boross	Coalition majority	MDF (Conservatives), KDNP (Christian-Democrats), FKGP (Smallholders)	1990-1994
Horn	Oversized coalition majority	MSZP (Socialists), SZDSZ (Liberals)	1994-1998
Orbán I.	Coalition majority	Fidesz (Conservatives), MDF (Conservatives), FKGP (Small Holders)	1998-2002
Medgyessy	Coalition majority	MSZP (Socialists), SZDSZ (Liberals)	2002-2006
Gyurcsány I.	Coalition majority	MSZP (Socialists), SZDSZ (Liberals)	2002-2006
Gyurcsány II.	Coalition majority	MSZP (Socialists), SZDSZ (Liberals)	2006-2010
Gyurcsány III.	Single party minority	MSZP (Socialists)	2006-2010
Bajnai	Single party minority	MSZP (Socialists)	2006-2010
Orbán II.	Oversized coalition majority	Fidesz (Conservatives), KDNP (Christian-Democrats)	2010-2014

Not only the MDF but also the Christian-Democrats and the Smallholders suffered the consequences of this unpopularity that were further deepened by intra-party conflicts between competing party elites. The loss on the right gave way to the rise of the left resulting in the landslide victory of the Socialist Party at the 1994 elections.

By 1998 the party system became a two-plus party system where the two major parties – Fidesz and MSZP – had almost equal strength. As Ilonszki illustrates “The combined share of seats of the two largest parties has increased (...). In 1998, the combined seat share was seventy-five percent, and, in 2002, it was close to ninety percent only barely decreasing in 2006 to eighty-five percent. As for the list vote of the two largest parties, the trend continues—the combined vote in 1990 was forty-six percent and by 2006 eighty-five percent which is higher than at the peak of two-partism in British politics.” (2008:138). As the description suggests the left-right divide became the dominant dimension of Hungarian

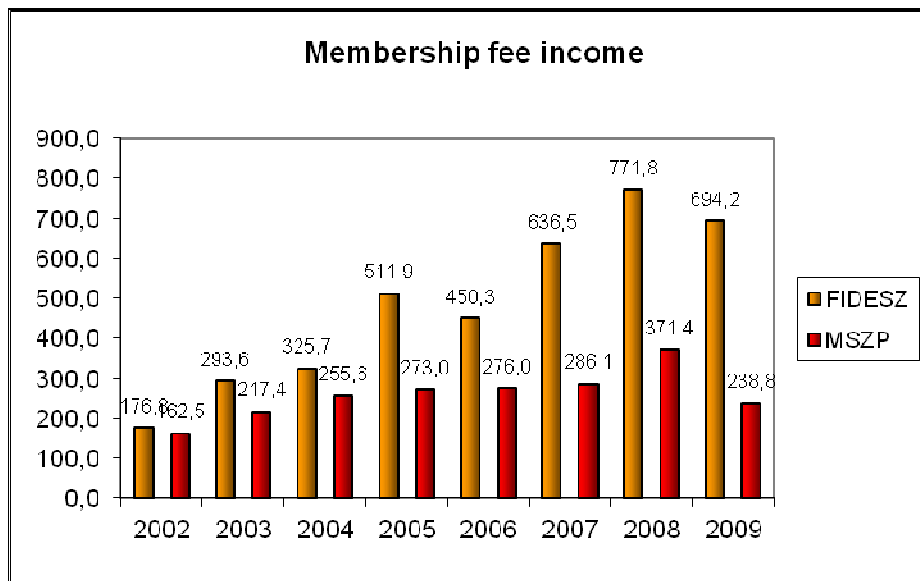
politics creating a divide that was impossible to overcome for example in coalition-politics. The emerging political blocks also affected the legislative work negatively (Ilonszki, 2007) with the government dominating the legislative process. The Rice-index (the voting unity) of the Hungarian PPGs was very high, even exceeding the average unity measured in consolidated democracies (Jáger-Várnagy-Ilonszki, 2011) and confirming the emergence of party blocks, coalition unity has been found similarly high (Ilonszki-Jáger 2008). Still, we can still speak of a *restricted cartel in this third period of cartel politics from 1994 to 2002*, since several legislative acts prove that actors identified key common interests and values and were capable to act upon them: one telling example is the increase of the parliamentary threshold from 4 to 5% which clearly benefited the incumbents and formed a *cordon sanitaire* against the post-communist party. Another example is the regulation of the conflict of interest arising from holding parallel elected offices at the local and national level: while holding of multiple elected offices was originally restricted by law, in 1994 when in the ranks of the governing Socialist Party several MPs had seats as mayors in local governments the regulation was changed to accommodate the practice. While the coalition government possessed the required  $2/3^{\text{rd}}$  majority to allow for holding a mayor and an MP mandate, the proposed bill was accepted also by the opposition parties (except for MDF who voted against it). This regulation served also the Fidesz: later it used the access to local political seats as a tool for party-building through delegating well-known and popular politicians to the local level in order to profit from the visibility, the contact to voters and from the financial resources available at the local level (Várnagy, 2008) To sum up we can say that the third period of cartel politics can be characterized by the gradual breakdown of consensus-oriented politics and the bipolarization of the party system. The last momentum of consensus about party matters is the acceptance of the Law XLVII of 2003 on Party Foundations which clearly benefited parliamentary parties since originally only foundations of parties represented for two parliamentary cycles could be eligible for funding. Although later this regulation was declared unconstitutional by the President of Republic still the parties managed to keep face and serve the remnants of the cartel by ruling that those parties are entitled for the public party foundation support that receive (other) state subsidies anyway.

By 2002 the minimal consensus that existed in the party system disappeared and we can speak of no cartel effects in the era of 2002-2010. Several explanatory factors can be stated: according to Enyedi the concentration of the party system was greatly aided by the electoral system that overrepresented the winners. This mechanical effect was further strengthened by



the growing ideological and emotional distance between the two party blocks and by the dominance of personal politics especially the focus on the Prime Minister that undermined the importance of smaller parties which could not redefine themselves as center or anti-establishment parties against the two blocks (2006:210). By 2002 the original organizational disadvantage of Fidesz disappeared. Furthermore, after the electoral failure in 2002 the party embarked on an intensive network developing campaign with the aim to increase its social embeddedness and strengthen its ties to society (see table 6 for the overview of the increase in membership fees).

Table 6: The income from membership fees in '000 USD of the two major parties, MSZP and Fidesz, 2002-2009<sup>5</sup>



The party declared the need for unity within party blocks suggesting that no other parties are viable on the right side of the political arena. These tendencies continued into 2006, when Enyedi offers the following analysis: “the most important message of the 2006 elections is the stability of the basic structure of Hungarian party politics. Our old parliamentary parties which are already older than some of their voters succeeded in maintaining the status quo that is quite an exception on our region. They are like good soldiers: they are disciplined, loyal to their camp and remorseless to their enemies. They are fewer and fewer but still they do not

<sup>5</sup> At the official exchange rate of 1\$=200,945 HUF

open the door to new entrants.” (Enyedi, 2006:205). The empirical data certify the analysis. For example, in the Hungarian Parliament consensual voting decreases: while in 2000 it reaches 54 %, by the second half of 2009 it is at 27 % (Jáger-Várnagy-Ilonszki, 2011). The reform of party regulations is thus inconceivable and political elites overcome outdated legal rules by conforming only formally with the legal requirements. As a result party finances are scattered with corruption scandals and campaign financing rests on a mutually beneficial relation between private enterprises and parties: companies contribute to parties by asking a reduced fee or no fee at all for certain services while parties award government contracts to loyal entrepreneurs (Enyedi, 2007). The corruption data coming from Transparency International reflect the same results: Hungarian political parties are embedded in private business sphere partly through campaign financing practices (Transparency International, 2012). Lengyel and Ilonszki draw our attention to the danger lying in elites imitating the respect for democratic rules as it can make the workings of democratic institutions ineffective (Lengyel-Ilonszki, 2010). Kopecky and Spirova also draw our attention to the fact that the relatively weak state and the power-hungry political parties together can offer a fertile ground for patronage practices and demonstrate that Hungary ranks high in Europe in terms of index of patronage that captures the politicization of the state (Kopecky-Spirova, 2011:906-907)

Growing distrust in political parties coupled with the growing discontent of governing capacities and the effects of financial crisis provoked the fundamental restructuring of the Hungarian party system in 2010: two new parties – the left-libertarian LMP and the radical right Jobbik – entered the Parliament while old parties present since the first parliamentary cycle – the MDF and the SZDSZ – disappeared from the political arena. Despite of the new entries the concentration of the party system prevailed due to the landslide victory of Fidesz that guaranteed a 2/3<sup>rd</sup> majority to the government and the poor election results of the Socialist Party. The current party system rather resembles a predominant party system (Sartori, 1976) than the multi-party system Hungary had started from (see table 1 for the constant decrease in the number of effective parties). While the discontent of voters can be an explanatory force behind the restructuring of the political field, Enyedi and Benoit demonstrate that the median Hungarian voter moved towards the right which also explains the emergence of Jobbik. Thus the authors talk about the 2010 elections as a critical juncture not only because of the concentration of the party system but the restructuring of voters’ preferences and attitudes. In this sense the polarization between parties and the median voter decreased as they got closer on the right but the polarization between parties prevailed and

even increased (Enyedi-Benoit, 2011:40). These two tendencies: the perceived support (even if it is diminishing) translated into a 2/3<sup>rd</sup> majority together with the strong polarization questions the pragmatic need for consensus in political-decision making.

### **Outlook on the present and (the future?) situation**

As it has been introduced above, 2010 was a turning point – and witnessed a critical election in the sense that a lasting pattern was overturned and a new pattern was formed: the Fidesz (with its small ally, KDNP in an electoral coalition) received 52.7% of the list votes and enjoys a 68% „enabling majority” in parliament. The majoritarian bias of the electoral system has often been observed and apparently was part of the intention of those actors who participated in the formation of the new democratic political context in 1989: empowerment of the majority to rule in a stable environment and the empowerment of the prime minister via the constructive confidence vote were part of the deal, although at that time the interests of the minority - at least of the minority that managed to get into the frames of parliamentary politics – were ensured by a dozen legal areas that can be legislated upon only by a 2/3<sup>rd</sup> majority in parliament. As also mentioned above different fields or topics of party regulation all belonged to this category and served well during the parties’ cartel periods – although as we have seen with a decreasing force.

At first glance this might explain why important areas of party regulation remained virtually untouched during the two decades – and why since after 2010 with an enabling parliamentary majority the government put them on its agenda. This explanation however would not suffice. In the first place, there was already one government period (1994-1998) when a 2/3<sup>rd</sup> majority governed – leaving virtually all party-related regulations untouched<sup>6</sup>. Of course, that was a different time-period, and party-political constraints worked differently – but most importantly at that time the original agreements of the elite consensus still prevailed. In addition, and in the second place: although numerically there was no other opportunity to over-write the 2/3<sup>rd</sup> laws from other research we know that – despite bipolarization tendencies and block politics – well until 2010 a substantial – although decreasing - proportion of

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<sup>6</sup> The only exceptions were a) the increase of the electoral threshold before the 1994 – second democratic – elections to block the post-communist party from getting into the parliament (a truly unbased fear at the time and ever since); and b) the law in 1994 making mandate accumulation for the MPs with a local political post possible. This latter initially served the Socialist left, and later the two large parties.

“normal” laws were accepted with government-opposition consensus. In contrast to that, 2/3<sup>rd</sup> laws were put on the agenda and accepted in an ever decreasing degree (Jáger - Várnagy - Illonszki, 2011). This might imply – in addition to prevailing conflicts – that for an extended period the cartel among the original (initial) actors worked – even if not smoothly but at least acceptably and there was no overarching intention to redraw the original framework.

The first signs that the cartel might be challenged not only from inside but also externally emerged after the 2009 EP elections with the obvious success of the extreme right and with the left LMP becoming visible and with the failure of the old members of the cartel: the Socialists and Liberals – the latter was not even able to gain a seat in the EP. The first concrete plans to transform the electoral system, to regulate mandate accumulation, to clean the parties from the blames of financial misconduct or even political corruption by changing campaign regulations etc. were indeed born in 2009 – both on the government (at that time still the Socialist-Liberal coalition) and on the opposition side (at that time the Fidesz and its small allies) – in addition to the left and the upcoming right. When at the 2010 parliamentary election the expected pattern came to the light: two founding parties of the democratic transition disappeared from parliamentary politics, the Fidesz became the absolute winner and two new parties became parliamentary forces, *the time was ripe for party re-regulation*.

Popular, institutional, practical, power, and party considerations are at play in parallel. All in all, the reasons can be summarized as follows: a) This is (will be) a gesture towards those, mainly the general public, who have been critical about the existing patterns. One should note that anti-party and anti-politician sentiments are high in Hungary. Slogans and references about “making politics less expensive” or about “fighting corrupt politicians” are easy to sell. Concrete results and consequences will get less attention. b) At the same time the institutional opportunity also supports re-regulation: the enabling majority can easily introduce and implement decisions according to its intentions without the necessity to discuss and argue. c) The change of the political reality such as the new tools of campaign communications and the growing importance of the Internet left wide areas of party politics unregulated since the legal framework could not be renewed. The new parties are pioneers in using these techniques which increases the pressure on old parties to regulate the area. d) From the perspective of power politics one should note that the Fidesz’ understanding, concept and practice of power aim at dominance and lack political self-constraints. The rationality behind seems to be that the fundamental transformations they are implementing – from the restructuring of social

stratification to creating new economic wealth and power centres – can only be maintained if the power framework is also changed. e) Finally, we think that in broader party political terms the new regulation will ensure that under-regulation prevail thus parties enjoy at least similar freedoms in their “business” as before while closing opportunities for the small or newly emerging partisan actors and offering advantages of a new cartel for those who are willing to accept the rules of this new-old game. The above arguments are partially only “thoughts in progress” because not all the laws have been accepted yet. Thus far the following regulations have been put in place.

Most importantly a new constitution has been enacted. The general debate on the Basic Law, as it is called, lasted for 5 days and the detailed debate lasted for 2 days in the parliament, and eventually it was accepted only by the governing parties. The Socialists (MSZP) and the left LMP did not even participate in the vote as a protest that the government did not consider other opinion but their own while the extreme right Jobbik was present and voted against. The Basic Law deals with parties in a very modest way. In the 31 page long document parties appear in the context of the freedom of association as they “participate in the formation and publicization of the popular will” (article VII); otherwise the document refers to the special laws that regulate the working and financing of the parties and that determine the conflict of interest rules. The parliamentary party is mentioned on one occasion (article 3. (4)): the opinion of its leader is asked before the Head of State decides about the dissolution of parliament.

The other accepted legal document is the new electoral law (2011/CCIII). This was also accepted against the protest of the opposition parties with the Jobbik voting against and the two other parties abstaining from the vote. The new system maintains its mixed character but instead of three tiers only two are left: 106 SMDs will be complemented by 93 national list seats, that is the regional list tier will disappear. As such the importance of the SMDs will increase – and the opposition can only challenge the huge government party if forms an electoral alliance. Hungary will be one of those few exceptional cases (Colomer, 2005) that transform their electoral rules towards majoritarianism, as opposed to proportionality. Open party interests continue to explain the electoral system regulations.

Some fundamental regulations are only in the process of preparation. Under the current circumstances they will be exclusively government initiatives. The two democratic opposition parties declared that they would not even participate in the fake parliamentary debates where opposition initiatives, not to mention bills are swept off the agenda. Most recently (March 10,

2012) the faction leader of the large governing party initiated a “bill on Parliament”, which reflects the power intentions of the largest party and would modify the parliamentary rules at the detriment of the smaller parties. Indeed, the question is: what can be the dominant expectation: the formation of a new cartel or rather the super-power of a dominant party, and thus the end of the predominant party system..

## **Conclusions**

Institutions matter and they are re-regulated when new interests gather strength and the new regulations are assumed to serve these new interests. The regulations of the party system emphasize the often overlooked nature of institutionalization, namely that the regulators are often the ones regulated. As a result long-lasting and functioning regulations can only be implemented based on consensus. As elite theories state the lack of elite consensus regarding the basic norms can hinder the stability of the regime (Higley - Burton, 1989). Originally, in 1989 the regulations were liberal in the sense that they left many questions open (in party law), or they responded to the safety and stability concerns of the new and old elite (in the electoral law).

While elite-consensus is necessary, cartel politics can endanger the proper functioning of democracies. As the case of the Hungarian party law stipulates due to the cartelization the regulatory framework freeze in its initial phase opening up the possibilities for corruption and blurred practices. With the degradation of consensus the renewal of regulation became impossible which further strengthened the necessity to overlook the rules which did not suit political reality anymore. While the public is apolitical, the overuse of corrupt techniques could not go unnoticed which contributed to the general mistrust of old elites especially governing parties. In 2010 the political elites had to pay the price for first not wanting later for not being able to renew regulations.

Now power games both within parties and among parties provide the background of the new regulations. The risks cannot be fully foreseen. Is the extreme right becoming part of the new cartel? A cemented power structure and government structure is being formed that would make government alteration impossible? Do these changes promote democracy or rather

increase democracy deficit? What seems certain is that at this stage of political development parties are not seen as safeguards of democracy but rather as cemented power structures of the elite.

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