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## **Establishing and maintaining political pluralism constitutional provisions on the freedom of creating and functioning of political parties in post-communist countries (Hungary, Poland and the Russian Federation)**

### **KEYWORDS:**

*post-communist countries, constitutional process, political parties, political pluralism, freedom of creating political parties*

Provisions of institutional guarantees in constitutions are mostly due to the bitter experiences of history – while establishing constitutionality, besides the positive provisions of forming the framework the social-political system, negative-prohibiting rules are used as well. The precedent of the Weimar Republic forewarns: establishing a political system cannot dispense with rules on hindering the development of the unwanted political system<sup>1</sup>. It is particularly true to the constitutional process of the Central-Eastern-Europe following the system changing of 1989–1990: the democratic systems following the communist totalitarian systems have a lot of constitutional provisions because of the bad historical experiences. And it is particularly true to the institutionalization of the political parties – the provisions thereof can be interpreted

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<sup>1</sup> See: Judgement of 26. September 1995 in the Case of *Vogt vs Germany*, par. 59. „The Court proceeds on the basis that a democratic State is entitled to require civil servants to be loyal to the constitutional principles on which it is founded. In this connection it takes into account Germany’s experience under the Weimar Republic and during the bitter period that followed the collapse of that regime up to the adoption of the Basic Law in 1949. Germany wished to avoid a repetition of those experiences by founding its new State on the idea that it should be a ‘democracy capable of defending itself’.

only with considering the features of the antidemocratic and totalitarian communist party in the background.

In this paper I would like to study in comparison the constitutional and other legal provisions on the political parties of three post-communist countries – Hungary, Poland and the Russian Federation. The democratic law of parties draws attention to the intentions of establishing and maintaining the political pluralism and multi-party system with constitutional provisions after a totalitarian past.

The countries in the soviet block followed the Stalinist constitution and declared the leading role of the communist party (in Hungary, 1972: “The Marxist-Leninist party of the working class is the leading force of the society.”; in Poland, 1952: “the Polish United Worker’s Party shall be the leading political force in society aimed at building socialism”), but by the time of the system changing, the memories of the multi-party system existing before the communist era were still vivid. Not like in Russia, where only one party ruled for generations. But in 1989-90 it happened that the parliaments ruled out the provisions on the exclusive power of the party from the Constitutions. As Halmai notes, the rules of the democratic party-law – which is special to the law of associations – cannot aim the establishment of the multi-party system, because the legal means have only limited efficiency in this scope of the transformation of the political system<sup>2</sup>. The measure of the task and the wide scale of arising problems can be studied on the development of the Russian multi-party system, on the “parliamentianising” of new parties<sup>3</sup>.

## **The freedom of creating political parties**

### **The notion of political parties, functions**

The source of the freedom of creating political parties is in the freedom of association, we consider the parties as special associations, with special legal provisions because of their goals and functioning. The special features of the law of parties – due to their specific constitutional role that was accepted only in the 20. century – can be intelligible from the structural positioning of the provisions. The freedom of creating parties is placed among the political rights as a part of the freedom of association, but while the Hungarian constitution in the Article 3,

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<sup>2</sup> G. Halmai, *Az egyesülés szabadsága. (The freedom of association)* Bp. 1990, p. 161.

<sup>3</sup> R. Sakwa, *Russian politics and society*, New York 2002, p. 126, 189–199.

the Polish in the Art. 11 separately emphasize again the freedom of creation and functioning of political parties, the Russian constitution in the chapter 1. (The Fundamentals of the Constitutional System) Art. 13.3. declares the principle of the political pluralism and the multi-party system only, referring indirectly to the freedom of creation of parties. This dual positioning of the provisions has critics referring to inconsistency<sup>4</sup> and has also explanation referring to specific role of the parties as “intermediaries” between society and state<sup>5</sup>.

Not all of the constitutions try to give a definition for parties, moreover the constitution makers usually refrain from it<sup>6</sup>. In Hungarian constitutional law lacking the legal definition of parties, the functions of the parties are considered to be a ‘definition’. The party is a civil organization with extra functions (“staggered notion of party” – Sólyom) like mediating between the society and state (“Political parties shall participate in the development and expression of the popular will.” – Constitution, Art. 3.2.), nominating candidates for the elections, exercising public power in the representative organs, and its functioning is democratic, membership consists of natural persons.

The Hungarian law does not, but the Polish and Russian ones try to circumscribe the notion of the party. According to the Polish act on political parties, Art. 1, the political party a voluntary organization acting under a definite name, whose aim is to participate in public life through exerting, by democratic means, an influence on creating of the State policy or to exercise public power. The Russian federal law on political parties Art. 3.1. says that a political party is a public association created for enabling citizens of the Russian Federation to participate in the political life of society by shaping and expressing their political will, to participate in public and political events, in elections, referenda and also for representing the interests of citizens in the bodies of state power and bodies of local self-government. This article sets a few more conditions for a political organization to be considered as a party like: it shall have regional branches in more than a half of the subjects of the Russian Federation and shall have not less than ten thousand party members.

<sup>4</sup> M. Chmaj, *The freedom of creating and functioning of political parties in Poland*, “Polish Political Science” 2001, p. 103.

<sup>5</sup> G. Halmai, *Kommunikációs jogok. (Communicational rights)*. Bp. 2002, p. 237.

<sup>6</sup> L. Sólyom, *Pártok és érdekszervezetek az alkotmányban. (Parties and interest organizations in the Constitution)*, Bp. 2004, p. 27.

Spreading out of the western constitutional principles, in the post-communist countries parties are considered to be a formation of the right of association as a fundamental human right, which fundamental right gets on by the special provisions on the creation of political parties. As a consequence of the human right-approach, law marks out the framework, limits and methods of the interference of state and public authorities.

## **Normative framework**

### **a) equality**

On the level of the parties as organizations, the creation of parties shall be unrestricted because this unlimited right is the condition of the equality and the fair competition of parties: the entry of new actors into the party-competition can be guaranteed only this way<sup>7</sup>. Furthermore in the competition, in the campaign, the public authorities shall be neutral – all of the parties have equal chances to become a governing party or even become an oppositional party<sup>8</sup>. The equal chances in competition are guaranteed by the provisions of electoral laws – for e. with the equal legal remedies or sending deputies to electoral committees. The polish law on parties in Art. 4 declares as a general principle that organs of public authorities shall be obliged to deal with political parties on a basis of equality.

The Russian act sets equal treatment as the principle of the state support of parties, in particular: a) ensuring equal terms and conditions and equal guarantees of access to state-run and municipal mass media; b) providing state-owned and municipal premises and means of communication on equal terms and conditions similar to those under which they are provided to state and municipal institutions; c) ensuring equal terms and conditions for participation in election campaigns, referenda, public and political events<sup>9</sup>.

The Hungarian act on electoral procedure in Art. 106 provides that local public service broadcasters shall at least once, free of charge publish the political advertisements of nominating organizations, and candidates for mayor in proportion to the nomination or the setting up of lists,

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<sup>7</sup> L. Sólyom, *Pártok és érdekszervezetek...*, p. 64–65.

<sup>8</sup> G. Halmai, *Kommunikációs jogok...*, p. 238.

<sup>9</sup> J. Zaleśny, *Ochrona praw wyborczych w Federacji Rosyjskiej: mechanizm legitymizacji parlamentu*, [w:] T. Mołdawa, J. Szymanek (red.), *Parlament, prezydent, rząd. Zagadnienia konstytucyjne na przykładach wybranych państw*, Warszawa 2008.

from the 15th day before voting to the 3rd before voting. All of the independent candidates are entitled to this right jointly, in proportion to their nomination. On the last day of the election campaign, national program providers shall publish the summary of the eight nominating organizations that have put forward the most candidates for representative and mayor in terms of nationwide aggregation. Joint candidates and lists shall be taken into consideration in proportion to nomination.

The constitutional and legal provisions support the political pluralism as they treat parties on an equal basis<sup>10</sup>. The biggest challenge for the equality is the state financing of the parties (see below).

### **b) prohibited goals and means**

The Hungarian Constitution after mentioning multi-party system in its preamble provides it with a positive provision (Art. 3.1.: political parties may be established and may function freely, provided they respect the Constitution and laws established in accordance with the Constitution) and with negative/prohibitive provisions as well. On the one hand, in Art. 2.3. declares that no activity of any person may be directed at the forcible acquisition or exercise of public power, nor at the exclusive possession of such power. Everyone has the right and obligation to resist such activities in such ways as permitted by law. On the other hand, Art. 3.3. forbids political parties to exercise public power directly. Accordingly, no single party may exercise exclusive control of a government body.

Other Hungarian legal acts prohibit the creation of party organs in workplaces, and provide that exercising the right of association may not attain crime or a call for committing crime and may not harm the rights or freedoms of others. On the grounds of the right of association no military organization may be created.

According to the Polish Constitution, Art. 13, in Poland political parties and other organizations whose programs are based upon totalitarian methods and the modes of activity of nazism, fascism and communism, as well as those whose programs or activities sanction racial or national hatred, the application of violence for the purpose of obtaining power or to influence the State policy, or provide for the secrecy of their own structure or membership, shall be prohibited.

It is an explicit prohibition in the Polish act on political parties Art. 6-7, that political parties shall not realize any duties, reserved by law to the organs of public authorities nor supersede those organs in realization

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<sup>10</sup> M. Chmaj, *The freedom of creating...*, p. 110.

of their duties, and may not organize or possess any units on the terrain of workplaces. Under section 1(2) of the Polish Law on Associations, the right to form an association may be subject only to such limitations as are prescribed by statute either in the interests of national security or public safety, or in the interests of public order, or for the protection of health and morals, or for the protection of the rights and freedoms of others.

The federal law on parties of Russia gives a more detailed but maybe not a more punctual description. The activity of political parties shall not infringe upon the rights and freedoms of a human being and a citizen guaranteed by the Constitution of the Russian Federation. Creation and activity of political parties shall be prohibited if their objectives or actions aim at a forcible change of the fundamentals of the constitutional system, violation of the integrity of the Russian Federation, undermining of the national security, formation of military and paramilitary units, incitement of racial, national or religious enmity. The creation of political parties on a professional, racial, national or religious basis shall not be allowed. A political party shall not consist of persons of one profession. The activity of political parties and their structural subdivisions shall not be allowed in the bodies of state power and bodies of local self-government (except for legislative (representative) bodies of state power and representative bodies of local self-government), in the Armed Forces of the Russian Federation, law enforcement and other government agencies, administrative apparatuses of legislative (representative) bodies of state power, in governmental organizations. Political parties shall not interfere in the educational process at educational establishments. In the territory of the Russian Federation the creation and activity of political parties of foreign states and of their structural subdivisions shall not be allowed. The ban of creation of political parties on a professional, racial, national or religious basis seems to be contrary to the international human rights charters.

The restrictions on goals and means of parties are under investigation at the registering period and while they are functioning as well. Strict sanctions are: denying the registration and dissolution – the Russian act provides the suspension of activity as well. The possibility of dissolution and the dangers (known from historical experiences as well) thereof were discussed in Germany already, but it was recognized because of hindering the reorganization of dictatorial parties<sup>11</sup>. In these countries

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<sup>11</sup> G. Halmai, *Az egyesülés szabadsága...*, p. 143–144.

the possibility of dissolution is provided, but as a guarantee, independent courts are entitled to it (in Poland the Constitutional Tribunal shall give opinion stating discrepancy of the aims and activities of a political party with the Constitution); when denying the registration legal remedies are provided. According to Sólyom, “the dissolution of a party is always a political decision. Judging whether or why is a party dangerous for democracy is always dependent on the actual political situation, because it is a preventive action”<sup>12</sup>.

The European Court of Human Rights in many cases was to solve the material restrictions on the aims of parties. Its arguments are standard even in case of the restrictions justified by the past, as long as the ECHR basically found the prevention of democracy as a acceptable justification for bans.

In 1998, in the case of *Socialist Party and others v. Turkey*, the Court held that „one of the principal characteristics of democracy is the possibility it offers of resolving a country’s problems through dialogue, without recourse to violence, even when they are irksome. Democracy thrives on freedom of expression. From that point of view, there can be no justification for hindering a political group solely because it seeks to debate in public the situation of part of the State’s population and to take part in the nation’s political life in order to find, according to democratic rules, solutions capable of satisfying everyone concerned”<sup>13</sup>. In the case of an other Turkish party, the Court argued that it is of the essence of democracy to allow diverse political projects to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself<sup>14</sup>.

According to Sólyom’s arguments we can recognize the special protection of the freedom of creating parties constitutional because it is related with the fundamental rights of communication. Material restrictions can be concerned only regarding this relation. Including political aims in the statute of the political party is not compulsory (and may not be required) according to the Hungarian legal provisions, submission or even the existence of the political program may not be a requirement for registering the party<sup>15</sup>.

<sup>12</sup> L. Sólyom, *Pártok és érdekszervezetek...*, p. 94.

<sup>13</sup> *Judgement of 25. May 1998 in the case of Socialist Party and others v. Turkey*, par. 45.

<sup>14</sup> *Judgement of 8. December 1999 in the case of Freedom and Democracy Party (ÖZDEP) v. Turkey*, par. 41.

<sup>15</sup> L. Sólyom, *Pártok és érdekszervezetek...*, p. 65–66, 76–77.

In the relation of the communicational rights and party-law it is fundamental to draw attention to the provisions that guarantee the freedom of mass communication: the freedom of media (as the main 'battleground' for the party competition) "is universally recognized prerequisite of political pluralism, and the prohibition against preventive censorship is the essence of that freedom"<sup>16</sup>.

### **c) rules of incompatibility**

Constitutional provisions declare party membership to be incompatible with a few public offices, because the functioning of persons in these offices shall be non-partial, otherwise we could face unwanted effects on party-competition as well. So it is natural that the positions of the judges and members of the constitutional court are incompatible with party-membership. And while the President of the Hungarian Republic may not be a member of a party, the President of the Russian Federation *may* suspend his membership in a political party during his term of office.

It is also recognized, and the European Convention for the Protection of Human Rights and Fundamental Freedoms also provides restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

In the case of *Rekvényi v. Hungary* (1999) the Court held that the freedom of association of the applicant policeman was not violated according to Art. 11.2. The argument said that "against the background of Hungary's recent history and the repercussions of a politically committed police force exploited for decades by a totalitarian regime, the Commission considered that the efforts to depoliticise the police could not be regarded as arbitrary"<sup>17</sup>.

### **d) state financing of political parties**

Besides the provisions on the abstaining of the state in the party-competition, the active role of the state is quite usual in the countries of the continent by the financing of parties from the budget<sup>18</sup>. This was

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<sup>16</sup> L. Garlicki, *The principles of the system of government in the Republic of Poland*, [in:] P. Sarnecki, A. Szymt, Z. Witkowski (ed.), *The principles of basic institutions of the system of government in Poland*, Warsaw 1999, p. 61–62.

<sup>17</sup> Judgement of 20 May 1999 in the case of *Rekvényi v. Hungary*, 57., for the commentaries of this judgement: see: *Fundamentum* 1999/3.

<sup>18</sup> J. Zaleśny, *Finansowanie parlamentarnej kampanii wyborczej – specyfika polska*, [w:] E. Pietrzyk-Zieniewicz (red.), *Przed wyborami. Konflikty, strategie, nadzieje*, „Studia Politologiczne” 2005, Vol. 9.

accepted because basically of two reasons: on the one hand the aim is to hinder the influence the private interest-groups, on the other hand the political parties are considered as organs functioning in public sphere and their more professional functioning should be enhanced with support<sup>19</sup>. Among the moot questions of party-financing now it is necessary to draw attention on the position of the state and the equality of parties. The incomes always have influence on the positions of parties in the competition, furthermore incomes are fundamental to survive. The active role of the state can be justified by the maintaining the party-competition, although it may harm the equal chances. Conditions, trying to make this influence at least bearable, order that the financing shall be based on formal and normative provisions, and may not consider the political program or ideology of parties<sup>20</sup>. By this way, although we may have reservations about the differences in financing the parties inside and outside the parliament, the state support is maintaining the smaller parties in opposition as well, and it is maintaining multi-party system as well. Sólyom raises the question that whether the state is obliged to maintain the political parties themselves that parties are necessary for the functioning of the political and constitutional system (at least two parties), if they could not provide their functions without the state support<sup>21</sup> – the answer seems to be ‘yes’ if we accept that political pluralism should be not only recognized but fostered as well.

As a normative framework of the public financing of political parties, acts on parties declare the finances of parties to be open for public and the basis of the public funding is the results of the previous election. The threshold of receiving financing from the state budget is that the party has to gain the 1% of votes in Hungary, the 3% in Poland and in Russia.

For the purpose of maintaining/organizing pluralism and compensating the disadvantageous positions of opposition, state may undertake active role. Such a positive discrimination can be found in the Parliament of Hungary, according to the Article 5 of the Act on the remuneration, cost reimbursements and other benefits of the Members of Parliament of 1990. The factions of political parties receive different amount of funding according to their oppositional or governing position.

<sup>19</sup> Z. Enyedi, A. Körösiényi, *Pártok és pártrendszerek. (Parties and Party systems)* Bp. 2004, p. 137.

<sup>20</sup> L. Sólyom, *Pártok és érdekszervezetek...*, p. 120.

<sup>21</sup> L. Sólyom, *Pártok és érdekszervezetek...*, p. 123.

The parliamentary factions may receive a monthly amount equal to the basic remuneration of twenty-five members of parliament, plus 30% of the basic remuneration for each member in case of the governing party and 60% of the basic remuneration for each member in case of the opposition parties, from the budget of the Office of the Parliament, to cover the expenses of their operation. The independent Member shall be entitled to use 75% of his/her base remuneration in support of his/her work. The lower remuneration for the governing parties can be explained with their other advantageous positions in the state administration and infrastructure, and the opposition can be at least partly compensated with this distinction.

The Hungarian act on parties for the sake of preventing political parties from living on state provided (following the German example<sup>22</sup>) that the state financing may not be more than the half of the all incomes of the party. According to the failure, the provision was erased, and by fact, in the recent years the state funding makes an extent of 80–90% in the incomes of the parliamentary parties.

### **The internal side of party-law – the functioning of the party as an organization**

Among the three countries Hungary has the most laconic act on parties considering the provisions for the internal structure and functioning of political parties. Hereby, the democratic structure and functioning shall be studied.

As Halmai noticed in 1990, in the countries that experienced the reign of totalitarian parties, constitution has explicit provisions on the internal democracy. These provisions and their reflection in the acts on parties are to prevent parties to develop towards totalitarianism<sup>23</sup>.

The Hungarian constitution does not require the parties and other social organizations to have democratic structure and function according to democratic principles. The act on associations refers to this principle, but – because it is a restriction on the fundamental right – it needs to have constitutional justification. The arguments of Sólyom are generally applicable to other political systems:

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<sup>22</sup> G. Halmai, *Kommunikációs jogok...*, p. 243–244.

<sup>23</sup> G. Halmai, *Az egyesülés szabadsága...*, p. 147.

“If Constitution establishes a democratic governmental system, parties playing constitutive role in it cannot function according to other different principles. The democratic internal structure of political parties is derived from their constitutional function. If the function of the party is to transmit people’s will towards state, by its organization it shall be suitable – i.e. opened – to show up people’s voice which may be able to shape party’s program and political line of conduct. But parties’ role in determining state’s will is the main factor that makes democratic way of will-forming crucial inside parties’ organization. (...) state will be democratic as much as the parties’ transmitting activity guarantees for the people to exercise sovereignty”<sup>24</sup>.

### **What does democratic functioning mean?**

Hungarian statutes give not too many guidelines. Although Russian constitution and the law on parties do not contain explicit wording of the democratic functioning principle, the latter in Art. 8 circumscribes in details: The activity of political parties shall be based on the principles of voluntary participation, equality, self-governance, legality and openness. Political parties shall be free to determine their internal structure, objectives, forms and methods of their activity, subject to the restrictions established by the Federal Law. Political parties shall operate openly, the information on their constituent and program documents shall be available to general public. It is against of developing of an oligarchy in parties that political parties shall provide for men and women, citizens of the Russian Federation of various nationalities, who are members of a political party, equal opportunities of being represented in the leading bodies of the political party, on the lists of candidates for deputies and for other elective offices in the bodies of state power and bodies of local self-government.

The polish Constitutional Tribunal on the base of the constitutional notion of parties acknowledged that a political party should base its internal organization (membership and structure) on principles of equality and voluntary access, therefore, on democratic principles. As M. Chmaj notes, “in purpose of avoiding the accusation of inconsistency of its purposes with the Constitution, a party shall in its statute or other document place the purpose of its existence in the sphere of influence

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<sup>24</sup> L. Sólyom, *Pártok és érdekszervezetek...*, p. 55–56.

a State policy, and the purpose itself at well as measures appointed for its realization shall be democratic. (...) The postulate of ‘democratic methods’ refers not only to ‘external’ activity of a party but also to the ‘internal’ activity”<sup>25</sup>. The act on political parties in Article 8 gives an exemplificative list of democratic principles, as: they have to ensure openness of structures, party organs have to be formed in elections and their resolutions have to be adopted by majority of the votes cast by its members.

Regarding the main issues of the internal activity of a party, the democratic principles are as follows:

- a) openness,
- b) freedom of joining and leaving the party,
- c) majority rule,
- d) reconstruction from below upwards (exclusion of leader-principle);
- e) freedom of expression of members and legal remedies.

ad a) The finances of political parties can be recognized as the most sensitive issue of open functioning. The acts on parties provide as a guarantee the publicity of parties’ financial report, and the publishing in press or official journal thereof.

In Poland, the final decision of the court concerning the entry in the register shall be published, cost free, in “Monitor Sądowy i Gospodarczy” and shall be delivered to the National Electoral Commission as well. The register, along with charters of political parties shall be open to inspection. Anyone shall be allowed to obtain, from the court, of the certified copies of the register and of excerpts from the registers and charters of political parties.

The Russian also provides that the information about creation and liquidation of political parties shall be published in the national print media. The registration authorities shall make entries concerning state registration of political parties and their regional branches in the unified state register of legal entities which shall be open to general public. Within two months upon the entry into force of this Federal Law the federal registration body shall open a special site in the public information-telecommunications network and shall publish the address of this site in Rossiiskaya Gazeta. The federal registration body shall annually publish the list of political parties and their regional branches as of January 1 in the national print media and on a special site in the public information-telecommunications network, indicating the date of

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<sup>25</sup> M. Chmaj, *The freedom of creating...*, p. 105.

registration of each political party and each of its regional branches. The said site shall also show consolidated annual financial statements of political parties, contact telephones of permanent leading bodies of political parties and their regional branches and other open information about political parties. The information about the members of a political party to be furnished to the registration authorities shall be classified as information with restricted access. The disclosure of the information indicated in this clause without the consent of political party members concerned shall entail liability established by Russian Federation laws.

As we can see, the membership of the party is a sensitive point of the openness as well, according to the fundamental rights of persons to keep their political commitment in secrecy.

According to the decision of the Hungarian Constitutional Court, the democratic political parties that may not exercise public power directly, similarly to other legal persons, between the barriers of the constitutional and other legal provisions, regarding their documents or files, may refer to the protection of personal data. On some fields of exercising the freedom of association (like finances, statutes), the act on association and the act on parties, provide the publicity, beyond this require only the functioning on the basis of democratic principle and self-governance. The public access to information of public interest is the constitutional guarantee only to control authorities that are exercising public power<sup>26</sup>.

ad b) Some restrictions on accession to parties were already concerned above at the issue of incompatibility, furthermore, the obligatory membership is also prohibited. Some authors find that due to the democratic features of internal activity, citizens have the general right to acquire membership in parties<sup>27</sup> – but according to the ECHR's opinion, the freedom of association does not imply the freedom of accession, and there is no obligation for associations to admit all of the applicants.

Regarding the freedom of leaving of parties, the provisions guaranteeing the voluntary withdrawal and preventing the arbitrary of exclusion are of great importance. The arbitrary at exclusion can be avoided if the member is excluded according to reasons appointed by the statute of the party, and not the leader of the party but the congress or an other supreme leading body decides, as far as possible by a qualified majority.

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<sup>26</sup> Decision 34/1994, (VI. 24.), III. 2–3.

<sup>27</sup> See G. Halmai, *Az egyesülés szabadsága...*, p. 143.

As the obligatory element of the statute of the party, laws bind parties to lay down the rules of the admission and exclusion.<sup>28</sup>

ad c) – d) The majority rule and the exclusion of leader-principle are naturally implied in the democratic way of functioning, however, the laws on associations and parties in Hungary do not say anything about them<sup>29</sup>. But we can find the rule in the law on associations that the competencies of the supreme leading body of the party are secured by law – avoiding that an oligarchy in the party makes empty the principle of internal democracy by acquiring these fundamental competencies from the organ of the members.

The most important competencies are: adopting and amending the statute of the party, admission and exclusion of members, election of the leader, liquidation of the party, nomination of candidates at the elections to the representative state organs, adopting the political program of the party.<sup>30</sup> In the light of the experiences of practice, we can recognize the determinative influence (in general or at least finally) of the leaders above the regular membership<sup>31</sup>.

ad e) The freedom of expression of members may prevail by the active participation in the organs of the party, which is guaranteed by the act on associations in Hungary in Article 9-10, just like possibility of the legal remedy opposite to the majority decision (although this remedy is provided only in case of lawlessness). So the member of the organization may participate in the activity and the events of the organization, he/she may elect or may be elected to the organs thereof. Every illegal decision of any organs may be offended at court by any member of the organization.

## Epilogue

As an afterword, it is necessary to draw attention to other factors that can determine party-systems or are of great importance in influencing the functioning and the features of the multi-party systems. These factors are working in the framework of the democratic and plural multi-party

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<sup>28</sup> Except the Hungarian law, but see the act on parties in Poland: Art. 9.1.2.; in Russia: Art. 21.2. c.

<sup>29</sup> See as contrary to this: law on parties in Russia: Art. 24-25, or in Poland: the already mentioned Art. 8.

<sup>30</sup> See the act on parties in Russia, Article 25.

<sup>31</sup> Z. Enyedi, A. Körösnéyi, *Pártok és pártrendszer...*, p. 130–135.

system, however they can significantly influence the party-competition, the chances of parties, and they may result dual or multiparty-system as well. The constitutional provisions favoring political pluralism may be studied in completeness only with respect to these factors.

The factors are:

*Electoral systems* – According to Douglas W. Rae, while majoritarian systems favor government effectiveness and accountability, usually favor the first, most successful party; the proportional systems promote more diversity in social representation, and may favor – dependent on the size of electoral districts, on the used mathematical formula – the biggest, the big, the medium-size and even the smaller parties as well<sup>32</sup>. The mixed systems in the studied countries try to combine the advantages of the two basic systems. However, in the Russian political system – with the lack of the traditions of multi-party system – the electoral system was manipulated by reformers to promote specific goals, above all, to encourage the development of multi-party system. According to Rybakov, the proportional election played a positive role in the development of parties and movements as well<sup>33</sup>. Achieving this goals the Russian parliamentary law also provides further advantages for party-factions in order to discipline deputies in Duma and to ‘parliamentarianize’ embryonic parties<sup>34</sup>.

Although majoritarian systems are usually connected to two-party systems, the development of the Hungarian party-system towards the very bipolar structure is obtrusive: in 2002 and in 2006 the two biggest parties gained the 90% of votes. The reasons for this can be found in the electoral behavior rather than in the normative framework.

*Parliamentary thresholds* – Thresholds in proportional systems are used to avoid the fragmentation the party-system and the parliament. Its effects can be studied on the polish political system where the Electoral Law of 1993 introduced an electoral threshold which led to the “dramatic” reduction of the number of parties represented in the Sejm<sup>35</sup>.

This system makes getting in for very new political formations quite difficult, especially when the financing of parties is based on it too, so it weakens forth the positions of the smaller parties. Sólyom argues that

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<sup>32</sup> Z. Enyedi, A. Körösnéyi, *Pártok és pártrendszer...*, p. 259.

<sup>33</sup> R. Sakwa, *Russian politics...*, p. 166–167.

<sup>34</sup> R. Sakwa, *Russian politics...*, p. 126.

<sup>35</sup> R. Piotrowski, *Sejm of the Republic of Poland*. Warszawa 1999, p. 12 and 18.

threshold breaches the principle of the equality, because “although the threshold expressed in percentage for getting into the parliament seems to be objective, it is not possible to justify in general that maintaining efficiency of parliament’s functioning needs gaining 4, 5 or any other percentage of votes”<sup>36</sup>.

*Financing of parties* – The problems of financing was concerned above, now it is necessary to put some light on its enhancing effect on the previous factors. The public support of political parties is based on the principle of efficiency and on the results of the previous elections. Hereby, the differences between the bigger and smaller parties are growing higher, moreover, if the parties that are inside the parliament enjoy extensive – and maybe unconstitutional – advantages, like in Hungary, this makes the ascent of the smaller ones almost impossible.

In order to confirm this statement, we shall have a look at the outcomes of the Hungarian elections of 2006: the 4 parties that were already in the parliament in the previous period, gaining the 97% of the votes, let only one party to cross the 1% threshold of financing, and a new actor could get into House of Nation only by the electoral cooperation of Fidesz and Christian-democrats.

*Peter Smuk*

#### **USTANAWIANIE I ZACHOWYWANIE PLURALIZMU POLITYCZNEGO W PAŃSTWACH POSTKOMUNISTYCZNYCH (WĘGRY, POLSKA, FEDERACJA ROSYJSKA)**

Autor artykułu bada regulacje konstytucyjne dotyczące swobody tworzenia i działalności partii politycznych w trzech państwach postkomunistycznych: Polsce, Federacji Rosyjskiej i Węgrzech. W konstytucjach państw Europy Środkowej i Wschodniej zajmują one szczególną pozycję. Tworzy je prawodawca mając w pamięci doświadczenie istnienia antydemokratycznej i totalitarnej partii komunistycznej w każdym z tych państw. Z tego też tytułu są one rozbudowane, a zarazem obudowane systemem gwarancji, które mają zapewnić, że pluralizm partii politycznych nie jest atropą konstytucją, ale realnym wyznacznikiem woli ustrojodawcy.

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<sup>36</sup> L. Sólyom, *Pártok és érdekszervezetek...*, p. 114.