Vetoing the President?

Defusing Fidesz's Presidential Veto Trap

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Following Fidesz's electoral defeat, the country's new political leadership has pledged to dismantle the legal and institutional structures that enabled sixteen years of democratic backsliding. Yet one of the most powerful obstacles to that project may be hidden in plain sight: the constitutional powers of the President of the Republic. If President Tamás Sulyok chooses to use them aggressively, Hungary could soon find itself facing an unprecedented constitutional crisis. Since April 12, Péter Magyar has repeatedly called on Fidesz-loyalist officials – most notably the president himself – to step aside by May 31 at the latest. And he has repeatedly refused. The prime minister's concern is understandable, as the president's approval is essential for the adoption and amendment of laws – and, as we shall see, of the Fundamental Law. Yet the conflict is not merely political. It reflects a deeper constitutional problem: democratic reconstruction must proceed while key institutions remain under the control of the previous regime.

A phased constitutional process

The Fundamental Law of Hungary has become an instrument for dismantling the rule of law, while the institutions originally designed to protect constitutional democracy have, through the systematic appointment of political loyalists, ceased to serve as its guardians and instead have become emblematic of its erosion. There is broad agreement among constitutional lawyers in Hungary that adopting a new constitution requires two stages. This concept is based on an article by Gábor Attila Tóth published in 2022, which distinguishes the "*restorative constitution-making*" from the so-called *classical constitution-making*. The first phase is the so-called *negative constitution-making*, which aims to temporarily restore the minimum requirements of constitutional democracy by invalidating the rules that underpin the autocratic legal order. The second step concerns the adoption of a new constitution, and can be described as *positive constitution-making*. It is beyond dispute that we are in a phase of negative constitution-making development. Yet even with a two-thirds majority in the Parliament, the Tisza government must remain bound by constitutional principles. Otherwise, the very logic that enabled Fidesz to dismantle the constitutional order through politically motivated amendments would persist. The challenge is also compounded by the fact that key public institutions entrenched by Fidesz make the restoration of constitutionalism extraordinarily difficult.

The President as a Constitutional Veto Player

As Kim Lane Scheppele has recently observed, even a parliamentary supermajority must contend with entrenched institutional "veto players." Péter Magyar appeared to recognize this on election night, identifying the President of the Republic and the packed Constitutional Court as the principal obstacles to both democratic reconstruction and the constitutional reforms necessary to unlock EU funding. This explains his repeated calls for President Tamás Sulyok to resign voluntarily and his decision to set a public deadline for doing so. There is, however, little indication that the President intends to step aside. On the contrary, Sulyok has already signaled that any legislation or constitutional amendment must be adopted "in accordance with the rule of law and respect for European values" and that, under European and international constitutional standards, even the appearance that a legislative process is aimed at removing an elected public official should be avoided. These statements are

striking coming from a president whose tenure has been marked by near-complete deference to a government that spent sixteen years weakening constitutional checks and balances. Concerns about the rule of law, European constitutional standards, or the protection of minorities did not appear to weigh heavily when legislation expanding decree-based governance, authorizing the suspension of citizenship for certain dual nationals, or targeting sexual minorities was enacted. More importantly, the President now appears poised to assume a far more activist role than at any previous point in his presidency. A head of state who has largely functioned as a reliable signatory of government legislation may seek to reinvent himself as an active wielder of both political and constitutional veto powers. If so, it is difficult to imagine that he would facilitate constitutional amendments—or accompanying legislation—whose explicit purpose is the premature termination of his own mandate.

If the President chooses to assume a more activist role, the obvious question is what constitutional tools are actually available to him. Under Article 6 of the Fundamental Law, every law adopted by Parliament must be signed by both the Speaker of the National Assembly and the President of the Republic before it can be promulgated and enter into force. As a general rule, the President is therefore obliged to sign legislation within five days of receiving it. There are, however, two important exceptions. First, if the President considers a law unconstitutional, he may refer it to the Constitutional Court for a preliminary review of its conformity with the Fundamental Law. Second, if he objects to the legislation on policy or other grounds, he may return it to Parliament for reconsideration. Of these two powers, the constitutional veto is by far the more significant. Not only does it delay the law's entry into force, but it also triggers a preliminary review by the Constitutional Court, which must rule on the legislation's constitutionality within thirty days. Should the Court identify a constitutional defect, Parliament must revisit the law before it can be promulgated. By contrast, a political veto merely requires Parliament to reconsider the bill; once it has done so, the President is obliged to sign it regardless of whether his objections have been addressed. The rules governing amendments to the Fundamental Law, however, are significantly different – and considerably more restrictive.

Constitutional Amendments: A Different Set of Rules

The rules are considerably narrower when it comes to amendments to the Fundamental Law. Unlike ordinary legislation, constitutional amendments are not subject to substantive constitutional review before promulgation. Under Articles 9 and 24 of the Fundamental Law, the President may refer an adopted constitutional amendment to the Constitutional Court only if he believes that the procedural requirements governing its adoption were violated. In principle, therefore, neither the President nor the Court may assess the substance of a constitutional amendment at this stage. There is, however, an important difference between ordinary legislation and constitutional amendments. In the case of an unpromulgated law, only the President may initiate a preliminary constitutional review. By contrast, once a constitutional amendment has been promulgated, the procedure may also be initiated by one-quarter of the Members of Parliament, the President of the Curia, the Prosecutor General, or the Ombudsman. Given the current composition of these offices—and the fact that Fidesz-KDNP still holds 52 seats in the 199-member Parliament—most of the key institutional actors involved in the process remain closely associated with the previous regime.

Formally, the President's powers are therefore limited to procedural objections. In practice, however, President Sulyok's recent statements suggest that he may be willing to push those limits. If Parliament were to adopt a constitutional amendment aimed at removing either the President himself or another Fidesz-appointed officeholder before the expiry of their mandate, he could attempt to frame the measure as incompatible with constitutional principles or European standards or because it violates the prohibition on retroactive legislation. Such objections would be substantive rather than procedural and would therefore sit uneasily with the constitutional framework itself. Yet they could still provide the basis for a consti-

tutional confrontation—and potentially trigger the impeachment scenario discussed below.

Impeachment

The Fundamental Law itself provides a potential response to presidential obstruction. Under Article 13, the President of the Republic may be removed from office if he intentionally violates the Fundamental Law or any other law in connection with the exercise of his duties, or commits an intentional criminal offense. The procedure may be initiated by one-fifth of the Members of Parliament and requires the support of a two-thirds majority of all MPs. In theory, this mechanism could become relevant if the President were to exceed the constitutional limits of his office. For example, a refusal to sign a duly adopted constitutional amendment within the constitutionally prescribed deadline, or an attempt to subject such an amendment to a form of substantive constitutional review that the Fundamental Law does not permit, could arguably amount to a violation of the President's constitutional obligations. In such circumstances, the parliamentary majority could initiate impeachment proceedings. Yet here another institutional obstacle emerges. While the National Assembly is responsible for initiating the procedure, it is not Parliament that ultimately decides the case. Under the current constitutional framework, the Constitutional Court acts as the adjudicating body in impeachment proceedings. Given the Court's present composition, there is little reason to expect that it would readily remove a President closely associated with the political forces that appointed its members. At first glance, therefore, Hungary appears trapped in a constitutional circle: a President capable of obstructing constitutional change can only be removed through a procedure that ultimately depends on another institution widely perceived as politically aligned with the previous regime.

This, however, is not the end of the story.

Paradoxically, the Fundamental Law itself contains a mechanism that may substantially reduce the President's ability to interfere with the legislative process once impeachment proceedings have begun. Article 13(4) provides that from the moment the National Assembly adopts the resolution initiating impeachment proceedings until those proceedings are concluded, the President may no longer exercise his powers. Since, in the context of impeachment proceedings against the President of the Republic, the Fundamental Law merely stipulates that the President "may not exercise his or her powers," yet the President plays a crucial role in the legislative process, it is necessary to provide for some form of replacement even for this extended period. The provision on "incapacity" contained in Article 14 of the Fundamental Law could serve as a supplementary provision, as this is ultimately what it addresses. Under these rules, the fact of temporary incapacity is established by the National Assembly, acting on the initiative of the President, the Government, or any Member of Parliament. Once such incapacity has been declared, the President's powers are exercised by the Speaker of the National Assembly. The implications are significant. If impeachment proceedings were initiated against the President and Parliament simultaneously declared his temporary incapacity, presidential powers would pass to the Speaker. Although the Speaker, acting as interim President, may not exercise the rights of a Member of Parliament and therefore loses his or her vote, the governing majority would nevertheless retain the two-thirds majority necessary to adopt the constitutional amendments required for democratic reconstruction. Ironically, then, one of the most effective tools for neutralizing the presidential veto may be found not outside the Fundamental Law, but within it. The constitutional architecture that was designed to entrench political power may also contain the means to overcome one of its most formidable obstacles.

A Constitutional Reckoning

What Hungary is confronting is no longer a routine political transition, but a far more profound reckoning with the foundations of constitutional government itself. When institutions created to safeguard democracy become instruments of its erosion, the challenge ceases to be one of personnel and becomes one of constitutional principle. The presidential veto may be one of the most formidable obstacles to democratic

reconstruction. Yet it is not necessarily an insurmountable one. Indeed, the very constitutional framework designed to entrench Fidesz's power may also contain the means to overcome its most significant public law obstacles. The real question, therefore, is not whether constitutional tools exist to navigate these veto points, but whether there will be sufficient political will – and democratic restraint – to employ them. Ultimately, the issue extends far beyond the fate of a single president or a handful of political appointees. It is about whether Hungary can move from a constitutional order designed to preserve power to one capable of limiting it. The success of constitutional reconstruction will depend not on the existence of institutional roadblocks, but on whether those entrusted with power can restore constitutional democracy without reproducing the logic of constitutional abuse. The challenge is formidable – but so too is the opportunity.

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