The Removal of Key Office Holders

Paradoxes of Constitutional Reconstruction in Hungary

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After the deadline that Prime Minister Péter Magyar set for the key constitutional actors to resign passed – including the President of the Republic, the Prosecutor General, and the Presidents of the Constitutional Court, the Supreme Court, and the National Judicial Office – he reiterated the government's intention to remove them by a single constitutional amendment. They are all Orbán appointees; some of them assumed office through personalized legislation, and by their actions or inaction, they facilitated the entrenchment of the Orbán regime and the impunity of the oligarchs, cronies, and others connected to it, in both formal and informal ways. There are more than enough political, and in some cases even constitutional, arguments for their removal. As the apparent political intention is to proceed through constitutional amendment, two paradoxes must be reconciled. The *anticipatory obstruction paradox*, which must disable any future deadlocks even before these are carried out without knowing for sure that they would even occur; and the *procedural self-entrenchment paradox* of the constitutional reconstruction reforms, which must disable the function of the President in promulgating and sending a constitutional amendment to be published, effectively removing this function. While it is essential to overcome both of the said paradoxes, this goes only while acknowledging that these are in themselves constitutional wrongdoings that must be confronted rather than concealed, and thus subjecting them to the highest possible standards of public justification and deliberation.

The Anticipatory Obstruction Paradox

President Sulyok declared that he does not intend to be an obstacle to reconstruction but will enforce the rule of law and other constitutional requirements. He also explained that he has so far signed the bills promoted by the new government. However, given his inaction since entering office (2024) on politically and legally sensitive matters, this newly discovered commitment to democratic values and the constitutional role of the presidency is less than fully convincing. The same can be said of his petition to the Venice Commission, which he submitted after Péter Magyar publicly committed to his removal, at which point, however, neither the legal basis nor the specific mechanism of removal had been determined. His sudden reliance on the Venice Commission is particularly noteworthy given that Fidesz has routinely ignored its opinions and has repeatedly described it as politically biased and a Soros agent. With this move, he already seems to be slowing and stalling reconstruction efforts at the level of constitutional institutions.

In his X message, the President stated:

> *"The planned removal from office of the President and the heads of other independent constitutional organs may cause a constitutional crisis and constitute a threat to fundamental constitutional principles. The heightened attention to the events is evidenced by the fact that the Venice Commission has already expressed its intention to investigate the case under an accelerated procedure."*

While his earlier inaction can be politically criticized, this latter intervention, given the context of the Hungarian illiberal or hybrid state (2010-2026) and the promise of regime change that culminated in the electoral authorization on 12 April 2026, may also have constitutional significance.

Whether the President is genuinely concerned about constitutional crisis and constitutional principles is ultimately beside the point. Given his conduct

since taking office, and the broader context of democratic, rule of law, and human rights deterioration in Hungary, the intervention is difficult to separate from its practical effect: delaying and potentially obstructing the reconstruction process. Should he and all the other office holders be concerned about these, they would have resigned. Seeking the advice of the Venice Commission is, in itself, a legitimate constitutional tool. The problem arises when that tool is used not to resolve constitutional uncertainty but primarily to delay democratically authorized constitutional change. In the present context, the request appears less as a search for constitutional guidance than as an attempt to create an additional veto point in the reconstruction process. At the very least, it raises suspicions of abuse of the institution and of the right to seek advice.

The façade, illiberal legality, autocratic legalism, however we choose to describe it, thus continues to operate against the electoral mandate for regime change and the political commitment to it. This request strengthens the otherwise weak constitutional justifications for the President's removal (as I argued here), by prompting the parliamentary majority to await the Venice Commission's opinion. Otherwise, it could be portrayed as disregarding important constitutional concerns and abusing its constitutional authorization. If one does not regard the petition itself as a sufficiently strong constitutional argument for removal, which can also be reasonably maintained, then one must wait until an actual obstruction occurs in the form of a political or constitutional veto. This would then make the constitutional justification stick, but it may already have delayed or rendered reconstruction ineffective. This is an anticipatory obstruction paradox. Preventive removal therefore becomes a constitutionally defensible option, even if it remains difficult to justify fully in rule-of-law terms. Ironically, the President's own conduct may continue to strengthen the constitutional case against him.

What would prevent the preventive removal? In the Hungarian constitutional system, the head of state can stall reforms by sending the adopted law back to parliament (political veto) or, if deemed unconstitutional, to the Constitutional Court (CC, constitutional veto). As the parliament enjoys a constitutional majority, it can override the veto. In ex ante constitutional review, the CC must decide within 30 days, or within 10 days when asked regarding a newly adopted law following a presidential constitutional veto. Constitutional amendments may only be challenged on procedural grounds; substantive review, based on both the wording of the constitution and the CC's doctrine, is unavailable. If a constitutional amendment is found unconstitutional on procedural grounds, it must be reconsidered by Parliament.

Theoretically, nothing prevents the President from repeatedly exercising the constitutional veto. Nor does anything prevent the CC from engaging in a loop with the President, thereby preventing essential reforms – including constitutional amendments – from taking effect. We do not yet know how the CC would behave in such circumstances. What we do know is that the constitutional framework permits such a loop, and existing scholarship on how the CC served the government in the decade suggests this possibility cannot be dismissed as merely theoretical.

A similar, albeit weaker, anticipatory obstruction paradox is therefore present in relation to the CC. At the same time, as I argued, the constitutional justification for the removal of CC judges is stronger than in the case of the President.

The anticipatory obstruction paradox holds that, for a proper constitutional justification, we should wait until evidence emerges, but if we wait, the reconstruction reforms could become impossible. Constitutional actors are therefore confronted with a choice between competing constitutional wrongs: accepting the risk of constitutional deadlock and the failure of reconstruction or pursuing the preventive removal of key veto players and the reconstructive removal of other actors, especially the President of the Kúria, as a first step towards rebuilding the independence of the ordinary justice system (about this, see e.g., here and here).

This leads us to the procedural self-entrenchment paradox of constitutional amendments aimed at removing these constitutional actors.

The Procedural Self-Entrenchment Paradox

The procedural self-entrenchment paradox arises from the constitutional amendment process itself, which the TISZA government has reportedly chosen as the mechanism for removing key constitutional office holders. As noted above, besides Parliament, the principal actors in this process are the President and the Constitutional Court. The constitutional amendment will be directed precisely at removing these actors from office. Why would they agree to it? Had they accepted the logic and necessity of removal, they could have resigned by the 31 May 2026 deadline. They did not.

The paradox is straightforward. The constitutional amendment must be signed into law by a President whose own removal is among the amendment's objectives. The President and the Constitutional Court may therefore become participants in a process designed to terminate their own mandates. The amendment can be sent back and forth between constitutional actors, preventing it from becoming law. Alternatively, the Constitutional Court, through an abusive constitutional interpretation intended to still serve Fidesz's political agenda, could invoke the implied eternity clause of constitutional identity and annul it – but whether they would do so is now unknown. In either scenario, the constitutional amendment may fail to enter into force, the veto players remain in office, and the election of new office holders becomes impossible.

The question, then, is how this paradox can be overcome, assuming that the President insists on remaining in office, as the available evidence suggests. Any solution must address a fundamental difficulty: the President's role in the lawmaking process, including constitutional amendment, is itself constitutionally entrenched. Under the Fundamental Law, any new method for adopting constitutional amendments must be established by a constitutional amendment. This is precisely where the procedural self-entrenchment paradox lies.

Impeachment or Extra-Constitutional Reconstruction

When political negotiation and voluntary resignation fail, two options remain. The first is the temporary suspension of President Sulyok through impeachment, an option Prime Minister Magyar has ruled out. The second is the establishment of an extra-constitutional reconstruction framework in which presidential promulgation is no longer a necessary condition for signing bills into law. Both would involve constitutional wrongs committed in order to overcome the procedural self-entrenchment paradox and allow constitutional renewal to proceed.

Impeachment was reportedly not chosen, which at first sight appears to be the correct decision. It would likely have amounted to a parliamentary coup, understood here as the deliberate misuse of a constitutional procedure for a purpose other than its intended purpose. It would be difficult to argue that President Sulyok (in office from 2024 onwards) has violated the Fundamental Law to a degree that meets the high accountability threshold attached to the office of the head of state. This remains true even if one considers his request for a Venice Commission opinion to be an abuse of power or attributes constitutional significance to it. Nevertheless, impeachment would have offered a straightforward way of overcoming the procedural self-entrenchment paradox. Once the impeachment procedure is initiated, the Speaker of Parliament assumes the functions of the head of state until the proceedings are concluded and could therefore sign the relevant constitutional amendments and legislation into law.

The Conditions of Extra-Constitutional Reconstruction

If the constitutional majority concludes that the procedural self-entrenchment paradox cannot be overcome within the existing constitutional framework, then any extra-constitutional reconstruction framework would have to satisfy at least the following conditions. It should be framed as a temporary reconstruction instrument, distinct from the constitutional framework ordinarily governing constitutional amendment and institutional change in constitutional democracies

and in the Hungarian constitutional tradition. Such a framework should contain at least three elements. First, it should define itself as a temporary reconstruction device, adopted either as a supplement to the Fundamental Law or as a separate structural unit attached to it. Second, it should establish the procedure for its own adoption, including a justification for why presidential promulgation and publication are not treated as indispensable procedural requirements, grounded in the anticipatory obstruction paradox. Third, it should regulate the removal and replacement of affected office holders and establish the criteria and procedures for electing their successors.

These arrangements should themselves be temporary. This may require shortened terms of office until new appointment mechanisms can be established through an ordinary constitutional amendment process or in a future constitution. In the case of the President, the Speaker of Parliament could temporarily assume the functions of the office until a successor is elected through a negotiated process.

Given the refusal of these actors, especially the President, to resign, both options would amount to a form of popularly legitimized parliamentary coup: a workaround that can only be defended as a tragic and openly acknowledged constitutional wrong committed to avoid greater anti-constitutional harm. It could also be argued that either option would leave the constitutional supermajority in Parliament without effective political or constitutional checks. This objection is a serious one. That is precisely why any such measures would require the highest possible degree of public justification, transparency, and parliamentary deliberation. The weaker the constitutional basis of the chosen solution, the stronger the procedural safeguards and justificatory requirements must be. Both the underlying dilemma and the available options should therefore be openly debated and defended in Parliament and before the broader public. As this presupposes a longer process, the opinion of the Venice Commission could also be awaited and engaged with in depth when justifying whichever solution the parliamentary supermajority ultimately chooses.

Confronting Constitutional Wrongs

The less justified and less connected to rule-of-law principles the constitutional amendment of removal is, the greater the risk that constitutional reconstruction itself will be portrayed as authoritarian constitutional change. Avoiding this trap requires confronting, rather than concealing, the constitutional wrongs involved and subjecting them to the highest possible standards of public justification and deliberation. Overcoming the anticipatory obstruction paradox and the procedural self-entrenchment paradox is therefore essential not only for the success of reconstruction but also for its constitutional and democratic legitimacy. The best solution, for all, including the Hungarian people and all constitutional democracies that would pursue democratic and constitutional renewal, however, would still be for the affected constitutional office holders to take some responsibility and resign.

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