The Emerging Trend of Parliamentary Performance: Freedom of Expression in the Hungarian National Assembly

Viktor Z. Kazai

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Laurent Fabius, the former President of the French National Assembly, once called the parliament, rather poetically "a theatre of shadows". It was a harsh criticism of the mostly formal and insignificant role of parliament in the legislative process under the excessive dominance of the Executive. A few years ago Hungarian opposition MPs decided to turn their own "theater" into something more meaningful, or at least more amusing. They have been using all kinds of creative techniques to express their opinion in the hemicycle. It seems, however, that the Speaker and the parliamentary majority do not really appreciate this new trend of performing arts for they constantly impose heavy penalties on the MPs. This practice is a reminder that the principle of parliamentary autonomy needs to be reconsidered in light of contemporary political realities.

The repertoire

In the most recent case, during his speech, the vice-president of the majority party (Fidesz) was accusing one of the opposition factions (LMP) of collaborating with George Soros (the Hungarian born American billionaire and philanthropist) with the purpose of settling migrants on Hungary. While he spoke two MPs from LMP stood behind him and were holding sheets with the text: "He is lying". They were each fined approximately 1,400 EUR by the Committee on Immunity for this act, but the plenary was requested to make the final decision. Another good example took place during the re-elected President of the Republic's inaugural speech, when a particularly creative opposition MP stood on her chair while holding a marionette with the face of the re-elected President of the Republic, thus expressing that he was the puppet of the government. Her salary was reduced by approximately 790 EUR. The repertoire of the parliamentary opposition includes displaying billboards, using megaphone and sirens, installing paper-maché sculptures and so on. Their creativity can always surprise the House.

The review

Regardless of the artistic value of the performances, the evaluation of these actions and the subsequent disciplinary proceedings can be very interesting from a constitutional perspective as well. This emerging trend can be traced back to the landslide victory of the Fidesz-KDNP coalition in 2010 which led to a two-thirds (constitutional) majority in the legislature. Since the governing coalition did not need the cooperation of the opposition at all, it could not care less about its opinion. "It seems that the House can work without opposition as well, although the debates will not be as enjoyable…" – said Viktor Orbán back in 1998 during his first term as Prime Minister after the then opposition had left the hemicycle to express its disagreement with certain controversial decisions of the majority. This attitude characterized parliamentary work after 2010 as well.

The opposition could express its opinion on the floor of course, but their participation in the parliamentary decision-making became a mere formality. Sick and tired of playing the role of bio-decoration, some opposition MPs soon began to invent creative solutions to communicate their ideas within parliament in a way to attract the attention of the media. Surprised by the success of this new form of communication, the majority quickly amended the internal

parliamentary rules to equip itself with the necessary tools to suppress this trend. Vague expressions, heavy penalties, unfair procedures characterized the disciplinary proceedings. One particularly serious case went all the way to the Grand Chamber (GC) of the European Court of Human Rights (ECtHR).

The seven applicants of the case Karácsony and Others v. Hungary (42461/13 and 44357/13) were fined for having gravely disrupted parliamentary proceedings after they had displayed billboards and used a megaphone accusing the government of corruption. In conformity with the rules (in force at the material time) the Speaker had proposed the imposition of a fine which was subsequently approved by the plenary session without debate or hearing. No remedy was available for the MPs against the decision. This was an important case, because for the first time the Court was requested to examine the conventionality of parliamentary internal disciplinary measures imposed on MPs. According to the unanimous judgment the restriction of the applicants' freedom of expression was not accompanied by effective and adequate safeguards from abuse, because the right to be heard, the right to an effective remedy and the requirement to deliver a reasoned decision were completely missing from the regulation. Consequently, the ECtHR found a violation of Article 10.

Even before the delivery of the GC judgment, the governing majority had already amended the rules, and the ECtHR itself noted that the "the minimum procedural safeguards required in the present situation thus appear to have been put in place..." In light of more recent practice, this conclusion of the Court seems rather hasty and superficial.

According to the new rules the proceeding is launched by the Speaker who initiates the decision of the House Committee where all the factions are represented. However, if the committee is unable to arrive to a consensus, the Speaker has the right to impose a penalty. This decision can be appealed before the Committee of Immunity which operates on the principle of parity (opposition and majority MPs are represented in equal numbers). The MP even has the right to be heard by the committee. This sounds promising, but the devil lies in the details. This Committee has the right only to overturn the decision of the Speaker. In other words, the support of at least one committee member belonging to the governing majority is needed to quash the penalty imposed by the Speaker. If the disciplined MP is still unhappy, she can bring her case before the plenary which decides without debate whether to uphold the Speaker's decision or not.

The procedure is cleverly designed, for it looks fair, but it is guaranteed that the will of the governing majority prevails throughout the whole process. The disciplinary proceeding is still a perfect tool to inhibit the opposition from effectively expressing their opinion. This is confirmed by the practice of the House which shows that opposition MPs are specifically targeted by the majority.

Epilogue

Parliamentary autonomy is indisputably a very important constitutional principle which guarantees the right of the legislature to regulate its internal affairs and to ensure the orderly conduct of parliamentary business. Having said that, it should not be forgotten, that the underlying purpose of parliamentary autonomy is to guarantee the independence of the MPs and the adequate functioning of Parliament from undue external interference and pressure. When the rules on parliamentary immunity and disciplinary proceedings were born, the relationship between Parliament and the Executive was characterized by conflict. The monarch, as the head of the Executive, was perceived to be an external threat who tried to manipulate and influence parliamentary decision-making.

In contemporary parliamentary regimes, however, the cabinet usually enjoys the support of the majority of MPs due to the very high level of party cohesion. Under such circumstances the disciplinary rules can be easily used by the parliamentary majority to suppress and to inhibit the parliamentary opposition from expressing their criticism towards the cabinet. Technically speaking, the House can work without a potent opposition. Nevertheless, if we take the deliberative function of Parliament – as an essential element of representative democracy – seriously, the principle of

autonomy needs to be adjusted to the political realities and adequate safeguards need to be introduced to protect the opposition from the tyranny of the majority.

ABOUT THE AUTHOR

Viktor Z. Kazai

Viktor Z. Kazai is a post-doctoral researcher at Université libre de Bruxelles and senior rule of law expert at the Civil Liberties Union for Europe.

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