

Cardinal concerns: the new super laws are coming

The constitutional process is far from over: phase two is just about to begin. In the autumn the government parties will introduce the so-called cardinal (or supermajority) laws that will flesh out various areas that were only addressed in broad strokes by the Constitution. While legally slightly inferior to constitutional provisions, these laws are also enacted and amended with a two-thirds majority, thus making them very difficult to change in the future. In light of Fidesz' failure to seek a consensus on constitutional issues, and its reluctance to consult or compromise on key issues, there are legitimate worries that the cardinal laws will only further enhance Fidesz's unilateral power grab.

Appearances are deceptive, especially if the general public believed that the constitutional process had been concluded in the spring. While many commentators and opposition politicians have criticised the new basic laws or certain aspects thereof, the worst fears of Fidesz-critics were not realised by the new Constitution.

Sure, the rhetoric of the preamble – loftily entitled National Creed – was tacky, and there are some provisions that raised eyebrows even in terms of the state's democratic functioning, e.g. the possibility that in collusion with the President of the Republic the Fiscal Council (or vice versa, the President collaborating with the Council) would have the effective power to dissolve Parliament. No matter how stringent the conditions for this dissolution are in theory, the Fiscal Council's authority on this issue is an absurdity.

Cardinal laws

Nevertheless, even some of the Constitution's most ardent critics would have to admit that in light of Fidesz' repeated use of its full power they had anticipated worse.

But the Constitution was left unfinished, many of the crucial issues have not been resolved yet. Overall, the Constitution stipulates that some 32 so-called "sarkalatos" – maybe best translated as cardinal – laws should be adopted. It is not unusual for constitutions to refer the specific regulation of certain areas to ordinary acts.

Here, the situation is different, however. Like constitutional amendments, cardinal laws also need to be enacted or amended with a two-thirds majority. Thus, unless they are squashed by the Constitutional Court – whose membership consists mostly of Fidesz-nominees – these laws effectively carry the same weight as constitutional provisions.

It is no secret that Fidesz seeks to enshrine in these laws its vision of what Hungary should be like and what developmental trajectory it ought to follow. As Orbán himself has

proclaimed, on many issues he wishes to bind the hands of governments for decades to come.

From A as in attacks all to way to V as in voting

In terms of the everyday operation of the state and government, these laws will be more influential than the Constitution. Here is a non-exclusive list of issues the detailed regulation of which will be left to as of yet unknown cardinal laws (the Constitution only contains some basic rules concerning these issues):

- external attacks against Hungary
- rules of Hungarian citizenship
- electoral laws and voting rights (including the rights of ethnic Hungarians abroad)
- personal data and freedom of information
- the operation of parties and their financing
- the rights of national minorities
- the detailed rules concerning the freedom of the press, media services, and the supervisory authority for media products and news markets
- the powers, organisation and functioning of the Constitutional Court
- the organisation and administration of courts, the legal status of judges
- the organisation and administration of the prosecutor's office
- the protection of families
- the functioning of the Fiscal Council, etc.

As they pertain to some of the most basic concerns in a modern state, most of these issues should ideally be regulated at the constitutional or supermajority level. Especially considering the fact that consensus in Hungarian politics has been impossible on virtually any issue, on the face of it, it appears reasonable indeed that they should be regulated with a majority requirement that will make future unilateral changes impossible.

So where is the problem?

From concerns about formal adoption procedures...

Well, seeing as how the bills or their drafts have not been presented yet, it'd be more appropriate to say that there are legitimate concerns in light of Fidesz' handling of delicate issues over the past year. The coming months may soothe these concerns, but for the time being here are the most important caveats regarding the process of cardinal law creation.

First, there is the suspicion that opposition parties have been left out of the Constitution precisely because Fidesz wants to draw less attention to the fact that it has no desire to conduct a serious consultation regarding these issues. While the Constitution was of course also drafted and adopted without the involvement of MSZP and LMP – and with harsh criticisms and ultimate rejection from the sole participating opposition party, Jobbik – Fidesz did take some steps to make the process seem more inclusive than it really was.

There was a demagogic “national consultation” asking citizens’ views on a few of the constitutional questions, some civic and professional organisations were asked to express their views on the draft, and Fidesz courted the opposition parties for a while, hoping that at least LMP would return to Parliament in return for a few concessions.

Yet even these half-hearted measures went much further than Fidesz’ general willingness to let others have a say in its decisions. Generally, Fidesz adopts laws without making any effort to involve the social partners, not to mention the political opposition. In fact, it has employed the procedural ploy of initiating major legislation through individual MPs rather than the real proponent, the government, thereby pre-empting legal requirements of consultation.

The failure to consider any opinions but the handful of persons in the Fidesz leadership responsible for designing policy is dubious enough when it comes to ordinary legislation. It is highly alarming, however, when applied to key issues that even Fidesz agrees should require a high level of social consensus – which is why it is enshrining them in laws requiring supermajority.

There is a deep irony in Fidesz’ acknowledgment that these rules deserve to be protected against unilateral changes and its desire to shape them unilaterally.

The adoption of the Constitution was at least a highly visible process – separated from the general legislative work – with both, domestic and international critics watching. The fragmented and drawn out process – intermingled with a variety of other legislative tasks, e.g. the budget – of enacting cardinal laws, in contrast, makes it much easier to pass controversial measures under the radar.

...to substantive worries

These formal concerns will ultimately matter little if the laws themselves will turn out to be non-controversial. While respect for the democratic process would dictate a more inclusive process with regard to basic laws – for this is what these are – the grumbling over processes will be forgotten more easily if the substance is ultimately not so different from what would have resulted from a fairer process anyway.

With regard to some of the more crucial areas – e.g. election laws, media – this is highly unlikely, however. Alarms have been raised already with regard to Fidesz’s plans for the judiciary, where the abolition of the National Council of Justice might herald Fidesz’s quest to rein in the last independent authority exercising oversight over the effectively combined legislative-executive branch (which is a European, not specifically Hungarian problem).

Early as the opposition’s shrill warnings in this area may be, it is true that the government has moved aggressively with regard to the judiciary. It has simultaneously cut the Constitutional Court down to size and occupied it with loyalists. It has also mandated that judges must retire at 62 (over 200 hundred will have to leave the bench in January, rattling an already overburdened administration of justice), ensuring that they will be replaced by younger and presumably more reliably Fidesz-oriented judges.

The strict enforcement of the retirement age is especially ironic in light of Fidesz’s insistence that it is dead-set against early retirements because the state cannot afford to forego the experience of highly-skilled professionals. For reasons unknown, this logic fails to apply to judges.

This and several other controversial issues will be on the autumn menu of Parliament, holding out the prospect of many interesting debates. Let the games begin.