

A President should be seen, not heard

Though it may seem as a whimper rather than a bang, the inauguration of President Pál Schmitt marks an important step in the establishment of the new constitutional order envisioned by the ruling party, the Fidesz. While most of the details regarding the new constitution remain yet to be filled in, both PM Viktor Orbán and the new president himself have been outspoken as to what the president's role should be. It can be roughly summarised as “be seen, but not heard.”

The effective Constitution designates two tasks for the president: s/he “shall represent the unity of the nation” and “guard the democratic operation of the State.” Schmitt strives to fulfil the former role only – and despite widespread misgivings about him among intellectuals on both sides of the political aisle, he does not appear unqualified to do so.

As far as the guardian of democracy role is concerned, the president's chief instrument is to delay the entering into effect of problematic legislative acts by refusing to sign the bills, and sending them either to the Constitutional Court for a preliminary constitutional review or, alternatively, back to Parliament with suggested changes for revision.

Not bothering to assuage often voiced concerns that he has no plans to engage in such type of democratic control, Schmitt has instead made clear that he desires to be an “engine of legislation” rather than a “check” on it. As a metaphor, this may be somewhat hazy – an engine actively drives something forward and does not merely help it along –, what Schmitt means, however, is not only fairly clear but also commendable at least in as far as it is open about his decision not to act as a constitutional check on parliament.

Unsurprisingly, PM Orbán shares Schmitt's view of the president's role (or is it the other way round?), as he told a TV reporter that – by definition – the president cannot act as a check on the government (i.e. the cabinet) because both are part of the executive.

This is mistaken on several levels. First, the Constitutional Court has held that the president is not in fact part of the executive (incidentally, this reflects widespread understanding of the role of presidents – and constitutional monarchs – in parliamentary systems. The German president's webpage notes, for instance: “According to the Basic Law, the Federal President is not part of the executive and stands above the three branches of government.”) In terms of the Hungarian Constitution's provisions, therefore, the president should act as a check on government in general, including the executive, though the instruments at his disposal are limited. When repeatedly admonishing the previous government for its practices, President Sólyom exercised this duty by maximally exploiting the limits of his power – some critics even say he purposely exceeded it.

Second, even if Orbán were right, the president's key task in terms of exercising his guardian role pertains to the legislature, not the executive: delaying and examining the

constitutionality of bills is a check on parliament rather than the cabinet. Orbán himself noted this much in the interview, implicitly correcting the reporter who all too typically had talked of the “cabinet passing laws” – though it is easy to see why somebody might conflate the two branches in Hungary. In this context, Schmitt’s “engine rather than a check” appears, well, not in sync with the Constitution.

The objection raised against Schmitt’s real (and perceived) understanding of his role pertains not to his planned relationship to the executive per se, but to his reluctance to place the guardianship of democracy in general at the centre of his activities. Though only his actual term in office will be the measure of his ultimate approach to this essential duty, for the time being the indications are that Schmitt will be derelict with regard to at least half of his constitutionally prescribed functions.

As far as the other half is concerned, his task of representing national unity, many of the criticisms are over the top. As Schmitt’s defenders rightly point out, party stalwarts are often elected as presidents even in parliamentary democracies where the presidency is principally a non-political office.

Even in Hungary, where the intensity of political polarisation has led to a (justified) craving for those who stand outside the party-political battlegrounds, only László Sólyom, whose brief political stint in the early MDF had catapulted him to the Constitutional Court and away from party politics, had been veritably independent when elected – and in 2005 he barely eked out a narrow victory over a leading party cadre, the MSZP’s Katalin Szili.

Schmitt’s success in politics derives primarily from his conciliatory and pragmatic nature, which, with some notable exceptions, has guarded him against strong and controversial stances and which ought to serve well in making him popularly accepted even outside his party’s camp. In fact, Schmitt’s successful career in the previous regime – also a sign of his pragmatism – is more likely to endear him to the average elderly – and frequently socialist – voter, who is likely to have fond memories of the dictatorship’s fading years, when Schmitt thrived as a run-of-the-mill conformist.

Unlike the confrontational Sólyom, Schmitt is likely to put harmony over controversy, not only in the context of his own party, but with other parties, too. Conflicts surrounding the presidency are going to be rare and ultimately that should give Schmitt higher approval ratings than the ones enjoyed by Sólyom, whose popularity was low for a president (he clearly placed the role of democratic guardian atop his duties and did not shy away from conflicts even if they hurt his standing as the expression of national unity).

Those defending Schmitt and the Fidesz’s choice are also correct in arguing that no matter what, the liberal intelligentsia will not be satisfied with the Fidesz-nominated president, for a variety of reasons: on account of his personal and political history, his expressed vision regarding his political role and his newly manifested nationalistic understanding of national unity. Though the Washington Post may have exaggerated when it labelled Schmitt one of

Orbán's "nationalist allies" – with some glaring exceptions, he was one of the more moderate voices in the Fidesz – his recent rhetoric does indeed suggest that he is now seeking to cover all the political bases. His inaugural address included references to a number of key nationalist issues. He spoke, for instance, of his desire to include a reference to the Holy Crown – an only recently politicised issue, but beloved by the extreme right – and Christianity in the new constitution. But all these are primarily matters for intellectuals and they will put off few of the "plebeian" citizens Schmitt seeks to woo.

And as far as the democratic guardianship is concerned? In international comparison, this is an unusual role for ceremonial heads of state in any case, and our prediction is that Schmitt's likely dereliction on this issue will last only until the new constitution is enacted. Given the attitude evinced by the Fidesz-leadership towards this function, its inclusion in the new constitution appears unlikely. If Schmitt does not conform to the Constitution, then the new constitution could be made to conform to him.