

Fifth constitutional amendment: Just following orders?

The governing supermajority amended the constitution for the fifth time since its adoption in September. The fifth amendment introduced a whole range of changes, including three ostensibly enacted to satisfy the unceasing criticisms from abroad. Fidesz has made slight adjustments to the powers of judge-in-chief Tünde Handó, has allowed campaign advertisements on commercial television and modified the provisions concerning churches to reflect the recently amended church law. While the new rules are supposedly liberalisations and are portrayed as such by Fidesz, in fact they are mostly cosmetic changes to problematic statutory arrangements.

Once again Fidesz is patching up its constantly rewritten Fundamental Law (colloquially known as the constitution), which was initially meant to be ironclad. In the government's defence, however, this round of amendments – the sixth to date – mostly seeks to incorporate changes requested by the hostile colonial powers, also known as the European Union. Indeed, the state secretary in the Ministry of Justice, Róbert Répassy, noted that the “government wishes to remove those seeming problems that could be used as pretexts for attacks against Hungary”. Given that Répassy is considered a moderate voice in Fidesz, one can imagine what the mood is like in the party's more hard-line nationalistic wing, also known as the rest of Fidesz.

The package of amendments touched upon several areas. Fidesz gave in partially to EU demands concerning the controversial power of Tünde Handó, the president of the National Office for the Judiciary, to transfer cases between courts, the ban on screening campaign advertisements on commercial television and the registration of churches. For the most part, however, these changes only partially realise what the international community asked for, and some subvert the legitimate goals underlying the amendments.

No more free transfers

The reform of the judicial system sought to concentrate vast powers in the hands of Handó, who - being the wife of a Fidesz MEP - is generally considered close to the main governing party. Among her most controversial competencies was the power to transfer cases between courts, ostensibly to ease the burden on courts facing excessive caseloads. In effect, this power offered the possibility to take away politically charged cases from unreliable courts and give them to benches that were less likely to present the reigning government with an unpleasant verdict.

In response to pressure from the EU, the government gave in on this issue and removed this particular competency from Handó's still substantial range of powers. However, it did it grumpily: the explanatory note attached to the bill noted how many billions in forfeited savings this will cost the budget. Generally, cost estimates are almost non-existent in draft legislation, so this note only serves as just another tool in the government's 'fight' against the European Union.

Campaign advertisements everywhere?

One of the most widely criticised provisions of the new electoral law was its ban on campaign advertising on commercial television. The law provided that parties could run free ads in the public media, but refused access to commercial television, which has far more viewers, especially in the crucial segment of undecideds. Fidesz claimed that this was to level the playing field for impecunious organisations, but it seems more likely that the goal was to keep the opposition from addressing hard to reach voters in rural areas.

The limitation seemed arbitrary and in conflict with fundamental rights, thus it was hardly surprising that there was international pressure on Fidesz to change it. Still, Fidesz' solution skilfully found a loophole: while political ads on commercial TV are allowed now, they must still be provided either for free for all those who qualify as candidates or alternatively not at all. Under such circumstances the commercial TV channels will have to forgo substantial revenue during the campaign period if they want to allow parties to advertise, and all they will receive in return is the wrath of the likely winner. Ratings winner RTL Klub, already rumoured to be in a conflict with Fidesz, may decide to risk it nevertheless, but with both money to lose and the disfavour of Hungary's all powerful ruling party, it's hard to see the upside.

However, while this limitation contradicts the voters' right to information, it is not necessarily against the interest of the opposition parties. As Fidesz' financial situation is much better than the one of the opposition parties, should they be allowed, they could easily purchase as much airtime as they need on commercial TVs.

For small churches, only a dubious relaxation

Finally, the governing majority has also enacted provisions that purportedly ease the recently imposed harsh registration requirement for state-recognised churches, which had suddenly stripped hundreds of smaller (and a few not so small) denominations of their officially recognised status as churches, and the concomitant rights and privileges. What the fifth amendment does is to constitutionally enshrine the recent amendment of the Church Law – itself a reaction to a Constitutional Court decision and international pressure –, which gives the status of “organisations that pursue religious activities” to most denominations, as opposed to their previous classification as plain civil associations.

Nevertheless, the law and the constitutional amendment retain two of the most critical elements of the previous regulatory scheme. For one, most of the financial benefits of an ecclesiastic status only accrue to a few privileged churches, ratified as "accepted" churches by a two-thirds majority in Parliament. The two most controversial aspects of the previous scheme remain, therefore. Firstly, many churches remain deprived of the benefits they used to enjoy. Second, and even more importantly, even if a given church fulfils the legally established criteria for a privileged status, its ratification as such is Parliament's decision. The latter is not required to justify a negative decision, nor do rejected churches have legal remedies if unjustly denied a status that may well decide their financial viability. The constitutional law think tank Eötvös Károly Intézet assesses that the law fails to redress the

concerns raised by the Constitutional Court regarding the previously effective legislation, and correspondingly remains unconstitutional.

Amendment No 6. coming up?

Now that the government has done the EU's bidding, it might feel that it is entitled to another round of self-gratification. In other words it might be tempted to enshrine another public policy 'achievement' in the constitution. The most recent fad is the ubiquitous "rezsicsökkentés", i.e. the government-mandated drop in utility prices. The policy has been stunningly successful in recouping popularity that Fidesz has lost over the past years, and expanding its already massive lead in the polls. Still, even some in the governing party balk at the idea of raising "rezsicsökkentés" to the constitutional level. Whether it happens or not is likely to be a pragmatic decision rather than a principled one – just as the whole idea was to begin with. In other words utility companies better pray for Fidesz re-election prospects to remain rosy.