


## On the separation of powers and the separation of state and Church: Remarks on the resignation of the Hungarian president

O podziale władz i oddzieleniu Kościoła od państwa. Uwagi na temat rezygnacji prezydent Węgier

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**Abstract:** The resignation of the Hungarian president in February 2024 not only proved to be a political issue, but also raised important questions of constitutional law. The event raised fundamental questions about issues such as parliamentarism, the separation of powers, political responsibility, and the separation of church and state. This paper presents a theoretic analysis, examining why reality seems to differ from constitutional law textbooks. Constitutionalists have generally interpreted the separation of church and state in an institutional way, considering the relationship between the various “structures”. In this paper, however, a different aspect of the topic has emerged, namely the intertwining of church and state positions. How should situations be handled when church leaders are involved in politics? This paper concludes that the relationship between the president and the government has changed drastically, even though the text of the constitution remains unaltered. This change has introduced the political responsibility of the president, an aspect that previously seemed unthinkable. Another aspect relates to the separation of church and state. It has become evident that this relationship is not just a structural matter, but one that also involves personal relationships.

**Key words:** separation of powers; Church–state relations; president; political responsibility; Hungary

**Streszczenie:** Rezygnacja węgierskiej prezydent w lutym 2024 r. okazała się nie tylko kwestią polityczną. Spowodowała również do postawienia ważnych pytań z zakresu prawa konstytucyjnego. Dotyczą one takich spraw, jak: parlamentaryzm, podział władz, odpowiedzialność polityczna oraz oddzielenie Kościoła od państwa. Niniejszy artykuł zawiera analizę teoretyczną prowadzącą do odpowiedzi na pytanie o przyczyny rozbieżności pomiędzy rzeczywistością polityczną a treścią podręczników do prawa konstytucyjnego. Konstytucjoniści z reguły interpretują oddzielenie Kościoła od państwa według klucza instytucjonalnego, rozważając relacje pomiędzy różnymi „strukturami”. Autor natomiast proponuje odmienne ujęcie, kierując uwagę na dostrzegany w omawianej sprawie spłot funkcji kościelnych i państwowych. W jaki sposób należy oceniać sytuacje, w których przywódcy kościelni są zaangażowani w politykę? W konkluzji stwierdza się, że relacja między prezydentem a rządem zmieniła się znacząco pomimo tego, że tekst Konstytucji pozostał taki sam. Zmiana ta przyniosła efekt w postaci politycznej odpowiedzialności prezydenta, co jeszcze niedawno nie było nawet brane pod uwagę. Natomiast jeśli chodzi o oddzielenie Kościoła od państwa, jest niewątpliwe, że nie chodzi w nim wyłącznie o kwestie strukturalne, lecz istotne znaczenie mają również relacje personalne.

**Słowa kluczowe:** podział władz; relacje państwo–Kościół; prezydent; odpowiedzialność polityczna; Węgry

### Introduction

In the relationship between constitutional law and politics, the former serves as the hardware, providing the framework on which several types of software (politics) can operate. These two areas are closely connected: a software developer must understand the intricacies of the hardware, while a hardware designer must be knowledgeable about the programs that run on the machine. However, it is important to note that these two areas of

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expertise are not interchangeable. If a hardware designer dictates how programs should run, it may lead to malfunctions.

Constitutional law scholars also act appropriately when they focus on their own field and refrain from commenting on public events. Constitutional law is a practical science, meaning that theoretical constructs must be grounded in reality. It is unnecessary to possess knowledge that is logically sound but does not accurately reflect real-world situations. The purpose of this paper is to examine whether our beliefs and teachings regarding the president's power to pardon, political accountability, the form of government, and the separation of state and church align with reality. Since we cannot alter reality, we must determine whether it is necessary to reassess our perspectives.

At first glance, this paper appears to focus only on Hungarian constitutional and political events. However, the events in Hungary provide insights that are relevant to all parliamentary states. The relationships between constitutional entities are similar in other countries, too. Therefore the Hungarian situation is not unique, it may also happen elsewhere.

## 1. The facts from a constitutional perspective

On 27 April 2023 – in conjunction with the papal visit and other clemency cases – the President of Hungary issued a decision regarding the evaluation of a clemency request, pardoning several convicted individuals.<sup>1</sup> One of the pardons was related to a paedophilia case, in which the convicted individual had assisted in covering up the sexual abuse of minors by the manager of a children's home. The person who was pardoned had already been released from prison at that time. His remaining sentence was suspended, and he was exempted from the disadvantages associated with having a criminal record.

The clemency case gained public attention on 2 February 2024, after being covered by a political news portal.<sup>2</sup> As a result of the ensuing political scandal, the president resigned on 10 February 2024. The former minister of justice, who had countersigned the pardon decision, also resigned from her position as a member of parliament and withdrew from running in the European Parliament elections.

The role the bishop of the Hungarian Reformed Church in the case is significant and has garnered public attention. The bishop, who was previously a minister in the Orbán government, was elected as bishop of the Church by the Reformed communities after his ministerial mandate. In addition to his role as a Church leader, he also served as a member of the president's advisory board. According to press reports, he supported the president's decision to pardon one of the actors involved in the paedophilia scandal. After the matter

<sup>1</sup> Decision of the President of Hungary, 27 April 2023, No. KEH/2787–6/2023.

<sup>2</sup> See: Balázs Kaufmann. 2024. "Novák Katalin kegyelmet adott a bicskei gyereketthon pedofil exigazgatóját fedező bűntársnak." [https://444.hu/2024/02/02/novak-katalin-kegyelmet-adott-a-bicskei-gyereketthon-pedofil-exigazgatojat-fedezo-buntarsnak?utm\\_source=rss\\_feed&utm\\_medium=rss&utm\\_campaign=rss\\_syndication](https://444.hu/2024/02/02/novak-katalin-kegyelmet-adott-a-bicskei-gyereketthon-pedofil-exigazgatojat-fedezo-buntarsnak?utm_source=rss_feed&utm_medium=rss&utm_campaign=rss_syndication) [accessed: 2 February 2024].

exploded, the bishop resigned from his position as president of the Synod, but he retained his episcopal mandate.<sup>3</sup>

## 2. Constitutional standards on the president's status and the right to pardon

Hungary is a parliamentary republic, in which the executive power is vested in the Government (Article 15 (1) of the Basic Law<sup>4</sup>), and the general direction of governance is determined by the prime minister (Article 18 (1) BL). The constitutional mainstream considers it evident that the president of the Republic is not part of the executive power.<sup>5</sup> Instead, the president holds a neutral power, as described by Benjamin Constant.<sup>6</sup> The president's power to pardon was discussed in detail in Decision 47/2007. (VII. 3.) AB<sup>7</sup> under the previous Constitution. In its decision, the Constitutional Court stated that: "[...] the President has a real decision-making right in terms of whether or not to grant clemency to the person named in the clemency request in the clemency procedure initiated ex officio or upon request. In their decision, they can also express fairness, humanitarian and moral aspects stemming from their own values."<sup>8</sup> The rationale of this decision is rooted in the Basic Law and practice confirms the president has the authority to grant pardons freely. The only limitation is the ministerial countersignature: the president's decision is only valid if it is also signed by the minister of justice.

Among Hungarian constitutional scholars it is also evident that presidents do not have political responsibility.<sup>9</sup> However, it is important to clarify what is meant by political responsibility. The simplest way to explain this is to outline the responsibilities the president "does" have. In terms of Article 13 (2) BL, it is clear that the president is only held accountable for violations of the Basic Law or other laws. Moreover, in many cases it must be proven that this violation was intentional and related to the president's duties. On the other hand, the president is not held responsible for decisions that are legally sound but may not be popular with society or with the public, based on the margin of appreciation.<sup>10</sup>

It is significant that political responsibility in constitutional literature means that the holder of the office can be removed for political reasons. In Hungary, for example, as in all parliamentary states, the prime minister has political responsibility, meaning that Parliament can withdraw confidence from them, resulting in their removal. Similarly,

<sup>3</sup> The Hungarian Reformed Church is geographically divided into four counties, each of which has its own bishop. One of the four is the head of the Synod, as well as the highest representative of the Hungarian Reformed Church.

<sup>4</sup> The Basic Law of Hungary, 25 April 2011, hereinafter: BL; promulgated on 18<sup>th</sup> April 2011, entered into force 1<sup>st</sup> January 2012.

<sup>5</sup> Minority views include the president to the executive branch. See: Kovács 2013, 37–50.

<sup>6</sup> Constant 1836.

<sup>7</sup> Decision of the Constitutional Court of Hungary [Alkotmánybíróság, hereinafter: AB], 3 July 2007, No. 47/2007. (VII. 3.) AB, Official Gazette [Magyar Közlöny] 2007, No. 87.

<sup>8</sup> Decision 47/2007. (VII. 3.) AB, Official Gazette 2007, No. 87, pp. 6530–6531.

<sup>9</sup> Petrétei 2013, 123.

<sup>10</sup> One different perspective is the moral responsibility of the president, as, according to the Basic Law, they have to represent the unity of the country. However, the moral dimension is beyond the scope of constitutional law, and must therefore be disregarded in this paper.

a minister can be replaced; the prime minister can initiate the dismissal of the minister due to a loss of confidence. No one else has such a responsibility: no matter how unpopular an ombudsman, a chief prosecutor or even a president may be, this has no effect on their offices. Their mandates are not based on popularity.

Therefore, the lack of political responsibility of the president does not mean that their decisions cannot be criticised or protested against. However, mere loss of confidence is not a reason for termination of the office.

In addition to political responsibility, another category that needs clarification is that of political decision-making. The legal literature distinguishes between legal and political decisions: a legal decision is based on a legal authority, typically a statute. When making a legal decision, one must follow the laws. On the other hand, in the case of a political decision, the basis of the decision is a value choice. The decision-maker takes into account specific preferences and ideology rather than legislation. This also applies to pardons: the president makes a decision based on their own value choices.

### 3. Constitutional standards on granting pardons

The function of a pardon is not to correct a judicial decision. From a legal standpoint, the final judicial decision must be considered as “justice”, even if it is morally unacceptable or goes against the abstract “truth”. There are many ordinary and extraordinary legal ways to remedy court error and prove innocence, but a pardon is not one of them. Instead, a pardon overrules the judicial decision, taking into account aspects that the judicial decision could not consider.

Pardon is not a judicial matter, but falls within the realm of law. The aspects of pardon are different from those of the courts, yet it is a procedure regulated by law. The basic law distinguishes between amnesties and pardons. Amnesties apply to specific types of acts within a specified period: criminal proceedings cannot be pursued against those who meet the specified criteria, and the ongoing proceedings or punishments must be halted. Amnesties are decided upon by Parliament through an Act of Parliament.<sup>11</sup>

By contrast, a pardon does not apply to a type of act, but to a person. The Criminal Procedure Law recognises three types of pardons, namely: procedural pardons, executive pardons, and pardons for a clear criminal record. In the present case, it was an executive pardon: the convict could be released before serving the imposed sentence.

Contrary to expectations, granting a pardon is rarely a popular measure. The *vox populi* speaks out in favour of punishing the guilty, and punishing them severely (it is no coincidence that the death penalty is still popular in societies to this day). This voice is much stronger than forgiveness, the voice of letting go of punishment. Translated into the language of politics, by granting a pardon, one can typically lose more supporters

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<sup>11</sup> Since the transition, Parliament has granted amnesty twice: in 1991 after the blockade of roads (the taxi strike) and in 2012 when opposition MPs violated assembly rules.

than one can win. Politics therefore takes a risk with the question of pardons; the more serious the social judgment of the act in question, the greater the risk.

While the president makes a political decision on granting a pardon, they do not bear political responsibility. In other words, the president's decision is based on their own (subjective) criteria. However – unless it oversteps the legal framework – this decision, while it can be criticised, cannot result in the termination of the presidential mandate.

If one compares the provisions on the power of pardon in the constitutions of Central European countries, you find a rather mixed picture. There are differences in whether a presidential pardon requires a countersignature and in which cases it applies.

Hungary and Romania require the consent of the government for pardons, while it is not necessary in other countries. There are major differences when it comes to granting amnesty. It is a legislative task in Croatia, Hungary, Romania, and Slovenia.<sup>12</sup> In the Czech Republic and in Slovakia, the president has the right to grant amnesty; however, this action requires a countersignature (unlike in the case of individual pardons). The fact that ministerial approval is required in the Czech Republic stems perhaps from bad memories of President Havel's hasty decision to empty the prisons soon after the Velvet Revolution.<sup>13</sup> In Serbia, both the National Assembly and the president can grant amnesty, while in Slovakia the Constitution delegates this competence to the government in the case of minor offences, and to the president in case of crimes.<sup>14</sup>

#### 4. Reshaping political responsibility

One fundamental principle of classical constitutional law is that the countersigning minister bears political responsibility for decisions made by the president. The rationale behind this is that a political decision, unless there is a specific constitutional reason, should not be made without political accountability. If the decision has significant political implications, it should be the countersigning minister, not the president, who assumes political responsibility for it.

In the case that led to the present paper, it was clear that both the politicians and the media placed the president as the primary target of responsibility for the decision, presumably because she was the one who made it. Moreover, the president herself believed that she was responsible for the decision and had to face the consequences of political responsibility, including the termination of her mandate. As a result, she resigned from her position.

However, all of this is far from what constitutional lawyers teach about the relationship between the president and the government. If the state organisation operated strictly based on textbooks, then the president would not need to seek an explanation from

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<sup>12</sup> While there is no constitutional provision pertaining to the subject in Slovenia, the right to grant amnesty is vested in the legislative branch and has been exercised before. See: Smailagić 2020.

<sup>13</sup> Cepel, Gillis 1993/1994, 66.

<sup>14</sup> For a more detailed analysis see: Csink 2022, 329–330.

the prime minister about the decision.<sup>15</sup> Instead, the president would call on the prime minister to explain how they could have put her in such a situation where a decision that was legally correct but politically divisive decision was countersigned.

## 5. Reasons for differences between textbook and reality

In relation to the structure of the state organisation, constitutional law dogma proceeds from the notion that the president is a balancing power to the government. Within a parliamentary framework, counterbalancing is primarily constitutional. One of the tasks of the president is to be the guardian of the democratic functioning of the state organisation: the president keeps political processes within the constitutional framework. In addition, the president is also a political actor. While it is not their job to define government goals or choose tools, they may play a corrective role in this area as well. In doing so, the president's margin is narrow, but it can be shaped freely within the framework, without political responsibility. In contrast to the above, the events of the "pardon scandal" demonstrate that the basic premise has been broken: the president, too, bears political responsibility for the right to pardon, even in the constitutional sense of the term.

One presumes that the contradiction between the literature on constitutional law and reality results from the perception of the role the president plays: first, from the fact that the president comes from the world of party politics, and second, that they intend to act as a balancing power "within" the government and not against it.

### 5.1. Where does the president come from and how?

For a long time, the way elections were conducted corresponded with the form of government: semi-presidential states elected their presidents directly, while Parliament elected the president in parliamentary states.<sup>16</sup> The reason for this could be that if the people elected both the Parliament and the president, there would be a "dual legitimacy" in the country. Juan J. Linz has argued that in a parliamentary system, Parliament is the only institution with democratic legitimacy, and that the government as a whole depends on the confidence of Parliament.<sup>17</sup>

Nevertheless, an increasing number of parliamentary states have turned to direct elections in recent decades. In 2003, Ray Taras stated that there was "[...] a slight preference in postcommunist countries to elect the president directly."<sup>18</sup> Today, it is apparent that all countries in the region elect their president directly, with the exception of Hungary. Zdeněk Koudelka has even argued that direct election is a "civilising trend."<sup>19</sup>

<sup>15</sup> See: Orsolya Kuli. 2024. "444: Orbán Viktor nem fogadta el Novák Katalin magyarázatát." <https://index.hu/belfold/2024/02/09/novak-katalin-orban-viktor-balog-zoltan-kegyelem-kozvetites/> [accessed: 9 February 2024].

<sup>16</sup> Kopecky, van den Meerkrok-Paszowska, van den Muyzenberg 1995, 77.

<sup>17</sup> Linz 1992, 143.

<sup>18</sup> Taras 2003, 120.

<sup>19</sup> Koudelka 2014, 21.

Even if there is no close connection between the form of government and the presidential election system, the method of election still influences whether the president comes from within or outside party politics, and what the relationship of the president is with the government.

In parliamentary systems, there is a general desire that the president should be above daily politics. On the other hand, there is no longer a uniform assessment of whether indirect or direct election results in more “political” presidents of a republic – that is, in which electoral system the president is more connected to a particular political side. A related question is whether the president comes from among politicians or from circles outside party politics. After the transition in Hungary, the country’s presidents came from outside daily politics: Árpád Göncz, Ferenc Mádl, László Sólyom, and Pál Schmitt had all earned reputations before their political careers. In subsequent years, those individuals who became presidents were indeed “professional politicians”: János Áder (who was re-elected) in 2012 and Katalin Novák in 2022.<sup>20</sup>

As far as neighbouring countries are concerned, one observes that it has generally been party politicians who were elected as president in recent decades. Exceptions include Ivo Josipović (President of Croatia between 2010 and 2015), who made a name for himself as a university professor, judge, and composer, and Danilo Türk (President of Slovenia between 2007 and 2012), who was initially a diplomat and academic. However, the vast majority of these presidents were originally politicians.

One could conclude that whether the president is elected directly by the people or by Parliament, the candidate is typically selected from among party politicians. However, I identify a difference between the two cases. Direct election is a fundamental aspect of the political world. For politicians, running in an election and campaigning for votes is routine task. However, for individuals outside politics, such as scientists, artists, athletes, or judges, the concept of popularity as a measure of professional success is uncommon. Unlike politicians, who rely on public opinion polls for recognition, these individuals find it odd that the public determines who holds office. Not being elected can even be seen as a blow to their reputation. They may be hesitant to risk their professional standing for an election with an uncertain outcome. There is no such obstacle in the case of indirect elections: there, the candidate does not “run for” but is “invited to” the office, and given the balance of power in the parliament, the final result of the vote can be sealed (with the exception of the 2005 presidential election). By contrast, indirect presidential elections present a different scenario. In these cases, candidates do not actively campaign, but are rather invited to run for office. In addition, the outcome of the vote is often pre-determined based on the balance of power in the Parliament, with the exception of rare instances such as the 2005 presidential election.

In parliamentary systems, the fundamental principal of constitutional law is that the president of the Republic should be “above the parties.” In practice, however, it is

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<sup>20</sup> While this paper was being written, Parliament elected a candidate from outside party politics, Tamás Sulyok, former President of the Constitutional Court. At present, it cannot be decided whether there will be a return to the practice of electing a president from outside party politics, or whether the current election can be considered an exception.



common for party politicians to become presidents of the Republic in various countries. I concur with József Petrétei's perspective that being above the parties is not determined by the election method, but rather by the authority of the individual in the position.<sup>21</sup>

## 5.2. The role of the president in balancing powers

According to the Hungarian literature on constitutional law, the president of the Republic is partly a constitutional and partly a political balance. The president's role as a counterbalance under public law stems from the supervision over the democratic functioning of the state organisation (Article 9 (1) BL). In practice, this role is evident in powers and measures such as the constitutional veto or the refusal of appointments. In such cases, "[...] with the exceptional measures, the president pushes the state machine through the deadlock so that its normal operation can start again."<sup>22</sup>

It is interesting to consider to what extent the president can be considered a political counterbalance. It is important to note that the president does not govern in the political sense of the word; it is not their responsibility to establish social guidelines and priorities. However, this does not mean that they cannot influence the development of political guidelines through their use of powers or other actions. The president's constitutional role, which includes a neutral status, suggests that "balance" does not imply a complete halt to government action, but rather serves as a reminder to pay attention. Political counterbalancing can be achieved through specific powers such as political veto and powers of initiative, but also beyond them. According to former President László Sólyom, the president also upholds constitutionality by analysing, criticising, and qualifying individual social events, specific official measures, or even political practices, and indicating the path of constitutional functioning.<sup>23</sup>

According to M. Duverger, the real power of presidents relies not only on the content of the constitution, but also on other factors such as history and political circumstances, the composition of the parliamentary majority, and the president's relation to the parliamentary majority.<sup>24</sup> The president's relation to the governing majority raises the question of cohabitation. Robert Elgie describes cohabitation as a situation where a president from one party holds power at the same time as a prime minister from an opposing party, and where the president's party is not represented in the government.<sup>25</sup> He argues against the mainstream view that cohabitation may disrupt the stability of governance, suggesting that the collapse of the political system occurs only under certain circumstances and that these circumstances are unlikely to combine very frequently.<sup>26</sup>

Experience has demonstrated that the role of the president of the Republic is enhanced in cases of cohabitation. They tend to use their powers more frequently and assertively

<sup>21</sup> Petrétei 2018, 135.

<sup>22</sup> Decision 48/1991 (IX. 26) AB, Official Gazette 1991, No. 103.

<sup>23</sup> Sólyom 2009, 84.

<sup>24</sup> Duverger 1978.

<sup>25</sup> Elgie 2010, 29.

<sup>26</sup> *Ibidem*, 30.



when they have a different ideology from the government, leading to more frequent disagreements between president and prime minister. In such scenarios, the president appears “stronger” than usual, not because the constitution grants them more effective powers, but because they are willing to exercise the powers they already have. Naturally, this goes against the government’s wishes, as no-one likes to be restrained and counterbalanced in the short term. It is quite unconventional in the logic of a parliamentary system for a two-pole executive power to emerge, with the president taking on executive duties. At the same time, the presidential institution cannot be completely depoliticised: the head of state has room for manoeuvre in shaping policy.<sup>27</sup>

In the case of cohabitation, it is likely that the president will become a strong balance to the government. However, the situation is different when the president and the government share the same ideology, and it is especially different when not only values link the president to the parliamentary majority, but also their political career. If a party politician becomes the president, then, quite naturally, they also consider the presidency a part of their political career. Moreover, since their political career is tied to a specific party, they adapt the presidential line to their party. Consequently, a president from a party-political background does not wish to be the (external) balance of the government, but rather wants to display an independent, integrative political direction within the government, in accordance with the legal status of the president.

All of this impacts the issue of political responsibility. A president who is a party politician prioritises the political interests of their party over their own official career. Candidates who come from outside party politics rarely do this; despite sharing ideological values with a community, they do not advocate for any party aspect to be more important than their own office.

From the above, one can draw the conclusion that would previously only lead to a failing grade in a constitutional law exam, namely that presidents have political responsibility and are therefore accountable for the outcomes of their political decisions while in office.

## 6. Political responsibility upside down

One fundamental aspect of parliamentarism is that political responsibility is held by the legislative branch against the executive power or its members. This responsibility is rooted in political decision-making, and the outcome is often removal from office. A minister’s political responsibility can also stem from their having countersigned the president’s decision.

It is rather common that presidential acts are valid only if countersigned by the relevant member of the government. If this endorsement is refused, the president’s decision is null and void.

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<sup>27</sup> Petrétei 2018, 132.

Countersignature is not exclusive to parliamentary forms of government; it is also common in semi-presidential states. However, the list of competences that require countersignature is varied. In Hungary, countersignature can be regarded as the general rule: all presidential decisions have to be countersigned, unless there is a constitutional reason for not doing so. Exceptions include the nomination of judges or signing of statutes, since constitutions are generally averse to the government being involved in such matters. In other countries, such as Romania, countersignature is the exception rather than the rule, required only when the president may have excessive influence on governance. Poland falls in between: Article 144 (2) of the Polish Constitution<sup>28</sup> provides as a general rule that actions of the president are valid only with the prime minister's signature. There are numerous exceptions, however, which include appointments, proclaiming elections, granting citizenship and pardons, signing laws, and conferring orders and decorations.

In the case under consideration, it appears that the mandate of the minister of justice, who countersigned the president's decision on 27 April 2023, terminated on 31 July 2023.<sup>29</sup> After this date, only the mandate of the member of Parliament (hereinafter: MP) remained. Following the pardon scandal, however, the former minister resigned from her position as an MP. It is worth noting that MPs do not bear political responsibility for the actions of the executive branch. Specifically, an MP is not accountable to the prime minister. Instead, they were subjected to the scrutiny of the latter.

## 7. Separation of state and Church in relation to the pardon scandal

While the separation of state and Church appears to be a common doctrine in Europe, the specific implementation of the principle can vary. Some countries choose to strictly separate Church and state, limiting their involvement in each other's affairs. Other countries are less strict, allowing for collaboration and contribution in various areas.

The pardon scandal brought to light a new issue in state–Church relation, focusing more on individuals than structures. Specifically, the question arose of how much involvement clergy members can have in political life and whether Church leaders bear any political responsibility for their actions.

### 7.1. The constitutional concept of the separation of state and Church

Due to the painful memories of socialism, during which the state closely monitored Church activities, the Hungarian Constitution of 1990<sup>30</sup> deemed it crucial to establish a separation between state and Church. However, it is important to note that Hungary did not adopt the strict separation model applied in countries such as France and the United States.

<sup>28</sup> Constitution of the Republic of Poland of 2 April 1997, Journal of Laws [Dziennik Ustaw] item 483 as amended.

<sup>29</sup> Her resignation from ministerial office was not linked to the pardon scandal.

<sup>30</sup> Act XX of 1949, promulgated on 20 August 1949. The Act was fundamentally amended according to the transition with Act XXXI of 1989 and Act XL of 1990. Mainstream Hungarian literature refuses the continuity between the constitutions before and after the transition.

While the wording of the previous constitution may have implied a strict separation, the Constitutional Court interpreted the provision in a manner that leaned more towards cooperation than to separation. In one of its early rulings, the court examined the issue of church property restitution during the transition period. The court emphasised that: “[...] the separation of Church from state did not mean that the state ought to ignore the characteristics of religion and Church in its legislation.” Neither the social activities of Churches (in areas such as health care and education, for example) nor state subsidies to Churches were regarded as unconstitutional.<sup>31</sup>

Instead of advocating for separation, the Basic Law promotes on coordination and cooperation, which was the model utilised between 1990 and 2011. While there appears to be a significant difference between the Basic Law and the previous Constitution, the practical application of the model remained unchanged. The Constitutional Court even acknowledged that alterations in the wording of the constitutional text did not impact the relationship between the state and the Church in practice.<sup>32</sup>

I find that there are three consequences of the separation:

- 1) The state cannot endorse any specific religion. It cannot favour one religion over another or consider the teachings of any religion. The state must remain neutral in matters of religion and ideology.
- 2) The state does not interfere with the decisions of Churches. Regulations that impact the internal affairs of Churches or their beliefs cannot be enforced by law. Church decisions are not subject to review by state courts. Unlike in some other countries, the Hungarian legal system does not allow tax authorities to collect church taxes (voluntary donations to Churches). This means that Churches cannot wield public power under the separation.
- 3) If the state differentiates between religious communities, such differentiation must be based on objective and reasonable grounds.<sup>33</sup>

## 7.2. Human relations in the separation of state and Church

The question arises from both the Church and the state about what kind of personal relationships are allowed: Can a clergy member hold a leading state position, or can a state leader take on a church role?

The answer to the first question is simple. If the state is truly neutral, then it must establish conflict of interest rules impartially. For example, it can specify that a minister cannot engage in any paid work without placing importance on whether that work is running a bakery or providing pastoral services. In some cases, conflict of interest rules apply not only to concurrent work, but also to past career paths. These rules exist to maintain the separation of powers, such as preventing those who have held high state offices

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<sup>31</sup> Decision 4/1993 (II. 12) AB, Official Gazette 1993, No. 15.

<sup>32</sup> In Decision 6/2013 (III. 1) AB (Official Gazette 2013, No. 35) stated that the wording of the Basic Law on the separation of church and state is even closer to the Court's jurisprudence than the provision of the previous Constitution. Therefore, the Court continued its jurisprudence.

<sup>33</sup> Csink 2021, 84–85.

in the previous four years from being elected as constitutional justices. This separation is based on the separation of powers, not the separation of the state and the Church. Therefore, from the states perspective, there is no barrier preventing clergy members from holding state positions, as long as they do not perform their church duties simultaneously.

From the perspective of the Churches, the issue is more complex, and individual regulations are also different in Hungary. With regard to the Catholic Church, the *Codex Iuris Canonici* states that: “Clerics are forbidden to assume public office which entail a participation in the exercise of secular power” (Can 285 § 3). In the approach of the Reformed Church, the separation between clergy and laity is not as distinct. Reformed church laws also prohibit simultaneous state and ministerial service, and even in the case of a candidacy for a state office, clergy members must suspend their church office.<sup>34</sup> However, this does not mean the prohibition of pastoral “activity”; they can undertake service upon occasional request. One important difference between the Catholic and Protestant approaches is that the latter allows for a possibility of “in and out”; clergy members can suspend their church activity, perform political duties, and then return to the Church. Catholics are less likely to accept such a solution.

Bishop Zoltán Balog of the Reformed Church served as an MP from 2006, a state secretary from 2010, and a minister from 2012 to 2018. During this time his pastoral service was suspended. On 25 January 2021, he was elected as Bishop of Central Hungary. It is important to note that the bishop held a higher position than the resigned president previously; he was a minister when Katalin Novák was a state secretary in that ministry.<sup>35</sup> In addition, during the pardon scandal the bishop was a member of the president’s advisory board.

Is this a conflict of interest or does it violate the separation of state and Church? I believe it does not, for the following reasons:

- 1) It was not mentioned that the state aligned itself with the teachings of any specific Church. Zoltán Balog entered public office not as a pastor, but as a Hungarian citizen, holding an ideologically neutral position.
- 2) No church entity held public power. Providing advice to the president is not an exercise of public power.
- 3) As a result of the separation of state and Church, the state does not interfere in the Church’s choice of leader (or decision for them to step down). Whether a Church decides to elect a politician as a bishop is an internal matter for that Church.

From the above, I conclude that the constitutional principle of separation was not violated. Whether a close connection with politics benefits the Reformed Church is a separate issue, beyond the scope of this paper.

<sup>34</sup> Act of the Reformed Church I of 2013 on the service and status of priests. The Act is no longer in force, it was substituted by Act I of 2024 (25 April 2024) but the previous one is applicable for the case above.

<sup>35</sup> Katalin Novák subsequently became minister responsible for families.

## Conclusions

First, this paper makes two observations: (1) the presidents from 2012 to 2024 came from party politics, and (2) the president needed to resign due to a political decision, specifically the “pardon case” that arose in February 2024.

Regarding the first observation, it was concluded that having a president from a political party is not “a system failure”, but rather a common and natural occurrence in the politics of the Central European region. This, in turn, transforms the president’s role; they are no longer just an external balance to the government, but instead become an independent force “within” the government. These two phenomena (party-politician president and new role) bring about a responsibility for political decisions, which makes the second observation – the president’s resignation on 10 February 2024 – completely understandable.

When it comes to the relationship between the state and the Church, the pardon case has introduced a new perspective. Previously, the separation was viewed strictly in institutional terms, but it has become apparent that the intertwining of Church and state roles can lead to complications. State neutrality mandates that laws cannot discriminate based on religious affiliation; for the state, priests and pastors should be treated like any other profession. Therefore, regulations must be based on the internal rules set by the Churches.

I believe that a satisfactory solution has yet to be reached in Hungary, and other countries should be prepared for similar situations that could arise anywhere.

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