

# Transfigurative Changes of Governmental Responsibility

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**Abstract**—The unequivocal increase of the area of operation of the executive power can happen with the appearance of new areas to be influenced and its integration in the power, or at the expense of the scopes of other organs with public authority. The extension of the executive can only be accepted within the framework of the rule of law if parallel with this process we get constitutional guarantees that the exercise of power is kept within constitutional framework. Failure to do so, however, may result in the lack, deficit of democracy and democratic sense, and may cause an overwhelming dominance of the executive power. Therefore, the aim of this paper is to present executive power and responsibility in the context of different dimensions.

**Keywords**—Confidence, constitution, executive power, liability, parliamentarism.

## I. BASIC ASSUMPTION

THE political responsibility of the executive power – in the beginning that of the individual, later mainly collective – had an indisputable role in the fact that parliamentary governance, also referred to as parliamentarism, has been rooted and evolved all over the world. In countries having this form of government, the axis of the functioning of the state power is the relationship between the parliament and the government, which is accountable to it. In this relationship, however, – at least legally – the parliament shall have the dominant role, which has appeared – since the 19<sup>th</sup> century – mainly in the form of parliamentary responsibility of the government [1].

The civilian transition resulted in the growth of the importance of popular representation, and, as a consequence, the governments and their ministers could not be independent from the will of parliamentary the majority any longer. One of the first guarantees of this was the accountability of the ministers through the control of the legislation over the execution, which actually urged the leaders of the executive power to operate according to the will of the representative body. The provisions for the responsibility and accountability to the parliament involved, from the very beginning, that the activities of the government and its members should be continuously scrutinized, assessed and checked by the legislative. Additionally, the citizenry gaining strength vindicated the right to remove ministers through parliamentary representation, since the negative assessment expressed

through exercising control rights could result in the removal of ministers. The principle that constituted the essence of the political element of government responsibility and according to which the government and its ministers could stay in power only in case they enjoyed parliamentary confidence, and lacking this they were obliged to resign, meant the institutionalization of the governmental system, as well as its most important constitutional guarantee. If the government and its members want to remain in their positions, they shall have the support of the majority of the representatives. Consequently, parliamentary confidence is a criterion of the operation of the government, which is the basis of the parliamentary government. The priority of the popular representation over the executive power, originating from the fact that it actually depends on the parliament – the confidence thereof –, can prevail mainly through the institution of the political responsibility of the government and the ministers [2]. This, however, had been present in the European parliamentary practice only as a constitutional tradition for a long time. The rules which resulted in the possibility of removing the highest body of the executive power through a motion of no confidence were set in the continental constitutions in a wider range from the beginning of the 20<sup>th</sup> century.

The parliamentary accountability of the executive power does not only mean the possibility of overthrowing the government; a wide-range of actual controlling instruments can also be attached thereto. Due to the fact that the political responsibility of the government can mainly and actually be realized through the instruments of parliamentary control, the bourgeois era established some differentiated control solutions. This is particularly significant because since the 20<sup>th</sup> century more emphasis has been placed on the control of the executive power considering the increasing weight of the government against the representative bodies. Since the role of the legislative has more independence, the function of the parliament seems to be lost. One explanation for this is due to the enhancement of the executive power in legislation, or the governmental representation in supra-national organizations – wherever the issue of parliamentary control is raised more intensely. However, both in the Hungarian and international literature, it is increasingly envisioned that due to the dominance of the executive power in public authorities, parliaments may lose significance not only in their regulatory function [3]. Regarding parliamentary control of the government, the question arises even in developed democracies, whether the pro-government majority can

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control – and if yes, in what way – the highest organ of the executive power, despite the fact that the government is formed by the parliamentary majority. Despite our doubts, it is necessary to state that in countries with such a practice the lack of the motion of no confidence against ministers does not mean that parallel the cessation of the individual parliamentary responsibility of the government member. Parliaments with instruments – basically those of the opposition – at their disposal can usually just importune ministers, but sometimes, as a result of a series of coordinated opposition attacks, the resignation of a government member may also occur.

The tendency towards the increasing weight of the government forces parliaments to take new measures in the field of control and to enforce responsibility. Nowadays, in accordance with this, the classical instruments for and bodies of parliamentary control, filled with the power of publicity, try to perform the traditional parliamentary control function and enforce governmental responsibility with the “cooperation” of the media, which is also a new – related to a political aspect, not legally regulated – way and tool to control the executive power.

## II. MAKING POLITICAL RESPONSIBILITY COLLECTIVE

In the course of the development of the civil constitution, parallel with the fading of individual responsibility, the joint liability of the leaders of the executive power came to prominence and took root. It is noted that the responsibility that was made collective prevailed even under the socialist circumstances so that due to the particularity of the government system – unlike in the civilian transition period – it was primarily of collective nature not “politically” but legally. Nowadays, when the responsibilities of the ministers of the member states have been increased with the tasks performed in the Council of the European Union as a result of the European integration process, the government members’ integration-political responsibility dissolves in the – supranational – collective nature of the decision making body to a great extent.

While discussing collective responsibility, we consider it important to state that the individual responsibility of government members – even in countries where it is exclusively regulated – is of minor importance since with solidarity the government can save the ministers from being called to account. So nowadays when the ministers – as members of the government – are responsible for their activities rather indirectly through governmental solidarity, they “only” have to enjoy each other and the prime minister’s confidence, and it is the prime minister who shall enjoy the confidence of the parliament.

In the constitutional systems, it is also a result of the political responsibility becoming collective that the governmental responsibility of the prime minister and ministers can be barely separated from each other just as – in a different context – from the minister’s responsibility point of view the responsibility for the administrative management of the portfolio cannot be separated from the responsibility for

the government’s policy. Perhaps this is why the “general responsibility for governance” is colloquially used for this form of responsibility. It is also important to show that there is a connection between the responsibility becoming collective and the scope and authority of the ministers gradually becoming narrow, the continuous weakening of the decision making competence. This tendency is strengthened by the fact that, as a result of the complexity of modern society, government decisions are necessarily increasingly complex, the preparation of which extremely diverse interest and volitional efforts shall be considered. All this overshadows the application of the principle of authority, – which previously made a one-sided approach possible – consequently, instead of the decisions of the particular minister the collective decisions of the government are becoming dominant.

Due to the establishment of collective government responsibility, the prime minister has had a dominant role in elaborating and enforcing the government’s policy. The political responsibility of government ministers’ cannot be separated from the prime minister’s responsibility, they form a unit so lurking behind the so called governmental decisions of a prime ministerial nature, there is rather a political volition of the head of government which shall be assumed within the body. When it comes to the enforcement of responsibility, the government becomes identical with the prime minister embodying and impersonating the body. This situation is notable as a result of the fundamental laws which indicate that the prime minister – or in addition to the government also the prime minister – as the addressee of the motion of no confidence against the government [4]. The vote against the head of government in case of a motion of no confidence – on the basis of the principle of political solidarity with the prime minister – always results in the fall of government.

The tendency of collective responsibility can be observed in the constitutional practice of the European countries. This happened despite the fact that some countries, in addition to setting the government’s political responsibility, still enabled the enforcement of the minister’s individual responsibility before parliament through formalized withdrawal of confidence.

## III. THE DEMAND FOR GOVERNMENTAL STABILITY

In the cross-fire of the social-political issues emerging in the first half of the 20<sup>th</sup> century, the governments proved to be weak and vulnerable against the parliamentary coalitions which were being reorganized whenever more important political issues emerged, and the “failure to govern” became more serious in Europe between the two World Wars. By then, the government members had been in political solidarity not just with each other but rather with the party which delegated them to the government. As a consequence – parallel with establishing the governments’ political responsibility in the constitution – there was an increasing interest in strengthening the executive power. The stability of the government’s constitutional operation – besides the provisions which set the government’s parliamentary responsibility – was significantly

influenced by the party system of the country concerned, or by the extent to which the regulation of suffrage enabled the parties to enter parliament.

In the 19<sup>th</sup> century, the vote against any and later only the crucial proposals of the government could lead to the fall thereof. From the beginning of the 20<sup>th</sup> century, the specifically prescribed motion of no confidence emerging under the rationalizing of parliamentarism made it hard to terminate the governments' mandate by the parliament, and from the second half of the century the institution of constructive no confidence practically inhibited it. Such change in the parliamentary practice of the government's accountability significantly decreased the constant dependence of the highest organ of the executive power on the legislation as a public authority.

With the spread of collective responsibility for governance, different constitutional methods have been developed to make the withdrawal of confidence regarding the leaders and the highest body of the executive power more difficult. In order for the stability of the government, the leading role of the prime minister within the government enshrined in the constitution, the fading of the ministers' individual responsibility parallel with the introduction of collective responsibility, or the institution of the collective motion of no confidence, were of such type. Despite this, the application of parliamentary tools on withdrawing confidence were narrowed by the constitutions respectively, in some cases they were even abolished, thus limiting or preventing the enforcement of the government's political responsibility before the parliament because the motions of censure were not duly considered. This is the aim of the guarantees – rather the type of procedural law – which set the terms that a specified number of parliamentary representatives' support is needed for a motion of censure. The consideration of the motion is bound to a so-called cooling down period and the decision – in order to avoid governmental vagueness – to an extremely short time limit. In the course of the decision-making on the motion – compared to simple majority – an increased majority of votes, sometimes special voting form is required. Governmental stability is under scrutiny when the provisions according to which, following an unsuccessful or less successful motion of censure, a new one with similar content can only be submitted after a definite period of time [5]. Experience indicates that despite such regulations, the minister cannot be removed against the prime minister's will even in countries with the “traditional way” of minister's responsibility, since, in this case, the political-confidential relationship between the head of government and his minister is usually provided by political instruments – through parliamentary majority [6]. Without considering the substance of the arguments to which these solutions have been found, we have to say that nowadays, due to this process, the traditional, individual responsibility of the minister does not prevail in a practical sense. The topic of government responsibility can practically – nearly exclusively – be interpreted with regard to the “responsibility for the party”, or perhaps it can prevail with the help of popular elections if we

consider it as a responsibility. This issue has been raised more often where the decrease of the government and government members' responsibility to such an extent – nearly irresponsibility – is further counterbalanced by the cardinal principle of government stability.

Regarding the practice of calling the ministers to account, nowadays several thinkers emphasize the decreasing significance and content modification of the instruments providing the enforcement of political responsibility [7]. It is based on the tendency that nowadays, the actual role of the motions of no confidence is minor in government crises. In addition, in the course of the practical application of calling to account the collectivity of government responsibility does not prevail unabatedly either. As a consequence of setting government responsibility, new governments are formed with significantly – or less significantly – different programs and several members of the previous government take a seat in the new government. The minister whose authority included the activity causing the fall – “ideally” – resigns with the head of government; this principle, however, is not considered obligatory concerning the rest of the ministers. Moreover, sometimes the head of government and/or the minister also stay. So in case of calling the ministers to account – be it ever so clear in theory – there is often no collectivity in practice and a broad interpretation of responsibility is possible.

We think that keeping the prime minister or the government's office despite the fact that the no confidence of the parliament has been expressed explicitly – either by the adoption of a motion of no confidence or an unsuccessful vote of confidence – is a category beyond the boundaries of constitutionality. This is the case even if the obligation of the head of government to resign is not regulated in some constitutions concerning this matter.

From another point of view, the legal institution has lived up to the expectation by having protected the governments from daily confidence issues. At this point, it is necessary to establish our standpoint that – as it is generally valid for regulations of public authority liability – the significance of the instruments of – political – accountability is provided rather by their existence than the frequency of their application. It is the awareness of the possibility of accountability which withholds a minister even with a seemingly strong support of government majority from unlawful or harmful – sometimes just unethical – activities.

Parallel with the above practice, the role and significance of the vote of confidence in the governments' instruments have noticeably increased. The vote of confidence initiated by the government, more precisely by the prime minister does not primarily serve as the enforcement of the government's parliamentary responsibility but just the opposite; it functions as an instrument of “governance technique”. The government can measure its parliamentary support by it, and it functions as a disciplinary tool – for instance, in case of an uncertain government proposal – against the recalcitrant members of the parliamentary majority supporting the government. It can also be appropriate for political pressure – with the threat of the

announcement of a new election – to reunite the pro-government forces that are about to fall apart, and put the parliamentary majority under pressure by raising the issue of confidence and keeping it on the agenda [7]. With regard to the fact that the lack of confidence results in the fall of government even in this case, the vote of confidence – to such extent – is still appropriate for the enforcement of the government's political responsibility.

#### IV. THE HUNGARIAN GOVERNMENT SYSTEM [5]

After the period of the political system change from 1989, the values and elements of democratic governance system were also revived through establishing/restoring the parliamentary government form in Hungary [8]. A chancellor-type government model was formed according to the German model, in which the previous equality between the head and members of the government ceased to exist due to the primacy of the prime minister.

The constitutional status of the Government is primarily defined by its relation to the Parliament. The determining element of the relation between the two organs is the relationship based on political trust, which at the same time – different from other areas of state operation – does not mean a hierarchy. The legislation shall not direct the highest organ of the executive power; it cannot take over its responsibility. The constitutional position of the government has actually become constant over the past twenty years, its bases have not been changed by the Fundamental Law adopted in 2011 either; it has merely updated and specified the former text of the constitution when it regulates governmental responsibility towards the parliament based on confidence, and the position of the prime minister within the government.

##### *A. Parliamentary Responsibility of the Government*

The new Fundamental Law is in line with the European tendencies. The ministers are accountable for their activities to the head of government, and the government is responsible to the National Assembly. We note that the Constitution, until it ceased to be in force, included a provision [9] on the ministers' responsibility to the Government, which actually meant the survival of a regulation coming from the communist era. Regarding the vagueness on the subject of responsibility, the method of accountability, the procedure, and the application of the possible legal consequences made, however, the respective regulation of the Constitution entirely formal.

The Fundamental Law – in line with the regulations of the Constitution of 1998 – originates from the principle of the shared responsibility of the government when it provides for the form of the enforcement of parliamentary confidence, i.e. the constructive motion of censure [10] – which can be submitted specifically against the head of government, but at the same time against the entire government. During the regulation of the legal institution by the Fundamental Law, the procedural guarantees, which have been shown earlier, served as a form of governance stability prevailed.

In Hungary, the Act XLIII 25§ (1) of 2010 reintroduced – besides the constructive motion of censure against the prime minister, which is ensured by the Fundamental Law – the “destructive” motion of censure against the prime minister, which can be initiated by any member of parliament. According to the Fundamental Law, the statement of censure against the prime minister results in the fall of the government, consequently the motion against the prime minister shall be considered as the motion against the whole government, of which the support of the majority of the members of parliament is needed in order to be effective. The prime minister cannot resign office within three working days from the announcement of the initiation at the Speaker of the House, or from the submission of the motion till the close of voting – but maximum within 15 days [9]. With this, the legislator protects the prestige of the parliamentary institution of political accountability so that in this case it prevents the “escape” of the head of government.

In international practice, we have not found any examples of the “cohabitation” of the constructive and destructive motion of censure regarding the prime minister. As far as we are concerned, the starting point of the regulation might have been that the maintenance of the constructive censure, which was introduced by the German model. Within the domestic parliamentary forces it seems that it served the over-insurance of the present government. Therefore in the Fundamental Law, the institutionalization of the destructive censure in Hungary – as the “easier” way of confidence withdrawal from the prime minister by the parliament – can be considered as the increasing counter-balance of the National Assembly against the government, and as the enhanced enforcement of opposition rights in the parliament, which, after all, helps to decrease the power of the executive arm. At the same time, the parallel application of the two systems of impeachment abolishes the constructive motion of no confidence serving as the basic function of stable governance. To put it in other words, the destructive censure against the head of government questions the maintenance of constructive motion in the same relation.

These days, raising the question of parliamentary confidence cannot only be tied to the initiation of the parliament. Recently the constitutions have several provisions according to which the government – possibly through the prime minister – can initiate the statement of confidence against itself, independently or attached to a law proposal, a specific issue, or to the government program. Measuring the parliamentary support through vote of confidence has developed with a different aim and form from the motions of censure in parliamentary law, so in practice it predominantly does not function as the enforcement of political responsibility but as a “governance-technical” tool. The government can judge its support through this, e.g. regarding the renitent members of parliament in the majority of case concerning an uncertain government proposal. Regarding the fact that, in this case, the lack of confidence also results in the fall of the government, the vote of confidence, after all, is capable of

enforcing the political responsibility of the government. The Fundamental Law – similar to the Constitution – also provides for these forms of enforcing parliamentary confidence, in the forms of individual votes of confidence attached to a government proposal, measuring the support which can be initiated by the prime minister but actually on behalf of the government [9].

In case of losing confidence in a destructive way, the obligation of the government's resignation was also set out in the Constitution [9]. The Fundamental Law goes further and sanctions the statement of this type of censure with terminating the office of the government "automatically" [10]. In this case, the government crisis will not be solved without the intervention of the Head of State, perhaps without the dissolution of the parliament and setting the date of the new elections. The Fundamental Law does not make the dissolution of the National Assembly constitutionally possible – which can generally be seen in international practice – in case of declaring censure against the government. Occasionally, this limitation of the dissolution of parliament might lead to the situation that the positions of power become "constant" as the result the cohabitation of the two organs by force even if the dissolution of the legislation was necessary [11].

The Fundamental Law – similar to the regulation of the Constitution – sets the minister's responsibility before parliament. With the institution of constructive censure as the constitutional tool of governmental stability, the possibility of declaring parliamentary censure against certain ministers is generally incompatible logically if we regard the fact that the ministers' responsibility submerges with that of the government. The Fundamental Law also takes it as a basis when it excludes the possibility of submitting a motion of censure against the ministers. So, it maintains the government-stabilizing function of the constructive censure thus the minister cannot be removed from office against the head of government's will. Not all this, however, means, as in the case of the international practice, that the parliamentary responsibility of the government member ceases to exist entirely. The ministers' policy and the confidence towards them can constantly be controlled by the so-called slighter parliamentary tools, which – based on the national regulation – are not appropriate to enforce the minister's political responsibility directly. With the basic "opposition" tools at disposal – such as speeches before the order of the day, interpellations, questions, immediate questions, periodic reports or committee hearings before appointment – the National Assembly can rather cause inconvenience to the ministers, their application does not have any consequences due to the lack of their expressing censure [12]. However, national and international parliamentary practices have proved several times that with the harmonized and planned application of control rights, with the use of publicity and with the help of the media – indirectly – the government member who has lost the confidence of the National Assembly can be forced to resign from office.

### *B. The "Overpower" of the Prime Minister*

The prime minister's priority status of public law is clear from the regulations of the Fundamental Law, which includes that the government and ministers' political responsibility before the National Assembly can only be forced through the responsibility of the head of government. In one respect, this is expressed by the fact that parliamentary censure against the government can only be realized through the motions against the prime minister, in the other respect the ministers' loss of parliamentary confidence can be manifested in the proposal of removing the head of government from office.

The ministers are appointed and dismissed by the president on the proposal of the prime minister according to the Fundamental Law [10]. So, the person of the head of government is crucial in selecting the member of government and in terminating ministerial office [13]. During governmental duties, the ministers are accountable to the head of government as the person determining governmental policy. Based on the above, however, it is only the prime minister who is entitled to enforce political responsibility – through a proposal of removing from office. The minister is politically accountable directly and exclusively to the prime minister [14]. It is, however, a key issue in this government's mechanism that what relationship is established in the prime minister-minister relation, and whether it is excluded or allowed at the constitutional level that the head of government instructs the "leaders of the portfolio". The dominant role of the prime minister in the work of the government cannot mean theoretically that the minister is subordinated to and can be instructed by the head of government, but in Hungary, for instance, informally a hierarchical relationship has been characteristic of the prime minister-minister relationship since 1990 [14]. In this system of relationship, the scope of control is determined by the prime minister's character and his actual weight within the government, which, in certain cases, may further strengthen the significant public position of the heads of government.

The new regulations unequivocally returned to the solution prior to 2006 that regarding the general direction of the government program the prime minister can allocate the tasks for his ministers, who are obliged to manage the sector under their state administration authority and the subordinated organs by performing those tasks [15], [10]. (The basis for the entitlement of the head of government to allocate the task is that the prime minister is directly attached to the program of the Government, consequently the prime minister has political responsibility for its implementation.) As a consequence, nowadays, the hierarchical relationship between the minister and the head of government prevails informally. It is important to emphasize that according to the Fundamental Law the deputy prime minister [10] does not mean an intermediary governing level between the prime minister and his ministers.

Based on the above, we can ascertain that the substantive character of the parliamentary government form stipulated by the Constitution and later the Fundamental Law, and the government's political responsibility before the parliament

exclusively prevail through the prime minister in Hungary. Besides this, the Hungarian constitutional regulation – mainly due to the institution of the constructive no confidence – has increased the stability of governance, the independence of the government and government members against the parliament, and at the same time – as a result of the continuous strengthening of the prime minister’s position – the role of the ministers’ political loyalty towards the head of government. Conversely, however, the dwindling of the minister’s individual parliamentary responsibility can be observed, which have been increased by the administrative phenomena that have resulted in – primarily due to the centralization of the budget and the government’s operation as a body – limiting the minister’s independence and decision-making authority further [16].

The public law basis for the government structure that can be characterized by the “overpower” of the prime minister has been established without expressly stating the ministers’ position and the rules of their responsibility in the regulations of the Constitution and later the Fundamental Law [14]. The ministers’ political responsibility for legislation seems to become empty regarding both its content and consequences, this process can also be considered as the domestic feature of the governance of the prime ministerial nature. The enforcement of the individual responsibility of the ministers “in the service of” the head of government is excluded by the prime minister’s – formal or informal – right of direction, in this regard the liability for the government members’ “overall” operation lies with the head of government. Since in case of the same person, parliamentary responsibility for activities based on direction or done individually is difficult to separate from each other in practice, the lack of the ministers’ individual parliamentary accountability – at least in this approach – seems a sensible legislative measure. With regard to this, however, the responsibility for the minister’s activity within and outside the scope of authority to direct is borne by the head of government before parliament, which may be modulated by the instruments of accountability – for instance a proposal for dismissal – to be enforced against the prime minister’s minister. Finally, we can say that the ministers’ individual political responsibility towards the parliament can exclusively be an issue under the constitutional and political conditions of the 21<sup>st</sup> century if the exclusion of the ministers to be directed is stipulated at the Fundamental Law level. Besides this the constitutional regulation of the existing constructive no confidence is a – primarily logical – obstacle to the establishment of the minister’s individual responsibility under domestic conditions.

In addition to the above, the prime minister’s charismatic personality, the creation of the system of ministries consisting of few elements – similar to the English cabinet governance , centralized administration, and parallel with these, the prime minister’s direct manageability of the agency leaders directed or supervised by the minister help make the government operate in a presidential way in Hungary [17].

Despite the fact that, compared with the previous Constitution, the Fundamental Law has only brought about correctional changes regarding the regulation of government operation, according to many, the Hungarian state system operates similarly to the French semi-presidential system – informal presidential governance – in practice. The basis of this is the earlier established chancellery-type government model, the frame to which the two-third parliamentary-governmental majority following the parliamentary elections of 2010 and 2014 was provided, which enabled the creation of the current form of government operation. We note that the presidential feature of governance – in terms of political science – can also be observed in the West-European parliamentary democracies but due to democratic traditions and the habits of the heads of power the voluntary restraint of power is different in each country [18].

#### V. THE GOVERNMENT’S POSITION IN THE SYSTEM OF STATE ORGANS

The changes in the existing political responsibility of the government towards the parliament have significantly transformed and influenced the concept of the separation of powers. This is seen even today, since the “existence” of the government in fact depends on the parliamentary majority. In this regard – in classic terms – we cannot speak of the separation of the legislative and executive powers, which may be modulated by possibilities like in the case of withdrawal of confidence, the prime minister may initiate the dissolution of parliament by the head of state.

Finally, we can say that nowadays the separation of powers is rather dependent on the party system than on the legal system set in the constitution. Within the framework of modern parliamentarism the government is the most important constitutionally institutionalised governing body of the party or parties winning the elections, the parliamentary basis of which is provided by the representatives who form the majority, have the same political commitment and act within the ties of party discipline. The government positions are mainly in the hands of the party leaders. The bills are drafted in the workgroups of the government parties, passed by the parliamentary factions of the same parties and executed by the government consisting of the same parties. In this approach the operation of public authority – according to Duverger’s wording – is not very different from the one-party practice at first sight, in which the executive and legislative powers, the government and parliament are merely “constitutional scenery” [19].

In the parliamentary systems, the concentration of power is obviously increased by the majority party or parties’ cohesive force and discipline. If the strict requirements of party discipline prevail in the course of voting the parliamentary factions are forced to be obedient, to the decisions of the parliament which are in accordance with the majority party or parties’ standpoint. Within such a framework the real content of responsible governance is rather embodied merely in the

possibility to publicly debate the government activity [20]. This mechanism does not exclude the application of the instruments for parliamentary control but – in fact – it is always without consequences. As a counterpoint to the described process a decrease in party discipline and in the number of parliamentary majority results in the decrease of government stability, consequently in such cases – even if temporarily – the separation of powers can be increased [19].

Such political lines of the separation of powers between parties have emerged much stronger at the boundaries of constitutional institutions since the second half of the 20<sup>th</sup> century, because, for instance, in case of a coalition government the mandate of a minister does not depend on the parliament but on the prime minister and the minister's party in coalition [14]. We must add, however, that despite the above described tendencies without the centuries-old relation of constitutional institutions or the legal systems set in the constitutions the parliamentary government system would fail to function, consequently the government's political responsibility is only faded by the existence of being pro-government or in opposition [6].

The question is – which is put by many – whether the separation of the parliament from the government, due to the above mentioned processes, and in connection with this the government's responsibility towards the parliament has a real content nowadays, when the government is supported by the same parliamentary majority, which has the right to make a decision on expressing confidence or no confidence against the government. We share the opinion that in the parliamentary system where the operation of the government depends on the confidence of the parliament and the majority of the parliament is in party political aspect the same as the government the separation of power is being degraded to a functional organizational issue [3]. With the diminishing of the differentiation between the legislative and executive powers the government's "real" political responsibility towards the parliament also sinks slowly into oblivion. Our conviction is also strengthened by the standpoints which consider the state systems based on the classic principle of the separation of powers incompatible with the absolute requirement for government stability [7]. Under these conditions, we think that the real restraint on government activity, with regard to the European tendencies in Hungary as well, is – besides legislation – rather the operation of the bodies which can be evaluated in practice as a kind of factor limiting execution. Most frequently it is the body of constitutional protection, the economic supervisory body of the parliament, or the state organ competent expressly in the control of budgetary management. But the institution of the ombudsman also fits the bill, which is nowadays an important tool of execution – within this public administration – control of "political nature", and as the body of the parliament it gradually supplements the control built on the subjection to administrative law with the aspect of expediency and "beyond the law". Apart from the above the institution of the president of the republic can also be mentioned, which may be

appropriate for the correct counterbalance of the executive power in countries where it receives a significantly different interpretation from that of the traditional parliamentary democracies due to the personal belief of the person in position. The democratic operation can be strengthened by the increase of the number of authorities with the possibility of independent legislation – self-regulatory organisations – which supplement the government operation and are directly accountable to the legislation [18]. According to this the government which is not supported by a qualified parliamentary majority, according to the standards of the rule of law, may further be limited in its freedom to act in the system of state organs functioning as the counterpoint of the executive power.

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