



**Political Science
Doctoral School**

Summary of Theses

Ferenc Kumin

Back for Consideration

The Political Veto of the Head of State in Hungary

Ph.D. dissertation

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Institute of Political Science

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1. THE BACKGROUND TO THE RESEARCH

As an employee of the Office of the President of the Republic between 2006 and 2010, I had the opportunity to directly observe the President's exercising of power, including the especially characteristic political vetoes of the period, their antecedents and aftermath. The basic idea for the research also stems from this observation and is based on a puzzle: how is it possible that with no legal constraints and within the President-Government-Parliament power distribution, the President, who is most limited in his powers and instruments, is capable of enforcing his will to a greater extent than expected over the legislature, which has much greater means? The arguments exist that the Hungarian regulation of veto powers directly results in constitutional inconsistency, in view of the fact that a similar majority is required for repeated adoption (Antal [2007]). We can also find comparative studies in which, within the typology that categorises the veto regulations of the various countries, the possibility for the repeated adoption of a piece of vetoed legislation falls within the same category as the total lack of veto powers (Shugart et al [1992] p. 150). On a logical basis, this is understandable and in essence acceptable.

Disregarding actual experience and again, purely on a logical basis, the success of political veto may be explained by several factors. It is important to note that respect for the President, which he is afforded regardless of certain, concrete cases, has a significant effect on the legislature. In theory, it may not be excluded that a similarity in political values between the President and Parliament is responsible for the phenomenon, and so this must also be examined. It is also possible that the objective correction of the administrative, "qualitative" errors of the legislature also serves the interests of those who commit such errors and who have a multiple interest in the result, i.e. the "functionality" of legislation. Finally, we must also take into the account that the given public reasoning is suitably persuasive, and ignoring it publicly has a greater political cost than the (easily validated) negative effects of admitting one's own error.

According to my hypothesis, it is this final point, the persuasive nature of public reasoning, which comes to the fore as an explanation during periods in which the political views of the governing majority and the President do not correspond. The respect which is characteristically present at the level of rhetoric is in practice not shown to influence the legislature with regard to its various decisions, and I accordingly afford the explanatory power of this theory less significance.

2. APPLIED METHODS

To verify my hypothesis, I shall review the period of political veto in Hungary between 1997 and 2010. The basic unit for the examination of Hungarian veto practices, which provide the most expansive part of my research, is the presidential transcript, the text of which may be found in the archives of the Office of the President of the Republic and in those of Parliament, while the letters of László Sólyom may be found online on the former President's website (www.solyomlaszlo.hu). I examine the text using the simple method of content analysis, I separate and determine the arguments included in the correspondence and identify the part that calls the addressed legislature to action (if such a call to action is included in the letter).

However, the analysis of the text of transcripts does not in itself provide a clear and full image of the political environment of the veto. To achieve this, I primarily examine the debate on the returned legislation using the minutes of the National Assembly. If required, I also review the relevant press reports of the period to better place myself into the political atmosphere surrounding the critical legislation; I do not indicate these tests as sources in my work. The third source of information for understanding the political environment is my own, personal experience and data gained from conversations with ex colleagues.

To examine the success of vetoes, I again used the electronic archives of the National Assembly. It is using this source that I review the necessary documentation, amendment proposals and the results of voting.

The detailed examination of Hungarian practices of course only makes it possible to draw general conclusions of limited validity with regard to political vetoes on the part of the President. However, within the framework of my research, a suitably in depth examination is only possible with regard to Hungarian practices, precisely because of the abovementioned abundant sources.

3. THE RESULTS OF THE STUDY

3.1 The number of vetoes in relation to presidential terms

It is expedient to first review veto practices relative to the passing of time. Although figures are interesting chronicles of the first thirteen years of political vetoing in Hungary, it is impossible to deduct far-reaching conclusions based on the extremely varied intensity and the initially low number of vetoes. The activity of Árpád Göncz, clearly as a result of its special character, does not conform to possible theoretical expectations: both of his vetoes occurred during the period of friendly co-habitation, and he remained passive during the period of so-called confrontative co-habitation. The distribution of the vetoes of Ferenc Mádl comes much closer to expectations, and his reaction to the change in the character of co-habitation is more normal in nature: he performs only one veto during the period of alignment and five during the period of conflicting co-habitation. It is difficult to examine the presidency of László Sólyom from this perspective, because practically speaking his whole period as President took place in a spirit of confrontative co-habitation, and only his final two months were in theory spent in friendly co-habitation – in light of the party affiliation of those who had previously nominated him – but pro rata he performed more vetoes (three) during this period than in the previous 58 months (twenty-eight).

No decision to annul legislation was brought by Árpád Göncz prior to 1997. Even this was followed by a further pause of three years, something that is not surprising for two reasons. First of all, with reference to the effectiveness of the two first, and at the same time two last vetoes performed by Árpád Göncz, it is understandable that the President did not acquire a taste for exercising his powers in this regard. His inaction after 1998 is particularly easy to understand in light of the fact that if the government majority whose political views corresponded more closely to his own failed to take his objections into account, then it surely seemed even more futile to send legislation back during the two years of confrontative co-habitation. The function of President embodied in the political veto was alien to Árpád Göncz, and this was essentially reinforced by the practically concurrent failure of his two veto decisions.

Ferenc Mádl also broke no records with his average of two vetoes-a-year, although there was no pause in his case and his activity increased towards the end of his term in accordance with the details given above. László Sólyom already overstepped the limit of two vetoes-a-year during his first year in office in 2006, although only by one. This tempo continued during the following year, 2007. The explosion occurred in 2008, when the number of returns

doubled, and even this figure increased by 50 percent in 2009, his 9 vetoes closing the most intensive period of the thirteen years. The pro rata figure for the partial year of 2010 again almost reached the 2009 value.

3.2. The effectiveness of political vetoes

With regard to all vetoes performed during the thirteen years examined, the ratio of complete effectiveness is 48 percent, which is complemented by a rate of 26 percent for partially effective procedures. Partial effectiveness has many forms, and so it would not be expedient to include all partially effective vetoes in a conclusive statement, but while also taking these into account it may nevertheless be stated that in Hungary, the number of effective political vetoes is definitively greater the number of ineffective ones.

The picture shows greater divergence when broken down according to individual Presidents. The two vetoes of Árpád Göncz's Presidency clearly do not represent a real character, but are just snapshots of a political situation which in retrospect provide little information. Accordingly, his period in office will be disregarded during the analysis of vetoes by President, but his vetoes are of course still included in summary data.

It was during the term of Ferenc Mád1 that this sphere or presidential power really took off, not just with relation to increased occurrence, but also with respect to Constitutional Court decisions upholding the practice. In addition, President Mád1 produced a minimally higher effectiveness index of exactly 50% compared to the total average. There are two possible reasons for this impressive figure. First of all, vetoes based on legal technicalities first appeared during his presidency; two of the three effective vetoes were of this nature. Returning legislation based solely on legal technicalities seems to be a veritably jolly joker with regard to effectiveness. Looking forward to subsequent cases, it may be stated that such returns always proved effective in the future. There is no reason to find this particularly surprising, because issues of legal technicality are usually not the result of intentional errors or specific circumstances surrounding their adoption, such as from the fact that the adoption of the legislation objected to requires a majority of two-thirds. The other criteria, which is valid for Ferenc Mád1's final, substantive and effective return, is also a recurrent phenomenon: the President brought up strong arguments to confront legislation that had been adopted unanimously, i.e. not mirroring the sole political will of the Government, and conceding a piece of legislation of this nature – as occurred in this case – can be done at no particular political cost, because it can be viewed as neither a failure on the part of the Government or as a success for the opposition.

Findings of systematic nature cannot be found in Mádl's only partially effective return of legislation. As I have already noted in the point that analyses the effectiveness of vetoes, this case may be regarded as relevant with regard to the birth of the partially effective veto, as it meant the beginning of legislative practices which we can often stumble on when analysing the vetoes of President Sólyom.

The ratio of effectiveness of the vetoes of László Sólyom is similar to that of the period in office of Ferenc Mádl. One of the reasons is the relationship described above. Five of President Sólyom's thirteen effective vetoes were of a legal technicality nature. It is however worth noting that in my study I used a wider definition of legal technicality than the National Assembly archives do.

3.3 Regularity within the set of effective and substantive vetoes

There can be two significant factors with regard to political vetoes within the process of adopting a legislative proposal: the identity of the submitter and the support gained by the proposal at the first final vote. If the submitter does not represent the Government, then there is a greater chance that we are not talking about a well thought out, mature process that has gone through the required negotiatory channels.

In parliamentary practices prior to 2010, it is characteristic that proposals by the Government are adopted in a much larger proportion. Members of Parliament regularly submit legislative proposals, but the National Assembly adopted only 23 percent of such Member's bill's during the period studied. The primary reason for this phenomenon is of course the fact that proposals submitted by opposition MPs do not have the required political backing to be adopted, but according to Parliament statistics, less than half of the proposals submitted by government MPs achieve a successful final vote (www.parlament.hu). Statistics show that individual member proposals are less sturdy elements of the system than legislation proposed by the government, but a similar conclusion may be reached by examining the political environment surrounding each piece of legislation debated.

The other significant factor is the level of support at the final vote on the adopted proposal. As we have already mentioned with relation to President Mádl's only effective veto that was not of a legal technicality nature, support that is well in excess of the government majority is a sign that Parliament is not executing the government's political program as such, but is bringing a decision as some kind of "compulsory exercise", which may be supported by the opposition at no political cost. Tasks related to the country's international obligations are characteristic of this kind of vote in Parliament, but the enforcement of lobby interests that

overwrite political opposition and exist parallel to government policy may also result in unanimous support.

When examining the effects of these two factors in the case of László Sólyom's eight effective vetoes, we may observe that one, the other, or both special circumstances were present in seven cases. It is also interesting to analyse the fact that the only piece of legislation designed to express the classic will of the government, and which was adopted by government majority, was only able to become directly effective because Parliament, which was nearing the end of its term, did not have enough time to push through the whole process required for it to be fully re-adopted. However, the case is also interesting with regard to the fact that the otherwise criticised substantive purpose of the legislation found its way into the law after all, and Parliament adopted the majority of the challenged provisions, which were wrapped in another re-adoption, in such a way that the President was unable to return the questionable legislation just as if the originally challenged legislation had been adopted once again.

The number of partially effective vetoes in the case of President Sólyom was eight. Of these, we may recognise three cases in which multiple objections included a mix of both legal technicality and content issues. From what we have observed with relation to the one hundred percent effectiveness of vetoes based solely on legal technicalities, it would seem an obvious conclusion that in the case of vetoes based on mixed objections, partially effective adoption is the result of the legislator only remedying the issues of legal technicality. However, when examining concrete cases, this does not occur in such an evident form in any of the cases, i.e. amendments always include substantive parts too, but not to a level that would enable us to call them fully effective.

The distribution of partially effective vetoes may also be observed with relation to the two influencing factors. These include a majority of acts that were submitted in the classical manner at the proposal of the government and were adopted with a government majority. The single Member's Bill was also in fact only not submitted as a government proposal because the new government had not yet been formed at the time of submission. There is therefore a sharp contrast between the political environment surrounding the effective and partially effective requests for changes in adopted legislation. It should also be noted that the political veto was directly partially effective in the case of three out of the seven indirectly effective cases.

With relation to ineffective political vetoes it is clear that there are a dominant number of pieces of legislation that have followed the classical route, although perhaps not to such a convincing extent as in the case of partially effective vetoes. The other indirectly effective

cases, four of them, are also included in this group. The distribution of these latter cases within the two categories are not indicative of anything, i.e. indirect effectiveness stemmed from partially direct effectiveness in practically the same number of cases as it did from ineffective returns.

3.4 The relationship between transcript length and effectiveness

Drawing parallels between the length of text and the quality of arguments is of course a strong simplification. However, if we assume that the quality of documents represent an even level of quality, then it may also be assumed that the arguments presented in longer texts are more forceful and diverse. When examining the length of transcripts, it is immediately noticeable that the length of texts increases with time.

With regard to effectiveness, it may also be observed that there are many short and effective letters. There are generally legal technicality vetoes that are assured success and which, because of their nature, do not require detailed explanation. The characteristic result of very long letters is partial effectiveness, but it may also be noted that ineffective returns are generally associated with letters that may be regarded as short at the time.

3.5 The exclusion of other possible explanations for effectiveness

The goal of my study was to find an explanation for what at first sight may be regarded as the surprising effectiveness of the legally non-coercive Hungarian political veto. According to my hypothesis, it is the power of the public nature of the explanation and justification attached to returned legislation that creates an environment in which the legislature cannot disregard the concerns of the President. To confirm this hypothesis, I also examined some of the President's other spheres of authority. The constitutional veto also had to be examined in detail according to other obvious criteria, but it also became clear that the institution of normative control has no coercive power over the National Assembly with regard to the assessment of political veto. This is primarily justified by the regulation which does not allow legislation that has been returned and then readopted to be sent for normative control. Of course, it is not as if the constitutional veto is ever the free decision of the President: its use is determined by restrictive professional terms and conditions.

I must also exclude another possible, but rather naïve assumption. The large number of effective political vetoes could also be explained by the fact that the respect for the position of the President of the Republic leads Parliament to do everything possible to avoid his decisions being overturned in any form. From the point of view of my study, I endeavoured to confute the thesis of respect for the President in the Sólyom era, which is especially important with

regard to the high number of cases, by examining another sphere of authority, the effectiveness of nominations. According to the Constitution, the President may nominate the leaders of six independent institutions. The filling of these posts required a total of 19 votes between 2006 and 2009. This result is clear proof of the fact that the National Assembly is willing to vote down the President of the Republic without hesitation according to its own interests.

A further explanation for the high number of effective political vetoes could be the execution, or much rather the threatening of the execution of one of the President's other emergency powers, the right to dissolve Parliament. From this perspective, an obvious explanation of the sensitivity of the National Assembly could be that it fears the possibility that in case of confrontation, the President of the Republic might dissolve Parliament and call for new elections. However, Hungarian constitutional regulations exclude the possibility of even thinking about such an effect. In theory, the President of the Republic has such a sphere of authority, but it is tied to such unique conditions that by simply following the rules of common sense we may easily dismiss their satisfaction.

4. CONCLUSIONS

Effectiveness statistics, both with regard to total values and the numbers for the more actively returning two last Presidents, show that political vetoes are more likely to be a successful and accordingly effective tool in the hands of Hungarian Presidents. This would seem to be reinforced by the hypothesis that it is the public nature of arguments for the return of legislation that constitutes a constraint that the legislature is unable to circumvent. However, the results of the detailed analysis only partly prove this hypothesis, and with certain reservations.

In order to establish a full image, it was necessary to define the concept of effectiveness and determine the characteristics of the individual returned pieces of legislation that are relevant from the point of view of political veto. Such a review of Hungarian political vetoes primarily drew attention to the special status of so-called legal technicality vetoes. In these cases, the powers of the President serve a particular practice, and not necessarily in a way that the founding fathers had originally intended. As a result of some accidental or otherwise unavoidable operational dysfunction of the legislature, rejects can on rare occasions even appear among adopted pieces of legislation. In theory, the work of the parliamentary process, the members of Parliament, the committees and the teams of experts who work in the background are all aimed at ensuring that no mistakes are included in the adopted laws, but it sometimes happens regardless.

At such times, parties on both sides of the transaction have an interest in the functioning of the practice of political veto; it is good for the legislature that no problematic pieces of legislation come into force, and it is also good for the President that he does not give his blessing to the promulgation of legislation that cannot be implemented, and which in addition he may in all probability successfully return. This effect based on mutually existing interests has prevailed to such an extent with relation to returns based on issues of legal technicality, that it was possible to observe the full effectiveness of the vetoes of this nature of both Presidents Mádl and Sólyom (both of the vetoes of President Göncz were substantive).

After determining this fact, it is expedient to turn our attention to substantive vetoes. During the analysis, the question was, is there any striking common feature between effective vetoes, and vetoes that are based on substantive objections. The analysis showed that these types of veto show an extremely high number of proposals that are submitted by non-government MPs, well above the legislative average. This phenomenon is complemented by the large number of laws that are adopted not just with a simple majority of the ruling party, but with a higher level of support often approaching a unanimous vote of acceptance.

These two attributes, whether appearing together or separately, show a well-defined characteristic of the workings of the legislature. These are pieces of legislation that do not necessarily represent the political will of the government as such. This kind of function may often be regarded as emancipatory expressions, the playing field of expression of will that is independent from the government. If the subject of legislation is popular or represents unique interests, they often produce unanimous or unique majorities on final votes. The frequency of such legislative function, the level of quality of which is lower than level that might be expected during the period examined until 2010, and is especially true of proposals submitted by individual MPs, may become especially high in the case of governments that are weakening and have diminished supervisory abilities. Pieces of legislation proposed by the government and which receive a level of support that far exceeds the government majority, include cases in which the legislature is conforming to some form of international commitment. Although one would have reason to believe that such legislation has been suitably elaborated, when objecting to the contents of such laws the President is not defying the government, but the badly or well-enforced will of some external party, a country or international body. The government may accept such objections at a much lower political cost than if the President steps up against legislation that is aimed at realising one of the government's own programmes.

Analysis shows that in the case of legislation that has followed the usual route (proposed by the government and adopted with a government majority) an effective political veto was only achieved on a single occasion, during the Sólyom era and the final session of the 2006-2010 Parliament. It is possible that during this unique period government proposed legislature was unable to mirror the will of the government in every regard, something confirmed by the large numbers of amendment proposals lodged by MPs. Nevertheless, the more obvious effect of the lack of time available in view of the nearing of end of the legislative term would seem to be stronger. If the otherwise busy final legislative schedule does not make it possible to returned legislation to be debated again, then it would become necessary to call an extraordinary session after the declared closing of Parliament, in what is generally a period devoted to the preparation of the upcoming elections. The political costs of such a situation would be so high that is practically negates the possibility of a session of this kind and consequently of re-adopting legislation. In such a period, the power of political veto therefore becomes more significant irrespectively of the actions of the President.

Returning to the original train of thought, we may observe that in the case of effective substantive vetoes the government, which represents the core of political will, may bow to the

objections of the President because those do not necessarily contradict the government's own interests, and in fact the acceptance of the arguments behind a veto may serve to regroup and discipline the sometimes scattered flock on certain occasions. However, in the case of partially effective vetoes, legislation that is proposed by the government and adopted with a government majority is greatest in number. Partially effective vetoes are in fact the field in which the sheer power of public argument may be observed to the greatest extent. The characteristic scenario is as follows: from the various arguments behind the return of legislation, the party behind the proposal chooses the one that detracts the legislation least from the realisation of the original objective and causes only a slight change, but in view of the amendment he is able to declare that the legislature took into account the objections of the President. There can be no other interest-based explanation for this kind of behaviour and in general for the need to maintain this kind of pretence, that the fact that the National Assembly is expressing that it respects the office of President to such an extent that, although it may not allow its will to be significantly modified, but it makes an effort to take the President into account in some form.

Effectiveness trends can therefore be summarised as follows: regarding only the statistics, around half of vetoes are effective, but effectiveness is not a victory over government will, but on the one hand the filtering out of defective legislature, and on the other the disciplining of legislature that has gone rogue and/or is operating to a greater level of cooperation than the government majority. Partially effective vetoes comprise around a quarter of all political vetoes. With regard to these it is a success for the President that his arguments are taken into account at all, even if this does not affect the essence of the reason for the legislation having been returned to Parliament.

The remaining some one quarter of vetoes are ineffective. These pieces of legislation do not show a marked difference when compared to those for which returns are partially effective. Legislation proposed by the government and adopted with a government majority are also dominant within this group. In these cases, the legislature for some reason declined to include even small, embellishing amendments in accordance with the objections presented. The reason for this may be the insufficiency of the arguments for amendment or circumstances that call for urgent re-adoption.

Projecting these finding onto our hypothesis, it may be determined that: in the absence of a better explanation, in the case of certain vetoes we have no choice but to come to the conclusion that the power of public argument had an effect. However, the detailed examination of effective political vetoes has shown that there is a further, often stronger

explanation in the majority of these cases, which enabled the return of legislation to become effective. Nevertheless, even in these cases it may be established that a transcript that presents good arguments is a prerequisite for effectiveness.

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