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The Interface Between Constitutional Duty, Constitutional Liability and Criminal Liability: A Comparative Analysis of Standards for High- Ranking Public Officeholders (Poland–Hungary)

Interakcja Między Obowiązkiem Konstytucyjnym, Odpowiedzialnością Konstytucyjną a Odpowiedzialnością Karną: Analiza Porównawcza Standardów Dotyczących Wysokich Ranga Funkcjonariuszy Publicznych (Polska–Węgry)

Abstract

The article presents a comparative analysis of the norms concerning constitutional obligations and the regimes of constitutional and criminal liability of the highest public officials in Poland and Hungary. It outlines the scope of these persons' constitutional duties and the mechanisms for holding them accountable for violations of the law, both in terms of constitutional and criminal liability. In this regard, the institution of formal and material immunity, as an instrument balancing the need to secure the exercise of public functions with the rule of law, is analysed. The study further examines the relationship between the constitutional duties of persons holding the highest offices in the state and constitutional and criminal liability.

Key words: constitutional duty, constitutional responsibility, criminal responsibility, immunity, State Tribunal, Constitutional Court.

Streszczenie

W artykule została dokonana analiza porównawcza norm dotyczących konstytucyjnych obowiązków oraz reżimów odpowiedzialności konstytucyjnej i karnej najwyższych funkcjonariuszy publicznych w Polsce i na Węgrzech. Przedstawiono zakres obowiązków tych osób wynikających z konstytucji, a także mechanizmy pociągania do odpowiedzialności za naruszenie prawa, zarówno na gruncie odpowiedzialności konstytucyjnej, jak i odpowiedzialności karnej. Omówiono instytucję immunitetu formalnego i materialnego jako instrumentu równoważącego konieczność zabezpieczenia sprawowania funkcji publicznych z zasadą rządów prawa. Praca skupia się także na relacji pomiędzy obowiązkami konstytucyjnymi osób zajmujących najwyższe stanowiska w państwie a odpowiedzialności konstytucyjnej i karnej.

Słowa kluczowe: obowiązek konstytucyjny, odpowiedzialność konstytucyjna, odpowiedzialność karna, immunitet, Trybunał Stanu, Sąd Konstytucyjny.

Introduction

Contemporary constitutional systems establish specific regimes of accountability for persons entrusted with the exercise of public authority. These persons have specific obligations under the Constitution, and any violation of these obligations may lead to the initiation of accountability proceedings, both constitutional and criminal.

The constitutional obligations of persons exercising public authority include, in particular, the requirement to act on the basis of and within the limits of the law, to respect the principles of the rule of law and to exercise the powers entrusted to them in the public interest. Both the Constitution of the Republic of Poland of 2 April 1997¹ and the Fundamental Law of Hungary of 25 April 2011² emphasise the supremacy of the constitution in the legal system and the obligation to exercise public authority loyally. Violation of these obligations is not only political or moral in nature, but may also have specific legal consequences.

¹ The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78 item. 483 as amended).

² The Fundamental Law of Hungary of 25 April 2011 (Official Gazette 2011, no. 43 as amended).

One of the basic instruments for responding to violations of the law by persons holding the highest public offices is constitutional responsibility, which consists in holding the highest state officials accountable for official actions that violate the constitution or statutes. Its essence is to protect the constitutional order and ensure the special binding force of the constitution by making it possible to sanction unlawful actions by public authorities.³ However, constitutional liability does not exhaust all forms of response to unlawful actions by persons holding the highest public offices, as criminal liability exists in parallel.⁴

Constitutional Duties of Persons Holding the Highest Offices in the State

The starting point for analysing constitutional and criminal liability is to define the constitutional obligations of persons holding the highest offices in the state. In the Polish constitutional order, the principle of legality expressed in art. 7 of the Constitution of the Republic of Poland, according to which public authorities act on the basis of and within the limits of the law, is of fundamental importance. This principle is universal and applies to all public authorities.⁵

This obligation is reinforced by the oath taken upon assuming office by the head of state, the prime minister and his deputies, ministers, MPs and senators. Upon assuming office, the President of the Republic of Poland swears to uphold the provisions of the Constitution, to safeguard its provisions and to act for the good of the Nation.⁶ The Prime Minister, his deputies and ministers swear to uphold the Constitution.⁷ Members of Parliament and senators, in exercising their mandate, are guided by the good of the Nation and safeguard the sovereignty and interests of the State.⁸

³ B. Naleziński, *Trybunał Stanu*, [in:] *Polskie prawo konstytucyjne*, P. Tuleja (ed.), Warsaw 2024, pp. 439-440.

⁴ B. Naleziński, *Trybunał...*, p. 442.

⁵ M. Zubik, *Prawo konstytucyjne współczesnej Polski*, 4th edition, Warsaw 2023, p. 50; M. Granat, *Prawo konstytucyjne*, 12th edition, Warsaw 2024, p. 293.

⁶ The Constitution of the Republic of Poland, art. 130.

⁷ The Constitution of the Republic of Poland, art. 151.

⁸ The Constitution of the Republic of Poland, art. 104 (2).

The provisions of the Polish Constitution set out the fundamental duties incumbent on every citizen, and in particular on persons holding public office. Loyalty to the state and its constitutional order is expressly stated in Article 82 of the Constitution: “It shall be the duty of every Polish citizen to be loyal to the Republic of Poland and to care for the common good.” However, the legislator has established special duties for persons holding the highest offices in the state. These duties have been assigned to the President as the highest representative of the state and guardian of the Constitution.⁹ Importantly, the literature on the subject indicates that the function of guardian of the Constitution is not merely symbolic, the head of state also has a real duty to ensure that other state bodies comply with the Constitution.¹⁰

The Hungarian constitutional order also includes norms shaping the civic duties and responsibilities of public officials. The Fundamental Law of Hungary, in the section containing the fundamental principles of the state, stipulates that no one may usurp power and that everyone has the right and duty to oppose such action in a lawful manner.¹¹ This is an exceptionally important provision, imposing on all citizens, including those in power, the obligation to defend the constitutional order against unlawful attacks.

As in Poland, the president, prime minister, ministers and deputies of Hungary take an oath before taking office. The content of the oath is specified in the Act on the Oath and Affirmation of Certain Public Office Holders.¹² Upon taking office, public officials pledge to remain loyal to Hungary and its Fundamental Law, to observe the law and ensure that others do so, and to perform their duties for the benefit of the Hungarian people.

The provisions of the Fundamental Law of Hungary also define the special position of the President of the Republic as the representative of the state, who safeguards the democratic functioning of the state and expresses its unity.¹³ It should be emphasised that the function of safeguarding the democratic functioning of the state means not only symbolic

⁹ The Constitution of the Republic of Poland, art. 126 (1) and (2).

¹⁰ L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, 11th edition, Warsaw 2024, p. 296; J. Juchniewicz, M. Dąbrowski, *Kompetencyjny charakter art. 126 Konstytucji RP*, „Przegląd Sejmowy” 2014, no. 4(123), p. 67.

¹¹ The Fundamental Law of Hungary, art. C (2).

¹² Act XXVII of 2008 on the Oath and Affirmation of Certain Public Office Holders (Official Gazette 2008, no. 93).

¹³ The Fundamental Law of Hungary, art. 9 (1).

representation, but also a real constitutional obligation to respond in situations that threaten the constitutional order.¹⁴ The Constitution expressly states that the President represents Hungary, thus assigning them the function of constitutional representative of the entire state. As József Petréttei points out, the representation of the state by the president stems not only from an explicit constitutional provision, but also from the very essence of the office of head of state, which in the constitutional system serves to embody the unity and continuity of the state.¹⁵

Constitutional Responsibility of High-Ranking Public Officials

Constitutional liability is a special form of legal liability for violations of the Constitution or statutes by persons holding the highest offices in the state.¹⁶ It serves to protect the constitutional order and the principles of the rule of law against abuses of power by senior officials.¹⁷

Poland has established a separate judicial body to rule on constitutional liability, namely the State Tribunal.¹⁸ The Constitution of the Republic of Poland, in art. 198(1) and (2), stipulates that the following persons shall be constitutionally liable before the State Tribunal for violations of the Constitution or statutes in connection with their position or within the scope of their office: the President of the Republic, the Prime Minister and members of the Council of Ministers, the President of the National Bank of Poland, the President of the Supreme Audit Office, members of the National Broadcasting Council, persons entrusted by the Prime Minister with the management of a ministry, and the Commander-in-Chief of the Armed Forces, as well as members of the Sejm and Senate, within the scope specified in art. 107 of the Constitution. This list is exhaustive, and no other person than those mentioned may be held liable.¹⁹ Con-

¹⁴ C. Lóránt, *Mire jó az ellensúly? A köztársasági elnök szerepe az államszervezetben*, [in:] *Az államfő jogállása I.*, C. Lóránt, S. István (eds.), Budapest 2013, pp. 13–14.

¹⁵ J. Petréttei, *A köztársasági elnök, mint Magyarország képviselője*, [in:] *Az államfő jogállása II.*, C. Lóránt, S. István (eds.), Budapest 2015, pp. 10–11.

¹⁶ J. Petréttei, *A köztársasági elnöki intézmény a magyar alkotmányjogban 1989–2014*, Pécs 2018, p. 284.

¹⁷ J. Petréttei, *A köztársasági elnöki intézmény...*, p. 288.

¹⁸ Act of 26 March 1982 on the State Tribunal (Journal of Laws 1982, no. 11, item 84).

¹⁹ B. Naleziński, *Art. 198*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, 2nd edition, P. Tuleja (ed.), Warsaw 2023, LEX.

stitutional liability is therefore only enforced against the highest state authorities. The idea is to hold those persons whose decisions and actions may seriously violate the constitutional order particularly accountable.

A constitutional offence, which forms the basis of liability, consists of an act, which may take the form of an action or omission, contrary to the Constitution or a statute, committed by a person holding one of the specified positions in connection with the performance of their functions.²⁰ An example of a constitutional offence would be a gross violation of the law by a minister when issuing a regulation, a violation of the prohibition in art. 107 of the Constitution by a member of parliament, or a violation of the Constitution by the President through an official act contrary to the Constitution.

The procedure for holding individuals accountable under the Constitution in Poland is a mixed political and judicial one. The body that can initiate the procedure is the Sejm,²¹ or, in the case of the President, the National Assembly.²² The Sejm decides by a qualified majority to bring charges against a given official before the State Tribunal.²³ For example, pursuant to art. 145(2) of the Constitution of the Republic of Poland, bringing the President of the Republic of Poland before the State Tribunal requires a resolution of the National Assembly adopted by a majority of at least two-thirds of the statutory number of members, at the request of 140 MPs and senators. In the case of the Prime Minister or a minister, a resolution of the Sejm by a majority of three-fifths of the statutory number of MPs is required, at the request of at least 115 MPs.²⁴ The preparatory procedure is conducted in the Sejm by the Constitutional Responsibility Committee, which examines the allegations and evidence and then recommends to the Sejm whether or not to adopt a resolution on bringing the person to justice.²⁵

The State Tribunal rules on responsibility in the form of judgments. The sanctions that the Tribunal may impose, in accordance with art. 25 of the Act on the State Tribunal, include, for example, loss of position or

²⁰ B. Naleziński, *Trybunał...*, pp. 438–439; J. Filip, *Pojęcie oraz rodzaje odpowiedzialności konstytucyjnej*, [in:] *Formy odpowiedzialności konstytucyjnej w państwach europejskich*, S. Grabowska, R. Grabowski (eds.), Toruń 2010, p. 20; S. Grabowska, *Modele odpowiedzialności konstytucyjnej prezydenta we współczesnych państwach europejskich*, Toruń 2012, p. 87.

²¹ Act of 26 March 1982 on the State Tribunal, art. 5 and art. 5a.

²² Act of 26 March 1982 on the State Tribunal, art. 5 and art. 5a.

²³ The Constitution of the Republic of Poland, art. 145 (2) and art. 156 (2).

²⁴ The Constitution of the Republic of Poland, art. 156 (2).

²⁵ See: L. Garlicki, *Polskie...*, pp. 453–455.

function, a ban on holding managerial or public functions for a period of 2 to 10 years, and, in certain cases, the loss of orders, decorations, and honorary titles. The State Tribunal does not impose criminal penalties, i.e. imprisonment, as its jurisdiction is a means of protecting the system by removing officials who abuse their power and possibly depriving them of the possibility of holding public office in the future.

In Hungary, no separate body similar to the Polish State Tribunal has been established to hold senior officials accountable, with the exception of a special procedure concerning the President. The President of Hungary is constitutionally accountable through impeachment proceedings before the Constitutional Court. According to art. 13 of the Fundamental Law of Hungary, if the President intentionally violates the Constitution or another law in connection with the performance of their duties, or commits an intentional crime, the National Assembly may, by a two-thirds majority, adopt a resolution to bring them to trial before the Constitutional Court. The procedure is initiated by a motion of at least one-fifth of the total number of MPs. Voting is conducted by secret ballot and, once the resolution is passed by Parliament, the President is suspended from office. The case is then examined by the Constitutional Court, which, if it finds that the President has violated the constitution or the law or committed a crime, may decide to remove the President from office. The literature emphasises that the constitutional responsibility of the President in Hungary has a limited scope, both in terms of subjects and objects.²⁶ It was deliberately designed to cover only the most serious violations of the law in order to ensure the President's independence and to protect the President from excessive interference in their functions by current political disputes.²⁷ Proceedings before the Constitutional Court primarily serve to protect the dignity of the office and to remove any grossly inappropriate behaviour, rather than to impose criminal sanctions.

²⁶ J. Petrétei, *A köztársasági elnök felelősségéről*, [in:] *Az államfő jogállása I.*, C. Lóránt, S. István (eds.), Budapest 2013, p. 74.

²⁷ J. Petrétei, *A köztársasági elnök felelősségéről...*, p. 74.

Criminal Responsibility of High-Ranking Public Officials

The criminal liability of the highest state officials is governed by different rules than in the case of ordinary citizens, due to the institutions of immunity. Nevertheless, the principle of a democratic state governed by the rule of law requires that the President, Prime Minister, ministers and members of parliament can ultimately be held accountable for committing a crime.

In Poland, the Constitution provides for a special procedure for holding certain senior officials criminally liable. This applies primarily to the President of the Republic of Poland. Pursuant to art. 145(1) of the Constitution of the Republic of Poland, the President may be held criminally liable only before the State Tribunal. Although this provision does not contain the word ‘exclusively’, it is interpreted as establishing the exclusive jurisdiction of the State Tribunal to prosecute and try the President during his term of office.²⁸ It is well established in doctrine that as long as a person holds the office of President, no criminal proceedings may be brought against them before a common or military court, even if they have committed a crime unrelated to their office.²⁹ The President of the Republic of Poland, therefore, enjoys complete and exclusive formal immunity for the duration of their term of office.³⁰ No legal action, other than possible impeachment before the State Tribunal, may be taken against them.³¹ This privileged position of the head of state is justified by the need to protect the dignity of the office.

If there is a suspicion that the incumbent President of the Republic of Poland has committed a crime, the only way to hold them accountable is through the procedure before the State Tribunal described above. After the end of their term of office, the President loses their immunity, and the State Tribunal may conduct proceedings within 10 years of the offence being committed, regardless of whether the perpetrator still

²⁸ J. Ciapała, *Udział Prezydenta Rzeczypospolitej Polskiej w postępowaniu sądowym w kontekście problemu jego odpowiedzialności*, [in:] *Zagadnienia prawa konstytucyjnego. Polskie i zagraniczne rozwiązania ustrojowe. Księga jubileuszowa dedykowana Profesorowi Dariuszowi Góreckiemu w siedemdziesiątą rocznicę urodzin*, K. Skotnicki, K. Skłodowski, A. Michalak (eds.), Łódź 2016, p. 70; M. Milczarek, *Odpowiedzialność karna Prezydenta Rzeczypospolitej Polskiej*, „Przegląd Prawa Konstytucyjnego” 2010, no. 1, p. 142.

²⁹ M. Milczarek, *Odpowiedzialność...*, p. 142.

³⁰ A. Domańska, *Odpowiedzialność Prezydenta Rzeczypospolitej Polskiej w Konstytucji z 1997 r.*, [in:] *Instytucja prezydenta w polskim i litewskim prawie konstytucyjnym*, D. Górecki (ed.), Łódź 2017, p. 41.

³¹ L. Garlicki, *Polskie...*, p. 451.

holds office.³² This means that even after the end of their term of office, a former President may be tried by the State Tribunal, provided that Parliament manages to pass a relevant resolution within 10 years of the offence. It is worth noting that as long as this possibility exists, ordinary courts are not allowed to conduct criminal proceedings against a former president for an act committed during their term of office. This is because the State Tribunal retains its jurisdiction over a former president with regard to acts falling within a formal president's competence during their term of office.³³

The situation is different for the Prime Minister and ministers. Members of the Polish government do not have general immunity protecting them from criminal proceedings, unless they individually enjoy parliamentary immunity if they are also members of parliament.³⁴ Art. 156(1) of the Constitution does provide for the possibility of holding the Prime Minister or a minister criminally liable before the State Tribunal for an offence committed in connection with their position. However, this does not mean that ordinary criminal prosecution of such persons, especially after they have left office, is excluded. Therefore, if a minister commits a common offence, e.g. causes an accident while driving under the influence of alcohol, unrelated to their official duties, they will be held accountable under general rules before an independent court.³⁵ However, it should be remembered that if they are also a member of parliament, the Sejm's prior consent will be required to hold them accountable. On the other hand, if the act is directly related to their office, the Sejm may refer the case to the State Tribunal or allow ordinary criminal proceedings, waiving the perpetrator's parliamentary immunity, if they have it.³⁶

In Hungary, the criminal liability of the highest officials is not subject to any special procedure, except for the President, as explained in the previous section of this article. The President of Hungary enjoys immunity, but according to art. 13(1) of the Fundamental Law of Hungary, criminal proceedings against the President may only be initiated after

³² M. Milczarek, *Odpowiedzialność...*, p. 142.

³³ B. Banaszak, *Prawo konstytucyjne*, 8th edition, Warsaw 2017, p. 566; O. Abramski, *Delimitacja odpowiedzialności Prezydenta RP a jej konstytucjonalizacja – wybrane problemy*, „Roczniki Administracji i Prawa” 2021, no. 2, p. 18; D. Bednarz, *Odpowiedzialność prezydenta Rzeczypospolitej Polskiej w świetle Konstytucji z 1997 roku*, „Facta Simonidis” 2016, no. 1(9), p. 37.

³⁴ B. Janusz-Pohl, *O spornym problemie właściwości Trybunału Stanu w zakresie pociągania do odpowiedzialności kamej członków Rady Ministrów*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2007, no. 3, pp. 85–86.

³⁵ L. Garlicki, *Polskie...*, p. 452.

³⁶ B. Janusz-Pohl, *O spornym...*, pp. 87–89.

the expiry of their term of office.³⁷ However, if the President has been removed from office by impeachment by a ruling of the Constitutional Court, this does not exempt them from criminal liability. After the proceedings before the Constitutional Court have been concluded and they have lost office, they may be prosecuted in court for an act constituting a criminal offence. A ruling by the Constitutional Court finding that the President has violated the law does not constitute an exemption from criminal liability. A former president may face criminal consequences under general rules after the end of their term of office. Furthermore, if the charge against the President concerned an intentional offence, the very fact of committing such an act constitutes grounds for constitutional liability (removal from office) and does not preclude separate criminal proceedings before a court.³⁸ Thus, the Hungarian system clearly assumes dual liability. First, the possible removal of the President from office for a constitutional offence, and then, after stepping down from office, ordinary criminal proceedings to punish the perpetrator.

With regard to the Prime Minister and ministers of Hungary, they do not enjoy any special immunity other than parliamentary immunity if the minister is also a member of parliament.³⁹ If a minister is not a member of parliament, they are not protected by any immunity and can be prosecuted like any other citizen.⁴⁰ The Prime Minister of Hungary, on the other hand, is a member of parliament by virtue of their office and therefore enjoys parliamentary immunity.⁴¹ In essence, the criminal liability of the highest executive authorities in Hungary is pursued according to ordinary procedures, with the exception that such proceedings may be temporarily suspended by parliamentary immunity.

³⁷ J. Petrétei, *A köztársasági elnöki intézmény...*, p. 269.

³⁸ J. Petrétei, *A köztársasági elnök felelősségéről...*, pp. 78–79.

³⁹ J. Petrétei, *A végrehajtó hatalom az új Alaptörvényben*, [in:] *Magyarország új alkotmányossága*, T. Drinóczi (ed.), Pécs 2011, p. 151.

⁴⁰ J. Petrétei, *A végrehajtó hatalom...*, p. 150.

⁴¹ J. Petrétei, *A végrehajtó hatalom...*, p. 141.

Immunity as an Instrument Balancing Duty and Responsibility

Immunity is a traditional legal instrument used to safeguard the independent exercise of public functions by temporarily or permanently exempting a specific person from liability procedures.⁴² In the case of the highest state officials, immunity acts as a „security” because it protects them from hasty or politically motivated prosecution. Legal doctrine emphasises that it is not a personal privilege, but a constitutional institution that safeguards the proper functioning of state authorities.

Constitutional law distinguishes between material immunity and formal immunity.⁴³ Material immunity consists in the complete exclusion of certain acts from liability, e.g. a member of parliament is not liable at all for activities falling within the scope of their mandate, in particular for speeches and votes in parliament.⁴⁴ This type of immunity is permanent and inviolable, which means that it cannot be waived.⁴⁵

Formal immunity, on the other hand, consists in the prohibition of holding a person criminally liable during their term of office without certain conditions being met, e.g. the consent of parliament.⁴⁶ It does not remove the unlawfulness or punishability of an act, but only causes the prosecution to be suspended or made dependent on the consent of a specific authority. Formal immunity is relative in nature, i.e. it can be waived and is temporary, as it only applies for the duration of the term of office.⁴⁷

These immunities serve to guarantee the efficient operation of the most important state bodies by preventing their paralysis as a result of criminal proceedings that could be initiated for trivial or politically motivated reasons. As stated in Hungarian literature, the aim is to protect senior officials from „unnecessary harassment” and „covert political attacks” that would interfere with the performance of their duties.⁴⁸ Parliamentary immunity, in turn, safeguards the independence of the

⁴² A. Dana, *Podmiotowy zakres immunitetu w polskim systemie prawnym*, „DOCTRINA Studia Społeczno-Polityczne” 2011, no. 8, p. 37.

⁴³ L. Garlicki, *Polskie...*, pp. 252–253.

⁴⁴ M. Granat, *Prawo...*, p. 244.

⁴⁵ M. Granat, *Prawo...*, p. 246.

⁴⁶ M. Granat, *Prawo...*, p. 247.

⁴⁷ L. Garlicki, *Polskie...*, pp. 254–255.

⁴⁸ J. Petrétéi, *A köztársasági elnök felelősségéről...*, p. 74.

nation's representatives so that they can freely exercise their mandate without fear of reprisals from the executive or political opponents.⁴⁹ It is therefore a guarantee mechanism linked to the principle of the separation of powers and the autonomy of parliament.

However, to prevent immunity from becoming synonymous with impunity, instruments have been provided for the waiver or limitation of immunity in cases of serious need. In the case of the formal immunity of parliamentarians, as discussed above, parliament itself may agree to hold one of its members accountable, which in Poland and Hungary requires a sufficient majority of votes.⁵⁰ The literature notes that all immunities are a departure from the general principle of equality before the law and should therefore be interpreted strictly and cannot be presumed where the law does not expressly provide for them.⁵¹ They are a privilege justified by special considerations, i.e. the protection of parliament, the independence of the judiciary or the stability of the office of head of state, and should not extend beyond what is necessary to protect these values.

Concluding Remarks

The comparative analysis shows that in both the Polish and Hungarian constitutional systems, the accountability of the highest public officials has been shaped as a multi-level system comprising constitutional duties, constitutional accountability and criminal liability. These mechanisms do not function in isolation from each other, but form a coherent constitutional structure aimed at simultaneously protecting the constitutional order and ensuring the stability of public authority.

In Poland, the State Tribunal plays a central role in this system as a specialised accountability body whose powers are detailed in the Constitution of the Republic of Poland and in the Act on the State Tribunal. This institution constitutes an extensive legal mechanism for

⁴⁹ A. Dana, *Podmiotowy...*, p. 38.

⁵⁰ In Poland, pursuant to art. 7c (6) of the Act of 9 May 1996 on the Performance of the Mandate of a Member of the Sejm and a Senator (Journal of Laws 1996, no. 73, item 350), the Sejm or Senate shall give its consent to hold a member of the Sejm or a Senator criminally liable by way of a resolution adopted by an absolute majority of the statutory number of members of the Sejm or Senate. In Hungary, pursuant to art. 4 (2) of the Fundamental Law, the Parliament decides on the waiver of a Member's immunity by a two-thirds majority.

⁵¹ A. Dana, *Podmiotowy...*, p. 38.

the accountability of the highest public officials and emphasises the formal legal nature of control over the exercise of public authority. At the same time, this mechanism remains closely linked to the decision of parliament, which introduces an element of politics as a condition for triggering constitutional accountability.

A different model has been adopted in Hungary, where the constitutional accountability of the head of state has been entrusted to the Constitutional Court under a special impeachment procedure, while the criminal accountability of the highest officials is, in principle, exercised in the ordinary court system after the end of their term of office. This solution emphasises the separation of constitutional and criminal liability, treating the former primarily as an instrument for protecting the constitution and the latter as a classic mechanism of criminal repression.

In both systems, the institution of immunity plays an important role, which does not abolish responsibility, but introduces temporary or conditional restrictions on its enforcement. Immunity serves as a guarantee, protecting senior officials from the instrumental use of repressive proceedings in the ongoing political struggle, while leaving open the possibility of holding them accountable in the event of serious violations of the law. Such solutions are in line with the broader European standard of protecting the stability of public institutions while maintaining the principle of equality before the law.

The analysis leads to the conclusion that the accountability of the highest public officials should not be assessed solely in terms of repressive effectiveness. Its primary function remains to protect the constitution as the foundation of the political community and to ensure the lawful exercise of power. Both the Polish model, based on highly formalised accountability before the State Tribunal, and the Hungarian model, based on the separation of constitutional and criminal liability, are different but functionally rational attempts to reconcile the principle of legality with the need for political stability.

From a broader comparative perspective, both systems confirm that modern constitutionalism in Central Europe is moving not towards the full criminalisation of political activity, but towards a balanced model of accountability in which legal sanctions are a last resort for protecting the political system, rather than a primary tool of political control. This structure promotes both the effectiveness of accountability mechanisms and the continuity of the functioning of state bodies.

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