

REFGOV

Reflexive Governance in the Public Interest

Services of General Interest

The Changes of Regulatory Frameworks of Services of General Interests
in Hungary

by László Boros

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REFGOV

**Services of General Interests
Historical Perspectives Analysis**

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**The Changes of Regulatory Frameworks of Services of General
Interests in Hungary**

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1. Services of General Interests

1.1 Broad outlines of the SGI provision debates in Hungary

The transition in the public sectors toward a market economy is characterized by restructuring the regulatory framework of them. The first question in this long process has been how far the process of liberalization and privatization could go?

But this is not a specific problem of the transition countries. The sixties and seventies, generally the welfare state times have changed the public sectors by the nationalization in a couple of developed countries, in particular in Western Europe. Then later when the whole economic background has changed and an era of liberalization came in the countries of the welfare state as well, many services "that were formerly directly delivered by public entities are now being organized through complex networks of public and private actors characterized by market, »quasi-market« and regulatory relationships between different entities."¹

The balance between privatization and nationalization became a critical point and a difficult job for the parliamentary majorities in the legislation and for the governments in the implementation. "Both nationalization and privatization are polyvalent instruments, viewed by their proponents as capable of securing a wide variety of beneficial results."²

So the Hungarian dilemma – how far the privatization could go – has been very complicated for years. The totally nationalized socialist public sector couldn't be working efficiently before 1990. The dominant concept of Hungarian economists - as a reaction on the former system

¹ Jacques Lenoble: Reflexive Governance in the Public Interest – REFGOV Integrated Project. Université Catholique de Louvain, 2003. Part B, 24. p.

² International Encyclopedia of Comparative Law. Volume XVII, State and Economy (Richard Buxbaum, Ferenc Mádl, eds.), Chapter 10: Regulation, by Terence Daintith. 52.p.

– was based on the privatization and liberalization in a relatively short period and on very different fields of public services.

What extent the control of state/government would be given up? That has been the second basic question related the privatization process. The Parliament had to decide the principles of the changing processes in the operational structure of the touched sectors. The results and short term consequences of the political decision making processes in the first transition decade are evaluated and summarized by European scientific community in this way: "Hungary is an example of a new member state with the history of state of control but an early choice for liberalization process with some reference to the British experience."³

The third basic question of the changes has been related to the methods. How the breakdown of the commanding positions of the government would be managed? Because the transition to the market economy is featuring by a profound reshaping of ownership structures of the institutions and enterprises, the legislators should have created a new framework of institutions and bodies to be responsible for controlling procedures to prefer the political interests of the state, the professional interests of the different touched branches and the consumers' interests of the citizens and the public and private firms.

These processes will be examined through a review of restructuring the regulatory framework, the results of new legislation activities from 1990 and an inventory of reforms or attempts of reforms. But before this analysis look at how the historical processes had gone to a basic transformation of the legal system?

1.2 The special political and legal background of Hungarian transition model

The central governance between 1988 and 1990 was gradually put into the centre of the position of the technocratic power. The ever fading influence of the Communist Party, the political life getting more plural (inside and outside of the Party) and in a paradox way the economic crisis generated by the technocracy pushed jointly the decision making competencies into the hands of governance administration. A never seen historical situation unfolded which nature was not yet transparent. The direction of legislation was put to act preparatory institutions.

³ Lenoble: 34.

The influence of the party was gradually diminishing due to inner fights and outer pressure, with the deepening of uncertainty the euphoria of disposal of the legal instruments was spread into the sphere of governance. The political parties direct the procedures of legislation as in democracies as well as in dictatorships. In one year, between the beginning of 1989 and beginning of 1990, the party gradually disappeared above the head of the government. To its place a few attempts were made like the compromises of round tables trying to define the main guidelines of legislation but the parameters were mainly set by the administration working more and more freely.

The third participant, the Parliament prolonging its mandate and the free act preparatory system produced an intensive and professional cooperation in the procedure of legislation.

In the same time a part of the administration used the sudden liberty to prepare the inevitable transition. One of the achievement was the government legislation which lead to spontaneous privatization. It has been a special Hungarian privatization form in the liminality between the old and new systems without any responsible state authority.

On the other hand with a minimal modernization the ministries and national competence institutions were made able to survive without changes, at the same time the insurance of public safety was insured. This could be made so professionally because of (as our surveys showed at that time) the well prepared – from the end of the seventies, beginning of the eighties – personal background of the governance featured by the technocracy.

1.3 The essential and substantive processes of Hungarian transition

As the new Company Law serving for the basis of private law and transition in market economy was ahead of its historical period and ahead of the neighboring countries and was a product of the ancient institution system, the creating of the base of the public law transition was a product of a special constellation mentioned above. The formations of constitutional solutions were not a conclusion of conscious conception but was influenced by accelerated and sudden direction changes in home affairs and foreign relations and finally shaped by these aspects.

The influential procedures could be divided into two phenomena aggregation. There were certain world political events which had perspective and global effects, for example we should stress the end of the bipolar confrontation namely the USA - USSR negotiations and

treaties. In the procedures of our area the most important were the Polish crisis treatment, home affair memorandum becoming transitional.

In Hungary the „partying” of the opposition, the stabilization of Opposition Round Table, the new special kind independence of the Government, the transitional activity of the old Parliament, the launching of the three-sided negotiations and finally the end of the Communist Party meant the facts the parliamentary legislation could become more dynamic. In this way the legal basis of the transition in Hungary were not laid down after the fall of the old political system like in the other East-Central and Eastern European countries but it was directed by the last Government of the ancient system, with the participation of the majority of the previous Parliament. It was not only that the political conditions were achieved by negotiations but also that parallel with the negotiations or with its results the two ancient institutions created the new legal institutions and the transformation of the old ones.

It can be concluded that the one year of public legislation which was the base for the transition was a real result of the cooperation of political forces dedicated to a democratic transformation. Acts approved until the dissolution of the old Parliament made the free, democratic election possible, the creation of the institution system of the civil parliamentary system and did all this in the sense of operational continuity. Nowadays a number of evaluation questions the positive character of the above process, they lack the radical rupture. In 1989-90 every responsible force considered it important that a stable state should perform the renewal of a collapsing economy.

The procedure of Constitution making was motivated by that in a great sense. Even until the end an open and free debate was held about the legal procedure to create a new Constitution or to make on an other way a constitutional legitimacy, for a long time a number of different solutions seemed to have the same chances. The situation of the country did not allow a real option for the call for a constitution making nation assembly or the election of it.

In reality the round table negotiations and the legislation of the old Parliament together reached the target of the creation of a constitutional base. Now it is a different question and not the question of that time, the responsibility of the actual political forces that since the modification sufficient for the 1989-90 transition no new Constitution could be born.

1.4 Basic theoretical points of a new concept of Services of General Interests in Hungary

In the short period of the beginning changes in the legal system an influential group of economists and legal experts – representatives of technocratic reforms in the late eighties - were being very active in a strong debate on the contemporary transformation on governance arrangements. One important point of discussion has been the theoretical base of a new concept of the future of Public Services.

They try to create a technocratic approach of the possible changes. They should have had a relevant response on the basic theoretical question: how would change the relations between the legal sphere of the State activities and the economic system? First of all how could change the measure and quality of the role of the legal system and Public Administration to supply effective Public Services?

They have known exactly that the first new Hungarian government of transition – independent on the political character of the dominant political forces – has to try to find the ways and effects of the move of the State from the owner-and-service-provision position to a regulatory function.

2. Restructuring the regulatory framework of the Public Sectors

2.1 General regulation for all Public Sectors

As mentioned above the first steps of legal transition were done by the old Parliament still in 1989, in particular the revision and amendment of the Constitution, before the final political changes implemented by the free elections.

2.1.1 The Constitution between 1989 and 2010

Looking from the point of view of the Services of General Interests the *Act XXXI of 1989 on the Amendment of Act XX of 1949 on the Constitution of the Republic of Hungary* (promulgated: 23/10/1989) has declared the next most important point by legislative enactment:

- The establishment of an independent democratic constitutional state with its core institutions of the President, the National Assembly, the Constitutional Court, the ombudsman, and the national and local government, whose discretion is guaranteed over local affairs.
- Hungary is declared to have a market economy, based on the right to private property.
- Health is reinforced to be a fundamental right: right to healthy environment, right to physical and mental health.
- Right to health is implemented through the provision of labour safety, health care, regular physical activity, protection of the environment with the overall responsibility of the national government.

The process of constitutional development is a special slice of the Hungarian legal reality in the past two decades. As numerous further mentioned example showed, the system has a couple of components which are constitutionally not in harmony with the present relations. This has become also clear that the constitutional solution of transition process in 1989 was not followed by a final version, by a real new Constitution.

The necessity of a written Constitution as a charter which settles every crucial element in one legal document could be debated and there are many who debate it. The opinion of these positions' representatives is based on the present situation and wants to conserve the practice in force since the transition.

According to this the Constitutional Court has to follow continuously the activity of the first period, always had to alert in every situation not complying with the Constitution and to supply with a strong interpretation activity the lack of a coherent and all-out act.

It is true there is no constitutional crisis in Hungary. It is maximum a historical scandal with no such significance for those who know about it that in 2010 we call our Constitution an act of 1949 number XX. Questions keep arising after all in a great amount. On the one hand the Constitutional Court can not go further even in their most active impetus than the interpretation of the constitution. On the other hand the parliamentary legislation is a political duty and responsibility.

The third traditional difficulty has been for twenty years that only the two-third agreement of the actual parliamentary forces could be a real base to create a new Constitution. From the spring of 2010 this problem isn't existing more because the new majority of the alliance of two conservative parties could win with more than two-third of the Parliament.

Let us take a look at certain crucial points. One of these is the case of the regulation of media. In this world the significance of media both sociologically both legally is much higher than an act approved in compromise, in 'sweats' could have been solved. This was a complete failure. The case of media would need a more legal regulation as a part of the Constitution.

There is the case of constructive motion of non confidence as well. The short crisis and the replacement of the Prime Minister in the summer of 2004 and the exchange procedure of the Prime Ministers by the stronger party of the parliamentary majority in 2009 showed that in the special situations of different historical periods could be proper (in 1949 in Germany, in 1989 in Hungary) but actually this solution is against the spirit of the era. But we could also mention our concerns about the General Attorney, the self governments or the taxation system. All of them are very influential component of the SGI sphere.

Exactly from the point of view of SGI the Constitutional Court activity has always been a basic influential component. All of the problems and questions do not lessen the historical achievements of the first period of the Constitutional Court. Immediately at the beginning period the starting new body set up rapidly found himself facing a huge pile of duties and

responsibilities. They had to solve the problem during their work and also define their own territory of competence, order of operation with their decisions. They cleared their relation to the legislation procedures, to the norm control procedure before parliamentary decisions, limited their own competence. The Court had less members than the original law prescribed (only 11 judges, though originally planned 15) because of the huge political fights. They started the interpretation of the Constitution in a very wide sense. They had decisions which were debated necessarily but their role in the development of the whole public life is a fact.

2.1.2 Competition Law

A really very difficult job has been for the new democracies to change the socialist type of planned economy to market economy. In 1989-1990 the Hungarian Parliament and the old and new Governments had a better position than the other similar countries because a couple of relatively important parts of market economy were implemented in the eighties. But the real competition based on the freedom and equality of the different ownership forms couldn't run because of the dominance by the owner's position of the state. So the new Parliament only from step to step tried to create a successfully functioning legal background for the competition.

Very important secondary rules on competition are found in the next laws: on economic companies (1988 and 1997), on foreigners' investments in Hungary (1988 and 1991), on state-owned enterprises (1989), on the transformation of economic organizations (1989).

In particular the above mentioned first Act on Company Law has been very important as the first step to the real market economy. It is visible that a couple of laws were accepted by the old Parliament.

The primary rules based on the secondary laws started with the *Act LXXXVII of 1990* on the prices: the most important regulators of the prices are the market and the competition. The citizens could recognize the change generated by this law in their life as well, in the first years in inflation higher than 20%.

The main source of Hungarian competition law is *Act LVII of 1996* on the prohibition of unfair market practices and restriction of competition (hereinafter referred to as the **Competition Act**). According to the Competition Act, in case of breach of Sections 2-72, the competition authority procedure falls within the competence of the courts. According to

Section 45, all competition authority procedures not falling within the competence of the courts fall within the competence of the Competition Office.

This law has three times had amendments (2000, 2003, 2005) in five years. The rules on competition were completed to the middle of the first decade in 21 Century by the *Act CXL of 2004* on the General Rules of Public Administrative Procedures and Services.

Act XVI. of 1991 on **concessions** declared that a concession contract can only be terminated in the cases set out in Act XVI. of 1991 on concessions, and based on the conditions set out in the concession contract. If a concession contract is terminated on other grounds, it will be regarded as breach of contract, and the party in breach can be used. The amendment of this law was issued in 2000 (*Act XXXIV of 2000*).

2.1.3 Privatization from 1989 and the Laws on Privatization

The last decade of the 20th century witnessed some extraordinary developments in Hungary. The political and economic change of system was made at an accelerated pace. Hungary has returned to the rule of law. A market economy has been developed and Hungary is a member of the community of developed European countries. Privatization played a decisive role in this process. By the end of the decade, it had been practically concluded.

The proportion of state-owned assets fell from 85-90% to its current level of 10-15%. A planned state-owned economy has been replaced by an economy based on private ownership. The following is an attempt to summarize the process of privatization in Hungary.

The privatization process had **four periods**. The first one has been the so called 'spontaneous' privatization. It was running in the second half of **1989** and at the beginning of **1990** because of the very peaceful continuity of Hungarian transition and because of the lack of administrative control by any central force. The members of the managements of a couple of large state companies together with the governmental technocrats could take the valuable part of the industrial state ownership.

The second period started together with the first democratic government in the late spring of **1990**. They didn't have experiences to manage the new forms of private ownership, and their activity to create a new legislative background for the entrepreneurs couldn't be successful.

The year of **1992** was a milestone, the beginning of the third period in the course of Hungarian Privatization. The state-owned companies, as well as cooperatives were given the opportunity by legislation to get transformed into corporations. This transformation process has been completed, the state-owned companies have been transformed into mainly joint-stock corporations, but to limited liability companies as well.

In **1995**, with the coming into force of the *Act On the Sale of State- Owned Entrepreneurial Assets*, a new, the fourth phase opened in the privatization. Now it is not transformational, but fully a privatization carried out by the sale of assets, which means that mainly company shares and stakes, but, to a smaller proportion, other assets such as estates, machinery, etc. are sold to market participants.

The organization whose prime task is the sale of state-owned assets is the **State Privatization and Holding Company Ltd** (APV Rt.), set up by the mentioned Act in 1995. Normally, a privatization contract is concluded in the form of a sales contract, in the case of which the consideration is cash, while in exceptional cases can the consideration be capital investment, assuming employment obligation, etc.

The property of state-owned assets can be acquired by almost all market participants, including all foreign persons: private persons and legal entities, even corporations owned fully or partly by foreign states or state budget-financed institutions.

2.1.4 Public Procurement Laws

Act XL of 1995, Act XIII of 1997, Act IX of 1999 and Act CXXIX of 2003 on public procurement. The **Public Procurement Council** was established by *Act XL of 1995 on Public Procurement* and defined as a central budgetary organ. The new *Act CXXIX of 2003 on Public Procurement* basically left its structure intact. The Council is subordinated to Parliament only and is independent from the Government.

The EU rules will be in effect in Hungary on 1 May 2004 following the adoption of the new act CXXIX of 2003. New EU legislation, which has to be transposed into national law by 2006, seeks to further facilitate international procurement.

3. From the economic crisis in 1990 to the EU accession in 2004.

3.1 The effects of the parliamentary, the governmental and the judicial changes on the legal environment of the SGI

3.1.1 Legislation in the new Parliament

In the spring of 1990 the new Parliament and Government got its mandate and began its work in a contradictory situation. On the one hand there was a general euphoria over the sudden success of the democracy, the never experienced interest in the political procedures, the legitimacy from the first free election helped its activity. On the other hand the unexpectedly bad economic situation, the trap of the debt, coming from these the accelerating inflation and the unemployment made its position very hard.

The objective difficulties cursed the third of the population directly, felt with fear another third (and it was not without reasons) and only the other had confidence in building a new future. In the work of legislation the lack of experience meant a drawback, which was true to a major number of the participants.

The fact, that in the round table discussions and at the different agreements (e.g. about the constitutional institutions) economic problems were not handled, did not make the situation easier. For this reason, in the first period only a very few acts were adopted for the good of the market economy, the crisis was handled by government interference.

Acts adopted in the beginning slightly altered the creation of the rule of law, but with other acts in a short time fired the emotions. It was also a problem that the two-third acts were decided by only a bilateral agreement, the logics of two public law experts were represented. In that way very crucial economic questions were out of scope (e.g. Land Ownership Act), making conflicts which have their effect until now. But other political transformation processes also had their negative effects (Act of Cooperatives, Recuperation Act).

It was also an unlucky moment for the legislation activity that MP's wishing to please their voters made their speeches. They attended the discussions of those agenda points which were not requiring too much expertise. They occupied these debates and the major time of the Parliament activities, so the long term economic questions were hardly ignored. (e.g. in the Concession Act debate had only one MP one contribution).

3.1.2 The situation of the new Government

The executive power was in the hands of a conservative government in the spring of 1990, which from the outside seemed to be in consent with itself but from inside it was strongly in parts. It was a strange coalition, because generally coalition is made between parties with different views, those who are on the same platform make a party-alliance. But these 4 years brought different crisis within each party in coalition. The shadow of the previous Government of transition fell over the activity of this government in legislation and application of law and was a special sociological background.

The earlier mentioned unique situation in 1989 and the beginning of 1990 gave a very positive background in communication for the cabinet becoming experts thanks to the events. Outstanding scientists, professional economists (including the Prime Minister Miklós Németh) and even politicians who were parts of the government became very popular.

For this reason the expectation of „the members should be experts” for the new government was a challenge meanwhile in a parliamentary democracy the ministers, politicians represent their parties.

József Antall the first PM knew the public feeling and also knew the leading politicians of the suddenly gathered coalition. He chose a solution in between; in a confidential base, he formed his Government with people standing close to him, not taking into consideration a few political aspirates.

The majority of his ministers though could not bear the comparison with the previous ones in the sight of the laymen and this moral was just increased by the effect of very crucial economic difficulties. These difficulties started in a great deal the crisis procedures within the governing parties and lead to the defeat in the next election. Also it was really unfortunate and sad that the Prime Minister became seriously sick and died in a short time at the end of 1993.

The first democratic government did the most important in the legal system: continued the building of the rule of law. The parliamentary legislation performed a tremendous job even that most of the participants were not experienced. From this legislation procedure a great honor should be made to lawyer MPs who were well educated and could adapt themselves to the new challenges.

These 20-25 politicians, beginners in the first period (disregarding party representation and age) had a great deal in the parliamentary legislation of the first years. Failures were inevitable during a load like that and they had to work in a technically underdeveloped environment.

Besides the development of the public law system and the establishment of the legal background of the market economy, another giant task was waiting for the Government and Parliament. With the creation of central state organization the democracy can not be whole. The setting up of the self government is also a must in democracy.

3.1.3 The general features of the legislation

The number of the new acts in the first year of the Parliament was above hundred but this could be considered as a necessary task after the transition. When the next few years kept the quantity of this legislation we thought that the stability of the rule of law needs some more time as expected. But now, after 20 years of the transition we have to face it that the legislation in a democracy faces such a big volume of challenge by the society.

A numerous critical moments and political conflicts showed that the only right way could be the transition of priority of legislation to parliamentary legislation. The essential is correct as an approach. Going closer to the everyday practice of the procedures, naturally, a more contradictory picture unfolds. Actually the Hungarian legislation is not in a situation even today that could be able to guarantee the quality of the completeness of the process with such a speed determined by the political willingness.

It is not about that the expert potential is not available to the volume. It is about that the political atmosphere and state surrounding the legislation is not calmer, wiser after so many years but on the contrary, despite the experience at the MP, expert level in the fierce political daily fights the legislation work is absolutely hectic.

This is represented, of course in the daily work on pale faces of the act the preparing MPs after the votes, and by desperate efforts for legal consistency. The over secured, over complicated and over debated politically act is a curse for the addressees and for all the others concerned.

The bureaucracy of procedures holds back, frightens the investors, increasing the power of useless office, wasting the money of tax payers. At least but not last reduces its efficiency in the European integration, spoils our position in tender and fund utilization.

3.2 The judicial system

We have to state at the beginning that the intact conservation of the state machine's key professional institution systems has become an important element of the peaceful and continuous transition. The critical attitude does not question the historically positive effects of the elementary processes. In a political point of view the human resource of the Hungarian judicial system was completely capable and mature to continue its work without a stop after the political and legal changes as well.

As the transformation of the system happened in a procedure of more phases, in the daily routine of professionals in jurisdiction was not noticeable the exact time, the beginning of a new era, it was rather a process. They did their jobs simply throughout the period according to the regulations in force. This was the right way to do.

Nevertheless, one of the crucial issues of the legal system after the transition has become the jurisdiction in a wider sense. The situation of different system elements vary in a great deal. With the changes the expectations towards the judiciary had grown dynamically. One reason was that one of the key components of the rule of law is an independent, high level and within reasonable deadline legal service.

For other reasons, the number of cases had increased in an area important for the laymen moral, in criminal law, because the number of criminality augmented (in 1980 130 000, in 1990 340 000 registered criminal acts) but with appearance of the newest forms of the organized criminality the cases became more complicated.

At the same time the number of cases increased in private law as well extremely important for professional spheres, with the opportunity of widening the market economy relations and with the bad functions of these relations because of the lack of sufficient sources, the mutual debts, the lack of creditability and deficiency of capital.

Just a few facts form the sudden increase of private law cases:

- The number of contracted relations increased with the gradual widening of private economy.
- In the beginning there were many non-profesional contract, the number of cases before court increased a lot because of bad contracts or contracts with failures which validities were uncertain and their interpretations vague.

- With the liberalizations of the advocate profession more cases were produced even from legal conflicts which earlier could be solved without the court.
- The contract discipline loosened with the transformation of owner structure and different forms of enterprise, a great number of deceived clients turned to the court.
- The real estate market and great value estates were liberated and the commerce of raw materials and industry products but at the same time the organized crime leaked into the great value business and the business ethics were ignored.
- The legal rules were not changed though but the meaning and scope of inheritance were radically changed sociologically which were very much limited in the previous system.
- The same way with the transformation of owner structure, a more attention were paid to fortune contract in marriages and later disputes even due to the number of divorce cases.

The duties of the court got into a new dimension both in quantity and in quality as well due to the facts mentioned above. Essentially, so to say globally and systematically neither the government neither the Parliament was concerned. They developed a bit the infrastructures of the buildings not really the technical circumstances.

An important step was the creation of the Courts of Appeal after a long political debate. The salaries of judges were also increased. But all these were only little and short term solutions compared to the huge pressure (case quantity, quality) which flooded the courts and to the significance of the courts in a rule of law.

The problem of human resource was solved thanks to an out of system situation: the radical increase of the number of institutions and of students in legal Higher Education. The limited number of the available positions in the legal practice indicated a competition for the jobs in the Courts and in the Prosecutors' Offices. The positive effect of this will be obvious in 8-10 years (though the competition is very strong even today).

Today, despite of statistical 'magical' attempts, it is extremely hard to get a final judgement in a short time in more serious cases. In the practice of the Courts there are some worrying tendencies and it is so sad that these negative trends are manifested in higher forums of judiciary due to the Hungarian specialties of judicial system.

In these phenomena the human resource problems of the seventies-eighties are revealed, especially that the criteria of quality had to be ignored in the application, selection and in the

procedures of the appeal forum. In this era not the political pressure but the bad objective and subjective circumstances kept off the talented and suitable candidates from the judicial work excluding a very motivated small number of young people.

A completely different world of problems can we see for when we analyze the situation of the prosecution system. The Attorney General as the Head of the whole prosecution system is responsible for the general legality control of the SGI sector. The contradiction of many changes and the basic continuity of the institutions were mixed with professional and political conflicts.

The follow up of the Stalinist (exactly made by Mr. Wishinski, the General Prosecutor of Stalin) solution regarding the position of prosecution system remained the same in the Post-Stalinist state structure as well. The content of the activity of the organization has basically changed in the seventies-eighties. The legislation in 1989/1990 resulted that the constitutional advantages of the transition created a free prosecution system not integrated into the governmental institutional mechanism. Among the motivations for the conservation of this status, we could list the need of continuity and the fear from restoration. This extraordinary possibility for the prosecutors to remain independent on the Government was also strengthened by a wide political concern regarding the person of the Attorney General in the actual Hungarian situation. Among the many other constitutional problems the position of the prosecution system remained untouched, the precise solution never found.

Later different attempts were made into the introduction of models accepted in democratic states but the actual political interest and the contradictory political relations concerning the stop of the modernization of the constitutional institutions prevented their success. Presently the Hungarian solution became rigid the most in the „imported” models. The other states in the region got the prosecution involved in the government sphere trying to guarantee with different legal devices the fulfillment of the functions of the organization.

But the uncertain situation of responsibility in relation to the importance of the duties transported the truly professional function into the focal point of political will and fights and at the same time the whole hierarchical organization was moved into the direction of politics. This situation caused a lot of damage for the confidence of the rule of law in the society and the hope for recuperation is very minimal disregarding any present or future constellation.

4. Changes in the regulatory framework of the Energy Sector

4.1 Basic legal rules of the sector

1990, 1996, 1997, 2006: Price Laws

The Price Law was basically regulated in 1990. The transition process changed the system of prices in all sectors of Hungarian economy. A price system of a market economy was implementing exchanged the rigid system of the planned economy. The most special part of the price system remained the mechanism of the energy prices. The authorities of the sector (in particular the Hungarian Energy Office, see in further points) had important rights to influence the Government in its decisions to make limits of the energy prices.

1993: Mining Act

In 1993 the "Mining Law" was issued regulating the position of a concessionaire. A Mining Bureau had been established based on the law, and it is responsible to determine conditions and framework of the concession rights and contracts. According to this document, the gaswholesaler must contract for the use of its free capacity with the actual customer. The free capacity is defined as "not yet contracted" capacity. In the gas distribution, this principle is not applied, thus the distribution companies are free to use their own capacities.

1994: Gas Law

The "Gas Law", passed in 1994, contains rules for transmission, distribution and supply of natural gas. Gas exploration and production in Hungary are competitive markets. Due to obvious economic reasons parallel systems for gas transmission, distribution and supply for the same consumer will not be built, thus these "natural monopolies" have to be regulated. According to the Gas Law the gas wholesaler (MOL) has to contract with the gas distributors to cover the gas volume and the capacity demand of the latter. By that means, the wholesaler is responsible for the reliable, continuous and secure supply. This requirement can only be fulfilled if the wholesaler is in a position of the "exclusive" importer and

possesses the necessary pipes and storage facilities. The Gas Law established the Hungarian Energy Office, which is responsible for the detailed regulation of gas (and electricity) distribution.

1994: Electricity Law

In 1994, after the Gas Law the Parliament passed the Electricity Law which regulates the production, transmission and distribution of electric energy. The Law defines the licensing procedure for the establishment of a new power plant (preliminary license, license for erection, license for operation, etc.) and determines the process of approval. The Parliament has to approve all recommendations to build power plants above the capacity of 600 MW; between 200 MW and 600 MW the government will approve the project, and below 200 MW the Minister for Industry and Trade permits the fuel for the power plant. Safety stocks of fuel for all power stations are also defined by the Minister. The Hungarian Energy Office approves the refurbishment, restructuring and change of the fuel of the existing plants.

1995: Environmental Act

The Act on the General Rules of Environmental Protection regulates the protection of the natural heritage and environmental values as parts of the national wealth. The rules protect their preservation and conservation and the improvement of their quality are primary conditions from the aspect of the health and quality of life of the biosphere, and of humans in particular.

1996: Atomic Energy Act

According to this law the peaceful use of atomic energy promotes the living conditions of humanity in numerous fields of industry, agriculture, health care, and scientific research. The regulation protects the interests of the public and the environment against the detrimental effects of ionizing radiation and gives rules on the regulation of the application of atomic energy and the associated licensing process, and on the fundamental tasks and obligations of regulatory authorities and the users of atomic energy in this field.

1998: Law on Biotechnology Activities

The Act make a regulation among other points on the Institutions which are responsible for permitting biotechnology activities, on the one hand an independent biotechnology committee (prepares the decisions and gives opinion; consisting of 17 representatives of the competent ministries, of the Hungarian Academy of Sciences, of the National Committee on Technological Development and of the non-governmental organizations), on the other hand the biotechnology authorities under the control of the competent ministries. There are several authorities according to the industries where application of GMOs are intended.

2001: Electricity Law

The Act was created in order to provide consumers with a secure, supply of low-cost electricity, to develop an objective, transparent and non-discriminatory regulatory regime, to promote the establishment of a competitive market in electricity, to create regulated access to electricity networks, and to align the applicable regulations with the relevant legislation of the European Communities, with due consideration of the aspects of energy efficiency, energy conservation and environmental protection requirements.

2003: Gas Law

This Act is created on natural gas supply in order to ensure a secure, good-quality natural gas supply for the customers, to have transparent, non-discriminatory regulations, to achieve a competitive market in natural gas, in the interest of approximating laws to the legislation of the European Union, ensure harmonization between the natural gas needs and the natural gas sources that may be taken into account, taking into consideration the requirements of energy efficiency, consumer protection and environmental protection.

The activity subject to this act, the supply of the customers with natural gas should be done on an appropriate level, according to the requirements of protecting life and health, with due regard to the nature and the environment, to the protection of the interests of the customers, asserting the interests of property protection, operational safety and energy efficiency, as well as in compliance with the requirements of the technical safety and the quality insurance regulations.

4.2 Hungarian National Authorities in Energy Sector

4.2.1 The Hungarian Energy Office

The official tasks of the Hungarian Energy Office are the following:

- a) issues, modifies – in cases specified by law – or withdraws the licences required for pursuing activities subject to licence,
- b) approves the Operational and Commercial Code worked out by the obligee of the activities subject to licence, the business conduct rules and their modifications, as well as supervises compliance with the provisions of these regulations, and may impose a fine specified in separate regulations in case of the breach of the regulations,
- c) performs data collection and data supply tasks specified in separate regulations,
- d) determines the order and the rate of the restriction of gas utilization of the individual customers,
- e) prepares the rules for fixing the administrative prices and fees applied in the natural gas supply, the administrative prices and fees, as well as the application conditions of the prices and fees, and the rules of calculation of the connection fees to be fixed on the basis of § 25, as well as supervises compliance with the prescriptions relevant to the administrative prices and fees,
- f) examines and controls the financial and economical conditions of establishing a natural gas system involving the issue of a licence and the modification of the licence,
- g) approves the transformation of the licensee, as well as the acquiring of influence in the licensees, respectively the modification in the value of the subscribed capital,
- h) controls compliance with the prescriptions included in the regulations and in the licence referred to its competence, and imposes a fine in case of their breach,
- i) has the right to inspect the documents associated with the activities subject to licence, even if they include business secrets,

- j) determines the scope of the data of management which have to be made public by the licensee,
- k) has the right to make copies of, or to make excerpts from the documents relevant to the activities specified in the licence, to ask occasional and regular information from the licensee – in a way specified by the Office – for performing its tasks. It is obliged to handle the obtained information confidentially, except if disclosure of the information and the data is required by law,
- l) may suspend for three days the conclusion of contracts on the organized market of natural gas in the case safe and transparent trade cannot be ensured due to an unfavourable course of market conditions,
- m) asserts the principle of least cost in relation with the products and services of administrative price and charge under the effect of the present Act, as well as in relation with the approval of the building of a direct pipeline,
- n) takes measures to publish licences and the decisions of public interest,
- o) may order an immediate implementation of its decision in cases and with conditions specified in the relevant regulations,
- p) controls the utilization of the connection charge paid by the customer for connecting to transmission and distribution systems,
- q) performs the tasks associated with system supervision, specified in Section (1) of § 17,
- r) supervises the access to transmission and distribution pipelines and natural gas storage facilities – specified in separate regulations,
- s) determines in a decision, for each and every licensee, the minimum quality requirements and the expected level of the activity of the licensee,
- t) controls the fulfillment of the unbundling of the activities according to the prescription of the relevant regulation,
- u) makes a decision in disputes arising between the licensees, referred to its competence,
- v) investigates the reasonable cost of the production of natural gas fields put into operation before 1 January, 1998.

The Office covers its operation costs from its own incomes. The licensees have to pay a supervision fee to the Office for its supervising activity, the rate of this fee is 0.05% of the net income of the previous business year of the licensee. For the procedure of the Office an administration-service fee is to be paid. The scope of the fees, the rate of the administration-service fee and the other rules relevant to the payment of the fees mentioned in the present section are specified in a decree issued by the Minister of economy and transport in agreement with the Minister of finance.

4.2.2 Hungarian Atomic Energy Authority

Establishing the regulatory duties in connection with the safety of the peaceful application of nuclear energy, particularly with the safety of nuclear materials and facilities under normal and accidental conditions and with nuclear emergencies is a basic task of the Hungarian Atomic Energy Authority. The HAEA is required to harmonize and handle the related public information activities.

The HAEA is an independent regulatory body with appropriate authorization, competence and financial base, whose objective is to ensure that nuclear energy can be applied only if it is subject to regulatory licensing and is under regular supervision in order to ensure adherence to the strict and legally-defined safety requirements. The control and supervision of the safe application of nuclear energy is a government task, which is performed through the HAEA as well as the ministers concerned. In the field of the peaceful application of atomic energy the HAEA is a government-directed, central public administrative organization with its own general scope of authority and its own tasks and regulatory competence. Under the Act on Atomic Energy, the HAEA both regulates certain activities (in particular, the licensing of nuclear facilities) and coordinates the regulation of those activities carried out by the ministries and administrative bodies.

5. Energy Policy and its Legislative Background

5.1 Energy policy

The energy policy aims to reliable, efficient and environment friendly energy supply. The two principal orientations of the energy policy are the implementation of an energy efficiency policy and the restructuring of the energy supply (regression of the coal sector, maintenance of the choices in favour of natural gas and nuclear power). From this last point of view, Hungary testifies to a marked will to diversify its suppliers for hydrocarbons as regards nuclear power (VVER technology).

5.2 Energy Policy Concept

The Energy Policy Concept (1993) identifies the following strategic objectives:

- Security of energy supply through diversification of energy sources.
- Contribution to environmental protection.
- Modernization of the supply-side energy systems.
- Increased demand-side energy efficiency.
- Improvement in public information on energy consumption.
- Attracting foreign capital for the necessary investments.
- Approaches to the EU and other international organizations.

The Energy Policy Concept includes an objective to increase the share of renewable energy sources in the primary energy balance to 5-6%, almost double the current figure. The estimated total utilization of renewables can at present be put at 35 PJ, which corresponds to 3% of total primary energy supply.

For Hungary, the main objective is accession to the European Union; after the general elections of May 1998, the Energy Policy Concept was reoriented to be in line with the European legal system. The National Energy Savings and Energy Efficiency Improvement

Program was established in the framework of the Energy Policy Concept. This program, adopted by the government in 1995, aimed at analyzing the current situation, the savings potential and the ways in which the legal, institutional and financial framework of Hungary's energy efficiency policy could be strengthened.

5.3 Energy Saving Action Plan

Based on this National Program, the Energy Saving Action Plan 2399/1995 (XII.12) (ESAP) was adopted by the government in 1996. ESAP consists of four major sets of measures:

- Penetration of renewables.
- Energy efficiency improvement.
- Energy efficiency labeling.
- Education, information and encouraging technology innovation.

Energy Saving Strategy and Action Plan of October 1999

This Action Program, which started in June 2000 and will continue until 2010 lists all the actions adopted by the government.

5.4 Hungarian Energy Policy Principles

The document entitled "Hungarian Energy Policy Principles and the Business Model of the Energy Sector " (1999) states that an overall energy conservation program must be drawn up to address the issue of co-ordinating individual energy conservation programs already operating in Hungary, to prepare a proposal on earmarking funds for energy conservation in the state budget, to explore further channels of funding from international sources, and to find a way of handling such funds in a more co-ordinated manner.

5.5 Law on Electricity Production, Transportation and Supply

The Law on Electricity Production, Transportation and Supply from 2001 specifies that the purchase of electricity produced from renewable energy sources (geothermal, hydropower, solar, wind, biomass and biogas) in a facility with installed generating capacity of over 100

kW should not be refused by the electricity provider (in case of power plants connected to the main grid) or the regional electricity supplier (in case of power plants connecting to the distribution grid). In case of co-generation, purchase of electricity is compulsory, when the installed generating capacity of the power plant (unit) is under 20 MW.

The Electricity Act which entered into force in January 2003 sets the conditions for support mechanisms for Electricity from Renewable Energy Sources.

Based on the experts' estimation and several studies prepared Hungary has a limited renewable energy (technical) potential, except for biomass and geothermal energy. This potential largely can be tapped, provided deployment mechanisms are in place and sufficient economic incentives are available to entrepreneurs.

The government is mainly interested in the potential benefits that renewable energy may bring, such as:

- ❖ Reducing energy dependency through the exploitation of locally available energy resources;
- ❖ Contributing to energy security through the diversification of the import sources (more than 90% of the energy import of Hungary is originating from Russia);
- ❖ Generating employment

There is large geothermal potential in Hungary where the water temperature gradient is appropriately high to use it for heat applications. However, it has not yet been taken up significantly because of the special technical problems caused by the high salinity of the thermal water in the Hungarian basin.

5.6 The development of Hungarian legislation on Energy Sector related to EU Law

The first phase of deregulation of the Hungarian energy sector got off to a good start in January 2003 when the country's largest consumers were entitled to buy electricity on the free market. Now in its second phase, energy market liberalization presents attractive growth opportunities for private players.

The **July 1997 Opinion** believed that Hungary should be in a position to comply with most of the EU energy legislation in the next few years, provided it continued with its efforts. However, the Opinion also asked for matters such as the adjustment of monopolies including import and export, access to networks, energy pricing, State interventions in the solid fuels and uranium sectors, and the development of energy efficiency and fuel quality standards to be closely followed. The Opinion did not foresee any major difficulties as regards compliance with Euratom provisions, provided nuclear safety standards were tackled appropriately in order to bring the single Hungarian nuclear power plant to the level required. It nevertheless called for surveillance of the long-term solutions to the problems of nuclear waste.

The **November 1998 Report** noted that progress had been made on the adjustment of monopolies, network access and energy pricing. It nevertheless called for close attention to be paid to State intervention in the solid fuels and uranium sectors, and the development of energy efficiency and fuel quality standards.

The **October 1999 Report** emphasized that progress had been achieved, particularly with regard to the adoption of the new energy strategy. Nevertheless, particular efforts were still needed in certain sectors, such as the preparation for the internal energy market (electricity and gas directives) and the adjustment of energy monopolies. No major difficulties were foreseen for compliance with Euratom provisions. Nuclear safety issues had to be carefully monitored, as in the past.

In its **November 2000 Report**, the Commission noted that Hungary had already adopted the main principles of the internal energy market, but these principles still had to be fully implemented, and more progress was required in particular with regard to further liberalization in preparation for the internal energy market (the electricity and gas directives), and energy efficiency.

In its **November 2001 Report**, the Commission considered that limited progress had been achieved in this area since the last regular report. Although Hungary had already adopted an administrative framework for this sector, there was a delay in the preparation of the internal market since the draft law on the liberalization of the market in electricity had not yet been adopted and no progress had been made in the gas sector. Particular attention had to be paid to this aspect of the energy sector. There had been progress on the reform of the

institutions and the government was continuing to promote energy efficiency. Hungary was also making progress in the important field of nuclear safety.

The **October 2002 Report** noted that Hungary had made progress in preparing for accession in the field of energy, although alignment with the *acquis* in both the electricity and gas sectors had been slower than originally envisaged. However, a major positive development was the adoption of the Electricity Act as an important step towards integrating Hungary into the internal EU electricity market.

The **2003 Report** stresses that Hungary respects the main commitments and requirements of the accession negotiations in the energy sector. However, it must continue to liberalize the electricity and gas markets and complete the alignment of its legislation with the *acquis* in these areas.

The Treaty of Accession was signed on 16 April 2003 and **accession took place on 1 May 2004.**

5.7 EU threatens Hungary over Mol law – a case study from 2007

Hungary has been threatened with legal action from Brussels unless it drops a proposed law that would protect **Mol**, its biggest energy company, from a foreign takeover.

The law, which had been expected to be ratified next week, was seen as an attempt to ward off a takeover approach from Austria's **OMV**, which last week proposed a conditional bid at Ft32,000 a share, valuing Mol's equity at €14bn.

Charlie McCreevy, the single market commissioner, wrote to Budapest on Tuesday warning it against adopting a draft law, often referred to as the "lex Mol", that would tighten the regulations on takeovers for companies with strategic importance.

Hungary insists the planned legislation does not contravene EU rules. Janos Koka, Hungary's economy minister, told the Financial Times: "It's not about protection against foreign investors. It's about protection against illegal hostile demands."

McCreevy's letter, seen by the FT, said he had opened an investigation into the move and would also press home a case before the European Court of Justice concerning Hungary's privatization law.

That case was filed in December 2006 because Budapest had failed to make changes to areas that discriminated against foreign investors. Hungary has been seeking to settle the action before a court hearing.

In the letter, addressed to Mr Koka, Mr McCreevy wrote: "If the actions or legislation currently envisaged by your authorities were to put an impediment on economic factors from other member states taking an interest in Mol, then I would be compelled to recommend that the Commission continues the existing proceedings to their conclusion in the court."

The intervention from Brussels is a blow to Mol's hopes of preserving its independence but the OMV approach still faces formidable obstacles.

Mol believes that a takeover would force the sale of at least one of Mol's most attractive assets, its refineries in Hungary and Slovakia, to comply with EU competition rules.

Wolfgang Ruttenstorfer, OMV's chief executive, said in an interview with a Hungarian magazine he expected that the merged company would be forced only to dispose of some petrol stations.

6. Legal regulation of Hungarian Healthcare System

1991: Act on the National Public Health and Medical Officer Service (NPHMOS)

The Service is established as a state agency on the basis of the former public hygiene stations, but tasks are defined according to the concept of modern public health, and include the professional supervision of health care. The Act defines the structure and organs of the NPHMOS.

1992: Act on the Amendment and Complement of Act II of 1975 on Social Insurance

The social insurance contribution is separated into health insurance and pension insurance contributions.

1992: Government Decree on the Family Physician and Paediatric Primary Care Services

The former district doctor system is separated from hospitals and renamed as "family physician service". The decree has given free choice of family physician and family paediatrician. There is a regulation of professional standards including family doctor specialization to be obtained.

1993: Government Decree on the Establishment of the National Pension Insurance Administration and the National Health Insurance Fund Administration

As of July 1993, the Social Insurance Fund Administration is divided into the National Health Insurance Fund Administration and the National Pension Insurance Administration. The decree determines the organizational structure of the National Health Insurance Fund Administration (NHIFA).

1994: Act on the Hungarian Medical Chamber

There is a compulsory membership for all practising physicians. The Medical Chamber is given the right to establish ethical norms and procedures, to negotiate the general rules and

content of contracts between the NHIFA and physicians, and to participate in health policy formulation.

1997: Act on the Health

The Act establishes the National Health Council, introduces the National Health Promotion Programme, to be approved by the Parliament. It determines the services which have to be financed from the national government budget, and establishes the Health Care Professional Training and Continuing Education Council.

2000: Act on Independent Medical Practice

2003: Act on the Various Aspects of Practicing Medicine

6.1 Historical progress in regulation of Hungarian Healthcare System

In Hungary, the Constitution (Act 20 of 1949) declares the right of everybody living in the territory of Hungary “to the highest possible level of physical and mental health.” [Section 70/D Paragraph (1)] In addition, citizens have a right to social security, which involves an entitlement to benefits guaranteeing income for old people, widows, orphans and unemployed who lost their jobs due to reasons other than their own fault, or in the event of ill health and disability [Section 70/E Paragraph (1)]. The state satisfies this obligation through social security and social institutions [Section 70/E Paragraph (2)]. The Constitution sets a task for the Government to define the public system of social and health care, and to arrange for funding for these services [Section 35 Paragraph (1) subparagraph g)].

The above principles were integrated into the Constitution when it was modified on 23 October 1989, representing one of the important stations of the change of the system. Hungarian health services were available for all citizens universally since 1975 as of right, but at the time of the change of régime, the services were made subject to insurance relationship based on contribution payment obligation (‘were put on an insurance basis’), from which large social groups (pensioners, unemployed, etc.) were excluded and there were some groups which were simply left out. The exceptions from contribution payment

obligation were gradually reduced, and since 1996 practically all Hungarian citizens have been insured.

The most important operational principle of the health system is solidarity, which means that the insured do not pay risk proportionate insurance premium but an income proportionate contribution pursuant to the main rule. We generally talk about social insurance because of the contribution payment instead of insurance premium payment, which, in addition to the insurance element, also executes a considerable income redistribution too from those with a higher income towards those with a lower income, from the active towards the inactive (pensioners and young people), from the employed towards the unemployed, etc.

The principal piece of legislation in the health sector is the Health Act setting out the most important framework rules of health care (Act 154 of 1997), which replaced its predecessor, which had been effective for 25 years, but became obsolete (Act 2 of 1972). Its scope covers all health service providers operating and health activities pursued in the territory of Hungary, defines the rights and obligations of patients and health care employees, and the state's responsibility for the health status of the population, the system of health services, the professional requirements of the services, and organizational and management system in the health sector. The Health Act also defines medical research conducted on humans, special procedures involving human reproduction, research with embryos and spermatozoon, basic rules of sterilization, treatment and care of psychiatry patients, organ and tissue transplants, sets out rules relating to corpses, it also deals with blood supply and emergency health care, medical expert activities, natural medicinal factors, spas and climatic therapeutical institutes and treatment facilities.

The Health Act specifies the obligation of health employees to provide services, and it also introduces the concept of health service providers with an obligation to provide services in a particular area, including also the main rules of on-call and on-duty service.

The local governments are mandated to arrange for the provision of primary health care services. Specialist health care, exceeding the tasks of primary care, is an optional task. Pursuant to the provisions of this act, it is a mandatory task of county governments to provide specialist health care above the primary health care level. Local governments can fulfil their obligation to provide these services not only as owners of outpatient and inpatient specialist institutions, but also in the framework of contracts concluded with the owners of such institutions.

In accordance with the effective legislation, the health sector is currently a diverse, multi-actor system, containing local governments, the state, which is present both as a regulator and an owner, a licensing and supervisory authority operated by the state, the National Public Health and Medical Officer's Service (NPHMOS) and the financing agency, National Health Insurance Fund.

The financing system operates on the basis of the principle that current (operating) expenses are covered from the National Health Insurance Fund, while capital expenditure (refurbishment, development, etc.) is covered by the owners (local governments and the state through various public administration agencies, e.g. ministries). This two-channel or dual financing system stops the involvement of enterprises into health services, because enterprises can recover their costs only through to the sale of services.

The majority of health expenses are covered from the state budget.

A new stage in the development of the health sector was the introduction of the Institutional Act (Act 43 of 2003) for the purpose of introducing new types of operational forms, already existing in other fields of the economy (corporate forms) in order to modernize the health care system. The Institutional Act introduced the concept of public health services (health service partly or fully financed by the budget) established rules for the organization of public health services, and determined the conditions under which health service providers can provide public health services, and also defined responsibility for the organization for public health services. The act also provides that local governments may satisfy their obligation to provide health services not only by operating their own service institution, but also through contracts (so-called health service contract), and defined the rules of such contracts too.

The work assisting the enforcement of rights of users is becoming increasingly important among health, social and child protection services. The Act 154 of 1997 on health care regulates the rights and obligations of patients widely. It clearly determines the rights relating to health services, human dignity, maintaining contact, information, self-determination, study of documentation, rejection of services, and physician's confidentiality. The act sets an obligation for the service providers to inform patients about patient rights. It also identifies the tasks of operating a patients' rights advocacy system in order to enhance awareness, enforcement and protection of rights.

7. Management of the Health Care System

7.1 Ministry of Health, Social and Family Affairs

In Hungary the social and welfare systems are managed and supervised by the Ministry of Health, Social and Family Affairs, with the exception of unemployment benefits (unemployment benefit, pre-retirement unemployment support). The activities of the Minister of Health, Social and Family Affairs are focussed on the fulfilment of the health policy, social policy and family policy tasks of the Government. In this work the Minister manages, coordinates and organises the health and social care system, the scientific and research activities in the sector, health and pension policy tasks relating to social insurance (in cooperation with the Minister of Finance) and also manages the National Health Insurance Fund and the National Pension Insurance General Directorate, as well as performs all tasks related to them, established by law. The Minister sets out the public hygiene and public health tasks, and is in charge of the public health program aiming at the prevention of diseases, and all other tasks relating to health promotion, he controls the National Public Health and Medical Officer's Service, the agencies of health care with national competence, national institutes, health services provided in higher education institutions, health improvement research activities, and the Office for Authorization and Administrative Procedures of the Ministry. The Minister also operates the Social Policy Council, the National Health Council, the National Disability Council, and he exercises regulatory supervision over the Hungarian Medical Association and Hungarian Chamber of Pharmacists. In order to fulfill his social policy and family policy tasks, the Minister defines tasks related to social care, child protection, and ensuring equal opportunities for disabled individuals, develops the system of social institutional care and services and identifies development trends for them, and also elaborates a system of family benefits and child raising support.

7.2 National Public Health and Medical Officer's Service

The National Public Health and Medical Officer's Service, operating as a public administration agency, performs mostly state tasks and implements a unified health administration system, with the following responsibilities: public health and epidemiology, regulatory licensing; sector neutral professional supervision; organization, monitoring and control of prevention and health improvement (health protection, health education, health promotion). The

NPHMOS has enforcement authority in the entire territory of the country concerning all natural and legal entities, as well as companies without legal entity (with the exception of armed forces and law enforcement agencies, but not the penal institutions, however, it has the right to perform sanitary inspections in these institutions, too).

7.3 National Health Council

The National Health Council is an organization responsible for maintaining the continuity of long-term health policy and enforcing the rights of users of health and social services. The Council is a body involved in the development of the Government's health policy and decision making relating to the policy, by making initiatives and proposals, reviewing documents and giving advice, and analyzing and evaluating the process of implementation of decisions. It has a very important role in identifying health improvement priorities, in which a professional consensus must be achieved.

7.4 Medical Research Council

The Medical Research Council (by the Hungarian abbreviation: ETT) is a proposal making reviewing, consultation and decision preparation body of the Minister. Upon the initiative of the Minister or members of the Council it takes a position on health policy, medical, pharmaceutical, scientific and any other health issues; it coordinates research activities falling under the responsibility of the Government, more specifically the Ministry, and makes proposals for the priorities of Hungarian and international research, assisting the transposition of research results into Hungarian health care practice. The Council also makes proposals for the design, implementation, documentation and control of clinical trials and biomedical research on human beings ensuring that they satisfy international ethical and scientific quality requirements, and monitors the implementation of such activities; the Council issues an opinion on scientifically founded research activities, and reviews and assesses the establishment of new regional research ethical committees, coordinating and promoting their standard operation.

7.5 Professional associations ('Chambers of healthcare professionals')

The two professional groups of the health care system, physicians and dental surgeons (hereinafter: physicians), and pharmacists, have had their professional self-government based on mandatory membership since 1994. The responsibilities of the Hungarian Chamber

of Physicians and Hungarian Chamber of Pharmacists include individual management of professional matters through directly elected bodies and officials, within the framework defined by legislation, definition and representation of professional ethical, economic and social interests, and contribution of the formulation of health policy, and improvement of the provision of health and pharmaceutical care of the population in accordance with their importance in society.

Chambers are public bodies with public responsibilities, for which they are eligible for state subsidy, established by the act on the budget. Membership in the chamber is mandatory. In Hungary only members of the chamber may be engaged in activities requiring a physician's or pharmacist's degree.

On 4 March 2004 the founding general assembly of delegates officially created the chamber of nurses and allied health personnel, which is the professional interest representation and self-government body of the nursing and allied health personnel. In Hungary only those individuals may be engaged in the pursuit of activities requiring special qualifications in nursing and allied health in preventive-curative services who are members of the Hungarian Chamber of Nurses and Allied Health Personnel.

7.6 Medical specialty colleges

The medical specialty colleges are the highest level of proposal making and reviewing bodies of the specific medical disciplines, operated by the Hungarian Medical Association and Chambers of Pharmacists, but their operating expenses are covered by the Ministry. The Minister is assisted by 37 medical and 3 pharmaceutical specialty colleges. Apart from the medical and pharmaceutical colleges two groups of nursing and allied health personnel, i.e. nurses and health visitors, have their own specialty colleges.

The specialty colleges elaborate, regularly review and publish professional recommendations, guidelines and methodological letters in their special field, and form a position on the technical requirements and quality certification, while medical sections can also take a standpoint on minimum professional requirements of health service providers. The colleges have a very wide competence of expressing their opinion.

8. Reforms in the previous government cycles

A distinct promise of the elections in 2002, as well as of the government program concerned a commitment to bring about a “welfare turn”, including the “Decade of Health” program. The two main elements of the program are the expanded continuation of the public health program and the program of consolidation– modernization of the healthcare system. The series of measures started with a stabilization program containing 50% wage increase, which was also intended to settle hospital debts. The Parliament resolution on the public health program was carried by an almost 100% parliamentary majority. New acts regulate the operation of health institutions and health workers’ conditions of work. Although the amendments allow hospitals to operate for profit, but it prohibits the sale of hospitals: for 5 years investors can only reach the maximum 50% stake with capital increase, but not with buyout. The individual conditions of work in the health sector and issues of overtime work are regulated in a separate act.

A new phase of the reform is based on the extension of managed health care experiments and regional care organization and planning. The objective is to improve the efficiency of the system, and to bring fund allocation decisions closer to the patient. The new system involves decentralization of certain social insurance tasks and brings the values and interests of health policy in balance with the extension of costs sensitivity. Regional Health Councils shall be formed, which prepare regional health development plans. The reform of emergency health services is an important element of the regional service organization based on the principle of progressive care, and is based on a unified fixed entry point, and relies on emergency care departments.

The health reform aims at creating a healthcare delivery system that ensures more equitable access than at present, operates in an up-to-date structure, is of controllable quality acceptable for patients and is able to ensure competitive and sustainable development for this country.

The basic principle of the model is to have patient care based on funds allocated from the health insurance according to the number of population, and adjusted to needs. Care managers have direct interests in “purchasing” the necessary and adequate quality health services for patients at the right place and time. It is the interest of both the patient and the social insurance scheme.

Managed patient care may significantly increase the quality of the service delivery system, improve efficiency of the services and may promote the development of a system adjusted to population needs and requirements. The objective of the transformation of the financing system is to allocate the funds to wherever they are actually needed, and are used most effectively.

As a result of the health reform citizens obtain adequate level health services in an early stage of their diseases, which improves the chance of their recovery. The standards of care and the conditions of service delivery may improve and, parallel with that, the number of unnecessary parallel examinations may decrease. Targeted drug treatment may reduce drug consumption. As a result of the reform, efficiency and transparency of public expenditure on health care will improve and the available public funds may lead to the greatest possible health gains on the level of society as a whole, in other words, the population’s health status may improve.

From 2004, the regulation of voluntary supplementary health funds has changed. Health savings accounts were introduced for the purpose of making private health expenditures transparent, for encouraging the licit purchasing of services, and invigorating competition between service providers. Preparations have been made to introduce long-term care insurance (accounts).

9. The 2007-2009 Reform of the Hungarian Health Insurance System

Today, for the Hungarian health care system as a whole, there are three outstanding issues waiting for urgent solutions. First – and in our view foremost –, the **insurance system** needs to be reformed. This paper is entirely devoted to this subject matter. The other two, namely the regulation of the **pharmaceutical markets** and the restructuring of hospital network will be touched upon only briefly in the next section.

9.1 New laws and measures adopted in 2006

With unprecedented speed in the history of Hungarian reforms, five major health acts were passed during the Autumn 2006 Session of Parliament. In spite of hectic political debates and claims questioning the constitutionality of the acts, all of them were signed by the President; hence they all entered into force.

As it was to be expected, the act pertaining to the re-regulation of the **drug market** provoked opposition from all corners of the industry. The aim of this law was manifold:

- Strengthening predictability and transparency, reducing the role of *ad hoc* negotiations;
- Re-adjusting costs and benefits to relieve the pressure on the central budget;
- Liberalizing the retail market and strengthen competition.

As from 2007, pharmaceutical producers and importers are required to offer price cuts in contracts with the Health Insurance Fund. In case of over-selling – i.e. if sales surpass the figure determined by the Fund's budget, producers will have to share the costs of this overrun. Pharma companies and the producers of medical appliances are now entitled to offer new (lower) prices for subsidized prescription drugs and appliances any time in the year, but this offer should be made public through the internet. The promotion of drugs will become more expensive, because a HUF 5mn license fee will be required for sales people. Physicians, GPs in particular, will be counter-incentivized against the prescription of expensive medicaments.

Prescriptions will be verified in each and every Hungarian pharmacy via on-line connection to a central data base. New measures are introduced to support generics. A free, downloadable software will help doctors in this. There will be no free prescription drugs anymore: patients will have to pay a minimum HUF 300/box, even if the drug is 100% subsidized. The market of pharmacies will be liberated in two important ways. First, the existing protective rules which prevent the opening of new retail outlets are abolished in two steps. Second, nonprescription drugs are allowed to be sold outside of pharmacies. The list of 280 OTC meds includes pain killers, anti-fungal creams, medical

disinfectants, anti-inflammation drugs, antihistamines, antacids, vitamins, some salves, eye drops and nasal sprays. The list will be revised regularly and updated. Stores that wish to sell OTC drugs must, however, get a certification from the National Public Health Service (ÁNTSz).

The act aimed to restructure the existing **hospital network** of almost 200 independent units was also a difficult issue. In structural terms, the problem is that Hungarian hospitals are either too small, or too big. From a financing perspective, the problem is that in 2007 the hospital sector has to swallow a simultaneous 10% rise in operating costs and a 10% reduction in income expected from the state-run insurance fund. Without restructuring *all* hospitals would go bankrupt. The target figures set by the act foresee drastic changes: 44 thousand acute beds instead of the present 60 thousand (*minus* 26%) and 27 thousand chronic beds instead of 20 thousand (*plus* 36%). The law introduces new definitions for different hospitals, in line with the size of their catching areas.¹ The hospitals have different types of owners (municipalities, medical universities, government ministries and churches); hence there was a need for a complicated, multi-round negotiating procedure. The act empowers the Minister of Health to determine the size of each and every hospital (detailed down to the level of departments!), while the seven Regional Health Councils are empowered to reallocate these numbers among the hospitals of the region.

9.2 Health Insurance Authority

The creation of a **Health Insurance Authority** is a pre-requisite of the intended health insurance reform because the licenses of the health insurance companies will be issued by this body. The Authority will function under the Ministry of Health, but the law guarantees a large degree of autonomy to its management. The Authority will be charged – *inter alia* -with the task to monitor the contracts between providers and insurers, to monitor price developments, and the independent quality assessment of hospitals using quality indicators.

The public will be informed about the rating results through the internet. Patients will have the right to present complaints with the Authority, if they don't accept the price subsidy decision of their insurance company. If patients complain against the unfairly treatment in a given hospital, the Authority will have the right to refer them to another hospital..

The modification of the health insurance act and some others – through the adoption of a so called package-law - will alter the entire system in many important ways. Hospitals and other larger medical institutions will be required to apply business and operation methods which are well-established in other parts of the economy. E.g., in case of larger

development 39 listed hospitals are identified within 50-55 km distance from each and every Hungarian locality.

6 projects, business plans are required, hospitals' books will be audited by external auditors, the simultaneous curative and administrative work of hospital directors will not be allowed, etc.

9.3 Co-payments

Co-payments was introduced from 15 February 2007 in the amount of HUF 300 per visit, or per hospital day. Though the fee is symbolic (\approx € 1.2), and there were many exceptions (e.g. children under 18), everybody understands that the amount will rise and the limitations will shrink, as time goes by. A regulation of **waiting lists** entered into force the first time in Hungary. There will be two types of lists, a central one (for transplantations) and another one maintained by all the hospitals individually. The Health Insurance Authority will monitor these lists and will have the power to intervene, if the complaint of a patient is justified. The **basic benefit package** – only loosely defined until now – will have much sharper contours. Injuries from certain type of dangerous sports (e.g. bungee jumping) will not be covered.

Medical examination for the validation of driving and hunter license will also fall into this category, etc. In many until now unregulated cases, the deviations from the medically justified procedures will not be fully covered. Another important change is the limitation of free hospital choice through the modification of the referral system. If patients go to hospitals without referral, the full costs of treatment will have to be paid. Otherwise, the GP's freedom is going to be limited to three local hospitals. Although it has no significant financing implication, a new regulation was introduced for cases, when women wish to undergo a sterilization operation.

9.4 Referendum against co-payment

In 2009 civil organizations started a movement against the co-payment in the health care system and with the help of a group of political parties they could be successful to initiate a referendum.

After a long political fight and discussion full of emotions the Constitutional Court decided that the referendum can be a legal initiative. The large majority of the citizens voted against the co-payment. The Parliament had to cancel this institution from Hungarian health care system.