

# **OPINION ON THE REGULATORY CONCEPT OF THE CONSTITUTION OF THE HUNGARIAN REPUBLIC**

by  
**Mr Gérard REUTER**  
(Luxembourg)

## **STATE FINANCES**

### **1. Introduction**

State finances nowadays play a key role in the activities of the governments of modern States. The volume of its financial resources often makes the State one of the principal economic players. Its action (major works programmes, intervention in the areas of social policy, national defence etc) has a major impact on the economic situation of a country.

It is therefore essential to ensure the sound management of public finances by establishing clear and precise rules. These rules must be fairly rigidly applied to ensure that they are observed and that they direct the medium to long-term management of public funds at national level.

For this reason it is important to lay down the principal rules governing the management of public funds in the basic law of the State.

### **2. The State's financial resources**

Where financial resources are concerned, the constitution must stipulate that taxes, duties and loans can only be raised on the basis of legislation, that is to say with the authorisation of the legislative authority. This stipulation is essential to enable Parliament to exercise proper political control over government action.

Likewise, it is desirable to lay down in the constitution the legal basis for taxes and duties levied by authorities below central government level and to stipulate that bodies subordinate to these bodies may be empowered to levy such taxes.

It is advisable to leave the definition of classes of persons subject to taxation to ordinary legislation, and for the constitution merely to state the principle of the obligation to pay taxes.

The details set out in the section on "the revenues of State finances", which adopts the basic principles of most modern constitutions, call for no special comment except to insist on the importance of specifying that apart from taxes, duties and other financial resources, State loans can only be raised with the authorisation of the legislative authority.

### **3. The administration of public funds**

The basic principles underlying the management of all public funds are transparency and parliamentary control. It is therefore essential that all expenditure on behalf of the State should receive prior authorisation from Parliament. This is ensured through the annual vote on the budget. The basic principles governing the establishment and implementation of the budget (annual nature, universality, unity, specificity and non-allocation of resources) must be enshrined in the constitution. It is true that in most States there is a trend towards debudgetisation, which means that not all State expenditure is entered in the budget. The arguments usually put forward to justify this practice are the volume and complexity of the State's transactions. However, debudgetisation cannot be justified by its undoubted convenience. It can enable the government to spend ever larger amounts of money without any genuine parliamentary control. It is therefore advisable for the constitution to state clearly that, in conformity with the principle of budgetary universality, all State revenue and expenditure should be included in the budget. Moreover, it would also be advisable to include the principle of provisional twelfths, described in the document, in the constitution. It is also recommended that the constitution should stipulate that legislation is required for transfers of appropriations between different budgetary lines, as Parliament would otherwise be unable to control the implementation of the budget once it had been voted.

The State must have recourse to private sector undertakings to ensure the functioning of its services. When public funds are involved, State procurement of goods and services must take place under conditions of transparency and free competition and on the best market terms. It is recommended that the constitution should stipulate that special conditions (public tender), to be determined by the legislature, should apply to public contracts entered into by the State or local authorities (to be specified). Most modern constitutions provide that the State's accounts must be approved by Parliament.

## **THE ECONOMIC AND SOCIAL COUNCIL**

This institution exists in most modern States. The role of the Economic and Social Council is essentially consultative. The opinion of the Economic and Social Council should be required whenever the government intends to adopt legislation involving general measures affecting either the national economy as a whole or areas of concern to several occupational groups. The composition of the Economic and Social Council should be such as to give its opinion moral authority, without its being binding on Parliament and thus liable to block legislative action. The possibility of allowing professional institutes composed of representatives of the principal economic sectors (trade, crafts, manual workers, private and public employees, agriculture) to operate alongside the Economic and Social Council should not be excluded. Professional institutes can guide legislative action by delivering opinions which, although they are not binding, can serve to highlight the relevant corporative interests whenever draft legislation is being prepared. In this way the Economic and Social Council would have a more general role covering several sectors of the economy and the field of activity of several occupational groups. At the same time, the consultative role of professional institutes would be confined to the specific interests of their own areas.

The composition and organisation of the Economic and Social Council should be regulated by law. The modus operandi of the Council might even be determined by rules of procedure approved by the plenary assembly of the Council.

## **THE STATE AUDIT OFFICE**

The status, composition and tasks of the State Audit Office, as set out in the document under discussion, are comparable to those enjoyed by

similar control bodies in other modern democracies. The primary task of the Office is to ensure the correct execution of the State budget. The Office's annual report enables Parliament to exercise political control over the government. It is important to stress the importance of the consultative function of the State Audit Office. The Office should be able to provide Parliament with opinions, on both the execution and the preparation of the budget, whenever the latter requires them. It would also be advisable to stipulate in the Constitution that the general accounts of the State must be accompanied by the opinion of the State Audit Office. The independence of the Office appears to be adequately guaranteed by the procedure for appointing members and by the fact that the Office has its own budget for operating expenses.

### **GUARANTEES OF PUBLIC PROPERTY**

Public property transfers must be attended by a series of guarantees.

Moreover, the State property to which these guarantees should apply must be defined. The guarantees should primarily apply to the transfer of immovable property allocated for direct public use (roads, bridges, rivers). As long as these properties are allocated for direct public use, they must remain inalienable. The transfer of these properties out of the public domain must not take place except through legislation.

The disposal of other movable and immovable property belonging to the State but not part of the public domain (State forests, mining sites, furniture allocated to the public service) should be governed by ordinary law. An exception to this rule should be made for the acquisition and disposal of property of a certain value which should only be authorised by special legislation.

It would therefore be advisable for the Constitution to stipulate that the acquisition and disposal of immovable property belonging to the State and major financial commitments by the State require prior legislative authorisation.

### **THE HUNGARIAN NATIONAL BANK**

Since the Hungarian National Bank functions as a central bank it plays an important role on the economic and financial role. Its independence must therefore be guaranteed both as regards the recruitment of its directors and the functioning of its agencies.

### **PUBLIC COMPANIES**

The decision to define the status and nature of public companies in the Constitution is justified. These bodies play an important role in the constitutional organisation of the State. The principal guidelines for their operations and activities should therefore be laid down in the basic law. The provisions governing the detailed operation of individual public companies should be determined by ordinary legislation.

Finally, responsibility for the financial supervision of public companies should be defined in the constitution. One possibility would be to assign this task to the State Audit Office. Another possibility would be to entrust it to an independent private sector audit firm whose report would be subject to parliamentary approval.