

## PRESENTATION OF THE FUNDAMENTAL LAW OF HUNGARY

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**Abstract:** *My aim in this article is to present the Hungarian Fundamental Law (constitution) to foreigners who have heard little or nothing about it. My aim is to provide a detailed and up-to-date insight and to promote a better understanding and knowledge of this nation. I have published a similar article before but the Fundamental Law has undergone several amendments since then. I will present the content and structure of the Fundamental Law and its amendments so far. The Fundamental Law consists of six parts; first, I will present the National Avowal, which is a declaration of the values professed by the state. Then I am going to present the Foundation, which contains the most basic provisions, such as the form of government or the fundamental constitutional principles. This is followed by a declaration of human rights in the Freedom and Responsibility part. The extensive fourth part, entitled “The State”, gives the basics of the functioning of each state body. Finally, the Special Legal Order part covers exceptional situations that differ from operations in normal times.*

**Keywords:** *fundamental law, constitution, national avowal, rule of law, amendments, human rights*

### 1. THE FUNDAMENTAL LAW OF HUNGARY- INTRODUCTORY THOUGHTS

My aim in this article is to present the Hungarian constitution to those who are not familiar with it and to give an objective view of it from a constitutional law perspective. The constitution of Hungary is the Fundamental Law, which was promulgated on 25 April 2011 and became effective on 1 January 2012. After the political changes in 1989–1990, this constitution was not yet in force but Act XX of 1949, which bore the numbering of the Constitution of the People’s Republic; however, it was a completely new constitution regarding its content after the political changes in 1989–1990. The Fundamental Law is the first constitution without numbering, and the legislator was clearly driven by a desire to innovate the content and perhaps to make it more accessible to citizens. The Fundamental Law also introduced many innovations in terms of content and structure. It is a constitution with a conservative ethos, guaranteeing the fullness of human rights, committing to the rule of law, democracy and the republican form of government, and adhering to fundamental democratic principles such as the separation of powers and sovereignty. It is the constitution of a state that measures itself by strict standards, ensures a high degree of control and removability of the government, recognises the existence of rights protection bodies and mechanisms such as the Ombudsman and the Constitutional Court, and ensures a broad control mechanism over the functioning of the executive branch of government. My starting hypothesis is that Hungary has come a very long way since the period following the political changes in 1989–1990 in dismantling the former system and fully establishing the rule of law. Hungary became a republic, with a parliamentary republic as its form of government. This form of government, which is common in Germany, means a strong prime

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ministerial power, but we have also adopted the German model of the constructive vote of no confidence as a means of overthrowing the government.<sup>1</sup> The Government can be overthrown by the National Assembly, as has already happened in the period that followed the political changes in 1989–1990. The National Assembly also has broad powers, as reflected in the form of government, which is parliamentary rather than presidential. However, there are public law constraints on the power of the National Assembly, which legitimately counterbalance the legislative body's predominant power.<sup>2</sup> One such constraint is the Constitutional Court. After the political changes in 1989–1990, the Constitutional Court was set up (from 1 January 1990), just like the institution of the Ombudsman (in the summer of 1995). Both bodies protect the rights of citizens, but while the Ombudsman, as the control body of the public administration, protects the rights of citizens, the Constitutional Court ensures the conformity of laws with the Fundamental Law through constitutional review. After the political changes in 1989–1990, Western-style local government returned, replacing the former council system. The institution of the President of the Republic was restored, as there was a collective head of state under socialism, in the form of the Presidential Council of the People's Republic. The Hungarian head of state is not part of the executive, unlike the French president, but he or she is more than symbolic.<sup>3</sup>

I also think that human rights unfolded in their entirety after the political changes in 1989–1990, and the legislator gradually created the necessary laws. In fact, the number of acts of Parliament has been steadily increasing since the political changes in 1989–1990, as previously the legislation had been dominated by decrees and law decrees. This guarantees, for instance, the right to life and that cannot be restricted in any case; the death penalty was abolished by the Constitutional Court in its Decision No 23/1990. (X. 31.).<sup>4</sup> Freedom of religion, freedom of the press, freedom of expression, freedom of association and freedom of assembly, to name just a few of the most important freedoms, are guaranteed by law. The Constitutional Court has gradually given substance not only to these rights but has also interpreted the workings of state bodies, in effect laying the foundations of democracy under the rule of law. It is said that its decisions have created an invisible constitution, because it filled the constitution with content from the outside. On the basis of this, I further claim that the rule of law is effective not only in form but also in substance. The Constitutional Court understood the concept of the rule of law to mean that “not only shall the laws and the functioning of state bodies be strictly consistent with the Constitution, but the conceptual culture and values of the Constitution should

<sup>1</sup> For Hungarian political life and the constitutional situation after the political changes in 1989–1990, see KÖRÖSÉNYI, A. (ed.). *A magyar politikai rendszer - negyedszázad után. (The Hungarian political system - after a quarter of a century.)* Budapest: OSIRIS – MTA Társadalomtudományi Kutatóközpont Politikatudományi Intézet, 2015.

<sup>2</sup> See KUKORELLI, I. A parlament hatáskörének közjogi korlátai. In: Márta Dezső – István Kukorelli. *Az Országgyűlés*. Budapest: Osiris kiadó, 2007, pp. 341–343. In: István Kukorelli (ed.). *Alkotmánytan*.

<sup>3</sup> See NÁBELEK, F., TÖRÖK, G. *Az államfő. 8. fejezet*. pp. 183–203. In: András Körösenyi (ed.). *A magyar politikai rendszer - negyedszázad után*. Budapest: OSIRIS – MTA Társadalomtudományi Kutatóközpont Politikatudományi Intézet, 2015.

<sup>4</sup> In: *public.mkab.hu* [online]. 31. 10. 1990 [2023-07-13]. Available at: <<http://public.mkab.hu/dev/dontesek.nsf/0/179297164CE96B8DC1258382003C36D7?OpenDocument&english>>.

permeate society as a whole. It is the rule of law that makes the Constitution a reality. Making the rule of law a reality is a process.”<sup>5</sup>

At the same time, a market economy<sup>6</sup> was established in Hungary, which brought with it the equality of forms of ownership. In the past, the regime favoured social property, which meant that state and cooperative property received special protection, e.g. the Criminal Code also gave them increased protection. Currently, forms of ownership are equal and equally protected, business and competition are free, and freedom of contract prevails. Of course, there is also international control over the state, as Hungary is a member of many international organisations, such as the United Nations, the European Union and NATO.

There have been 10 amendments to the Fundamental Law so far, which are described in detail below. These ten amendments may seem like a lot in such a short period of time but some world events have required the legislator to reflect on them at the level of the Fundamental Law. In Hungary, the Fundamental Law is adopted and amended by the National Assembly by a 2/3 vote of all members of Parliament, or “the grand two-thirds” as we put it simply. This form of constitution-making is widespread and known in the world, there is no separate constituent assembly that makes the constitution, the National Assembly is both a legislature and a constitution-making power. The Fundamental Law cannot be amended by referendum. “A proposal for the adoption of a fundamental law or for the amendment of the Fundamental Law may be submitted by the President of the Republic, the Government, any parliamentary committee or any Member of Parliament. The Speaker of the National Assembly shall sign the adopted Fundamental Law or the adopted amendment of the Fundamental Law within five days and shall send it to the President of the Republic. The President of the Republic shall sign the Fundamental Law or the amendment of the Fundamental Law sent to him or her within five days of receipt and shall order its promulgation in the official gazette. If the President of the Republic finds that any procedural requirement laid down in the Fundamental Law with respect to adoption of the Fundamental Law or the amendment of the Fundamental Law has not been met, he or she shall request the Constitutional Court to examine the issue. Should the examination by the Constitutional Court not establish the violation of such requirements, the President of the Republic shall immediately sign the Fundamental Law or the amendment of the Fundamental Law, and shall order its promulgation in the official gazette.”<sup>7</sup> Let us now look at the amendments to the Fundamental Law so far.

## 2. AMENDMENTS TO THE FUNDAMENTAL LAW SO FAR

The Fundamental Law has had ten amendments so far, which is a lot in such a short time and, at the time of writing this article (2022), the 11<sup>th</sup> amendment is in progress. Let's look at them in their order. The first amendment of the Fundamental Law (2012) affected

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<sup>5</sup> Decision No 11/1992. (III. 5.) of the Constitutional Court, in Decisions of the Constitutional Court, 1992, Part III p. 80.

<sup>6</sup> For the political changes in 1989–1990, see RÁCZ, A. *Alkotmányjogi alapok*. Budapest: Államigazgatási Főiskola, Harmadik átdolgozott kiadás, Felelős kiadó. BAKA A. főigazgató. 1998. p. 26.

<sup>7</sup> Alaptörvény, S) cikk (1)(3).

the remuneration of former presidents of the Republic and incorporated the transitional provisions of the Fundamental Law into the Fundamental Law. The transitional provisions contained mainly political statements, “these provisions were adopted by the National Assembly in order to give effect to the Fundamental Law.”<sup>8</sup>

The second amendment (2012) would have introduced the institution of electoral registration, but this was annulled by the Constitutional Court in its Decision No 45/2012. (XII. 29.).

The third amendment (2012) stated that the conservation of natural resources is the duty of everyone, and that agricultural land should be regulated by a cardinal law, i.e. it made the Land Act a cardinal one.

The fourth amendment to the Fundamental Law (2013) defined marriage as the relationship between a man and a woman and stated that the family is based on marriage and the parent-child relationship. This amendment is also the most extensive, incorporating the crimes of the communist dictatorship into the Fundamental Law. Some say they do not belong here, while others agree. Among the sins of the former regime, it mentions, among others, the maintenance of a repressive system, the abolition of a multi-party system, and the establishment of a legal order based on illegitimacy. The fourth amendment also concerned the Constitutional Court in the context of some of its specific procedures. It has been enshrined in the Fundamental Law that churches can be recognised by the National Assembly through a cardinal act. It also affected the courts by allowing the President of the National Office for the Judiciary to designate a court to hear a case “in order to ensure a balanced caseload in the courts”.

The fifth amendment to the Fundamental Law (2013) concerned the religious communities and the administration of the courts and merged the National Bank of Hungary and the State Financial Supervisory Authority. In other words, it has put the supervision of the financial intermediation system in the hands of the MNB, Hungary’s central bank. The aforementioned transfer of cases between courts was abolished by this amendment, which also stipulated that, with regard to churches, “persons of the same faith may establish a religious community for the purpose of practising their religion in an organisational form defined by a cardinal act.” The state cooperates with certain religious communities and these are considered established churches. In other words, there is a difference in status between religious communities.<sup>9</sup>

The sixth amendment to the Fundamental Law (2016) introduced the concept of a state of terrorist threat, in response to changes in the world. The Special Legal Order is the sixth part of the Fundamental Law and currently covers six cases, but the legislator will reduce their number to three from November. A state of terrorist threat may be declared in the event of a significant and imminent threat of terrorist attack or an actual terrorist attack.

According to the seventh amendment to the Fundamental Law (2018), we respect the Holy Crown, which embodies the constitutional continuity of Hungary. It added to the EU

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<sup>8</sup> CSINK, L., FRÖHLICH, J. *Az Alaptörvény és az Átmeneti rendelkezések viszonya*. Budapest: Pázmány Law Working Papers 2012/2., Pázmány Péter Katolikus Egyetem (Pázmány Péter Catholic University Budapest), p. 5. In: *plwp.eu* [online]. [2023-07-13]. Available at: <<https://plwp.eu/docs/wp/2012/2012-2.pdf>>.

<sup>9</sup> GÁVA, K. *Az Alaptörvény módosításai. Pro Publico Bono*. 2014, Vol. 2, No. 2, p. 44. [2023-07-13]. Available at: <<https://folyoirat.ludovika.hu/index.php/ppbmk/article/view/3039>>.

clause of the Fundamental Law the idea that the exercise of powers under this paragraph should be consistent with the fundamental rights and freedoms enshrined in the Fundamental Law. The seventh amendment also included that the right of assembly should be subject to the right to respect for private and family life. The provisions on the right of asylum have also been partially amended. This amendment provided for the creation of an Administrative Supreme Court, but this was not eventually established.

The eighth amendment to the Fundamental Law (2019) again concerned the courts and reinstated the previous provisions, i.e. the provisions on the Administrative (Supreme) Court were deleted.

The ninth amendment to the Fundamental Law (2019) added the provisions on the family, stating that a mother is a woman and a father is a man. It also states that “Hungary shall protect the right of children to a self-identity corresponding to their sex at birth, and shall ensure an upbringing for them that is in accordance with the values based on the constitutional identity and Christian culture of our country.” The provisions on Special Legal Order have been completely rewritten and, contrary to previous plans, will enter into force this November, earlier than planned.

The tenth amendment of the Fundamental Law (2022) addressed one of the situations of special legal order, the state of danger. Until now, a state of danger could be declared in the event of an industrial or natural disaster, or in the event of an epidemic. But now, in view of the situation between Russia and Ukraine, the state of danger has been extended to include the possibility of declaring it in the event of armed conflict, war or humanitarian disaster in a neighbouring country.

Finally, the eleventh amendment (2022) stipulates that elections for local government representatives should be held together with elections to the European Parliament, for cost-saving reasons, which was not the case until now. It also changes the name “megye” (county) to the historical name “vármegye” (similar to shire in English). At the same time, the new title of government commissioners (*kormány megbízott*) will be capital government commissioners or county government commissioners (*főispán*).

### 3. NATIONAL AVOWAL

For the first time, the initial part of the constitution is not called the Introduction or the Preamble, but the solemn National Avowal. This shorter section is literally a creed, a list of values that the Hungarian state and legislature believe in. The Avowal stresses that we are part of Christian Europe and makes several other references to Christianity. When it emphasises the role of Christianity in preserving the nation, this is a salute to the Christian religion, but it does not mean that it makes a legal distinction between religions, as there is denominational equality in Hungary. The Avowal considers the national minorities of Hungary to be part of the political community and also emphasises that our nation, divided into parts (across borders), exists in spiritual and mental unity. According to the National Avowal, Hungary seeks cooperation with all countries of the world.

The Fundamental Law regards the family and the nation as the most important framework for coexistence, and human dignity as the basis of human existence. It believes that the rule of the people can only exist where the aim of the state is the fulfilment of good life, security, order, justice and freedom.

The National Avowal contains a reference to the Holy Crown,<sup>10</sup> which has long since ceased to be a symbol of kingship but a concept of public sovereignty that embodies and expresses the whole nation. Everyone is part of the Crown, that is, of sovereignty. The Holy Crown initially represented only the king; then, in the 1500s, it came to represent the power of the king and the nobles, and in 1848 it was extended to the serfs. Therefore, the mention of the Holy Crown does not conflict with the republican form of government or the assertion of popular sovereignty. Despite this, there are some who believe that the mention of the Crown is outdated and should not be included in the Fundamental Law.

Subsequently, the National Avowal distances itself from the 1949 Constitution of the People's Republic and affirms that our freedom came from the 1956 Revolution. It also believes that the twentieth century has witnessed a series of events that led to moral upheavals, after which spiritual and moral renewal is essential.

#### 4. THE FOUNDATION

The Foundation section contains fundamental ideas and principles in the context of the constitutional functioning of the Hungarian state. Hungary is an independent democratic state governed by the rule of law, and its form of government is republic. The state operates according to fundamental principles such as the separation of powers and sovereignty. This part also states that Hungary bears a responsibility for Hungarians living beyond its borders, which in practice takes the form of a wide range of measures and support.

Here you can also read the European Union clause, according to which Hungary contributes to the creation of European unity. The Fundamental Law also specifies the capital and the administrative units of the state. The official language is Hungarian. Then it lists the symbols of the state: the flag, the anthem and the coat of arms. "Paragraph (1) of Article I) The coat of arms of Hungary shall be a vertically divided shield with a pointed base. The left field shall contain eight horizontal bars of red and silver. The right field shall have a red background and shall depict a base of three green hills with a golden crown on top of the higher central hill from which rises a silver patriarchal cross. The Holy Crown shall rest on top of the shield. (2) The flag of Hungary shall feature three horizontal bands of equal width coloured red, white and green from top to bottom as the symbols of strength, loyalty and hope, respectively. (3) The national anthem of Hungary shall be the poem *Himnusz* by KÖLCSEY Ferenc set to music by ERKEL Ferenc." The following is a list of national holidays: 15 March to commemorate the 1848–49 Revolution and War of Independence, 20 August to commemorate the founding of the state and King Stephen, 23 October to commemorate the 1956 Revolution and War of Independence.

For now, the official currency is the forint. Then there is the sentence in the Fundamental Law that says that marriage is between a man and a woman, a mother is

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<sup>10</sup> BÓDI, S. Different Concepts on the Doctrine of the Holy Crown in the Works of Ferenc Eckhart, Ákos Timon and Emma Bartoniek. *Jogelméleti szemle*. 2016, Vol. 17, No. 2, pp. 18–32 and BÓDI, S. The Importance of the Doctrine of the Holy Crown in the Hungarian Public Law Thinking with Special Focus on Werbőczy's Tripartitum. *Polgári szemle: gazdasági és társadalmi folyóirat*. 2016, Vol. 12, No. 1-3, pp. 185–201.

a woman and a father is a man. The legislator considers marriage and the parent-child relationship to be the basis of the family relationship. Obligations are scattered in parts of the Fundamental Law, in this part it says that everyone has a duty to participate in the performance of community tasks.<sup>11</sup> It is also a duty that everyone must protect natural resources.<sup>12</sup> The idea that “the protection of Hungary’s constitutional identity and Christian culture is the duty of all bodies of the state” is an obligation towards state bodies.”<sup>13</sup>

It is important that Hungary respects the universally recognised rules of international law and seeks cooperation with all peoples and countries of the world.

Subsequently, it describes the procedure for adopting and amending the Fundamental Law and lists what constitutes law. The Foundation finally lists the crimes of the Communist dictatorship, i.e. the fourth amendment mentioned above, can be read in this section.

## 5. FREEDOM AND RESPONSIBILITY

This is the part of the Fundamental Law that contains the fundamental human rights. As regards the classification of human rights, the Hungarian Constitutional Court and the legislature have adopted the following typology.<sup>14</sup> Some rights and prohibitions are absolute and cannot be limited. There are several categories of rights that can be limited, some that can be limited under the general fundamental rights test and some that can be limited under specific tests. It should be noted that most rights can be limited, so there are fewer rights that cannot be limited. These so-called absolute rights,<sup>15</sup> and prohibitions arising from them which cannot be restricted under a special legal order, are the right to life, human dignity, the prohibition of torture, the presumption of innocence, the principle of *nullum crimen sine lege*, the right to a defence, the prohibition of retroactive criminal legislation, the prohibition of medical experiments without consent. “Trafficking in human beings shall be prohibited. Practices aimed at eugenics and the use of the human body or its parts for financial gain, as well as human cloning, shall be prohibited.”<sup>16</sup> We therefore consider these absolute rights and prohibitions listed above to be inviolable, absolute, both in peace and in war.

Most rights can be limited under the general fundamental rights test. This test is the so-called test of *necessity and proportionality*, which means that a human right can only be restricted to protect another fundamental right or constitutional value for a legitimate purpose, by law, if necessary and if the restriction is proportionate and does not deprive the restricted fundamental right of its full scope.<sup>17</sup> Finally, there are the *special tests*, the

<sup>11</sup> Article O).

<sup>12</sup> Paragraph (1) of Article P).

<sup>13</sup> Paragraph (4) of Article R).

<sup>14</sup> See BALOGH, Z., GÁRDOS-OROSZ, F. Az alapvető jogok korlátozása. (Alapvető jogok és kötelességek c. fejezetben). In: Iván Halász (ed.). *Alkotmányjog*. Budapest: Dialóg Campus Kiadó, 2018, pp. 231–235.

<sup>15</sup> BALOGH, Z., GÁRDOS-OROSZ, F. Korlátozhatatlan jogok. In: *Alkotmányjog*. Budapest: Dialóg Campus Kiadó, 2018, p. 235.

<sup>16</sup> Paragraph (1)- (3) of Article III.

<sup>17</sup> ERDŐS, C. *Az általános alapjogvédelmi teszt és elemei, Az alapjogok korlátozása*, In: Stefánia Bódi – Gábor Schweitzer (eds.). *Alapjogok*. Budapest: Ludovika kiadó, 2021, pp. 83–87.

public interest test and the reasonableness test. The public interest test was developed for the right to property, under which property can be restricted to a large extent in the public interest, including expropriation. And this is the strongest restriction on property, since it is a deprivation of property in the public interest. Of course, this is not the same as socialist property expropriation, since here expropriation is linked to immediate, unconditional and full compensation. And the reasonableness test applies to the prohibition of discrimination, i.e. it is forbidden to discriminate between people unless there is a rational justification.<sup>18</sup> However, there may be cases where there is a reasonable justification for making a distinction, for example, to ensure that only suitably qualified people are hired for a particular job. There is no reason, nevertheless, why a party should not, for instance, hire a person who did not vote for that party as a maintenance worker in the party office, because there is no reasonable justification for doing so in terms of filling the job.<sup>19</sup> As a matter of course, the Constitutional Court has also added a great deal to the interpretation of individual rights.

This part of the Fundamental Law enshrines the objective duty of the state to protect institutions and the idea that human rights must be regulated by law, i.e. that decree level is not sufficient. It begins its list of rights with the right to life and human dignity. In the past, many people thought that the two rights were inseparable, but nowadays it is believed that there are situations in life where the two rights can conflict. These are typical euthanasia situations.<sup>20</sup> Human dignity is sacrosanct. Next, torture is banned under the Fundamental Law, as is medical experimentation without consent. The Fundamental Law also prohibits cloning; however, it does not use this term but says that “copying human beings is prohibited.”

Everyone has the right to private and family life and their privacy, and the exercise of the right of assembly must not infringe on the peace and quiet of the home.<sup>21</sup>

The Fundamental Law recognises the right to data of public interest and the protection of personal data. *Naturally, it should be pointed out that each right is set out in (a) separate act(s), so we can only outline the catalogue of rights here. Regulations with detailed guarantees can be found in many of the cardinal acts.*<sup>22</sup>

The Fundamental Law also enshrines freedom of conscience and religion; the state and churches operate separately in Hungary. The state does not interfere in religious matters, is neutral in terms of ideology, but seeks to cooperate with the churches.

These are followed by the regulations of the right of assembly and the right of association; the right of assembly was interpreted many times by the Hungarian Constitutional Court,

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<sup>18</sup> BALOGH, Z., GÁRDOS-OROSZ, F. *Speciális alapjogi tesztek*, In: *Alkotmányjog*. Budapest: Dialóg Campus Kiadó, 2018, pp. 234–235.

<sup>19</sup> See discrimination cases, formerly under the competence of the Equal Treatment Authority, now under the competence of the Commissioner of Fundamental Rights.

<sup>20</sup> In this context, see BÓDI, S. *Gondolatok az eutanáziáról Oregon állam szabályozása kapcsán. Jogelméleti szemle*. 2022, Vol. 1 pp. 23–35.

<sup>21</sup> This had to be written into the Fundamental Law because it often happened that people demonstrated in front of politicians' houses, and the legislator felt that the politicians' neighbours or minor children or family members shall not be required to tolerate the crowd shouting outside their house. This is in line with the thinking of the US Supreme Court, which also protects the peace of the home.

<sup>22</sup> A cardinal act is an act adopted by 2/3 of the Members of Parliament present.



until a new law was passed in 2018 based on the German, Bavarian model. It is the right of association that makes it possible to create parties, associations and organisations. No armed body may be created under the right of association.

The Fundamental Law also recognises the right of petition. The Constitution protects press freedom and the right to freedom of expression. The detailed rules are set out in the highly publicised Media Act, which has undergone several amendments since its creation.<sup>23</sup> There are many limits of freedom of expression, the most essential one being that it is forbidden to violate human dignity. The sanctions are so severe that the Criminal Code contains the facts and sanctions that come into force if the limits of freedom of expression are exceeded.

Hungary guarantees freedom of scientific research and arts, and the right to education and culture. Everyone has the right to a free choice of work, but this does not imply a substantive right to a job or position. Everyone has the right to own and inherit.

Subsequently, the text introduced by the seventh amendment to the Fundamental Law stipulates that foreigners may not be settled in Hungary but may only reside in the country on the basis of an individually assessed application. This is a reflection of the mass influx of people into Europe. Hungary shall, “upon request, grant asylum to non-Hungarian nationals who are persecuted in their country or in the country of their habitual residence for reasons of race, nationality, the membership of a particular social group, religious or political beliefs, or have a well-founded reason to fear direct persecution if they do not receive protection from their country of origin, nor from any other country.”<sup>24</sup>

Article XV is also of great importance and much quoted, as it is the non-discrimination clause, which prohibits all forms of discrimination between people. Men and women have equal rights.

This is followed by the protection of children’s rights, and a duty introduced by the Fundamental Law that children of legal age shall care for their parents in need (as long as this does not endanger their own subsistence). The ninth amendment to the Fundamental Law introduced the text that “every child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development. Hungary shall protect the right of children to a self-identity corresponding to their sex at birth, and shall ensure an upbringing for them that is in accordance with the values based on the constitutional identity and Christian culture of our country.”<sup>25</sup> This thought is also a reflection on the new trends that are taking place, among others, within the European Union, which are related to the questioning of the biological sex and the challenges to the Christian-Jewish culture of Europe.

The following issue is the rights of employers and workers, social security and the right to physical and mental health. The catalogue of rights continues with details on the right to vote, followed by freedom of movement (freedom to move). Rights to a fair trial, such as the presumption of innocence, the right to legal redress or the right to a defence are also essential for the rule of law.

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<sup>23</sup> Act CLXXXV of 2010 on Media Services and on the Mass Media.

<sup>24</sup> Paragraph (4) of Article XIV.

<sup>25</sup> Paragraph (1) of Article XVI.

The Fundamental Law then refers to the protection of the rights of nationalities, since there are 13 nationalities in Hungary who are constituent elements of the state. The chapter ends by mentioning some of the obligations, such as the reference in the Fundamental Law to the participation of all in satisfying common needs, and the obligation to go to war, which is suspended in peacetime and would only come into force in certain cases of special legal order.

## 6. THE STATE

The part entitled “The State” discusses the state bodies relevant to constitutional law, first of all, the legislative branch, the National Assembly. The National Assembly is unicameral in Hungary, although the idea of a bicameral parliament were raised several times. It was an issue both during the political changes in 1989–1990 and before the adoption of the Fundamental Law. It can be said that the legislative branch has quite a lot of power and can be dissolved by the President of the Republic, in addition to dissolving itself. The legislative branch is not the only decision-making body, since citizens also have the opportunity to express their views in a national referendum as an institution of direct democracy.

The part entitled “The State” subsequently discusses the Head of State, who is elected by the National Assembly in a maximum of two rounds. It can be said that the President does not have significant powers but is still more than symbolic. He or she has the classic powers of a head of state and can be impeached by the Constitutional Court.

The Fundamental Law then deals with the functioning of the Government, the supreme body of the executive. After the political changes in 1989–1990, a strong prime ministerial position was established on the basis of the German model, the so-called prime ministerial governance.<sup>26</sup> The government includes deputy prime ministers and ministers. The government can be overthrown by a so-called constructive vote of no confidence, which was introduced by the Bonn Basic Law and is widespread in parliamentary countries around the world. “One fifth of the Members of Parliament may, together with the designation of a candidate for the office of Prime Minister, submit a written motion of no confidence against the Prime Minister. If the National Assembly supports the motion of no confidence, it thereby expresses its lack of confidence in the Prime Minister and simultaneously elects the person proposed for the office of Prime Minister in the motion of no confidence. The votes of more than half of the Members of Parliament shall be required for such a decision by the National Assembly.”, reads the relevant provision of the Fundamental Law.<sup>27</sup> This legal institution has been used once so far.<sup>28</sup>

The Fundamental Law also lays down the outlines of the operation of the Constitutional Court, which is an independent institution and one of the most important guarantees of

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<sup>26</sup> On constructive vote of no confidence and prime ministerial governance, see KÖRÖSÉNYI, A., HAJDÚ, A., ONDRÉ, P. *Politikai vezetők: kormányfői karrier és teljesítmény. 2. fejezet.* In: András Körösenyi (ed.). *A magyar politikai rendszer- negyedszázad után.* Budapest: OSIRIS – MTA Társadalomtudományi Kutatóközpont Politikatudományi Intézet, 2015, pp. 35–57.

<sup>27</sup> Paragraphs (1)-(2) of Article 21.

<sup>28</sup> It was applied on 14 April 2009.

the rule of law. It is not the same as the Curia, the highest judicial body. Therefore, it can be seen that the so-called European centralised model, which is hallmarked by the name of Hans Kelsen, was introduced in Hungary in connection with the operation of the Constitutional Court, and not the American decentralised version. The Constitutional Court also carries out *ex ante* and *ex post* constitutional review, as well as a number of other functions.

The Fundamental Law goes on to dealing with the courts and the prosecutor's office, both of which have four levels in our country. The central administration of the courts is supervised by a separate body. Strict rules apply to the appointment of judges and prosecutors, which, besides the qualification requirements, also require an occupational fitness assessment. As a general rule, the appointment is for an initial period of 3 years, renewable thereafter for an indefinite period. The public prosecutor's office not only has a role to play in representing the prosecution but also in protecting the public interest, for example, by supervising social bodies or by playing an important role in child protection.

The next legal institution discussed in the Fundamental Law is the Ombudsman, the Commissioner of Fundamental Rights. The role of ombudsmen was created after the political changes in 1989–1990, with four ombudsmen at first, meaning that Hungary followed the multi-ombudsman system. However, a legislative amendment brought about a shift to a monocratic, that is, single ombudsman system, so now there is one ombudsman and two deputies. The Commissioner of Fundamental Rights not only serves to curb maladministration but also provides human rights type legal protection, so there is a mix of functions in the domestic model of the ombudsman.

Subsequently, the Fundamental Law deals with local governments in the part entitled "The State". Local authorities are an expression of local autonomy, operating at all levels. They have autonomy, but they are also controlled. The control (legal supervision) is carried out by the county and capital government offices. Autonomy means legislative freedom, i.e. the right to make regulations, economic autonomy, owning their own property, and freedom of association, that is, the freedom to associate with other local authorities.

In the part entitled "Public funds", the Fundamental Law discusses the functioning of the National Bank of Hungary (the central bank), the State Audit Office of Hungary and the Fiscal Council. The State Audit Office of Hungary is the financial and economic control body of the National Assembly, the National Bank of Hungary is the central bank responsible for monetary policy, and the Fiscal Council examines the soundness of the central budget.

The part entitled "The State" concludes with discussing the Hungarian Defence Forces, the police and the national security services. Although in 2004 peacetime military service was suspended, it can be restored under a special legal order. Obviously, the main task of the police is to prevent and detect crime, but they also have a role to play in curbing illegal immigration, for example. The national security services are present in the functioning of every state, tasked with protecting national security interests. Based on their organisation, the national security services in Hungary can be divided into a civilian and a military part.

## 7. SPECIAL LEGAL ORDER

Special legal order refers to situations where a legal order different from normal operations enters into force. This may be due to an external or internal attack, civil war, revolution, industrial or natural disaster. The operation of the Constitutional Court cannot be restricted in any special legal order. Under a special legal order, the National Assembly may not be dissolved or declare its own dissolution. The new amendments reduce the number of cases of special legal order from 6 to 3.

## 8. CLOSING THOUGHTS

Hungary came a long way to the birth of the Fundamental Law, from the political changes in 1989–1990 to now. The first real constitution is usually considered to be the 1949 Constitution of the People's Republic, before that Hungary had a historical constitution. During the political changes in 1989–1990, the constitution was amended several times, so even though the numbering of Act XX of 1949 was retained, we could then consider it a democratic constitution.

This was replaced by the conservative Fundamental Law, which introduced novelties regarding both form and content. A constitution that is based on communal conception of man, that recognises a wide range of obligations and measures itself against a strict set of criteria. A state that recognises and respects all the guarantees of the rule of law in its functioning, principles and institutions. Perhaps I have succeeded in pointing out that it is the constitution of a state that wishes to preserve its national identity but reconciles this with international guarantees and the most fundamental constitutional principles. It is the constitution of a state that, looking back on its history, has overcome dictatorial regimes of the far right and far left, has experienced territorial fragmentation several times in its history, and has struggled a lot for its independence and survival.

The text of the Fundamental Law is available to anyone online, in English as well. Read it to get closer to understanding this nation, its history and its current manifestations.